REPORT

OF THE TRIAL OF

THOMAS WILSON DORR,

FOR TREASON;

INCLUDING THE

TESTIMONY AT LENGTH,

ARGUMENTS OF COUNSEL—THE CHARGE OF THE CHIEF JUSTICE—THE MOTIONS AND ARGUMENTS ON THE QUESTIONS OF A NEW TRIAL AND IN ARREST OF JUDGMENT:

TOGETHER WITH THE

SENTENCE OF THE COURT,

AND THE

SPEECH OF MR. DORR BEFORE SENTENCE,

FROM NOTES TAKEN AT THE TRIAL.

PROVIDENCE:

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1844.

REPORT

OF THE COMMITTEE

APPOINTED

TO INQUIRE INTO THE EXPEDIENCY

OF ADOPTING SOME MEASURES

FOR THE

RELIEF

OF THE

SUFFERERS

BY THE

YELLOW FEVER.

PREFACE.

The following Report has been prepared with great care and labor. The effort has been to make it as accurate and as full as the circumstances of the case would allow. This may in a great degree account for the delay which has occurred in completing it. It is believed that the testimony, the rulings of the Court, the points raised and decisions thereon, are scrupulously exact; and that Arguments of Counsel, if not fully, are, at least, *fairly* reported.

In the preparation of this Report we have been greatly aided by the extensive Briefs of one of the Counsel and by the comparison of three sets of notes taken at the Trial, including those of the Prisoner himself.

The necessity of this Report has arisen from the many obvious defects and inaccuracies of former Reports in partizan newspapers and pamphlets; from the fact that none of the important proceedings subsequent to the verdict have ever been published; and from the extended and increasing demand of the public for a more impartial, detailed and complete history of a Trial so novel in its character, and so important in its consequences.

It is proper to observe that most of the Report has been heretofore published, as it was prepared, in the columns of the Republican Herald.

GEORGE TURNER,
W. S. BURGES.

Providence, August, 1844.

FINIS

STATE TRIAL.

STATE OF RHODE ISLAND, &C. *vs.* THOMAS W. DORR,

FOR TREASON.

For the State, JOSEPH M. BLAKE, Esq., Attorney General, assisted by ALFRED BOSWORTH, Esq., of Warren.

The Defendant conducted his own case, in the absence of his principal counsel, Hon. SAMUEL Y. ATWELL, from severe illness. Assistant counsel, GEORGE TURNER, Esq., of Newport, and WALTER S. BURGES, Esq., of Providence.

To present a connected view of all proceedings from the commencement, is annexed a short preliminary statement.

Mr. DORR returned to the State on the 31st day of October last, and was immediately arrested and committed to prison, on a charge of treason against the State, as laid against him in an indictment then pending in the county of Newport. On the 29th of January, 1844, Mr. Burges, of counsel for the Defendant, at his request, gave a written notice to the Attorney General, that the Defendant would claim a trial of his case at the ensuing session of the Supreme Court at Newport. Mr. Blake replied to Mr. Burges, that at the opening of the next term of the court in March, he should inform the Court that he was ready to proceed in the trial of the indictment against Mr. Dorr, whenever the Court might direct. Notice of Mr. Dorr's intention to plead to the jurisdiction of the court, at the session before the regular term, was sent to Mr. Blake, in writing, on the 26th of February.

Mr. Dorr was taken from the prison in Providence, by Deputy Sheriff Potter, the same officer who committed him on the 29th of February last, and brought, the same day, before the Court at Newport, which was then sitting, by adjournment from the preceding regular term in August, to dispose of the arrears of business. Mr. Dorr was forthwith arraigned; and, being called upon to plead, interposed a plea to the jurisdiction of the Court, on the grounds that the law of the State (a portion of the Algerine law, as it is commonly called,) which authorises the finding of an indictment out of the county in which the offence is charged to have been committed is against common right, unconstitutional and void; and that if the act be constitutional, it does not in terms take away the right of being *tried* in the county where the offence is charged to have been committed, and ought not to be stretched by implication. Mr. Dorr is a resident in the county of Providence, and nothing is alleged against him in the county of Newport. The Attorney General demurred to this plea.

Mr. Dorr moved the Court to assign the earliest day for the trial of the demurrer. They assigned Thursday of the next week, in the regular term.

On Tuesday, March 5th, at the first sitting of the Court in the new term, Mr. Dorr was again brought into Court, and being satisfied, as he said to the Court, that the trials of the plea to the jurisdiction, and of the main issue by a jury, (in case the plea should be overruled,) could not both take place at the present term, in consequence of the distant day assigned by the Court for a hearing on the plea, and being desirous not only of avoiding delay, but even the appear-

ance of delay, withdrew what he believed to be a substantial defence, the plea to the jurisdiction of the Court, and pleaded *not guilty*, and claimed an immediate trial by jury, as his right. The Court, after consultation, announced that the 26th day of April following, was the earliest that they could assign for the trial, and assigned it accordingly.

The Defendant's counsel then moved the Court, in their discretion, to transfer the indictment to Providence county, where the Defendant and his witnesses resided, as the Defendant was constitutionally entitled to "a speedy trial by an impartial jury," neither of which could be obtained here. The motion was supported by Messrs. Turner and Atwell, and opposed by Bosworth and the Attorney General, and overruled by the Court; who ordered sixty additional jurors to be summoned by the Sheriff, for the 26th of April, and remanded the Defendant to Newport jail.

NEWPORT, *Friday morning, April 26.*

Present the whole Court, consisting of JOB DURFEE, Chief Justice, and LEVI HAILE, WILLIAM R. STAPLES and GEORGE A. BRAYTON, associates.

The Defendant, Thomas W. Dorr, is brought into Court, and persists in his former plea of *not guilty.*

Mr. Turner stated to the Court, that both the Defendant and himself had to regret the absence of Hon. SAMUEL Y. ATWELL, the principal counsel, who was detained at home by a severe, if not dangerous indisposition. But the Defendant would not ask for delay on this account, as he would be entitled to ask.

Mr. Turner suggested to the Court, that as there were a number of witnesses, some of them residing at a distance, who would be called to show the disqualification of several of the persons drawn and summoned for jurors, it was desirable that an adjournment should take place till to-morrow, that they might all be at hand when called for. But the Court decided that it would be best to proceed immediately, as the jurors whom it was intended to challenge might be disqualified on their own answers, and, if not, they might stand by till the witnesses should be produced.

Mr Turner moved the Court that the witnesses of the Defendant be summoned at the expense of the State, the Defendant being unable, of his own means, to procure their attendance.

Mr. Dorr stated, in explanation of the remarks of his counsel, that he should be able to offer to his counsel a reasonable compensation, but he should not be able to meet the further expenses of the case, especially if he should be obliged to summon many witnesses.

The Court replied that it had not been usual to furnish the aid of the State, except in cases of entire destitution, where counsel was assigned by them to the prisoner; and denied the motion.

The *Attorney General* then proposed to the Court several questions to be put to jurors, as they should be severally examined, touching their competency to sit in the case:

1st. Have you attended to the reading of the indictment of the State against Thomas W. Dorr, the prisoner at the bar?

2d. Have you formed, or expressed the opinion, that the said Thomas W. Dorr is guilty—or the opinion that he is not guilty of the crime in said indictment?

3d. Did you vote for the said Thomas Wilson Dorr, for Governor, at the election, on the 18th April, 1842?

4th. Have you formed the opinion, or do you believe that said Thomas W. Dorr was the Governor of this State, or authorised to exercise the duties of Governor, at any time between the 16th day of May, 1842, and the 28th of June, 1842?

5th. Are you a relation of the said Thomas W. Dorr?

6th. Are you a freeholder in the county of Newport?

Defendant objected to the 3d and 4th questions, as unreasonable and improper, and the question was argued at some length by Messrs. Turner and Dorr, and by the Attorney General.

The *Attorney General* contended that if these questions were not put, jurors, who had taken part with the prisoner and approved his proceedings, would sit to try him. If they voted for him, or believed him to have been Governor of the State, they had prejudged his case, and of course would hold him justifiable against the charge in the indictment. *If Mr. Dorr was Governor, then he had a right to do all that he did;* and those persons who believe that he was, are certainly incompetent to try him.

Mr. Dorr said, that although, as had been remarked, this was a novel case, novel and unusual expedients ought not to be resorted to, to procure a conviction. It was impossible to doubt the purport and tendency of these questions. They were aimed at all persons belonging to one of the political parties in the State, the party with which the Defendant was connected. All such were to be excluded from the jury; and all of another description were to be admitted without any such test as had been proposed. This would insure to him not the "impartial jury" guarantied to him, as of common right, but a partial jury of political opponents, and would work the most flagrant injustice. These questions were involved in the 2d question, or rather that the question involved all that could be properly asked of the opinions of jurors. If the reply was, that the juror had neither formed nor expressed an opinion concerning the guilt or innocence of the prisoner, he had qualified himself; and it was improper to go behind the oath he had taken, to extort from him other answers, when the first

covered the whole ground upon which it was competent to examine him. To go farther than this was to invade the right of the juror himself, to question his veracity, and virtually to charge him with perjury. If he had told the truth in his answer he was competent. And how far could an investigation of this kind be carried? Where was it to stop? A great variety of opinions upon the political questions involved in this case had been entertained, and different opinions by the same individuals at different times. Some were still for the old charter; some for one constitution, some for another; some had voted for the Defendant and believed he was duly elected and qualified as Governor, who afterwards went over to the opposite party, and contradicted their former assertions and acts. If these questions were to be put, then many others might be asked with the same propriety, the oath of the juryman to his impartiality would be nugatory, and an inquisitorial process would be devised, such as had never been heard of in a court of justice. If the juror answer that he voted for Defendant as Governor, and considered him to be Governor between the times named, then it would be necessary to ask him if he still remained of the same opinion, and, if not, when and how he changed his mind. There is no end to this sort of inquisition. Then, again, look on the other side of the question. If a person who says he believed the Defendant to be Governor be unfit to be a juror because of partiality, how much more fit and less partial is he, who says he believes the Defendant not to have been Governor, and has thereby closed his mind against all the evidence of justification that the Defendant may offer. The difficulty is in the case itself. It is a political question; and all persons have conversed about it and canvassed it more or less. If a fair trial be intended, the jury must not be selected from the political opponents of the Defendant. He cannot ask the prosecutor to put an entire list of Defendant's political friends in the box; and he has a right to protest against the exclusive selection of his political enemies: a jury at large, without selection, will be the nearest approach to fairness. A fair trial is inconsistent with such a procedure as that suggested, and with any other tending to the same result. No man can mistake the political meaning of the questions which it is now proposed to ask.

The Court, after deliberation, were equally divided upon the motion of the Attorney General, and the question was overruled. Chief Justice Durfee, and it is believed Judge Haile were in favor of putting the questions, and Judge Brayton and Staples in the negative. The Chief Justice observed that he was clearly of opinion that they ought to be asked.

The jurors, 76 in number, were then called, and all answered to their names except four, one of whom was before excused, and three were fined for non-attendance.

The prisoner, on being asked the usual question by whom he would be tried, replied, "by an impartial jury."

The Indictment was then read again, the first count of which is as follows:

INDICTMENT.

NEWPORT, SC.

At the Supreme Judicial Court of the State of Rhode Island and Providence Plantations, holden at Newport, within and for the County of Newport, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and forty-two.

The Grand Jurors of the State of Rhode Island and Providence Plantations, and in and for the body of the County of Newport, upon their oaths present, That Thomas Wilson Dorr, of the City of Providence, in the County of Providence, Attorney and Counsellor at Law, being an inhabitant of, and residing within the said State of Rhode Island and Providence Plantations, and being under the protection of the laws of the said State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance and wickedly and traitorously devising and intending, the peace of the said State of Rhode Island and Providence Plantations, to disturb and to stir up, move and excite, insurrection, rebellion and war against the said State, on the seventeenth day of May, in the year of our Lord, one thousand eight hundred and forty-two, at the City of Providence aforesaid, in the aforesaid County of Providence, with force and arms unlawfully, falsely, maliciously and traitorously, did conspire, compass, imagine and intend to raise and levy war, insurrection and rebellion, against the said State; and in order to perfect, fulfill, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr—he, the said Thomas Wilson Dorr, afterwards, to wit, on the said seventeenth day of May, in the year of our Lord, one thousand eight hundred and forty-two, at the City of Providence aforesaid, in the aforesaid County of Providence, with a great multitude of persons, whose names are at present, to the Jurors aforesaid, unknown, to a great number, to wit, to the number of three hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, muskets, swords, pistols, dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and gather themselves together against the said State, and then and there, with force and arms, did falsely and traitorously and in a warlike, hostile manner, array and dispose themselves against the said State of Rhode Island and Providence Plantations, and then and there, that is to say, on the day and year aforesaid, at the City of Providence aforesaid, in the aforesaid County of Providence, within the said State, in pursuance of their traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, 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 war, against the said State of Rhode Island and Providence Plantations, contrary to the duty of his said allegiance and fidelity, against the form of the Statute in such case made and provided, and against the peace and dignity of the State.

In consequence of the great length of the testimony in the case, it is considered unimportant to a full understanding of the case, to go into the minute particulars of empannelling the jury; only the incidents which are most important are stated.

The regular drawn jury for the term consisted of 16. Sixty in addition were selected and summoned upon a *venire* by the Sheriff, previous

to the commencement of the term. Forty-eight more, (twelve in each *venire*,) were afterward summoned by the Sheriff, by order of the Court. One other person was excused on account of indisposition. Deducting the five absent or excused, there remained 119, from whom the choice of a jury was to be made.

The Defendant was entitled to twenty peremtory challenges, and made use of the full privilege in this respect allowed him by law.

Of the 99 remaining, 83 were set aside by the Court, in consequence of their answers that they had formed and expressed an opinion of the guilt or innocence of the prisoner, or upon proof by witnesses to the same effect. Only one person was set aside on proof by a witness, for the government, that he had formed and expressed an opinion. Several were set aside on proof produced by the Defendant. Four persons summoned were not reached on the list, the jury being complete.

As the offence charged is political, and a great political question was involved in the issue, it is proper to state that the jury were all of one political party, and all opposed to the political sentiments of the prisoner, and those of the party with which he is connected.

Of the drawn jurors, sixteen in number, two are connected with the democratic party. One of these, Abner Tallman, replied to the question of the prosecutor, that he had formed and expressed no opinion; but was taken off, on the production by the prosecutor of a witness who deposed to the contrary. The other, John H. Cornell, answered that he had formed and expressed an opinion, and he was set aside; as was also, for the same excuse, Forbes Manchester, the only person among the 108 summoned jurors, who is connected with the democratic party.

On Friday morning (the 26th) after the empannelling of the jury had commenced, Mr. *Dorr*, upon the question of the competency of Philip Sherman, suggested to the Court, that the 2d question put to jurors, in its present shape, might admit to the jury, persons who had fully made up their minds upon the general subject. The question now is whether the juror have formed or expressed an opinion upon the guilt or innocence of the prisoner as *charged in the indictment*. He may have made up his mind that he is guilty, and may yet be in doubt about a particular day, or the precise "manner and form," and thus pass into the jury box. If the question were general, according to the usual practice, "have you formed an opinion as to the guilt," &c., the juror might reply that his opinion was formed and expressed, though he was not certain as to time, and manner and form.

The suggestion was not considered by the Court; and the question was put as before.

Abner Tallman was called as a juror in the forenoon of the 26th; and answered that he had not formed nor expressed an opinion, and was otherwise qualified. The Attorney General requested that he might stand aside for the present, that he might send for witnesses as to Mr. Tallman's having expressed an opinion; although he could not say what he should be able to prove by them. The Court granted the request. The next morning *Peleg T. Wait* was produced, who swore that he had had a conversation at his shop with Tallman, in which T. said that he would not pay for a sheep that had been killed "as long as he had a drop of blood in his veins." Tallman also said, that, if he were on a jury to try Gov. Dorr, he would never find a verdict against him "until all was blue." Witness could not recollect which of the expressions used by Tallman applied to the sheep, and which to the sitting on the jury. Witness said that he had never mentioned the conversation with Tallman to any body; and that when he was asked on the subject he knew nothing about it, but would remember it in an hour or two. Mr. Tallman was again examined and related the particulars of his conversation with Mr. Wait. Mr. T. said that he had had no conversation with Wait on the subject of sitting on the jury, and that the expressions used by him related to a sheep said to have been worried by a dog of his, but untruly; and for which he would not pay till "all was blue." The Court said that it was a plain case, and the juror must stand aside. Defendant protested against the ruling of the Court, and requested them to note his exception.

Robert Seatle, on the first *venire*, having swore that he had not formed nor expressed an opinion, was set aside, on motion of Defendant, for the production of witnesses. When his name was called, and the witnesses were about to be examined, the Court said it was unnecessary—He must stand aside, as they had noticed "an improper communication" with him; Judge Staples remarking that this was enough to throw a doubt on his qualification. The "communication" was with William H. Cranston, Esq., whom the government had requested to look up witnesses in the case of Tallman, and who had passed over, in the view of the Court, and held a conversation with Seatle.

Saturday afternoon, (27th.)

Edward Coggeshall examined: Had expressed no opinion. Stephen P. Slocum, witness, testified that he had heard Coggeshall say that Dorr "ought to be hung"; and Peleg Almy, jr. that he had heard him say that the "Dorrite party ought all to be hung." Blake, Attorney General, remarked that the juror intended nothing personal by this. Set aside for cause.

Moses Norman said he had formed an opinion, if all was true that he had read in the newspapers; and had expressed an opinion that Mr. Dorr was guilty of treason. Challenge for cause: not allowed by Court: challenged peremptorily.

Abraham Coggeshall said he had formed and expressed an opinion, but thought he could sit as an impartial juror. Challenge for cause overruled: peremptorily challenged.

Robert H. Watson had formed an opinion; but thought he had never expressed any. Challenge for cause overruled by Court: peremptorily challenged.

Same proceedings by Court and Counsel in regard to John Sherman and Joshua C. Durfee, when called as jurors.

Samuel S. Peckham had formed and expressed an opinion that every person in the suffrage party was guilty of treason. Challenge for cause overruled: peremptorily challenged.

Monday forenoon, (29th.)

William Swan, jr. sworn. Had expressed no opinion. Caleb S. Knight, witness, testified that he had heard Swan say that "Dorr and his party ought to be hung," and that Dorr had committed treason. Set aside for cause.

Defendant stated to the Court, that, from information given to him, it seemed to be a proper question to one of the keepers of the jury empannelled in part, whether he had had any conversation with any of them upon the case on trial. The question being asked, the officer declared that he had not.

Defendant challenged in writing the whole array (of 12) returned upon the 3d venire, on the ground of improper interference by William H. Cranston, Esq., who accompanied the deputy sheriff out of town in making the summonses, and in whose hand-writing the return of jurors was made, as follows:

CHALLENGE.

SUPREME COURT, March Term, 1844.

NEWPORT, SC.

INDICTMENT—*The State* vs. *Thomas W. Dorr.*

I challenge the array in this case for manifest partiality in the officer by whom the same was returned, Because,

George Howland, a Deputy Sheriff of this county, who was charged with the service and return of the writ of venire for additional Jurors, unmindful of his duty in that behalf, and to the great and manifest prejudice of this traverser in obtaining a fair trial by an impartial Jury, did, on the night of the 26th of April instant, take with him to advise with and assist him in his said duty, William H. Cranston, Esq., an Attorney and Counsellor at Law, and an officer of this Hon. Court, whose frequently expressed opinions are inimical to the traverser, and who, ever since the commencement of the present trial, has acted, apparently, as an Attorney with, and in the employment and under the direction of, the Attorney General; and has summoned witnesses, at his request, in behalf of the State, from remote parts of the Island.

And because the Jurors returned on the writ of venire aforesaid, by the said George Howland, Deputy Sheriff as aforesaid, and constituting said array, were returned at the nomination and suggestion of the said William H. Cranston.

And because the return upon the said writ of venire is in the hand-writing of the said William H. Cranston.

(Signed) THO'S. W. DORR.

Mr. Dorr said that it was impossible to disguise the fact that an attempt was made to construct a political jury for the trial of this indictment. Of all the men who had thus far been summoned by the sheriff, only one was of the same political party with himself. All the rest were his polit.-cal opponents; and this was the "fairness" for which the indictment had been removed into this county from that where he resided, and where the acts charged in the indictment were said to have been committed. Such a proceeding as this he intended to expose here, and before the country. He believed that he might with propriety have made a similar challenge to the first *venire*, as having been got up under the inspection of a relative of the individual designated in this challenge. But he had supposed that such a general challenge might have been regarded by the persons summoned as directed toward themselves, though it would have been intended only for those who were making use of them for their own purposes. Such a mode of getting up juries to insure conviction ought to receive the severest reproba tion.

Blake, Attorney General, with considerable warmth, repelled the implication, which he said the challenge conveyed, that he had been sending out an emissary to nominate and collect jurors, and in his turn charged the Defendant with attempting to direct the sheriff in the discharge of his duty.

Mr. Turner said that he would take the word of the Attorney General in the disclaimer he had made, and would cast no imputation upon him; but it was very natural to suppose that Cranston might be under his directions *generally*, as he (Blake) had stated here that he was under his directions in summoning witnesses.

Mr. Dorr said that Mr. Attorney, in a moment of irritation, had made a charge of interference against him, which was groundless. After the first *venire* was exhausted, he (Mr. Dorr) had said to the sheriff, as he was passing round the table, "Give us this time, Mr. Sheriff, two or three democrats. Before, they were all of the other sort but one." This was said sportively, and publicly in the hearing of several persons, and not for any improper object. No individual was named to the sheriff. I now repeat, said Mr. Dorr, in the presence of the Court—let us have men for this jury who are not all of one sort.

John Tallman testified that William H. Cranston was with the officer on Saturday morning when he summoned Headley as a juror; the day before, Cranston was with Headley and Dennis.

John Headley was taken up as a juror on Saturday, William H. Cranston being in company with the officer. Cranston sought for witnesses against Abner Tallman, who had been summoned as a juror.

Nathan Dennis testifies that William H. Cranston was in company with the officer who summoned him as a juror: the day before Cranston came to summon him as a witness. Cranston said to him (Dennis) that he was looking for witnesses to get Abner Tallman from the jury.

Samuel Heath was summoned as a juror by the officer, Cranston being in his company.

Mr Turner read from 3 Jacob's Law Dict. 569, and Co. Litt. 158, on the subject of the impartiality, which ought to be shown by officers in summoning jurors.

A "tolerable ground of suspicion" even is sufficient to set aside the sheriff's return. So also a nomination of the men by either party.—3 Bla. Com. 359. 4 Bla. Com. 352. 4 Hawkins' P. C. 11. Hale's Com. L. 286-9. 3 Jacob's 574.

One person returned on a pannel at the nomination of either party, will vitiate the return.—Wood's Instit. 616.

"An attorney was turned over the bar for giving directions to the sheriff what persons he should return."—English Liberties 239. 3 Jacob's L. D. 572.

The *Court* decided that the challenge to the

array could not be sustained; and the Defendant excepted to the ruling of the Court.

The *Defendant* proposed a question to the Court respecting his right of being heard for himself. A prisoner has a right to be heard by counsel, and to speak for himself. After the two counsel, whom the rules allow, have spoken, is it still the right of the prisoner to be heard? The *Court* said not. The prisoner, if he speak, is one of the counsel, and only one other can be heard with him.

Monday afternoon, (29th)

Samuel Heath examined: summoned for a juror and declared that he had expressed no opinion. Peleg Almy testified that he heard Heath say, they "did not kill enough at Chepachet," (meaning the charter troops,) though his feelings were not worse toward Dorr than the rest; he considered him as a ringleader. Set aside for cause.

Samuel Westcott was admitted a juror.

Defendant excepts, because his answers were unsatisfactory.

Tuesday morning, (30th.)

Mr. *Blake* alluded to the injustice which, he said, was done to William H. Cranston yesterday, in the matter of summoning jurors.

Mr. Cranston said, that he had no conversation with the deputy sheriff, when he went out to summon jurors; but rode with him only. Those who knew him, would believe him incapable of such an interference.

Benjamin I. Lawton examined for juror: had expressed no opinion.

Thomas Cutter, witness, heard him say that "T. W. Dorr ought to be shot."

Abiel Spencer heard Lawton say, he "would chop Dorr fine enough to make sausage-meat, if he could have his way."

George L. White heard him say that he "would have the Dorr party all hung."

Ordered by Court to stand aside for the present. The jury was filled without calling him again.

At 10 o'clock in the forenoon the jury was completed, and the following is a list of them:

1. Benjamin Carr, of Tiverton,
2. Asa Devol, do.
3. William L. Melville, Jr., of Newport,
4. William Card, do.
5. Jonathan Coggeshall, Jr., of Portsmouth,
6. David Seabury, of Tiverton,
7. Benjamin Cory, do.
8. Charles W. Howland, of Little Compton,
9. Borden Chase, of Portsmouth,
10. Joseph Paddock, Jr., of Newport,
11. Richard C. Norman, do.
12. William D. Southwick, do.

Richard C. Norman was appointed Foreman, and declined. Joseph Paddock, Jr. was appointed in his place.

The jury being empannelled, the clerk again read the indictment, and Mr. *Bosworth* opened the case for the State.

The crime charged was happily a novel one. A terrible oppression had been occasioned by trials for treason, when carried on by the King and government in England; and this had been the occasion of the crime being restricted here to those odious and atrocious acts which stab maliciously and wickedly at the life of the State. The prosecutors, he said, could have no feelings which would lead them to desire a conviction in this case. The jury were fortunately relieved from the duty of ascertaining the law. The court will instruct them in the law, and they will apply it to the facts. He spoke of the violation of high duties in treason. Read the statute against treason; two witnesses required to each overt act.

Levying war was an unlawful assembling, in warlike array, with treasonable purpose, and with ability to commit the act.—2 Swift's Dig. 264-5.

Appearing at the head of armed men, and advising them to act, is a levying war.—6 Dane's Ab. 693.

Dispersion without any actual engagement does not take away the character of treason. Manœuvreing in the face of the government is enough. 2 Burr's Trial, 407.

There are four counts in the indictment. Two charge the acts done at Providence on the 17th and 18th May, 1842, and two those done at Glocester on the 25th and 27th of June.

[Mr. Bosworth then went on to give a history of the proceedings of the Defendant, and to describe his motives and character in an exaggerated strain of denunciation and invective, more adapted to the political caucus than to the hall of justice, and which a political opponent should hesitate to employ. Mr. B. had forgotten the remark of his colleague, the Attorney General, that "if Mr. Dorr was Governor, then he had a right to do all that he did;" and that the true question involved the principle of popular sovereignty which might be honestly supported by Mr. Dorr, as it had been by the men of former days, who have bequeathed to us the inheritance of our liberties.]

The question was raised to the Court by Mr. Bosworth, whether the prosecution may prove the intention of the accused before the proof of the overt acts of treason. The Court, upon the authority of Chief Justice Marshall, (1 Burr's Trial, 472,) decided that the prosecutors might proceed in the order they pleased. Chief Justice Durfee remarked, that the intention may well be proved first; "for the law does not presume that a man at the head of armed men is committing treason."

The prosecuting officers then proceeded in the examination of witnesses in behalf of the State.

WITNESSES FOR THE PROSECUTION.

Tuesday Forenoon, April 30th, 1844.

Jeremiah Briggs.—Was present at the meeting of an Assembly at the "Foundry," on the 3d of May, 1842. Saw the officers sworn; saw Mr. Dorr hold up his hand and take the oath of office. The oath was taken by the Representatives, Senators, Clerks, and the State officers, excepting the General Treasurer. Mr. Dorr took an oath to support the Constitution of the State and of the United States as Governor. Saw a large procession formed on Christian Hill. The General Assembly and the Governor were attended by about

150 armed men. Crossed over from the hill to the house where they were to meet. Was there the whole time; and heard Mr. Dorr deliver his address as Governor; it was very long. The Assembly passed acts to renew the charters of several of the military companies. They also elected military officers, and passed several resolutions. They amended the charter of the Volunteer Company of Providence, and of Light Infantry Company of Woonsocket, so that they might enrol 200 men. They also amended some laws passed by the General Assembly some time previous; recollect in particular the riot act. Some of them seemed to think the Foundry was not a fit place to sit in, as it rained through, and some drops fell on the Speaker's head. They requested the Sheriff, Burrington Anthony, to obtain the Court House for their session the next morning. Witness passed in with the procession. They went in uncovered, through files of soldiers.

Cross-Examined.—Witness heard Mr. Dorr deliver his Address as Governor, from a printed paper. There was nothing unusual in it for such an address. Never heard one delivered before. Heard nothing in it about using force. The procession was like others he has seen since; has seen better looking men.

William Burrough.—Saw Mr. Dorr at the foundry acting as Governor of the State. Saw the procession form. It was composed of men armed and unarmed. Saw Mr Dorr take the oath in the common form. Military guards were stationed about the building for some time. The General Assembly passed acts, and appointed military officers. They appointed a committee to call on the Secretary of State to take possession of the papers of his office; also a committee to take possession of the public funds. Mr. Anthony, the Sheriff, was authorised to prepare the Court House for the use of the Assembly. They abolished the laws respecting offences against the State, called the Algerine laws. They appointed civil officers, and continued the Courts. They appointed a Speaker and Clerks, and altered the law respecting riots.

Saw a guard at Anthony's house on the 18th of May. There were several cannon there, and some companies of armed men; supposed they were there to protect Mr. Dorr.

Cross-Examined.—There were armed men in the procession on the 3d of May. Some had clubs or canes, they were not ordinary walking stics, some of them were as large as his arm. The committee spoken of to take possession of the public funds, were to demand them after a new Treasurer was sworn in. There was nothing warlike or riotous in the proceedings of the Assembly. Does not recollect hearing any forcible measure proposed. B. Anthony was authorised to go and demand the keys of the State House, and if he obtained them, to prepare it for their use. Nothing was said about what he was to do, if he did not get the keys. He was requested to do so. Saw no difference from other legislatures in the mode of conducting the business. One man there seemed to know more about business than the rest, and told them what to do. Others did not seem to understand the manner of doing business. Never saw anything just like it elsewhere.

Levi Salisbury.—Saw Mr. Dorr at the foundry. The Assembly was held there for the purpose of organizing the new Government; and they took the necessary steps for that purpose. Was not present when Mr. Dorr took the oath as Governor. Heard him deliver his Message. He was standing on the platform at the end of the building. Don't recollect seeing him before he came in. The procession was decent, well dressed and orderly. The armed men had guns or swords. The General Assembly passed acts and resolutions, and appointed officers, chiefly military. Does not recollect the appointment of any but military officers, excepting those necessary to organize the two Houses. Committees were appointed to inspect the public offices, and to transfer to the new officers the books, property and papers. A Resolution was passed directing the new Treasurer to receive and receipt for the funds. Does not recollect hearing Mr. Dorr propose to take possession of the public property by force, or any other person in his presence. Was not at B. Anthony's house on the night of the attack on the Arsenal. Knows of it only by report. Does not recollect of hearing Mr. Dorr say anything about attacking the Arsenal.

Cross-Examined.—Witness believes that the General Assembly passed a resolution authorising the Governor to demand and require the surrender of the public property to the new officers of the State. The organization of the Government was conducted in every respect in an orderly manner. There was nothing unusual, except that both Houses met in one room. Saw no dictation of any one person over the rest. There was by-talk and conversation among the members of the legislature, as in other public bodies. A resolution was passed in the House, requesting the Sheriff to prepare the Court House for the use of the Assembly. Does not recollect that anything was said of any alternative, if the House should be refused to him. Saw nothing unusual in the procession. Did not see any of the procession carrying large sticks or clubs.

[Witness hesitated in replying to a question from the Attorney General, whether he knew that it was Mr. Dorr's wish to take possession by force on the 3d of May, 1842, on the ground that he might subject himself to prosecution for misprison of treason, if he stated he had such knowledge and gave no information of it.

The *Attorney General* said it would be such an offence to refuse to testify what he knew of such a desire or intention on the part of the Defendant.

Mr. Dorr said he hoped Mr. Salisbury would not withhold anything he knew on his account.

The *Court* said that the witness was not asked whether he divulged or concealed, at the time, his knowledge of Mr. Dorr's intentions, but now generally what he knew on the subject; and that he must answer the question asked of him.]

Mr. Salisbury continued.—He certainly understood at the time, that it was the wish of Mr. Dorr to take possession of the State House and of the other public property. (*Mr. Dorr* said witness was correct.) Witness understood that Mr. Dorr was for vigorous measures. There was some discussion in the House on the subject, but it was dropped informally. There was a division of

opinion in the House upon taking such a step. The resolution that was passed, requesting the Sheriff to prepare the State House for the sitting of the Assembly, did not authorise or imply the use of force for that purpose. Witness understood that it was then Mr. Dorr's intention, and also that of others, to take possession of the State House, and other public property by force, if force should be necessary.

Wm. H. Smith.—Was at the foundry at the meeting of the General Assembly; Mr. Dorr also. Witness heard him deliver his inaugural Message. Thinks Mr. Dorr took the oath; but does not positively recollect seeing him do so. The procession was formed near the Hoyle tavern. Mr. Dorr was near the head of it. Some were armed, others not. Persons with arms walked by the side of the members of the Assembly; also by Mr. Dorr. The Assembly elected military officers. Does not know that Mr. Dorr signed any military commissions to officers then appointed; or that such commissions were issued; or of Mr. Dorr's procuring a seal of the State. That was the duty of another officer. Witness has seen commissions with Mr. Dorr's signature to them; but does not know that they were issued to the persons named in them. Heard Mr. Dorr say that he was elected to the place of Chief Magistrate, and was bound to perform the duties of his office. Has also the strong impression that Mr. Dorr said it would have been better to go at once to the State House, and take possession of it. Witness knows that it was Mr. Dorr's desire to take possession of the State House at all events. Witness did not know at the time that force must necessarily be used. There were different opinions as to the necessity of force to accomplish the object.

Cross-Examined.—A Resolution passed the Assembly, requiring all persons in possession of any of the State property or papers, to transfer the same to the newly elected officers; and the Governor was authorised to carry this into effect. This Resolution was passed near the close of the session. State officers, Senators and Representatives were elected. A committee was appointed to count the votes. The votes were counted; and the result was declared to the Assembly. Witness thinks there were about 7000 votes given in. There were few if any against Mr. Dorr. Does not know that any other Governor of the State was ever elected by an equal majority. Mr. Dorr made no proposition hostile to the true interests of the State. He acted as Governor of the State. Witness never knew of his acting otherwise than from a high sense of duty. He was treated by the Assembly and those associated with him, as Governor. Witness does not know where the votes given in for Defendant as Governor now are; or where the votes are at present, which were given for the People's Constitution, under which Mr. Dorr acted.

Tuesday Afternoon.

[*Mr. Turner*, for Defendant, read from the authorities, to show that an overt act of levying war must be proved, before testimony as to intention, or for other purposes, can be introduced.

The Court adhere to their opinion before expressed.]

Roger W. Potter.—Was Sheriff of Providence county in May, 1842. Saw the Defendant at the Assembly held at the foundry. He was called the Governor of the State. The day after the Assembly adjourned, a warrant was placed in the hands of witness against Dorr, and another against William H. Smith, as Secretary of State. Mr. Dorr was not to be found. Witness saw him again on the 16th of May, (the day he returned from New York.) He was in a carriage surrounded by a guard of armed men.

Cross-Examined.—Witness did not go out of the middle of the city to look for Dorr. Witness was first directed to go to Burrington Anthony's house for Dorr; but, after dinner, was directed not to go there, but to arrest Dorr if he should find him down street in the city. Did not know what might be considered his place of residence, as he had removed from his former home to the Franklin House, and afterwards left that house. Did not know that his residence was at B. Anthony's. Did not inquire for him there. Was told he might be found at the printing office of the Herald or Express. Edward Carrington of the council and others told him that Dorr would be down street. Witness received the warrants from the Governor, or some one of his council.

Dutee J. Pearce.—Does not know what day Mr. Dorr left the State for New York after the adjournment of the People's Legislature. Witness left on Saturday and met Mr. Dorr in Philadelphia on Monday. They proceeded to Washington. Witness left him in New York, when he returned from that place. Witness knew Mr. Dorr intended to return to Rhode Island, but nothing respecting his intention to maintain himself as Governor and to take possession of the public property by force. Mr. D. did not communicate with him on the subject. The proposition to take possession of the public property was made at the time of the sitting of the Legislature; but witness did not hear Defendant make it. Witness took ground against this proposition and opposed it. During the session of the Legislature at the Foundry there was a meeting of several persons at B. Anthony's house; and the subject of taking possession by force of the public property was talked over. Several persons were in favor of it. Does not recollect that Mr. Dorr expressed an opinion.

During this absence of the Defendant, witness heard him speak of bringing a force to this State, to resist the force which might be brought by the General Government in aid of the Charter Government. But Defendant never spoke of wanting or using any force from abroad, except in the contingency of an interference from abroad by the U. S. troops. He did not say how many men would be wanted in such an event. His object was to prevent an interference on the part of the General Government. Witness was informed, after he left Washington, that Defendant saw the President. Mr. Dorr stated to witness afterward at Chepachet, that he considered himself the lawful Governor of the State, and that he had as good a right to use force to defend the Government as any other officer had to overthrow it. Did not hear him hold out any inducement to any one to stand by him. He certainly did not to me.

Cross examined.—Did not hear Mr. Dorr say that he wished to take forcible possession of the State House. Did not have much conversation with him at that time. George H. Brown, of Chepachet, was strongly for the measure. Witness took ground against it. For this he was called a coward by Mr. Brown; but he (Brown) had made tracks fast enough when he got into difficulty.

Witness had no doubt of Mr. Dorr's intention to take possession of the State House. When witness returned to Newport, he said then that, if it had not been for him, Dorr and his men would have taken possession of the public property; and witness believes he was correct in saying so.

William P. Blodget.—Saw Dorr in the procession on the 16th of May. Followed the procession to Federal Hill, near B. Anthony's house. He addressed the multitude; does not recollect whether from a carriage or a platform. He said it was false, as he had been accused, that he should have the aid of 500 men from abroad that he had asked for; he expected 5000 when they were wanted. He drew his sword and said that it had been dipped in blood once, and before he should yield up the rights of the people of Rhode Island, it should be buried in gore to the hilt. Dorr was surrounded by between 300 or 400 armed men in the procession, and a concourse of unarmed. Witness never heard such a yell as when Defendant announced his determination. They applauded him with the yell of fiends. Witness was told it was not safe for him to remain there. Was not much frightened. Remained 20 minutes or half an hour. The men about Dorr were more like desperadoes than men. They only wanted a leader to do anything. Gave information of these proceedings to the Governor and Council.

The cannon of the Artillery Company were taken by Dorr's men on the afternoon of Tuesday, the 17th of May. The detachment came down about four o'clock; no authorised person was present to defend them. Witness collected a number of his friends to prevent the carrying off of the guns in case the orders should arrive from the Governor in time; they did not arrive and the guns were carried off. The officer in command of the detachment, said the muskets of his men were loaded; so also did one of the company. The troops from the rest of the State were ordered up and came during the night of the 17th and in the morning of the 18th. Witness was not at the arsenal, but was ordered to await the arrival of the troops from Warren, Bristol and Newport. In the morning the column of about 550 men marched up Federal Hill, under the command of Col. William Blodget; he marched beside the commander; some one came and told them for God's sake to stop, as they would be fired upon. Companies were then deployed to the right and left, and the cannon of the Newport Artillery were unlimbered in front. The hostile guns were then withdrawn some distance. The numbers around them decreased very rapidly when the troops came up, to 40 or 50. The cannon were said to be loaded with round shot and slug iron. After a time, B. Anthony promised that the guns should be returned at four o'clock in the afternoon, if the troops were withdrawn; Anthony said the men were drunk, and could not be influenced by him. The troops were consequently withdrawn.

Cross-Examined.—Did not see on what Dorr stood when he made his speech. The shout was more like an infernal yell than anything else. To understand it, one must have seen Dorr's countenance when he made the speech. It accorded with the whole scene.

Dorr did not make any explanation as to the use of the 5000 upon the interference of Tyler. His name was not mentioned. Did not derive the story of the sword from a newspaper. Witness has not said that he came here to get Mr. Dorr convicted, or to that effect. He has said that he should say here all he could against Mr. Dorr.

Edward H. Hazard.—Saw the procession of the 16th of May. Information was received by the authorities, that Dorr was in Stonington, and an armed force of his friends went to Stonington to escort him up. A proposition was made to the Governor to arrest Dorr at Kingston depot, but it was not accepted. Went down to the depot of the Stonington Railroad on Monday morning and saw Dorr arrive. There were probably about 1400 men in the procession; went with Col. Blodget afterwards to Federal Hill. Heard Mr. Dorr say that the sword had been dyed in blood, and should use it again in the same way in defence of the rights of the People of this State. Dorr also requested the military officers to meet him at Anthony's.

[Mr. Hazard then gave an account of the proceedings at the Arsenal on the night of the 17th of May, and also of the occurrences in the city on the 18th and afterwards, giving hearsay information relating to various individuals and subjects, which was objected to by counsel for Defendant. Witness however proceeded.]

Witness saw the men at the breastwork after they had fallen back from Anthony's house. D'Wolf was to take charge of them, and, if they could hold out a short time, Dorr was to return.

Cross-Examined.—Dorr spoke boldly and candidly. Witness thinks he may have said that the 5000 men who were to come from New York were to stand against Tyler; though he does not distinctly recollect. Witness did not derive the story about the sword from a newspaper. Never saw it in any newspaper.

Henry S. Hazard.—Was in Providence on the 17th and 18th of May; saw Dorr on the 16th of May when he came from Stonington; saw the procession first going to the bridge; didn't follow it; saw a large collection at B. Anthony's house on the 17th of May; many were the same as those who went in the procession. There were 300 or 400 up there when I went up; they were in companies; their arms were stacked, and guards were stationed round them. On the night of the 17th, about 12 or 1 o'clock, heard cannon fired; rode up on horseback over Federal Hill; saw the men in line; rode along the line, and over to the arsenal; told Col. Blodget that they were coming; he said he was ready for them; rode back, and heard them asking one another in

ine whether they were going to the arsenal; some aid they were; some said they were not; then ode to the Light Infantry Armory and told Col. Brown. There were four or five hundred men; but not all under arms. The cannon were in the road; they appeared ready for service.

Cross Examined.—Should think there were rising 400 men with arms; there was a very heavy fog that night. Rode along the line from one end to the other. Could'nt see more than half the length. They were standing in line; not in the best of discipline; think they were mostly in double line; stopped a little from the father end of them; rode along the whole line; went there on purpose to see how many there were; didn't see Dorr that night. In answer to question whether he had said he hoped to see Mr. Dorr in prison witness replied that he had said he hoped justice would be done to Mr. Dorr; and he was anxious to have him arrested. He had no hard feelings against Mr. Dorr.

Joseph S Pitman.—Heard on the 15th of May that Mr. Dorr had requested an armed force to meet him at Stonington. The next day saw him escorted through the streets of Providence. [Mr. Pitman was aid to Governor King, and gave an account of what he saw as a scout on the night of the 17th.]

Henry S. Hazard.—(Recalled.)—As we marched up, the cannon of the insurgents was planted opposite Anthony's house, pointed down the hill. We marched up until we could see into the muzzles of the guns, and then halted. The insurgents then withdrew their cannon and many of them dispersed; should think that when they posted their cannon again, not more than forty or fifty remained. Saw a man swinging a torch as if to apply it to the cannon; some one took hold of him, and prevented it.

Orson Moffitt.—Saw Dorr in Providence on the 16th and 17th days of May; saw him marching through the streets on the 16th. On the 17th, an armed force came down from B. Anthony's house to seize the cannon of the Artillery company; saw them take the guns and carry them away. They said they came by orders of Gov. Dorr. They said their muskets were loaded. Saw Dorr on the 16th draw his sword; and something was said about a sword dyed in blood; could not hear exactly what else he said. Went to Warren on the 17th, at night, to bring up the troops; came back and went through the city the rest of the night; went into Dorr's lines. Heard him give the order to fire. Saw one gun flash, and then heard Mr. Dorr himself call for the torch. Saw the other gun flash; saw him holding the torch; could see him plainly when the gun flashed; was near enough to him to have touched him easily; the cannon was near the arsenal, pointed at it; when he found the gun only flashed, he said he was betrayed. He appeared to be commanding; heard him give no other orders than the one to fire; it was obeyed instantly. There was no guard on the plain when I was there; saw a number of men about. They generally started to go off, and I left soon after the gun was flashed. About 12 o'clock that night witness was fired into going down Carpenter st.; was challenged first; did not stop, and the musket was fired. Was leaning down and looking out of the carriage, else he should have been hit.

Cross Examined.—Saw Dorr draw his sword on the 16th; could not exactly hear what he said. Saw Dorr on the night of the 17th. Am certain that he applied the torch to the cannon; knew him by the voice at first and then by sight. Witness could not say anything about the dress of Mr. Dorr, whether he had a hat or a cap, or what sort of a belt, or what was the position of the guns, or who were near, or standing around, or who flashed the first gun. Was in the midst of the men about the guns.

George O. Bourn described the march of Mr. Dorr's men toward the arsenal. A person who was following, told him there were 300 or 400 under arms, and that others were to be armed with the guns that might be taken. They were then to march toward the city. The cannon were placed near the great tree. Thought the men in the arsenal could reach those around the cannon on the field with muskets.

Cross Examined.—One of the insurgents told him there were 1,000 men without arms, who were to be furnished from the arsenal.

Wednesday, May 1st.

Roger W. Potter.—(Recalled.)—Went on Federal Hill on the morning of the 18th of May while the insurgents were there. Was called upon in the morning to go to the council chamber. A warrant was put into his possession against Thomas W. Dorr. Went up with the governor to Federal Hill. We missed of the troops who had started before us. When we got there John S. Harris was addressing the crowd. Went in and inquired for Dorr; B. Anthony pledged his honor that Dorr had been gone some time. A call for the Governor to come to the window arose. Witness took out the window; Governor King then said that the Sheriff was in the house with a warrant for Dorr; they cried out, No, No, shoot him: shoot him. Governor King then retreated from the window. Witness went to the window; they cried out shoot him. A man levelled a gun at his head; they looked at each other a moment, and the man lowered his musket. At Burrington Anthony's request, witness called to the crowd not to fire into the house. The cry then arose that the landholders were coming. Wm. Dean gave the information; and the men rushed away from the house and the cannon. Went out to the cannon. A man by the name of Gould was flourishing a lighted port match above one of them which was pointed directly at the troops coming up the hill. Carter said that he should stand by the guns till he was shot down; Gould said that the cannon were loaded with round shot and scrap iron. When we first went up there was a line of men with muskets before the house, perhaps a hundred; there were armed men in the house, on the stairs and above. When the troops came up there was a great rush of both armed and unarmed men from about the house. One man cried out, where the hell are you going; a pretty soldier to be running away.

Hiram Chappell.—Was in the procession which escorted Dorr from Stonington depot. They were under arms. Don't know that the muskets were

loaded. The men had ammunition. Witness remained at and about the house of Burrington Anthony till they went to the arsenal. Isaac Allen had command of the troops at Burrington Anthony's house; he said at the time that he was appointed major by Dorr and received his orders from him. Knows of ammunition being purchased for the purpose of going to the arsenal. Dorr gave him money to buy powder and flannel, 25 dollars. Dorr went with the troops to the arsenal. Witness did not go on the field. All the troops left the field about day break. Went back with Dorr in the same squad. He said nothing about disbanding his troops or going away. Did not know that Mr. Dorr had left till 8 or 9 o'clock. Drew the charges of the guns in the morning with Carter; found first a bag of slugs, then a ball, then a cartridge, then another ball, then another cartridge; the last cartridge was fired off and the guns reloaded. They were loaded with ball and bags of slugs when the troops came up.

Went to Chepatchet on the 24th of June. Saw men under arms, about 250 or 300, and in the morning saw a breastwork thrown up. Isaac Allen had command of them. Afterwards they chose D'Wolf commander. Saturday Dorr came with an escort and staid there till Monday night. About dark a letter was read on the hill ordering the troops to disperse and go home peaceably. There were 25 or 30 of the Spartan band who were said to come from New York. They were armed with muskets. They were out on scouts most of the time. D'Wolf was chosen by the officers There was a pike company there, a picked up company. There was a large quantity of scrap iron for the cannon, and three boxes of balls; looked as if they came from some fort. One of the cannon came from Olneyville, called the Governor King. A rumor rose at one time that the Algerines were coming, and Major Allen made a fuss and called up the Woonsocket artillery to stand with match ropes lighted by the guns. Allen said that if the Algerines did not come up then they would go into town on Wednesday. D'Wolf and Allen took their orders from Dorr. They so reported, and Dorr directed the troops to obey them. Dorr's order was that no stranger should be admitted on the hill. The report was there that men were coming from New York, Massachusetts, and Connecticut; also that Mike Walsh had written to New York for the rest of his band. The muskets were said to have arrived at Norwich, and were then in boxes on the wharf, as the railroad directors would not let them be brought over; the troops there were encouraged by these reports. Knows that arms and ammunition were obtained and secreted after the Federal Hill affair for the Chepatchet gathering. Had some in his own house. Knew of the expedition to Warren, as the men came to his house for arms. Knew that they wished to go and get arms from the wharf of Messrs. Brown & Ives. At Chepatchet guards were set, countersigns had, and one prisoner was taken. Heard from Captain Bradley that he had surrounded Sprague's house with his company to find if Dorr was there. Witness ascertained that he went away about half an hour after the letter was read upon the hill. Witness knew half an hour previous that Mr. Dorr was going to leave. Dorr came on the hill soon after he got there, and also on Monday. Heard that Dorr's father had been there Monday.

[Mr. Turner objected to the witness's stating for testimony the hearsays and rumors that any body may have told him. He ought to state facts. The court ruled that whatever the insurgents said or did among themselves was proper evidence to characterize the assemblage. The Government were bound to prove the connection of the prisoner with this assemblage. The Defendant was not answerable for their acts any further than this.]

Witness.—When the letter was read upon the hill, the troops dispersed in great confusion, like a flock of sheep with dogs after them. Knows that arms were purchased in other States for the use of the troops at Chepatchet. Tents were there which came from Massachusetts; two men there told him that they were stolen. Dorr went off from Federal Hill before the Governor and sheriff came up. Didn't leave till after it was reported to witness that the troops were coming.

Cross Examined.—In witness's opinion there were 250 or 300 men armed at Chepatchet; they were going and coming continually. They were not permitted to go or come freely from the hill. No one could go from the hill except by permission of the sergeant of the guard. An expedition went out after arms on Saturday. Heard there was a council of officers before the order to disband was given. The balls for the artillery that were there were put up in boxes, as they are kept in forts and armories; had information of Allen that aid was coming from New York, Massachusetts, and Connecticut. On Monday night it was rumored that the State troops were encamped at Scituate. Did not hear at the time we left that any State troops were marching from Greenville.

Stated before the commissioners upon his examination that he plugged the cannon at Federal Hill; before they went to the arsenal did plug the cannon with short pine plugs, this was done about 11 o'clock in the night; didn't tell any one of it then; should have been very foolish to have done so. Went out with the pieces and halted there till morning. Was present when the charges were withdrawn from the guns the next morning; the pine plugs were jammed through.

By the 250 or 300 men in arms in Chepachet means only those who were on the hill. There were men armed and unarmed in the village. There were guards in the barracks, as they were called, at the upper end of the village and at Sprague's tavern. The men around street went where they pleased, except when the companies marched. The object of the assemblage in arms at Chepachet and at Federal Hill was to take possession of the State. Witness was an officer, but without a commission. Witness did not tell any one, after his examination by the commissioners, that his story to them about plugging the guns was false, and was related to them to gain favor.

Jonathan M. Wheeler.—Was in Providence on the 16th, 17th and 18th days of May. Men were under arms in the escort. Dorr delivered an address on Federal Hill; was on the hill the afternoon of the 17th; there were armed men there; didn't know that the cannon were taken till eve-

ning. Was on the hill the night of the 17th; saw Mr. Dorr there once on the ground at the arsenal. The troops were around him;—witness staid there till two o'clock and then went away. Don't know what the troops did; thinks he heard Dorr say that if he was legal Governor he had a right to take possession of the public property, and was bound to do it. Understood the intention was to take the arsenal that night. Saw the guns flash. Was not near enough to see how they were pointed. Understood the guns were brought on the field to take the arsenal. Thinks the men in the field were under the command of Thomas W. Dorr.

Gen. Leonard Blodget, (at that time Colonel.) —Witness produced the evidence in writing of his appointment to command the arsenal in Providence by Col. Samuel Ames, Quarter Master Gen., and of the approval of Gov. King.

Witness commanded the arsenal on the night of the 17th, and on the 18th of May, 1842, and was employed as above stated. On the night of the 17th an attack was expected. Somewhere from one to two o'clock in the night a sentinel came and informed witness that there was a flag of truce at the door. Witness went down stairs to the door, and saw two men with a flag. One of them demanded the surrender of the arsenal. Witness asked him in whose name. He replied, in the name of Col. Wheeler, adding in an under tone, and of Gov. Dorr. Witness said he knew no such persons by those titles; and should not surrender but defend his post. They then said that he or they would come and take it. Witness replied very well, then come and take it. The bearer of the message then answered that Dorr had a large force with him. Witness understood that the demand was made by Col. Wheeler in the name of Gov. Dorr. Witness was informed that there would be an attack just before the men came on the ground. Went out once and heard their voices. There appeared to be a large number; but saw them indistinctly. The arsenal and the arms in it were State property. The Quarter Master Gen. supplied the provisions and ammunition. From 30 to 50 men were enlisted by witness for the defence of the arsenal. Gov. King came into the arsenal from ten to twelve o'clock on the night of the 17th, and went away again. Two companies marched into the building from the city to assist in the defence—the Cadets and Marine Artillery, numbering about 75 men each. A number of citizens were also present, making about 200 in all who were in the arsenal that night. Did not see the flash of the guns before the arsenal.

Cross-Examined.—Does not recollect that Orson Moffit made any report to him of proceedings that night. Does not recollect of seeing Moffit. Sent out Mr. Barker and Col. Pitman as scouts. Knows nothing in particular of the movements of Mr. Dorr on the outside. Gov. King remained but a short time at the arsenal. The building is of stone, two stories high, the walls 18 inches thick, the doors and windows of iron. The artillery pieces were placed in the lower story—5 six pounders. The doors toward the attacking party were to be opened, and the pieces were to be run out and fired.

Nelson B. Aldrich.—Saw Mr. Dorr on the plain before the arsenal on the night of the 17th May, with the men who marched there. They had 2 pieces of cannon. Dorr passed by witness. Saw the flash of the cannon; but was not near enough to see the direction in which they were pointed; the cannon were north of the arsenal. When Dorr passed he was going along the line of a company. Understood that the object was to take the arsenal.

Was at Chepachet, and saw Dorr once on the hill. Can't say whether he was armed. There were armed men there; and saw cannon, implements of war and musical instruments. Saw Dorr at Sprague's tavern, the head quarters. He had a belt around him. Can't say whether he had arms or not.

Richard Knight.—On Saturday, 25th of June, started from Providence for Chepachet about 2 o'clock in the afternoon. Nothing strange took place till near Chepachet, passed two young men from Chepachet going to Providence in a wagon; they turned and followed him; they could not overtake him; his horse got near the fort and became frightened and ran; men ran down the hill and crossed his track; there were three blacks there; one of them had a gun. Guns were pointed at witness, and one was fired. A black man told him the next day there was a ball in it. Several men ran along the hill and headed him off. The horse ran but about five rods farther and then stopped. The men asked where he was going; said he was going to Jeremiah Sheldon's. They told him to pass on; he stopped and asked for Mr. Sheldon; the two men then came up and stopped opposite. Sheldon was sent for and went into an inner room with him. Soon an armed man came to the door, and said Capt. Bradley wanted to see him at the door of the house; witness went out and saw a man with a sword, who said that Gov. Dorr had sent to have him arrested, and carried on the hill. The officer told two men to take hold one of each arm; they moved on three or four rods and halted. There were 25 or 30 men about, who were ordered to fall in, and they then marched him on the hill. They carried him up to near where the marquee was. There was a gathering on the other side of the marque. Was taken up to the place and saw Dorr in the circle. The salute of the officer was returned by Mr. Dorr. They took me into the ring, and the officer said to Dorr that he had taken a man and asked what should be done with him; Dorr said that depended on which side he was. Witness had some conversation with Dorr, and then the officer and Dorr stepped aside, and the officer returned and said I must go into the marquee and be examined by the officers. Went in and saw a man with no hair on, who was called Secretary. They asked me several questions, and the answers were noted down in a book. Understood the Secretary was Seth Luther.

Mr. Carter was present during the examination. Witness was then marched over with 16 men to the guard house. Was kept there that night and the next day. Got permission to go to Col. Aldrich's, who was colonel and commissary in that army. A great many men came in from the Thompson road. On Sunday there were from

600 to 1000 men in the village, mostly without arms. There were said to be companies f om places out of the State; some with drums, some without. The companies were marched up and down the street Some of these companies said they were from one place at one time, and another at another. Saw pikes made in the blacksmith shop near the guard house. On Monday at 2 or 3 o'clock, Col. Aldrich came and said I was released, but must stay till sunset, and then go without giving any information that I was released. He said that Gov. Dorr was going away. Witness asked him to let him have an officer to go on the hill. Aldrich called a man whom he called sergeant of the guard, and he went with me. Down round the tavern there were men that grabbed him, but the officer caused him to be let go. Went up the hill and looked round. When he first went there on Saturday, Sheldon told him that the Algerines were deceived; that they could have 3000 men and as much money as they wanted Went up on the hill and saw about 150 men under arms and probably 150 more standing round. On Monday there were 300 or 400 men under arms, half of them well armed. They pointed me out as the old Algerine. They were expecting some communication from the Governor, and were impatient; some one said he had gone, another said it was a d—d Algerine lie. They expected the communication to be to go and attack the column at Greenville or Scituate. Saw Dorr with a belt on; cannot say whether he had any sword or pistols. The men said that they were going to take possession of the government of the State. Witness left the hill about 7 o'clock. Went towards Providence, and about 2 or 3 miles from Greenville was stopped by the other kind of troops, at least they looked differently.

Cross examined.—Dorr was not present in the marquee when the man with no hair examined him. Witness experienced no ill treatment from Dorr, or by his orders. Was released by order of Mr. Dorr. Dorr was not present at any time after he was taken into the marquee, and witness never heard him say a single word. Bradley said that witness was taken in the camp; replied that he was taken in Sheldon's house. Carter said they were not going to have any Algerines coming there to contradict them; he would find that he had been taken in their camp, which would soon be the whole State of Rhode Island. Carter took up a bag apparently of bullets, and said that those were the pills for the d—d Algerines. Witness went to Chepachet upon the suggestion of a daughter of Mr. Sheldon. Had other business there. Thought he had as good a right to go there as any body. Witness paid his tolls and went on his own hook. Don't recollect of having seen any of the Governor's Council that day before starting. A great number of men there on Sunday were spectators. The companies marched up and down the street several times, saying they were from as many different places. The last company was a large one of 60 or 70 men; they hurra'd, and said, this is the first company of the three thousand men from Hartford who would all be there before the next night. Witness understood these movements of men pretending to be from different places were merely for show, to produce an impression on him of their numbers. Saw no men intoxicated on the hill, every thing was orderly there; but there were one or two near the tavern who appeared to be affected with liquor. Don't recollect that they were armed. Witness was insulted most at the guard house.

Charles J. Shelley.—[Mr. Dorr objected to this testimony to prove acts committed before he went to Chepachet.

The Court admitted it on the ground that it went to characterise the assemblage at Chepachet.]

Witness.—On the night of the 22d of June was hailed on the road to Chepachet and ordered to stop. Didn't stop. Drove on till near Sprague's tavern, and was again ordered to stop. Drove on till near the tavern, when we saw a cannon on the bridge a short distance off. We then stopped and went into the tavern, and asked some one to take care of the horse. Capt. West, as they called him, took out a pistol, and ordered him to sit down, saying that he had been at large long enough.

[Mr. Dorr again objected and asked the witness if he saw him there or heard that he was there; Shelley said he did not see him, or hear that he was there.]

Witness.—There was a warlike assemblage at Chepachet, at Sprague's tavern, and at the guard house. Should think there were a dozen or fifteen men.

Wednesday afternoon.

[Mr. Dorr again renewed his objection to the admission of the evidence of Mr. Shelley.

The Court decided that it was proper for the witness to state the object and intentions of the men collected there.]

Witness.—A body of armed men were in Sprague's house. Newell stated to him that they were officers and soldiers of Gov. Dorr. Newell acted as an officer; was called Gen. Newell. Witness was taken prisoner by them; was retained in Sprague's bar-room half an hour; then was taken over to the guard-house, the building described by Mr. Knight. Protested against their taking him from the house of Mr. Sprague. Sprague said these men would take care of him; that he was a prisoner of war. They took him for an Algerine, a spy, a d—d scoundrel. They stated that they were arrayed against the Algerine government. Was searched, and was taken from the guard-house, bound in the street, marched off towards the north, and finally reached Woonsocket. There were in company from 30 to 40 men armed with muskets, and a piece of cannon. Major Allen had the chief command. Captain Bradley, Capt. West, and others, were present. After marching six or seven miles, witness was put into the ammunition wagon. After they reached Woonsocket an alarm was fired, and men collected in arms. Witness was taken to a room called the arsenal. After having been kept there some time he was released. Two others were taken at the same time and were marched over with us. Witness saw a wagon at Woonsocket, said to be loaded with muskets in boxes, and tents. This load went back with us to Chepachet. Witness went over with Carter; staid in Chepachet about an hour. There were considerable num-

bers of men in arms there then; they stated that their object was to take possession of the government, and to place the rightful Governor at its head. Seth Luther was there. He talked of the object of the assemblage. He said they had a large number of men in New York, who were coming on, with Mr. Dorr at the head. Carter said the same. He said they were all prepared, and would'nt have to go home for their breakfast as they did on Federal Hill.

Cross examined.—Don't know that I heard at that time of any apprehended attack upon Chepachet from the city of Providence. They talked at Chepachet of an express being sent towards Providence. Witness was complainant in certain cases in Providence county against part of the persons for offences committed at this time. Some of these men were acquitted, and part of the matter was compromised. The defence set up was that there was a state of war and the offence was merged in treason. It was not set up in their defence that there was any deficiency of evidence.

Henry A. Kendall.—Saw the body of men who marched on the night of May 17th to the arsenal, and saw them again on the plain before that building. They had arms and cannon, drums and fifes. Witness was there when they started, and on the plain. The cannon were stationed so as to fire upon the arsenal. The purpose of the marching to the arsenal was to take it. Witness was a part of the time near Mr. Dorr. Can't say that he heard him give any orders. Orders were given by various persons. The troops marched on the plain; they halted awhile and then advanced. Witness saw the artillery pieces attempted to be fired. They flashed. Witness don't know who attempted to fire the guns; was about ten or twenty feet from them; don't know where Dorr stood at the time. Mr. Dorr was on the plain at the time. Witness thinks another attempt was made to fire the guns, or one of them. Witness thinks he discouraged Dorr from making the attempt on the arsenal while on the field. He did not comply with the advice. The men, some of them, remained on the field till daylight. They went on about one o'clock. Witness heard of the flag of truce being sent; thinks Carter bore it. Witness don't know when Dorr left the plain, but witness thinks he left him there when he (witness) went away himself. Witness cannot recall the particulars of any conversation he had with Mr. Dorr on the field. Witness knows what his own intention was in going to the arsenal; not that of any one else.

Cross-Examined.—Saw the man who attempted to fire one of the guns; it was not Dorr. Don't think he saw the man who touched the second gun. Did not see Mr. Dorr have a torch in his hand that night. Witness did not go with the men to Chepachet.

Col. Silas A. Comstock.—Came to Providence about noon on the 18th of May, and went on Federal Hill. He saw the embankment which had been thrown up on the brow of the hill. Did not remain there.

Witness was also at Chepachet. Saw Gov. Dorr there, and a collection of armed men. Mr. Dorr came up on the hill to inspect them. He wore a belt with two pistols in it. Witness arrived at Chepachet before him. The men on the hill were, some of them, at work on the entrenchment. Does not recollect that they were drawn up in order when Mr. Dorr came upon the ground. There were a number of pieces of cannon; some of which were mounted; there were also powder and cannon balls. Witness did not hear Mr. Dorr address the soldiers. The object of the assemblage was military discipline and improvement, in order to support and protect the People's Legislature, which was to meet at Chepatchet on the 4th of July. The meeting was accidental, and not by any particular orders that witness knew of. Guards were stationed about the hill in the night; and in the day time also. Witness did not know that there was any particular movement in view until something else was arrived at. Witness understood that Gov. Dorr issued his proclamation to convene the People's General Assembly at Chepatchet; and the men on Acote's hill gathered there in reference to this call. They meant to defend the place. The guards were stationed about for the safety and protection of the place. The men came to Chepachet when they did in consequence of rumors which had been put in circulation, that Chepachet was to be sacked by Charter troops from Providence.

Cross-Examined.—Witness acted as Colonel of the men assembled in arms at Chepachet, and exercised authority accordingly. In the opinion of witness, on Monday, June 27th, when the men were formed into a regiment, there were under his command from 200 to 250 men under arms and orders; and this was the greatest number of armed men who were at any time at Chepachet on his side. There were many other persons on the ground, and in the village, who came and went as they pleased. They were spectators, and were not a part of the military, or subject to any orders. There were as many spectators as men every day about the lines. The number of soldiers on the hill did not vary much, though the men kept changing as they came and went. Witness was not there on Saturday afternoon; but understood that a company then went off and returned to Cumberland. The spectators spoken of were from Glocester, and from other towns. Our men were all volunteers, without pay. Nothing was furnished them but their food.

There was no fort on the hill; there was nothing more than a slight breast-work going round the south and west sides of the hill. It was a temporary work of not much strength. There were large openings, or embrazures, in it, for the pieces of cannon.

The general impression among the men was, that we were to maintain the government under the People's Constitution, by offensive or defensive means, as circumstances might require.

The men did not come there as full companies in a state of discipline. They came for the most part in squads, a dozen or so in each. Only one or two companies came there as such, and officered. There were from eleven to thirteen men who were said to have come from New York, and to belong to the Spartan Band. They conducted themselves like the rest of the men in an orderly manner. Witness considered them under his

command as the rest were. There was no colored man under arms, to the knowledge of witness. But there were two or three blacks in the commissary's department, to prepare the provisions. None of our men were under pay. No inducement, other than his food, was held out to any to come there.

Witness understood that a proclamation was issued by Gov. Dorr to the People of the State; but did not see it. The People were called upon to assemble in arms for the support of their government. There was very little response to the call. Our men did not assemble there from the several towns, as there was reason to expect they would do. The government under the People's Constitution was abandoned for want of support by the People. This was the sole cause of the disbandment of the men.

A Council of Officers was called by Gov. Dorr to consider the subject, at Gen. Sprague's house. Every officer present expressed his opinion upon it. The ground of the disbandment, was, that the People of the State, after having been called upon, had refused to give their support to their own government. They had denounced its officers, and had gone over, many of them, to the other side, leaving their friends by themselves. The order to disband was submitted to the council of military officers by Gov. Dorr, and received their approval. The meeting was at head quarters, at Sprague's house. Two meetings were held there in the course of the day. At the last, in the afternoon, the order for disbanding the men was given by Gov. Dorr to Gen. D'Wolf, at the house for him to carry on the field and announce to the men. This order was issued toward sunset on Monday, June 27th. Witness does not recollect that he took particular notice of the time of day. Believe it was within an hour of sunset when the order was sent. The men disbanded in consequence of the order. There was a little feeling at first manifested by some, who were not informed of the circumstances, and who were for holding on. There were but few who made any objection to the disbandment or who did not approve of it, as affairs were situated.

Witness did not see Gov. Dorr leave Chepachet. The last he saw of him was when he gave the order to D'Wolf. It was a short order to the officers to disband their men. Does not recollect the wording of it. D'Wolf read it to the men on the field as given and signed by the Commander-in-chief.

The subject was deliberated upon in council before the order was finally given. There was no irregularity or disorder among the men, at the time; though they wanted discipline. They separated as usual after a dismission. There were countersigns given out; but does not recollect any of them.

Witness saw bradley at the house of Sprague at the time of the order to disband. The house was not surrounded at any time. Bradley's company were dismissed, and were firing their guns. The house was our head quarters. Witness recognized Gov. Dorr as Governor of Rhode Island and Commander-in-chief; and received his orders. Witness does not know of any force being expected from New York or elsewhere, or of any supplies expected from abroad. It was a matter of conversation that, if the troops of the United States should interfere in our State affairs, there were men in New York who stood ready to give their assistance to repel them. This was the general impression. There were at the hill two Massachusetts men, D'Wolf and another. No unnecessary restraint was pla ed upon the people in the village of Chepachet. Knows of no person being arrested beside Mr. Knight.

Gov. Dorr gave orders that private property should be strictly respected by all, and, so far as witness knows, it was respected. The soldiers received their provisions from the Commissary. Witness heard no complaint from any one that private property had been interfered with. If it had been, should have heard of it. We left the village uninjured and unmolested as we found it. Gov. Dorr gave directions to have the guns, tents and every thing else on the hill removed.

[Ch. Justice Durfee here remarked that there was no question about the taking of private property, by the men in arms there (meaning the suffrage soldiers.) This is not in dispute; and Dft's. questions to witness on this point are objectionable.]

Direct Examination resumed.—Witness acted as a Colonel; commanded the 2d regiment. There were a number of companies, as he had before explained, parts of which came there; two companies from Woonsocket, one from Burrillville, one from Cumberland, one from Glocester, one from Pawtucket. There was but one regiment there. Witness did not give any orders in particular to the Spartan band. Among them were Mike Walsh, Johnson, Newman. Walsh was the leader. Witness didn't ask Walsh whether his object was to support the People's Constitution or not. Has the impression that they were there to assist in any arrangements that might be made to defend it. Did not see Walsh go through any exercises.

The principal reason for disbanding was that the People did not come as they had promised, to support the Constitution and government; and many of our friends had come out in the papers with a public remonstrance against our proceeding further. The charter troops had no effect upon us. They had not come near us. Orders were sent to all the towns, by Gov. Dorr, for the people to assemble at Chepathet; to come out generally, all who were in favor of the Constitution, and show themselves, and present a strong front. The latest of his seeing Mr. Dorr was when he gave the order to D'Wolf. The consultation was had among the principal officers. D'Wolf was called first, as he was the tallest officer we had. Bradley, Newell, Potter, Carter, Landers, and as many more were called into council by Gov. Dorr. Word was sent to them on the hill in his name. They went to his room, and he stated, in substance, that as no response had been returned to the orders issued; and the people were not with us, and declined to support us, that it was proper to disband. This was the opinion of the council also. D'Wolf fully recognised the propriety of the measure. Witness went with D'Wolf to the hill. Staid there till dark. When we returned

to the village we did not go to Sprague's. Witness was at his house in the evening. Didn't see Gov. Dorr again at all. The officers all separately expressed their opinions, but does not recollect that the question was formerly put to the vote. Witness heard that the Charter troops had come out as far as Greenville. But their coming out was not the cause of the disbandment. What men we had were ready to stand their ground.

Horace A. Pierce.—Came on with Mr. Dorr from Stonington on his return from N. York May 16th. Mr. Sayles was there. Mr. Dorr did not say any thing in witness's hearing about collecting a force at Anthony's house. Witness was not an officer there on the 16th. Saw Mr. Dorr a little after sundown on the 17th. There was a considerable number of men under arms at Anthony's house, about 300. There were two companies from Woonsocket, one from Pawtucket, several from Providence. It was said they were there by order of Gov. Dorr. Witness expected the object was to make an attack upon the arsenal. Saw Dorr in the house. They went to attack the arsenal that night about one o'clock. Col. Wheeler and Maj. Allen had the direction of the troops. Dorr was at the head of them. He went with them. When we got near the arsenal some one gave the word to halt. They then advanced some distance to where the cannon were placed. They were attempted to be fired; and were afterwards limbered again. Dorr came back and requested men to take charge or the guns. Many of the men deserted them. Some of them were afraid and left. After the guns were flashed, Dorr came and requested the men to take charge of them. They were again unlimbered, and Dorr gave the order to have them fired, again. It was said he touched them off. Witness could not see distinctly whether he did so or not. Some who were standing by remarked that few men would have the courage that Dorr had, and no one could call him a coward; for he touched off the cannon himself. Those who remained then went back to Anthony's house. Witness thinks it was from 7 to 8 in the morning, when Mr. Dorr left Providence. The State troops came up between 8 and 9. Mr. Dorr went with C. Allen. Witness did not know that he was going till he had gone. The first he knew of it, some one called out of the window and requested them to disband. This was not assented to by those who had charge of the pieces. When the State troops came up, some one who had the port fire, swung it, as if to touch off the cannon. Saw a gun presented either at the Sheriff or Gov. King. The pieces were withdrawn after the house had been searched.

Heard a fortnight after that another attempt would be made. Went to Chepatchet, thinks on Wednesday June 22d. A company came from Chepatchet to Woonsocket, and witness returned with them. The embankment was begun to be thrown up on Wednesday or Thursday. There were from 100 to 150 men there then. Understood Mr. Dorr would be there. The purpose of our going there was to protect the General Assembly and to execute the further orders of that body. Mr. Dorr came on Friday night or Saturday morning. On Saturday there were from 200 to 250 men on the hill. There were a great many without arms who were in the village as spectators. There was a company of men who lived in Chepatchet who staid at their houses except when exercised. There might have been some who came and went away again with arms, and professed their readiness to give their assistance if necessary. Went on the hill first with Dorr. He went round and spoke with the men. Didn't hear him give an address. There were five or six pieces of cannon on the hill. Never saw but one loaded. That was loaded with powder, ball, and a bag of slugs. Saw scrap iron around and pikes. They were carried up on the hill. Saw Mike Walsh and his party. Thought he had 14 men; some said 11. Heard that if the Executive of the United States interfered, men would come from New York and other States to repel the troops of the United States. The arms and ammunition were not to his knowledge furnished from New York. The disbanding was near sundown. D'Wolf brought the letter on the hill and read it. Witness was not on the hill at the time. Was at the tavern. Can't tell certainly what time Mr. Dorr left Chepachet. Witness left himself before dark. Thinks Mr. Dorr left not far from dark. When Mr. Dorr went on the hill, he had a belt on with a pair of pistols. Saw the handles of them. Thinks he had no sword. He had a cane. Witness does not know that he (witness) held any office there

Cross Examined.—A man by the name of Smith told witness first that Mr. Dorr touched the cannon off. Couldn't tell what time Mr. Dorr left Burrington Anthony's house. Some said he had gone afterwards. Witness thinks there were 50 men that returned from the arsenal. There was no order purporting to come from Dorr for the troops to assemble at Chepatchet. It was given by Major Allen. Knows of a request from Mr. Dorr for a board of officers to convene and consult about what was best to be done. Thinks they did not meet. The organization at Chepatchet was to carry into effect the government under the People's Constitution. The greatest number of persons under arms on the hill, including all who were subject to orders, was from 200 to 250 men. The men in the streets came and went as they pleased as spectators. There were some artillery balls there. Many of them did not fit the guns. There were not cannon balls enough to supply the pieces more than 15 or 20 minutes in an engagement. Witness heard a report from the captain of the artillery to that effect. Witness was in the marquee frequently. There were muskets and rifles in the marquee, that were not called for or used. They were lying scattered about there. Walsh and his men were subject to orders like the rest. They drilled and worked on the intrenchment. Good order and discipline were maintained. Saw no disorder or improper conduct among the men.

Benjamin M. Darling.—Was on the plain before the arsenal on the night of the 17th of May, 1842. Witness arrived there from out of town just as the men were going out; and did not hear the reason for going. Witness had heard that Gov. Dorr would probably be arrested, and that he wanted his friends to come and protect him.

Saw two cannon there. Had not been informed for what action they were there. Saw a flash, which was said to be of the cannon. Witness was distant from 12 to 20 feet. Witness did not go to Chepachet.

Cross-Examined.—Saw Mr. Dorr on the ground. Was near him, as his aid. Got to B. Anthony's house late from Woonsocket, and was not in the council. It was a dark night, from a very heavy fog. A man could hardly be distinguished a few feet off. The men halted on the field. It was very still there. Mr. Dorr was near the middle of the whole force. The men scattered not a great while after they went on the ground. Some scattered immediately. Witness did not move from his place till the Pawtucket Company left and marched off the ground. Witness then went to the rear, by order, to inquire of Mr. Dorr why they left. Saw Dorr going about among the men in different parts of the field to rally them. Dorr came up again. He gave the order to have the pieces withdrawn, after the attempt had been made to fire them. Saw the flash of one of the pieces.

Witness came off the field with Gov. Dorr, and went down town to the Manufacturers' Hotel in the morning to see about his horse, and to find the man who came in with him.

Witness when he went to the rear, as he has before stated, went to ask Capt. Dispeau why he left the ground. Dispeau said in reply, he wanted to do something—could not tell what. When witness got back to Dorr, many others had left. Several passed him on the run. Was there to obey orders from Gov Dorr. Don't recollect receiving any other order in particular from Dorr than to go and see what was the matter with Capt. Dispeau. Dorr gave the orders for the attack. Did not make any report to Dorr. Recollects saying that Dispeau's Company had fallen back. There were 40 or 50 men round the guns at the most when they were carried off the arsenal ground.

[The *Chief Justice* here remarked that the object of the cross examination thus far seemed to have been to establish the charges in the indictment, by proving the particulars, instead of denying them.

Mr. Dorr hoped that the privilege would not be refused him of getting at the facts as they were, even if they should be against him in the opinion of the Court.]

John S. Dispeau.—Saw Mr. Dorr at Providence on the 17th of May, 1842. He had a body of men assembled there with him in the afternoon. Did not see him take the command of them. Saw the men move from Burrington Anthony's house to the arsenal. Thinks it was hard on to two o'clock at night. Should think there were rising 200 armed men who went to the attack; two companies from Woonsocket, one or two from Providence. Witness was frequently called for at Anthony's house. Some one would come and inquire for the Pawtucket company, and I would go in with Dorr. Sometimes he was busy with others and sometimes not. The officers there were talking of their plans. They were talking whether it was best to make an attack upon the arsenal or not. Don't know what conclusion Dorr came to. Witness knows what conclusion he himself came to.

Mr. Dorr went to the arsenal to make an attack. This was his object. Did not see Dorr on the field while he was there. Does not recollect receiving any direct communication or order from him, though he might, as all sorts of communications were flying about. Did not see Dorr, or know he was on the field when witness got there, as witness' company was on the extreme left. Witness left his ranks to ascertain how many men were there, and came back; did not meet Mr. Dorr. Witness considered every one as being for himself, and that he had no superior; ordered his company himself to fall in and march to the field. When there he did as might have been expected where there was no military discipline. Witness returned to Burrington Anthony's house about sunrise. Saw Dorr there. Don't recollect that any conversation passed between them. Witness did not go to Chepachet. Received an order to go that was left for him at his store; don't know by whom. An order was brought to him to go to Federal Hill (before the affair at the arsenal.) A man came to Pawtucket and told him he was wanted by Gov. Dorr. Don't know the man. Witness went round and gave notice to his men, who were handy. Ordered them to meet at the National House in Providence. Went in himself about 4 o'clock in the afternoon. [The order for witness to go to Chepachet, signed by the acting Adjutant General, by order of Gov. Dorr, dated June 24th, 1842, was produced and admitted by Mr. Dorr to be correct; also witness' commission as Lieut. Col. of the 2d regiment, in the old and usual form, dated the 5th day of May, 1842, and signed by Gov. Dorr.] The commission was left in his shop. Others saw it before he did; so that it became known that he had it. Was requested (when under arrest) by Governor and Council to bring in those papers, meaning the order and commission, when he was out on parol, and he did so accordingly. His wife and child were sick, and he did so to get home.

Cross-Examined.—There were 200 or 250 men at Federal Hill before going to the arsenal. Witness went into the council of officers. Don't know who presided. Recollects that Dorr said that he was not much acquainted practically with military matters. Something was said about the propriety of Mr. Dorr's going out or remaining at head quarters.

Witness had ninety men in his company at first mostly well armed; all armed with something or other. Witness might have received an order to come up to the arsenal that night from Darling (Dorr's aide-de-camp) but does not recollect distinctly. Witness did not know his own men well. When the arsenal affair failed, witness did not himself contemplate any further action. Held the commission which has been spoken of, when he was ordered to go to Chepachet. Intended to accept this commission. Would not have given it up, if he could have got his discharge from imprisonment before. Gov. Arnold requested him to bring it in when he went home on parole. He gave it up that he might get his final discharge. Hiram Chappell was in prison with him. Witness had conversation with him within the prison

yard; having seen Chappell's examination before the commissioners published in the papers, in which he (Chappell) stated that he had plugged up the guns before they were carried out to the arsenal. Chappell then told witness that he did not plug the guns; but had said so in order to get his discharge from imprisonment. He said that seriously. The prisoners were black-guarding about the matter in the yard.

After witness withdrew his men from the field at the arsenal, he went over again to it. Did not meet Mr. Dorr. Witness met the guns as they were coming back in the morning. All witness' company went off the field before the arsenal, when he did. There was some dissatisfaction among witness' men because he marched them off without making more of an effort to join in the attack on the arsenal. This was the reason why witness walked over on to the ground, as he has before stated. If any body be to blame for his men's marching off, it was not his men. They were willing to go wherever he would have gone.

Willis Bowen.—Was in Chepachet, he believes, on Saturday, in June, 1842. There was an assembly of men in arms there. Was there but little while. He judged there were from 150 to 200 men under arms. The troops were drawn up in a hollow square. Gov. Dorr went into the square and delivered a speech. He had a belt around him and the appearance of pistols. The men formed into square to hear his speech; can't recollect much of it. He stated that he came there for the benefit of the people, and that he would rather that his bones should remain on the hill than that the people should not have their rights. He went off the hill escorted; don't know by how many. He was attended when he came on by several persons; one of them appeared to be an officer. Saw there cannon, drums, fifes, tents, and flags flying.

Cross-Examined.—Was a little deaf when there from a cold, and the wind blew strong. Should think Dorr used the words before mentioned. Witness was there but a short time. Was two or three rods from Dorr, at the corner of the hollow square. When he went to Chepachet didn't know that there was any disturbance there. Some of them had a notion that witness should not go away, but he went away. The sergeant of the guard, a man named Dean, was going to stop him. Witness saw no disturbance or disorder.

Caleb E. Tucker.—Was at Chepachet on Saturday, June 25th, 1842. Saw an assemblage of men in arms, cannon, tents, &c. Saw Gov. Dorr there in the afternoon. He had a belt and pistols, and a small cane in his hand. The men were drawn up in order and manœuvring about. The first I saw of Mr. Dorr, a man from Thompson pointed him out, and said the Governor was a smart, portly looking man. Heard him address the troops, who were drawn up in a hollow square. He said they were there for the purpose of protecting the Legislature, which was to be there in a few days. He spoke of the rights of the People which they were to defend. Could not say certainly whether he used the expression that he would rather leave his bones there, or not. He said he would rather stay there till cold weather than that the people should not have their rights, and their Assembly meet. Guards were placed around the hill below, none upon it. Witness went down to the tavern. He made no inquiries as to their object. He went on the hill to see the Governor. Don't recollect particularly anything being said about making an attack.

Cross Examined.—Witness asked no leave to go on the hill. There was no objection made to his going. He was within ten rods of Dorr when he made his remarks. Saw Potter there; this was about 4 o'clock. Has an impression that he heard the words he has mentioned that he would rather leave his bones there. Should rather think he didn t get this impression from a newspaper. The men whom he saw there in arms were rugged, hard handed people, farmers and mechanics. Some visiters were from Thompson, and his conversation was mostly with them. There was perfect order on the hill, and the same in the village. There were two men from Connecticut, apparently visiters, not armed. There were perhaps two hundred men under arms. The meeting there corresponded well with military trainings generally. The order was as good as at a general muster. Witness saw one or two not quite sober at the tavern.

Thursday Morning, May 2.

Darius Hill.—Repeats the statements before made respecting the assemblage of armed men at Chepachet. Witness understood from those there that Gov. Dorr was to convene his legislature there on or about the fourth of July. Hardly thinks the men on the hill were the members of the legislature. Don't know what the cannon were put there for, except for protection. They were pointed so as to command the road from Providence. Saw many things that looked as if they might, with a little help, go into the cannon. Witness left there on Monday afternoon between 4 and 5 o'clock. Was among the armed men. Left on his own business; had corn to hoe and cows to look after. Heard there was a body of men coming up that way under a pretty slow progress from Providence. Did not understand for what object. The People on the hill were under the command of Major I. B. Allen during the first part of the race. Didn't hear Dorr give any command. Should suppose in his own mind that Allen acted under Dorr. Witness didn't suppose that he himself acted under any body's command; he considered himself a nation by himself. Didn't interrupt Dorr to ask him what his intentions were. Heard but few words of his address. Heard orders that purported to have been issued by Dorr; and understood from the officers that the orders for the movements on the hill were by authority of Dorr.

Cross-Examined.—Was there the 25th, 26th, 27th. If his recollection serves him right, was not there the 28th; don't know what flag was there; or what time the State troops got there the next day. Witness resides four miles west of Chepachet. Is a small farmer. The men on the hill were principally of that class, and mechanics, those whom he knew.

George B. Aldrich.—After passing Mr. Dorr in the road in a carriage going out of town, as he thinks at about half past 8 in the morning of the 18th of May, witness proceeded into Providence and went on Federal Hill, where he saw about 40 or 50 suffrage men with cannon. One or two went on the hill with him. The number of men with the cannon were decreasing while he was there.

Was at Chepachet Thursday, Friday, and Saturday, in June. Saw Dorr on the hill there on Saturday. Did not hear him address the troops. Some of them were drilling. Saw him walk about on the hill. (Witness was reluctant to repeat the conversation between himself and Mr. Dorr, lest it should commit himself, but was told he must proceed.)

Witness went on—Mr. Dorr said, that, if he had had his way, the embankment would have been thrown up in a different manner; Mr. Dorr said he gave no orders to Major Allen to call the people together at the time when they were called. He said that the breastwork was not well done. Understood he came there upon the information given him by Major Allen; Dorr did not say so. Witness went with Major Allen from Woonsocket up there. They went there to protect the Legislature that was to meet there the 4th of July; and that was the purpose of the greater part of them. Witness went because the rest did. Major Allen seemed to be commander. He gave witness some orders which he did not obey; and witness did not hear Allen give any orders coming from Dorr. Heard forty reports about the Charter troops coming there; sometimes they were at Greenville; sometimes within a mile, and sometimes at Scituate. Witness went on Saturday night about sunset. There were armed men scattering all the way up and down in the village. Saw two men who drove up to the tavern ordered out of the carriage by armed men. Can't say that he saw any one under restraint as a prisoner; can't say but he did. There were a good many things carried on, some manœuvring, some firing. Saw a lot of old iron there. Expects likely they were going to put it into the cannon. The cannon were on the south side of the hill, pointed southerly.

Cross-Examined.—There was no fort at Chepachet, only a line along one side of the hill about four feet high. They mowed a quantity of brush, put that in the middle and covered it with dirt. Witness works at farming when he does anything.

Gen. Jedediah Sprague.—Lives in Chepachet. Keeps the hotel there. Kept it also in 1842. Heard that it was Gov. Dorr's intention to come to Chepachet the night before he came. Don't know that he knew before of his intention to return at all. Witness was at a meeting at Woonsocket about the 1st of June. He heard there was to be a military parade there and found a meeting of officers. Military movements were discussed at this meeting. An organization of the military was the intention. Understood that the organization was for improvement in tactics. The ultimate object was not stated. D'Wolf was there; he might have been the chairman. Comstock, Allen, Potter and Dean were also present. It was proposed to raise a subscription to purchase a piece of ground for the suffrage association to use as a parade ground. Witness has heard letters read from Mr. Dorr; may have heard them in some meeting, or they may have been read to him individually. Cannot speak positively or recollect the particulars of the letters. Did not understand whether Mr. Dorr was coming or not to take command of the troops. Was not surprised when he heard Mr. Dorr was coming. Thinks it was anticipated, and that he would return. Witness does not say whether Mr. Dorr was Commander-in-chief, or not. He took rooms at his house; and was sometimes there and sometimes on the hill. During the time Mr. Dorr was there, the military officers from the hill were occasionally inquiring for him, and went and talked with him. Witness saw no action on the part of Mr. Dorr, nor, in fact, on the part of any one, as he was not much abroad. Soon after Mr. Dorr came thinks he heard him say that he knew nothing of the assembling at Chepachet and of what was going on till shortly before he arrived. Thinks he said that he was going to convene the legislature there. That matter was understood long before assembling of forces. The presumption was that Mr. Dorr would be there. Heard it expressed that the object of the troops was to protect Gov. Dorr and the Legislature; never heard from Mr. Dorr that it was his intention to go to Greenville and attack the Charter troops. Witness thinks he heard something of the kind said. Mr. Dorr left Chepachet about sundown on the 27th of June. Didn't see him when he started. Conversed with him about leaving. He expressed his intention of going because he was not sustained by his friends. He meant that he was not sustained in calling the Legislature, and in carrying into effect the People's Constitution. He said it had become evident that he was contending against his friends and enemies, and must overcome both to effect the object contemplated. Others advised him to leave. The citizens of the place came to the conclusion that this was the best course. Heard that there were large forces of the government troops to be marched there. Heard of the expectation of assistance from abroad. Heard some of those at Chepachet say that they expected it from New York. Believes Walsh quartered on the hill. Saw the troops marching in the streets a number of times. On Thursday, when the guard from Chepachet returned to Woonsocket others returned with them. From that time witness was most of the time in the back part of his house attending to his visitors, but saw troops occasionally in the street. Guards were stationed around his house after the Charter troops arrived.

Cross-Examined.—When Gov. Dorr arrived at Chepachet, he was accompanied by citizens of the village and town No person from out of the State was with him to witness' knowledge. There was a guard at the house after Mr. Dorr came. Recollects of hearing that a meeting of military officers was desired by Mr. Dorr before he came, to discuss what measures were proper to be pursued before a call should be made on the people. Does not know of this council being held. Witness understood Dorr to say, that he was not ap-

prised of what was going on at Chepachet until shortly before his coming there; that the gathering at that time was without his orders. Witness understood that the military force collected was for the purpose of protecting the people's legislature. Heard that some of the men were desirous of going to Greenville to attack the charter forces. It was an anxiety on their part. The disbandment took place on Monday, June 27th. Witness understood some time before the final order was sent out that a disbandment was to take place. Heard the order read before it was delivered to the commanding officer. Don't know when it was read on the hill. There were various rumors of the approach of the opposite forces. They arrived the next day, the 28th, about breakfast time, say 7 to 8 o'clock. Mr. Dorr left Chepachet one or two hours after the order to disband was given. Don't think it was half an hour from sunset either way when he left.

Witness recollects that Mr. Dorr called on the people to support him. Couldn't say that there was any proclamation to that effect. It is his impression that there was. Witness knows nothing of what took place in the council of military officers that was held for consultation except from what he heard. He knew that such a council met. The result was the disbandment of the troops. Walsh and a few men were there from New York. Reports came on Wednesday, the 22d of June, that an attack might be made on Chepachet from Providence. The people of Chepachet thonght they might wish to arrest the Lieutenant Governor and some of the representatives. Expresses arrived there in the night stating that many people were leaving the city in the direction of Chepachet. Some of the citizens went out on the road to ascertain. The patrol first arrested Shelley and Keep, afterwards Harris and Peckham. The cause of the arrest was an expectation of men coming from Providence to make the attack, and the suspicion that these were among the first. Saw no harsh treatment of them at his house.

Gov. Dorr on Saturday requested him to close his bar room that there might be no disorder in the village. The request was complied with, and the bar room was kept closed. The troops were very orderly, quiet and peaceable at his house. The troops were principally farmers from the country towns. There were some Providence men among them; but not many of them answered the call. Witness new a great many of the troops personally. They were men of good reputation.

Witness understood there were two or three instances where private property was interfered with by some of the men—th ee instances, a horse was taken, used and afterwards returned; a cow was taken for food; this was paid for. Witness saw Mr. Dorr pay for a part of it. Some boards were taken which were afterwards burnt on the hill. Witness knows that these acts were contrary to the orders of Gov. Dorr. His orders to his men were that private property must be strictly respected.

[Mr. *Dorr* here asked the witness if the village of Chepachet was not the next day sacked by the charter troops, (he replied yes;—how these troops compared with the suffrage troops in point of sobriety, &c.; and whether witness' property was or not appropriated by the charter troops. The *Attorney General* objected to this inquiry; and *the Court* overruled it, saying that only such questions could be put as were relevant to the issue on trial.]

Dutee J. Pearce (recalled.)—Went to Chepachet en Sunday, 26th of June. Arrived there about 12 o'clock. Saw Mr. Dorr at Sprague's hall presiding in a council of officers. Don't recollect any one but William H. Potter. Mr. Dorr was occupying the seat usually occupied by a chairman. The officers were in chairs or on benches on his right and left. Witness stopped a moment, and Mr. Dorr said that it was a meeting of officers, and called witness to his room. Mr. Dorr talked awhile with him there, and went out, and came in again. Witness urged upon him the necessity of disbanding his forces, and stated the force which he was well assured would come against him. Mr. Dorr gave no assurance that he should do so. He said he came there for the purpose of acting under the Constitution which he had sworn to support; that he had the same right to use force for the purpose of supporting that Constitution, that others had to bring force to put down the government under that Constitution. Witness told him it was altogether idle to expect that Legislature (the People's) to organize again, that a great many of its members had resigned, and that witness did not know one that would meet there in pursuance of any call from him. Witness further stated that the Charter Legislature had adjourned from Newport on Friday, and that their very last act was to pass a law calling a Convention, under which all could vote for delegates, and that this measure had tended in a great measure to allay the excitement, and that many of those who were his friends, were quite willing to accept this proposition as a compromise of the difficulties. There was present at this time, S. Potter, Jr., of Providence, who confirmed witness' statements. Witness mentioned to Mr. Dorr that he saw many of the most ardent friends of the Suffrage cause in the ranks of the Charter troops on Saturday. Among others he mentioned Mr. Emmes, of Providence, which seemed to strike Mr. Dorr with astonishment. Witness thinks he mentioned that there was to be a meeting in Providence that evening, at the call of Mr. Wales, for the purpose of settling the difficulties and satisfying Mr. Dorr, that he should proceed no farther. Mr. Dorr asked witness if he saw the review of State troops on Saturday. Witness told him he saw them pass his boarding house. They were said to be 2300 strong. Witness should judge that there were at least 1500 of them well armed. Witness also stated that additional forces to the number of 500 to 600 were expected from Washington and Kent. Mr. Dorr asked if he was to be attacked that evening. Witness answered that he thought not. Told him that it was the intention of the most influential Charter men to adopt such a course as would prevent bloodshed. Witness thought there would be no attack till Wednesday. The object of the

State government was to send out troops to cut off his resources, so that if he remained there till Wednesday retreat would be impossible. Mr. Dorr appeared to be under a misapprehension with regard to these forces. He was under the belief that when they started from Providence enough of his friends there, who had not come out, would hang upon their skirts, so that when they reached Chepachet, they would be inefficient. Mr. Dorr said he was there to sustain the government of which he was the head and which he had taken an oath to support. Witness had not the slightest idea that any thing that was then said to him would have the least effect in inducing him to leave; and witness so reported in Providence after his return. Mr. Dorr said little, showed distrust; and did not believe witness' statements or conclusions to the extent represented to him. Witness talked at Chepachet mostly with the citizens and the guards. Witness asked Mr. Dorr how many armed men were there; he gave no definite answer. Witness got the impression that there was 300 or 400, and more were coming. Witness does not think that Mr. Dorr expected foreign forces; he judged so from what Mr. Dorr had said previously, that he intended to rely upon the people of the State, and rejected the idea of any force from abroad except upon the contingency of the United States interfering. Witness heard the men say that they would defend themselves. Did not hear that they intended to march to Providence. Knew beforehand that there would be an attempt to reorganize the government under the People's Constitution on the 4th of July, and that being driven out of the city of Providence by force, the General Assembly would be convened at Chepachet. Saw Dorr's proclamation to that effect in manuscript lying open on his table. Witness told Dorr also that an application had been made to the President of the United States by the Charter government, which would probably be answered favorably on Tuesday following; and that then the United States troops would be brought against him; that Col. Bankhead was waiting in Providence, probably for further orders. Witness stated also the rumor that Bankhead had been out in disguise and reconnoitered Dorr's camp. Dorr asked who was in command of the State troops. Witness told him Gen. McNeill. He said it was strange that he should be in such a place, (referring to Gen. John McNeil, formerly of the army, and then in the Boston Custom House.) Witness told him it was not the New Hampshire General, but the McNeill connected with the Stonington railroad. He expressed himself astonished, as he had lately been advising with him about his rights and movements in Rhode Island. Mr. Dorr did not say whether McNeill's advice was to dissuade him or not from an attempt to establish the government.

Cross examined.—Witness has the impression that Mr. Dorr said he had nothing personal in view, but came there to discharge his duty as a public officer. Saw no disclaimer in the newspapers on the part of Suffrage men, of Mr. Dorr's proceedings; but knew that individuals had come out and disclaimed any farther support of the new government. Mr. Dorr asked if he (Pearce) had resigned his seat in the People's Legislature. Witness replied that when he was arrested and gave bail, he necessarily vacated his seat. In this opinion he was confirmed by Mr. Atwell, and by Mr. Dorr, who said he didn't see how witness could take his seat again. Witness made the same statement, as to his having vacated his seat, before the Supreme Court in the county of Washington.

Dorr did not treat him cordially, but politely; the statements to the contrary in the newspapers were without foundation. The conversation was carried on mainly by Dorr's questioning him and his answering. Dorr got a great deal more than he gave. He stated that he had called on the People for support, and had issued a Proclamation to that effect; but that the support that had been promised had not come. Witness recollects of telling Dorr that Maj. Power was taken; and his reply was then "my sword is gone." But Maj. P. did not obtain it. Witness didn't go on the hill at Chepachet.

Witness reported when he returned to Providence, that he supposed there were 400 men, 300 of whom were well armed, and 100 indifferently; and that there were besides, 200 men in the village; whether they belonged to the force could not tell. This was the best judgment he could form. But these statements were only a matter of opinion. Just before witness left, W. H. Potter called out from the step of the hotel that all who were in favor of Gov. Dorr would form a procession. They fell in two and two, and 200 or more went toward the hill.

Witness passed two guards on the road; and at Farnum's, two or three miles from Chepachet, saw men with side arms, and supposed them to be a reconnoitering party.

Mr. Dorr made no report to witness of the number of his forces. He was very evasive on that point. Some of the men requested that I should report in town the number as high as possible. Witness came to the conclusion that they were short of provisions. Heard one say to the other, we can get pork enough at Woonsocket. Does not mean in any unlawful way. Witness was no wiser when he left Chepachet than when he came, from what Mr. Dorr told him. Saw men marching there. Had heard it rumored before he came, that there were Irishmen there, but didn't see any if there were any there; nor any that he knew from abroad.

Understood that if the Charter troops came out to put down the government of which Mr. Dorr was the head, that he should have felt authorised in resisting with what force he had. Never heard him say that he should call for foreign aid except in case of the interposition of the United States in our affairs. Witness heard in Providence that aid from the United States was confidently expected in Providence; Gov. Francis and Mr. E. R. Potter told witness so. Witness does not know any thing about Col. Bankhead's going out to Chepachet except what he heard. He heard from both sides that Bankhead came out to Chepachet to examine Dorr's ground.

Dorr asked who had command of the State troops; he told him Gen. McNeill. Dorr said it could not be Gen. McNeill who was an officer in

the Boston custom house. Witness said no, the superintendent of the railroad. He was much surprised, and replied that a short time before he had been in friendly conversation with McNeill about Rhode Island affairs, and derived the impression that he was friendly to him and the cause. Witness didn't understand that there was any correspondence between Dorr and McNeill. Understood that this referred to a personal interview. McNeill belonged to the same party with which they acted, and was supposed to be a friend to the Suffrage cause. Thinks McNeill sent an order for cars for the Suffrage friends at the Stonington depot. Witness was not present at any of the addresses delivered by Mr. Dorr in New York.

Laban Wade.—Was on Federal hill on the night of the attack on the arsenal. Saw the armed men march to the arsenal and Mr. Dorr with them. Did not hear him give any order. Saw him at two or three different places on the plain. Saw the cannon touched and flash. They were pointed toward the arsenal. Cannot say that I recollect hearing the order given to fire. Witness' object was to take the arsenal, and presumes that all had the same intention. Was at Burrington Anthony's house.

Witness was also at Chepachet as early as any of them. Went away on Monday. Mr. Dorr was there. I considered him the Governor of the State, and presumed he had the command of the acting commander. Thinks he saw Dorr on the hill. Saw him at Sprague's tavern, the head quarters. There were arms and munitions of war at the hill. Witness' object in going to Chepachet was to support the People's Constitution and the Assembly there. He contemplated to fight as hard as he could if attacked. Didn't contemplate attacking any body. If ordered by Gov. King to disperse, should have dispersed *if he had been obliged to.* Heard that troops would come to attack them. That did not cause the dispersal. The reason I dispersed was because the rest went away and left me. The disbandment was in consequence of an order from Gov. Dorr made up in a council of officers. Witness saw the cannon twice attempted to be fired at the arsenal. Can't say if the attempt was made again. Witness never received any order to go to Chepachet. Don't know whether there were orders issued. Lives at Woonsocket. Two companies went over from Woonsocket, with their officers.

Cross examined.—Saw Gov. Dorr at two or three places on the arsenal ground. It was so dark from a heavy fog you couldn't see any thing unless you felt it first. Couldn't see how the men were situated there on the ground. Thinks they became scattered shortly after going there. A portion of them retreated and marched off soon after going on the ground, can't tell how many. Should think nearly half. Can't tell how many marched there. The last he saw of Dorr there was after daylight and before sunrise. He was near the cannon. They were being dragged off. The men had all left when he came off the field. Don't know who fired the gun. It was not Dorr the first time, for he stood within two feet of him. Before the second flash witness went a little from him. Did not see him go to the gun. Couldn't say whether he did or did not. Witness was returning toward the gun when he saw the flash. Gov. Dorr had a glazed cap, frock coat, and white sword belt. Didn't see any body wave the torch. The man who touched the cannon was a fair sized man. The men at Chepachet were good hardy fellows, farmers and mechanics. The company he went with were mechanics.

Nelson Maxon.—Mr. Dorr was present on the ground and at Federal hill where they were making preparations to attack the arsenal. The men were in squads on the plain. They marched there in regular order. (Witness then went on to relate what he saw, as has been before stated by others.)

Thursday Afternoon, May 2.

Col. William H. Potter, (Acting Adj. Gen. at Chepachet.)—Was at Federal Hill at the time of the preparation to attack the arsenal. The object of the assemblage was to take it. They went over to the field about midnight. Witness does not know whether any signal guns were fired; was up toward the arsenal at the time the troops marched. Saw Mr. Dorr on the field and considered him the Commander-in-chief of the State. He was the commander there. Did not know what was intended next if they should take the arsenal.

Was at Chepachet. Did not know that Gov. Dorr was coming there till the night before. Saw a letter from Mr. Dorr. Does not remember the purport of it; heard it read at a meeting of officers at Chepachet; Mr. Newell read it. This was before Dorr came.

Attended the meeting of officers at Woonsocket, which has been spoken of, two or three weeks before the affair at Chepachet. Colonel D'Wolf was chairman. The object of hat meeting was to find a place for the organization and discipline of the militia. The object of the organization was to carry into effect the People's Constitution against all opposition. If assaulted, they intended to defend themselves against the forces of the State, or any other forces. The officers adjourned to meet at Chepachet. Gen. Sprague was appointed a committee to select a piece of ground suitable for military exercise. Sprague, Comstock and others were present. No letter from Mr. Dorr was read there, according to witness' recollection. Cannot swear whether the meeting was held with the consent of Mr. Dorr or not.

The next time witness saw Gov. Dorr, was at Killingly, Conn. Does not know whether any one was in the room when he went in or not. 15 or 20 went into the room with witness to see Gov. Dorr. Did not see Walsh there. Saw him first at Chepachet. Mr. Dorr came down with them to Chepachet. Col. Newell gave the information that Gov. Dorr was in Killingly. It was expected that Mr. Dorr would come to Chepachet. Some officers were appointed by Mr. Dorr before he came and after. Col. D'Wolf was appointed next in command to himself, with the title of General. Witness did not hear Gov. Dorr's speech at Acote's hil', or hear him say anything

about attacking the forces at Greenville. Some 40 or 50 of the men wanted to go and see what they were made of at Greenville. Does not know what they might have done before they got back. If the Charter forces had made an attack on ours at Chepachet, they would have been resisted. Heard of the Charter forces being at Greenville on Sunday. There were six or seven cannon at Chepachet. Does not know where they or the ammunition were procured. Some of the powder was brought by the people of Chepachet. The object of the assemblage was to carry into effect the People's Constitution by all means that might be necessary.

The greatest number of men in arms at Chepachet at any time, was about 225. Was informed that the General Assembly had convened there by the Governor. The object of the troops was to support the General Assembly and the People's Constitution in any way that might be required, and as should be directed by Gov. Dorr upon consultation with his officers. Orders were issued in writing, by direction of Gov. Dorr, to the people of the towns, particularly in the county of Providence, to assemble in arms at Chepachet; and these orders were sent a second time. (An order to Dispeau of North Providence, was here produced and verified as signed by witness.) Pikes were made for the use of some of the men, and there was scrap iron on hand for the purpose of loading the pieces. Believes Seth Luther was clerk.

Cross Examined.—Knows of an order issued to convene a council of officers, before the affair at Chepachet—Newell informed witness of it. Does not know whom it came from. They were requested to consider whether the People's Constitution could at that time be put in force; to consider whether any thing should be done, and if any thing, what. This council did not meet as requested. The assemblage at Chepachet was voluntary and without orders. The men came from Woonsocket and other places voluntarily, with their officers. Information was sent to Mr. Dorr at Norwich. Does not know what it was. After Gov. Dorr's arrival a general call was made upon the people similar to the order to Dispeau, and that call was repeated, up to Monday. It was not replied to. There were as many men there on Sunday and Monday as on any day. The men were counted by Gov. Dorr's order on Saturday. There were 200 or 225. After that a detachment left the place and went home. Some went to Cumberland and some to Slatersville. 60 or 70 left. Witness does not know by whose request they returned home. The men were counted a second time, by Mr. Dorr's order. The number did not exceed 225 at any time—that is, this was the number of men armed and under orders. They were mostly farmers and mechanics. The men about the village were unarmed and under no orders. No strict discipline was maintained on the hill until Monday. No man was pressed into the service. All who did serve, served voluntarily. Never heard of Mr. Knight's being fired upon, as has been related. Witness acted as Adjutant General. If it had happened must have known it. Witness does not know of funds being provided to subsist the force. A contribution was taken up on the ground and $70 collected. There was no depot of provisions on hand. There were some barrels of flour and beef remaining when the camp broke up, which would not have lasted four days. Part of the cannon balls would not fit the pieces. What would fit would not have lasted more than fifteen minutes in an engagement. This fact was reported by the captain of the artillery. There was a report of an approach of the forces from below on Sunday evening, and preparations were made to receive them.

A council of officers was called on Monday. It was evident that there were not artillery, ammunition and provisions enough, and that we were not sustained by the force that was expected. The enemy were said to be at Greenville and Scituate; there had been frequently such reports. It was reported on Saturday and Sunday night that they were coming Witness does not know by whom the order of dismissal was taken to the ground. Should think the order was issued about 4 o'clock. But witness had no time to look at, and cannot speak certainly. Mr. Dorr left Chepachet about sunset. No person from out of the State was in Mr. Dorr's company when witness saw him at Killingly. All with whom he returned into the State were officers and citizens of the State.

Gen. William Gibbs McNeil.—Being asked by the *Att. Gen.* whether or not he had a conversation with Mr. Dorr, shortly before his (Mr. Dorr's) return into this State in May, 1842. The witness stated to the Court, that before he proceeded, he should like to make a few remarks with regard to the circumstances of his being here. He said he appeared as a witness on this occasion most unexpectedly, most painfully and most reluctantly. He had been summoned, had been permitted to leave the State, and had been recalled by a letter from the Attorney General. He was now again within the jurisdiction of the State and was bound to give his testimony. And this he was desirous of doing on account of some insinuations contained in the testimony of Duty J. Pearce, which slandered him most falsely and most foully. In the conversation which he had with Mr. Dorr, he was not a counsellor or adviser except in opposition to him. Witness regarded this conversation as private and in confidence.

[*Mr. Dorr.*—I release you from all the honorary obligation which you regard yourself as being under, that you may relate all you know.]

Witness being in New York in May, 1842, and hearing that Mr. Dorr was there, called with Mr. Gailliard, of South Carolina, to pay his respects to him at the Howard House. A great many persons were present, none of whom he knew. Mr. Dorr introduced him to Mr. Slamm, much to his surprise, as he had always regarded him as a fictitious character. (Laughter.) Witness does not wish to be understood that he found Mr. Slamm other than a gentleman in all respects. Mr. Slamm informed him that Mr. Dorr intended to return to Rhode Island and enforce the Constitution, which he regarded as valid. They conversed but little, and upon the question of the

necessity of his so doing. Witness did not consider that there was anything serious in the matter. He asked Mr. Dorr, jestingly, who was to command his forces. Dorr walked up to him and slapped him on the shoulder and asked him if he would not. Witness did not decline the offer, because he did not consider it as serious. All this passed in a few minutes. There was no debate on the subject.

It was remarked that a majority were in favor of this Constitution, which witness had always denied, contending that there was no majority, meaning no legally ascertained majority. It was also stated, he believes by Mr. Slamm, that they could have assistance from abroad, as many as 10,000 from N. York, and 1000 from other places. Witness left the House without an impression of anything serious being intended. With regard to the car; the next day, the last time witness had the pleasure of seeing Mr. Dorr, Burrington Anthony came to witness and requested a car to run separately from Stonington to Providence. Witness acceded to his request, was censured for this, on the supposition that he had made an offer of this conveyance. The price was not specified. As witness had before remarked, this was the last day he saw Mr. Dorr; but he hoped that they might often meet again as friends, as before.

Cross Examined.—(*Mr. Dorr* asked witness whether he intended to apply to him any of the remarks which he made before he commenced his testimony. *Witness* replied that he did not.]

In connection with the aid from abroad, witness thinks it highly probable that something may have been said by Mr. Dorr about an expected interference on the part of the United States government in Rhode Island affairs, but witness cannot now recall it. There were no enlistments spoken of as having been made. The language was general that thousands would repair to Mr. Dorr's standard from sympathy in the cause. Witness believes they would have come after Mr. Dorr had got possession of the city of Providence. This opinion does not rest upon anything witness heard from Mr. Dorr, or upon any facts stated by any one. Witness only speaks from his general knowledge of the people of the cities, and from mixing with them all over the country. Sympathy would have been an inducement to them.

The conversation was hasty and general. Witness has not seen Mr. Dorr since until to-day, nor had he seen him before for some time. Witness had no communication in any way with Mr. Dorr after this interview; nor was there any concert or understanding between him and Mr. Dorr. Witness afterwards held a commission from the authorities of Rhode Island as Major General, Commanding-in-Chief. He was not a citizen of this State. Col. Bankhead was not under his employ or command.

[The question being asked whether other persons from abroad were not employed or engaged on the same side with witness, the *Court* said it was improper.]

Witness afterward understood, that for the part he had taken in Rhode Island affairs, he was liable to be attacked in the city of New York. He went immediately to the Pewter Mug to meet any assailants, but found no difficulty. He was not molested.

The *Attorney General* here stated that all his witnesses had been examined, and that the prosecution would rest here for the present.

Alfred Bosworth, Esq., then further addressed the Jury in the opening of the case for the State; recalling their attention to the four counts in the indictment, charging the prisoner with levying war against the State, at Providence, on the 17th and 18th of May, and at Chepachet, in Glocester, on the 25th and 27th of June.

The evidence, said Mr. Bosworth, exhibited the proceedings of a set of daring, worthless, desperate men, guided and directed by a leader who sought the bad eminence in which he was placed with his eyes open and warned of consequences, and who waged war on the sanctities of private life, for the accomplishment of his foul, ambitious and nefarious purposes; to attain which he was ready and willing to imbrue his hands in the blood of his friends and relatives. At the arsenal he was prevented from succeeding, by the treachery of one of his men, and by the desertion of others; but not until, descending from the honorable place of a commander, he had attempted with his own hands to light the torch of civil war against his relations and fellow-citizens. After having committed such atrocious acts, he escaped from the State.

Mr. B. then went on to describe the session of the People's Legislature at the foundry. The prisoner there took an oath as Governor of the State, and exercised the duties appropriate to such a station. He issued military commissions, giving power to expel, kill and destroy the inhabitants of the State. The General Assembly also performed the part of a Legislative body. They assumed to exercise the authority of a Legislature. Postponing the choice of Judges, they proceeded in the election of military officers, and passed divers acts and resolutions. All which indicated most clearly in all of them a deliberate, wicked, and malicious intent. They knew what they were about; they acted with their eyes open, and the consequences are upon their heads.

After remaining a short time abroad in the capacity of an extra territorial Governor, and obtaining assurances of aid in his nefarious designs, the prisoner returned again into the State, still bent upon his wicked object, and urging on others to carry it into effect, even at the sacrifice of life; willing, as he said, to leave his bones on the field, and calling on the people to stand by and support him. But fortunately he was not supported by his friends, on whom he called in vain. A formidable force was sent to break up his encampment; and when all hope of success had vanished, and he had nothing left to depend upon, he fled again, thereby manifesting a sense of guilt, and a conviction that he was a wrong doer who felt no confidence in his cause. For if he had been animated, as it has been pretended, by sense of duty, he would have remained, to receive the justice that was due, and which he could have no reason to fear if he were not guilty.

Mr. B. then reviewed the testimony bearing on the particular overt acts, and concluded with remarking, that the evidence was so clear, positive and direct, that the jury could not hesitate, and "must pronounce the prisoner guilty."

Friday Morning, May 3.

Dutee J. Pearce said he wished to make a few remarks, in consequence of what had fallen from Gen. Wm. G. McNeil. Mr. P. said that he had given a correct account of his conversation with Mr. Dorr at Chepachet, and derived from Mr. Dorr the impressions concerning Gen. McNeil, which he had stated. The misapprehension arose from the words which he (Mr. Pearce) had related as having been used by Mr. Dorr, at the interview at Chepachet, concerning the *time* when he (Mr. Dorr) had last seen Gen. McNeil. Witness had said that Mr. D. used the words "a few days" previous. He might have said "a short time" previons.

Mr. Dorr here said that Mr. Pearce made his visit to Chepachet on the 26th of June, and his (Mr. Dorr's) interview and conversation with Gen. (then Major) McNeil, was at New York on the 13th or 14th of May preceding. Mr. Pearce had made an error in stating that he (Dorr) had mentioned this interview as having taken place a few days previous. He had spoken of it to Mr. Pearce as having occurred not long, or, a short time ago. He (Mr. D.) had had no interview, conversation or communication with Gen. McNeil since the 15th of May. Gen. M. Was of the same political party with Mr. D in general politics; and he heard nothing from Gen. M. at New York to contradict his supposition as to Gen. M being friendly to the Suffrage cause and its success in Rhode Island.

MR. TURNER'S OPENING REMARKS.

May it please your honors:

Gentlemen of the Jury—When you consider the novel character of the circumstances by which I am surrounded; the high nature of the duties which have devolved on me, as one of the counsel for our distinguished client; and the deep sense of professional and personal responsibility which a faithful discharge of those duties create in the mind; you will find, I trust, ample apology for whatever embarrassment may be betrayed by me in attempting their discharge; and will kindly extend to me such indulgent consideration as my position requires.

The circumstances, I have said to be of a novel character, for trials for treason have, happily for us, until the present time, been entirely unknown in this State; and of very rare occurrence in this country.

The duties of which I speak, inasmuch as they embrace the distinct assertion of principles of vital importance to the whole community, of which we are all members, as well as the vindication of the character of our client, may well be pronounced of a high and commanding nature.

And the responsibility, which it is impossible not to feel, arises from a contemplation of the consequences to him and to us, which will result from the verdict you may render in the present case; which verdict in a greater or less degree, will depend upon the fidelity and ability with which the defence is conducted.

In view of these circumstances, well may the Defendant's counsel, therefore, feel a degree of self-distrust, and embarrassment, which ordinary cases would neither call for, nor justify.

But gentlemen, in some respects, your own situation is not less difficult than ours; your position, as jurors, has also its novelty, its duties, and its responsibilities. It is your duty, impartially and fairly to try, and true deliverance make, between the State and the prisoner at the bar; and this you, under your oaths as jurors, are to do, according to law and the evidence given you. It is your duty, therefore, attentively and patiently to hear, and seriously and carefully consider and weigh the matter, whether of law or evidence, that may be submitted to you for the defence; we look to you for that on your parts; and on the other hand, we assure you on our parts, that it will be our endeavor, neither to tax your attention, nor draw on your indulgence beyond what a complete discharge of our own duties may require.

In point of responsibility, gentlemen, there can be no comparison between us. When we shall have faithfully acquitted ourselves of our duty to our client, all our responsibility ends; yours then begins; neither he, nor the people of this State, or country, nor our fellow men of this day, nor those after generations that may succeed us, will have cause to enquire after or care for us. But it will be to you that he and

they will all look; and all will equally hold you while living and your memories after death, responsible for the verdict you may render;—you are at this moment, and it is the first that has occurred in American history, standing in a position between *popular rights* and *popular supremacy*, on the one side, and *legislative assumption* and *oppression*, on the other; and although you will decide the immediate fate of one person alone by that verdict, yet upon that verdict hang suspended the destinies of Freedom herself.

By the indictment, our client (Mr. Dorr) is charged with the crime of *treason*.

Treason, gentlemen, is an offence that differs materially and essentially in its character from most other crimes; in them, such as murder, rape, arson, &c., the injury intended is merely of a personal and private nature; they are directed against the individuals of a community only, and are punished as such. But treason is a crime against an entire community collectively, and it is the highest crime that an individual can commit against a community or body politic, of which he is a member. It is, therefore, a *political* offence; and as such it ever has been, and still is to be regarded.

Such being the nature and character of treason, from the principles and structure of American government, its object is generally, if not always, a change, either in the form of government, or the administration of it. We are to look, therefore, for its origin, in political causes. History will justify me in saying, that treason has been most frequently created, and oftenest punished under the most arbitrary governments, and those whose administration has been most wickedly conducted. Could a full and perfect history of all the proceedings against treason, be written, at this day, it would present to us such a picture of cruelty, depravity, oppression, robbery and murder, sometimes with, and sometimes without the *forms*, but always *under color of* LAW; and avowedly for the better preservation of ORDER; that as Americans, the citizens of a free country, which has hitherto escaped its desolations, we should turn in disgust and abhorrence from the detail of its monstrous atrocities.

Treason, gentlemen, you must be aware, is a plant of slow growth; for "mankind are more disposed to suffer whilst evils are sufferable, than to right themselves by abolishing the forms to which they have been accustomed"; and where prosecutions for this and similar offences have been most frequent, it has been invariably found that injustice and oppression have ever been their precursors. It derives its origin most frequently "from a long train of usurpations and abuses" on the part of government; whilst, on the other hand, under good governments, well administered, treason is a crime scarcely known in history.

It is of importance, therefore, gentlemen, that we should turn our attention a moment to the political history of our own State, as well for the purpose of ascertaining the remote causes of the present prosecution, as to fix in our minds the great and broad principles upon which we intend to rely for the present defence. He would not himself, nor shall we in his behalf seek, by any evasion or subterfuge, to shun the great question you are to try; it is not the *act*, but the *construction* put upon it, which gives importance to the cause; and the question, when stripped of its technical investments, and presented before you in its naked lineaments is this: *are the people of a State, dependent on the will of the legislature alone for altering its fundamental laws, and reorganizing its government?* This is the great question; and well deserving the deepest solicitude, and the most profound consideration.

[Here Mr. T. was interrupted by the Attorney General, (Blake,) and told by the Chief Justice (Durfee) to confine himself to the *indictment*.]

It was my purpose, gentlemen, to have reviewed to you, the course of legislation pursued by the Charter government, on subjects out of which this prosecution has grown; and to enlarge somewhat on the grievances under which about three-fifths of our fellow-citizens have labored, in order to have shown to you, that justice to them and to their rights had long been, not only neglected, but denied, and to have satisfied you that the time had actually arrived, for the People themselves to take measures for establishing a written Constitution; but from all this I am debarred by the direction of the Hon. Court; and will ask your attention to the matter of the indictment itself.

Mr. Turner then read all his points of defence, as follows:

1. That in this country Treason is an offence against the United States only, and cannot be committed against an individual State.

2. That the 4th section of the Act of Rhode Island, of March, 1842, entitled "An Act relating to offences against the sovereign power of the State," is unconstitutional and void, as destructive of the common-law right of trial by jury; which was a fundamental part of the English constitution at the Declaration of Independence, and has ever since been a fundamental law of Rhode Island.

3. That that act, if constitutional, gives this Court no jurisdiction to *try* this indictment, in the county of Newport; all the overt acts being therein charged as committed in the county of Providence.

4. That the Defendant acted justifiably, as Governor of the State, under a valid Constitution, rightfully adopted, which he was sworn to support.

5. That the evidence does not support the charge of treasonable and criminal intent in the Defendant.

Mr. Turner said that, before making any comments, he would call the witnesses for the Defendant, who had been long detained here, and were anxious to return to their homes and business.

WITNESSES FOR THE DEFENDANT.

Henry S. Hazard (recalled).—Stood at the door of the arsenal when Col. Blodget came to the door on the night of the 17th of May. Saw men with the pieces in the lower story; but cannot state whether the plan was to defend both stories or not, except from what has been said here by the witnesses.

Col. Charles W. Carter (summoned by the prosecution but not examined).—Witness was present, as an officer of the escort, in the procession of the General Assembly from High street to "the foundry," on the 3d day of May, 1842. He saw no persons in the procession unusually armed, or having large canes, sticks of wood, or any thing of that sort. The object of this assemblage was to organize the government under the People's Constitution. In the afternoon Gov. Dorr ordered the city troops, in which witness was an officer, a lieutenant in the 4th Ward Volunteers, to be in readiness for the next day. The next day witness called on Gov. Dorr to ask him for what service they were wanted. He replied that he regretted that his purpose of taking possession of the State House and of the public property was defeated by the opposition of the House of Representatives. He (Mr. Dorr) thought this was the right course, and was in favor of it.

Before we went out to take the arsenal, or to attempt to take it, there was a meeting of military officers, at Burrington Anthony's house, at the request of Gov. Dorr, to consult about the steps to be taken. Some thought it would be better to march into the city first before going to the arsenal. The majority were in favor of going to the latter; and the opposition was waived. After hearing the views of the officers, Gov Dorr gave the order to march to the arsenal, which contained the State arms. Witness supposed the soldiers then would follow Gov. Dorr wherever he might lead them; this, at least, was witness' determination.

Several of the officers suggested to Gov. Dorr that he had better remain at Anthony's house, with a guard. Witness was one of them. Gov. Dorr replied that he had often publicly stated, and at the Town House, that when danger should happen he wished to be found any where but in the rear; that he should be as good as his word, and would not send others where he was not willing to go himself. Mr. Dorr went out in the centre of the column. Witness was near him. Henry A. Kendall was on one side.

It was a very dark night, in consequence of the heavy fog and mist. It was difficult to distinguish any thing a little distance off. The night was not chosen because it was dark. The fog came up late. It seemed like an interposition of divine Providence.

Witness counted the men in sections before they started to go out; and found 234 in all, although the number had been represented by some as larger.

Witness saw Gov. Dorr on the field, doing his duty as an officer, and attempting to rally and bring up the men. The two artillery pieces, six pounders, were loaded with round shot—balls.

Col. Wheeler, the chief officer of the force, after the men had been halted, called on witness to carry a flag of truce to the arsenal, and demand the surrender of it. Col. Wheeler told him to say to Col. Blodget, who commanded the arsenal, that "there was force enough there to blow them all to hell." Witness replied, he should say no such thing, but should say what was proper on such an occasion. Col. Blodget has given a perfectly true account of what took place when witness went to the arsenal with the flag. Witness

went up to the lines, and called for the corporal of the guard. He was asked who's there. He replied an enemy, having in his hand a sword with a white handkerchief upon it for a flag. Col. Martin then carried him up to the door. Witness made a demand for the surrender of the place in the name of Col. Wheeler; but immediately thought that it should be made in the name of Gov. Dorr, and corrected himself. Col. Blodget answered that he knew no such persons, and should defend his post. Witness then went back and saw Col. Wheeler. Said Wheeler, what did he (Blodget) say? "What did he say," witness replied, "what the devil should he say but that he should defend the arsenal." Witness then turned round, and looked toward the other end of the line; and, when he looked back again, there was no Col. Wheeler to be seen. He had gone off in the fog. Witness then went after Gov. Dorr; and both he and the Governor then looked for the Colonel, but could not find him on the field. Gov. Dorr then ordered witness to take command of the artillery, which he did.

Just at this time witness saw Capt. Dispeau with the Pawtucket company going off in the rear. Witness asked him where the devil he was going. Dispeau replied "there is danger here." Witness asked him how the devil he expected to go to war without getting into danger.

The men were then ordered into line, the guns were placed in position and pointed at the arsenal, and the right gun was touched: it flashed but did not go off. The left gun was also flashed, and primed again; and was flashed a second time without going off. The first gun witness believes was touched off by a man named Andrews, the second by a Mr. Hathaway. Gov. Dorr stood in the rear of the guns. He did not have a torch in his hand that night, or apply a portfire or torch to either of the pieces. Witness commanded them, stood close by them all the time, and is sure that Gov. Dorr did not attempt to fire them. Witness has heard the testimony of Orson Moffit, that he saw Gov. Dorr swing a torch and flash one of the pieces; and knows that in saying so he has testified what is false. Witness gave the word to fire the pieces by the order of the Commander, Gov. Dorr.

The guns were entirely unserviceable. The powder was old and poor, and, becoming damp, had hardened, so that the priming wire would not go down through it. The statement which has been made here, that the guns were plugged up with wood, or something else, is untrue. They were bored out in the morning, after they were brought back, at Anthony's house, with a gimlet and rod, which was the only way in which they could be cleared. There were no plugs found in them; the substance was dissolved powder, which had hardened and become solid.

After the flash, the men began to scatter; so that soon there were hardly enough left to carry off the guns. Witness limbered one of them himself. Gov. Dorr collected about fifty men to take the guns back. He went off the field with one of them, witness with the other. The rest of the men had left.

There were about fifty men who went back to the house of B. Anthony, on the morning of the 18th, and their number decreased. Col. Wheeler having gone, Gov. Dorr that morning appointed Levi Aldrich Colonel, and several others in the places of those who had left. The signals were not answered; the men did not return to defend the head quarters, and it became necessary for Mr. Dorr to leave the ground, which he did at about half past 8 o'clock. Gov. Dorr consulted with his friends, and showed witness a letter informing him that all the officers of the government, in Providence, had resigned, and that he could expect no support. He was advised to leave. This was my advice to him. Understood he left an order with Col. Aldrich to fall back, with authority to dismiss his men. The Col. gave the order from the window.

Sometime after Gov. Dorr had gone, the charter troops, some six or eight hundred of them, came up. Twenty-seven of our men remained. They fell back to the edge of the hill, stood by the cannon, and would not suffer them to be taken from them by force. They meant to go off with the honors of war. Mr. Anthony requested witness to give them up. Witness' intention was that they should be given up to the Artillery Company, to whom they belonged, according to the agrement when they were taken; and they were so given up the next day. Witness prevented a cannon from being fired at the mass of men when they were coming up the hill, by catching the match. After Gov. Dorr had gone away, some one said something about a compromise with the enemy. Gov. Dorr never mentioned any such thing. Witness never believed any thing about this compromise. When Gov. King and the sheriff came up, the men saw that there was no such thing. Witness called this the soft soap story. There was no man on duty among the soldiers on Federal Hill who was under the influence of liquor, or intoxicated. The statement that any of the men were in that condition is untrue.

Witness was one of Gov. Dorr's aids at Chepachet in June following. The average of the armed men there, composing our force, did not exceed 200. The men were coming and going as they pleased. The service was voluntary. A company from Cumberland went back on Saturday. Witness knew of none being taken up and compelled to serve. He took up one of his own men who was drunk, and kept him in the guard house till sober. He was the only one whom he saw in that condition.

There was no command exercised over the men about the village, and not much over the soldiers on the hill. Thirteen of the latter were from N. York. Being in the confidence of Gov. Dorr as his aid, witness had frequent conversation with him. Heard him say that in case the President of the United States interfered in the affairs of this State, he wished and expected assistance from other States. But witness never heard him say that he desired or expected any such aid to interfere between the two political parties of the State, and to strengthen one against the other. Mr. Dorr's view was that if the people were let alone from abroad by the United States they would take care of themselves; and if they could

not maintain their rights they did not deserve to have any.

There was a talk among some of the men, that if they got to Providence they could occupy the Colleges for barracks. Gov. Dorr forbade all marauding. He ordered that private property should be every where respected. A couple of beef cattle were taken; but the one that was kept was paid for.

Gov. Dorr said that the assemblage at Chepachet was premature for want of a consultation. There was no regularly organised force there. The organization commenced after they got there. A council of officers was held at Sprague's hotel, before whom the state of affairs was laid. Witness was present. The opinion of the officers was given in favor of disbanding. Gov. Dorr wrote an order to this effect, and Gen. D'Wolf carried it to Acote's hill and made it known to the men. Gov. Dorr said that it appeared by a newspaper that had been sent to him, that many, who had been just before our staunch friends, in Providence, were now going against us and denouncing us. Many had also expressed their satisfaction with the doings of the Charter General Assembly. Gov. Dorr said it made no difference how they went over to the enemy, whether from cowardice, or by base means; it had become evident that the majority were against supporting the Constitution by arms; and if we remained there, we should have to contend as a faction both against friends and enemies.

The order to disband was given when the sun was three quarters of an hour high. The soldiers broke up from the camp as men do at the end of a general muster, without any haste or disorder. Gov. Dorr left Chepachet at about sunset. Witness went with him. There were no others except the driver of the wagon. They went to Vernon Stiles's hotel, in Thompson, Connecticut. There were only three colored men on the hill; and they were in the commissary's department. Witness heard in Norwich that Eddy had some money there to procure ammunition. The troops dispersed immediately on being disbanded. Of some 600 men in Providence, who held meetings and agreed to come out into service when called for, only 35 came to Chepachet. Gov. Dorr was informed that when he should move to carry the government into effect, that he could depend on 1500 men, who were pledged to support him. He remarked, at the dssbandment, that if those who had been deprived of their rights, would not fight for themselves, they were not worth fighting for.

Witness was present on Saturday afternoon and heard Gov. Dorr deliver his Address to the troops. Witness stood near him. He did not hear him use the expression about laying his bones on the hill, as has been stated. If he had used it, witness would have heard it. The flag under which we assembled, was the standard of '76.

Cross Examined.—The guns which were aimed at the arsenal, were unloaded after they were brought back to Anthony's house in the morning. They were loaded with round shot—with cannon balls. When reloaded they were loaded with slugs. The guns were pointed quartering at the arsenal; thought it would produce a better effect than if the balls went plump on. The guns were as far apart as the width of this room. Saw the right gun touched and went to the left. There were not more than a dozen men around them. About this time they went away behind wood-piles and somewhere else. After the return from the arsenal, witness remained outside at B. Anthony's house, rallying the men. Was not by the guns the whole time after they were brought back. Saw nothing but powder when the priming was withdrawn. Didn't know when Gov. Dorr was to return from New York. A man came to him and said Gov. Dorr wished him to make some pikes. Saw the pikes when made, although he did not make them. The assemblage at Chepachet was to protect the People's Legislature, and the town against invasion. It was only talk among some of the men of going to Providence and taking pessession of the Colleges. There was no plan or conversation to that effect among the officers. Things did not admit of such a movement. Witness held himself ready to go any where that he should be ordered. Thinks he said something about preparing hot shot, to be used when necessary, as they are sometimes in war. Witness does not know of any aid being called from New York to act in any other case than that of interference by the general government. Witness thinks he himself proposed taking the armories in Prodence first, before they should attempt to take the arsenal. Gov. Dorr wanted to take the arsenal because it contained the State arms.

Saw Gov. Dorr between the time of the Federal Hill affair and that at Chepachet. The plan was to procure men and ammunition, and to maintain the People's Constitution and government by force, if necessary. Witness thinks he (witness) mentioned then, that they had tried to take the Warren guns. Gov. Dorr might have approved of it; cannot speak certainly. Does not think he disapproved of it. There were men about the village of Chepachet with arms. The men left the hill at first, when they pleased, but that was stopped toward the last; and those who chose to become soldiers were required to stay. Two farmers, good men, came there and were going off the hill. Witness told them that they had better not; but one said he had six cows at home and one heifer that kicked very badly and thought they had better go home and see to them, as they had left there nothing but women folks. Witness made them leave their muskets behind. The men generally wanted to go to Greenville, to attack the charter troops. The reason they did not, was, the news from Providence that our party in town had given up entirely. Was not on the hill when the order to disband was read. Heard no proposition from Dorr to go to Providence and take possession of the Colleges, or any thing else. Never heard any thing from Gov. Dorr which carried the appearance that he was acting for his own personal interest. He was acting for the people only, and in their service; and if they had not abandoned him through cowardice, their Government would have been this day in operation.

John S. Harris.—Knows where the votes given for the People's Constitution now are, and of

their being counted, and how many there are.

The *Att. Gen.* objected to the admission of any testimony on this point.

The Court.—Such testimony is not relevant at all to the issue.

Mr. Turner.—A great deal of evidence has been offered to show that the Defendant assumed to be Governor of the State and pretended to act under a Constitution. The assistant of the prosecuting officer has laid great stress on this point in his opening to the jury. In the present stage of the case, we offer this testimony, for the purpose of explaining the motives of the prisoner.

Mr. Dorr said it appeared to him that he was entitled to this testimony, even supposing that all the proceedings in favor of the People's Constitution, and to elect a government under it, were null and void. It went toward an explanation of his intentions, and to show what authority there was at the foundation of his acts, and that he had not risen up in the midst of the People as an usurper, acting of his own mere motion, and without law. It is certainly proper to claim a right to repel the charge of wicked and malicious motives in exercising a pretended authority, which has been so much dwelt upon by the prosecutor in the opening of the case. He (Mr. Dorr) was charged with usurping the duties appropriate to a Governor of the State. Let us inquire whether this was or was not an unauthorized assumption. Let us look into the election, and, beyond, at the votes for the Constitution itself, at the formation and proceedings of the People's Legislature, at his (Mr. Dorr's) recognition by the Assembly and by the People in his political capacity, and then it will be more easy to make up a fair judgment upon the character, motives and intentions of the accused.

Durfee, Ch. J.—The Court rule, that as evidence has been introduced very properly by the government to prove a *conspiracy*, it is for the prisoner to disprove that fact, but not to confirm it. It is not necessary, in order to be a usurper, that a man should set himself up alone, and pretend to act in any authority. In fact he cannot do so but by the consent of large numbers. But such a *conspiracy* can give no authority by its numbers, and can excuse no one for the violation of the laws. No one knows better than the prisoner the maxim that ignorance of the law is no excuse for its violation. No crime can be permitted to be excused by showing that the prisoner acted under a mistake of the law respecting his natural rights. *A prisoner might as well set up, to an indictment for robbery, the defence that he had a natural right to the possession of the property which he took from the person robbed.* The evidence which the jury should consider, is that which relates to the levying of war, and the part which the defendant took in it. If the evidence prove this charge as laid in the indictment, then the jury should bring in a verdict of guilty, otherwise of not guilty. The evidence offered will not prove the absence of the malice charged.

Mr. Dorr hoped not to be misunderstood in having it supposed by any one that he set up the defence that he acted under a mistake of law in supporting the rights of the people or his own. Very far from it—he claimed to be justified by having done what he had a right to do. But the testimony was offered in this stage to explain his motives.

Staples, Justice.—The evidence of the prisoner's intention can be of no importance. There is no pretence of any private malice on his part, and the law infers general malice to constitute the offence, if the facts be proved.

Durfee, Ch. J.—All considerations of this kind are more properly presented after verdict by way of mitigation of the sentence.

Brayton, Justice.—Understood that no evidence had been offered to prove special malice in the prisoner.

Mr. Turner.—Will the Court have the goodness to state why testimony as to the "fiendish looks" and expressions of the Defendant was allowed to be gone into? The opening counsel has indulged himself freely in harsh imputations against the Defendant; and a great many things have been introduced here, which can have no other effect than to prejudice the jury against him. We ought to be permitted to remove all these prejudices, as we can, if we be permitted to go into the whole case.

Durfee, Ch. J.—The evidence proper for the jury is that which relates to the levying of war, and the part the Defendant took in it.

Staples, Justice.—No evidence ought to have the slightest weight with the jury, if any such has been put in, to show any personal malice or feelings on the part of the prisoner. The evidence must go to prove the facts laid in the indictment, and upon these the jury must render a verdict of guilty if at all.

The *Court* rejected the testimony offered; and the Defendant excepted to their ruling. At the request of the Court, the motion to admit this testimony was reduced to writing as follows:

"The Defendant offers to prove, by John S. Harris, that a large majority of the whole male adult population of this State, being citizens of the United States, gave their votes for the adoption of the Constitution, commonly known and called the People's Constitution of Rhode Island, in the month of December, A. D. 1841, under which said Constitution the Defendant was elected Governor of this State, in the month of April, 1842. And this testimony he offers, in this stage of the case, to repel the imputation of malicious motives and intentions, as charged in the indictment and urged by the prosecutor in behalf of the State."

Mr. Harris then gave his testimony on other points. After the People's Legislature broke up, Gov. Dorr went to Burrington Anthony's house, and the next day to Mr. Bradford Allen's house, to meet a number of his friends; and was occupied in signing commissions and in the business of the government. When this was done, he set out for Washington. He went there, at the desire of his friends, and in compliance with the vote of a large public meeting in Providence, for the purpose of making a true representation of our affairs to the President. Witness was not present at the arsenal, and had nothing to do with military affairs.

Col. Benj. M. Darling (recalled.)—Was present at Federal Hill in the procession on the 16th of

May, and in the barouche with Gov. Dorr when he addressed the people. The escort were arranged in a hollow square or circle. There were 375 armed men. The line of men extended nearly around the carriage. Witness did not hear any thing said about the sword being dyed in blood. If any such expression had been used, he must have heard it, as he sat within 3 feet of Mr. Dorr in front. Mr. Dorr said that it had been presented to him by the brother of an officer who died in Florida. He said it had never been dishonored, and never should be as long as he had it. Witness waved his sword and gave the signal for a cheer. It was a loud and hearty cheer. Mr. Dorr stood on the seat while making his speech, and held up the sword when he was speaking of it. No such language was used by him concerning the sword being dyed in blood, as has been related by Wm. P. Blodget and E. H. Hazard. Nor did he wave the sword. Witness did not look at Mr. Dorr all the time. His beard was very long, and he looked very dusty. Recollects Dorr's saying something about the 5,000 men; but not exactly his remarks. The whole proceedings on the hill lasted for about an hour. The address was not more than three quarters of an hour long. The meeting was peaceable and orderly. Heard no threats made by any of them. Don't think any one could have stood within 20 feet without distinguishing whether Gov. Dorr stood in a carriage or on a platform.

Samuel H. Wales.—Was on Federal Hill in the procession when Gov. Dorr returned from Stonington. Mr. Dorr made no such remarks concerning the sword, as have been stated here by Blodget and Hazard. The principal tenor of the speech was an account of his reception in New York. In reference to the 5,000 men, he stated that he was sure of aid enough from New York to paralyse any force which the United States might use against the Suffrage party in this State. Gov. Dorr drew the sword and held it up. He said it belonged to an officer who died in the Florida war; and the brother of this officer had presented it to him. Mr. Dorr added that it had never been dishonored in battle, and he hoped it never would be. Mr. Dorr said that he was willing to die with that sword in his hand, if need be, to sustain the Constitution of the State. Witness stood very near the carriage, within five feet of Mr. Dorr, inside of the military. They occupied a large space around the carriage. Paid particular attention to the speech. Should have heard Mr. Dorr if he had used any such expression as testified to by Blodget respecting the sword dyed in blood. Mr. Dorr appeared fatigued and covered with dust. The applause was very hearty, and might have been peculiar, as it was a dusty day. There was no ferocious yell as has been described. The meeting was orderly and soon broke up.

Nathan Porter.—Followed the procession to Federal Hill. Gov. Dorr stood up on the middle seat of the barouche in delivering his speech. He said it had been reported here that he had solicited 500 men from New York; that was a mistake; he could have 5,000 men, but he did not want them except to repel the force of the General Government. Gov. Dorr drew his sword and held it up. He said it had belonged to a brave man who had fought in the Florida war; that it had never been dishonored, and never should be; that he had sacrificed all in the cause except life, and that he was willing to lay that down, if need be, in the cause of the People; that the sword had been used in the cause of the country, and he was ready to use it again if need be. The appearance of Dorr was peculiar. His face was red and he was very dusty. The wind was high and blew his hair about—his beard was long and he looked haggard. Witness remarked to some one by, that he never saw Gov. Dorr look so badly. He looked as one would who had been riding in the sun uncovered. Witness thought the speech was calm and dignified, and a moderate one under the circumstances. The meeting was orderly, and the cheer was a loud and hearty one, and seemed to come from warm and manly hearts. Witness stood very near Gov. Dorr. Has heard the statement of Blodget Mr. Dorr used no expression of the sword dyed in blood or gore, &c.

Jumes Thurber, jr.—Is acquainted with William P. Blodget. On Tuesday, met him between here and the Park House, and passed the compliments of the morning with him. Spoke to him about the death of Major Power. He said, yes, the old man was used up. Witness replied, yes, and I see you was pretty much used up at Dedham, the other day. He said, they packed a jury against him, and thus convicted him. Witness said, well, I do not know but they will do so here with Mr. Dorr. Blodget replied, I hope so, by God. Witness said two wrongs do not make a right. Blodget answered I want to pay them in their own coin. He said he had not heretofore wished Mr. Dorr convicted; but now he would do what he could, and he should not have been down here, had it not been for this.

(Witness was going on to state conversation he had with E. H. Hazard, in relation to Mr. Dorr's trial, but was stopped by the Court)

Burrington Anthony.—Was at home when the men returned from the arsenal. Gov. Dorr left about an hour before the Charter troops came up. Witness did not say to Col. Blodget, as he has stated, that the men on Federal Hill, at his house, were drunk. He may have said to him, that they were much excited; but he did not mean by liquor. He offered them nothing to drink; and saw none of them at any time affected by it. Witness pledged himself to Col. Blodget and Gen. Gibbs, when the Charter troops were at his house, that he would endeavor to have the artillery pieces restored that afternoon, as far as was in his power, but he had no command over the men. Witness saw a letter containing the resignation of the officers of the government put into Dorr's hands, at his (witness') house. A great many of Mr. Dorr's men, who had returned to the house, had then gone away. Heard no firing. After a few men had carried the pieces back to the edge of the hill, the Charter troops came up near them; and a match was then waved over a cannon pointed at them. At this they sprang aside against the fence and all went down together. The piece was not fired.

Witness heard Gov. Dorr's speech delivered at Tammany Hall in New York, on the 14th of May.

There were 5'000 persons in and around the hall. He expressly repudiated the idea of foreign aid except in the event of the interference of the U. States in the affairs of Rhode Island. He said, as he had always said, that if the people of this State could not maintain their rights against the Charter party, they did not deserve to have any.

Met Gen. William G. McNeill in New York at the Astor House. He said he had seen Gov. Dorr, and had omitted one thing, and that was to offer him and his friends a car to go to Providence, provided that it should not interfere with the regular train. He requested me to step up to the desk and write an order to that effect, and he signed it. He had always expressed himself as a political friend. Understood him then to be favorable to the Suffrage cause.

Sheriff Potter must have been mistaken as to witness's requesting him to prevent the people without from firing. Witness did not use the language attributed to him. Asked Sheriff Potter if he had any objections to the People's Legislature sitting in the Court House. Potter said he had no intimation of his being superseded as Sheriff, and should not relinquish the possession of it. This was on the day of the meeting of the People's Legislature. Witness was not authorised by the vote of the House to take the State House, or to use force. He was directed to ask for it.

Capt. Josiah Reed.—Was captain of the chartered United Independent Company of Volunteers of the city of Providence. Was on Federal Hill in the afternoon of May 17th. A member, and an officer, of the old Artillery Company told him that the company were at the armory, and wanted us to come down and get their pieces—two six-pounders. Soon after he was called into the house by the Governor, and received an order from him to go down and take them. Witness went down with his company. Saw Col. Bennet and demanded the guns in the name of Gov. Dorr. He requested witness to file his men round at the back door where the guns were, and asked if he would wait about five minutes for the key, which was not there. He stated that the company had not yet made up their minds to let the guns go. Shortly after Lieut. Col. Wilkinson called witness into the armory and asked him if he would pledge his word that the guns should be returned to the company after we had got through with them. Witness told him he would, and did so pledge himself, and he gave witness liberty to take them. After witness went out, the key not coming, another officer came out and told them to wrench the lock off the door. He ordered Sergeant Dawley to do so. While he was in the act of doing it with his bayonet, the key was found and passed out of the window to William H. Potter, who unlocked the door, and we took the guns. The guns did not belong to the State. They were the property of the Artillery Company. The key was in possession of Lieut. Col. Wilkinson, who was not at the armory at the time we went there. These brass pieces were sent to the Company by General Washington, to replace three iron guns which were borrowed of this company, and which were lost in the sound. These cannon were taken at the surrender of Burgoyne.

Witness was at Anthony's house previous to going to the arsenal.

Gov. Dorr was requested by the officers to remain at the house. But he refused to remain, saying that, as he had promised, he should not be found in the rear, when there was danger to be met.

At the arsenal ground witness was sent with a detachment, and lay in ambush close by the building, on one side. The plan was, that when the doors were opened to run out and fire the artillery pieces, his company should rush in and take possession of the building; which he did not apprehend there was much difficulty in doing.

Kingsley P. Studley.—Was a Lieutenant in the Volunteers; and went down with them to the Artillery armory to take their pieces. Witness repeated the statement that Capt. Reed had made, and said that the detachment who went for this purpose consisted of 50 men.

Thaddeus Simmons.—Was at the arsenal within 20 feet of the cannon. Was one of the guard who marched out by the side of Gov. Dorr; four on each side; and was close by him from Anthony's to the Arsenal. The guns were placed under the command of Lieut. Carter. They were southeast from where some 30 men were, near a tree. Heard the orders given by some one to fire. Both guns flashed, first one, and then the other. Does not know who touched them; but knows it was not Mr. Dorr. Was so near as to be positive of this. Mr. Dorr moved about the field to bring up the men.

Joshua Hathaway—Was not at the arsenal. Was at Anthony's house the first part of the evening, and the next morning when the artillery pieces were brought back. Knows in what state the guns were when they returned from the arsenal, as he assisted in boring them out. The difficulty with them was that the powder had moistened and dissolved and then hardened. There was no pine or other plugs found in the vents. There was nothing but powder in the vents; and they had to be bored out with a gimlet before they were serviceable. Witness helped do it. He has a brother named Seth, who was said to have been at the arsenal ground that night.

Benj. M. Slade.—Was commissary at Chepachet. When the troops disbanded, there was not more than two days provision on hand. It was mostly obtained by voluntary subscription; some of it in Providence, some in Woonsocket. Some was sent in by the citizens of Chepachet. There were two colored people employed in his department. The whole number of our men under arms at Chepachet was from 200 to 250. There was no chaplain on the hill. The flag was the United States' flag. Some tents were borrowed from Massachusetts. The marquee was borrowed by witness and Capt. Landers.

Wm. H. Potter (Government witness, recalled.)—Was near Gov. Dorr at the arsenal. Stood within 8 or 10 feet of him, near the tree where the pieces were flashed. Mr. Dorr did not wave a torch or touch either of the pieces. If he had done so, witness must haveseen him. Lieut. Carter was near them, and appeared to have charge of them.

William J. Miller.—Was one of the publishers of the Providence Express in June, 1842. A proclamation for convening the People's Legislature at Glocester, was sent us on Saturday for publication. Circumstances compelled us to decline its publication. An order of Gov. Dorr for the disbandment of his military force at Chepachet was brought to the Express office, on Tuesday morning, June 28th, by the hands of Walter S. Burges, for publication. It was printed by us in an extra by a permit of one of the Governor's Council.

Col. W. H. Potter.—(Recalled.)—The procession in Chepachet, alluded to by D. J. Pearce as being formed at the hotel, and moving toward the hill was entirely a civil procession. The men in it had no arms, nor were they under orders. All persons there in the street favorable to the cause were requested to manifest it by falling in and joining a procession.

Walter S. Burges.—The relations between Mr. Dorr and myself having been of a friendly nature. I called to see him at Mr. Anthony's house, on the evening of the 17th of May, 1842. There was no doubt entertained that it was his intention to take possession of the States' Arsenal that night. We had a conversation on this and other subjects, in which he requested me, in case of any accident to him, to attend to his affairs and take care of the papers in his office. He directed me where to find the books and papers which were in his hands as one of the State Commissioners of the Scituate Bank; the files of papers pertaining to his office of President of the School Committee in the city of Providence, which he had filled for some considerable time; also, the papers, securities and funds belonging to the R. I. Historical Society of which he was then Treasurer—and sundry other valuable papers relating to certain administration and guardianship accounts—particularising the location of each, and giving me the keys that led to them.

Witness never has seen Gov. Dorr before nor since, manifest any motives or intentions other than as a public officer.

Friday Morning, May 3.

Walter S. Burges.—(Recalled.)—Just before dark, on the evening of Monday, June 27, 1842, I received a letter from Governor Dorr. It was brought to me in my office by two officers of the Charter party, unopened. The men who brought it, one of them a Mr. Eddy, had been intercepted. I opened it in the presence of the officers. It contained information to witness of an order being given for the disbanding of the troops at Chepachet—also a copy of the original order, under sealed cover, directed to the Express office, for publication. These were taken immediately that evening before General McNeil and the Governor and Council. The next morning they were returned to me by Gov. Arnold, one of the Council, who requested me to leave the order at the Express office and have it published. I carried it to that office, but they refused to publish it, unless by an order from the Governor and Council. I returned to Gov. Arnold, and obtained his order or permission for its publication, and again carried it to the Express office, and it was soon out in an Extra. This was on the morning of the 28th June

Friday Afternoon, May 3.

Mr. Turner then commenced an address to the jury in the further opening of the defence, recalling their attention to the five points which he had before introduced, viz: 1. That treason was not an offence against this State, but against the United States. 2. That, if any treason had been committed, an indictment could not constitutionally be found out of the county, where it was charged as having been committed. 3. That, at all events, such indictment, wherever found, could not be *tried* out of such county. 4. That the Defendant committed no treason, but acted justifiably, having performed the acts charged against him, in his capacity of Governor of the State, and having been duly elected and sworn under a valid Constitution. 5. That there was an absence of all the motives and malice which are necessary to the existence of the offence charged.

These points Mr. T. proposed to take up, separately, and to maintain and illustrate each in its order.

The *Court.*—There has been no foundation laid in the proof of facts to sustain the 4th point of justification.

Mr. Turner.—The testimony on this point being distinct from the rest, he had intended to reserve it, until he should come to it in the proposed order; but he was ready to take up the points in any order that might be preferred by the Court.

Staples J.—All the testimony ought certainly to be put in in this stage of the case. It would be irregular after commencing the argument of the law to return to the introduction of new proof.

Upon this suggestion of the Court, the 4th point of Justification was then taken up; and Mr. Turner proposed to prove by the authorities, that the People had a right to adopt a constitution of government, and that, in the exercise of that right, they did adopt a constitution in December, 1841; under which the Defendant derived his authority; and in proof of this fact, he proposed to offer and authenticate the votes of the People themselves in proof of said Constitution.

The *Attorney General* objected to the introduction of this testimony; and asked how the votes themselves were to be proved.

Mr. Dorr.—I intend to show that the votes were received and counted, and how many there were, and for what they were given; then I will produce the votes themselves, and lay them on the table before the jury for their inspection, and that of the Court; and, in the next place, if the gentleman be not satisfied, I will call in the

voters themselves severally to verify their votes, commencing at any place he may please to designate.

Durfee Ch. J.—This subject has already been gone into at large in the case of Cooley; and such testimony as is now offered was rejected upon full deliberation by the Court. We cannot permit it to go to the jury. It would fail to prove the point for which it is introduced if it were admitted; for the prisoner cannot be held justified by acting under any other constitution than that of the State. This Court can recognise no other than that under which it holds its existence; and must take it for granted that the government preceding the present was also the government of the State until changed, in due legal course. Any irregular action, without legal authority, is no action at all, that can be taken notice of by a court of law, who are bound by the laws, and sit to administer them. It matters not therefore whether a majority, or what majority, voted for a pretended constitution, as is alleged by the prisoner, and as he now asks to be permitted to prove. The numbers are nothing; we must look to the legality of the proceeding, which, being without form of legal authority, is void and of no effect. If such proceedings should be tolerated in a court of law, and be accounted to hold any man justifiable for the violation of it, then law is at an end, and general anarchy would ensue; as what had been done once could be done again, and with as good effect; so that a succession of changes might be perpetual, and there would be no permanent form of government. Of what benefit then to the prisoner can it be to introduce testimony which cannot support his case, if conceded to its fullest extent. The question is not what was done, but what was done according to law; and numbers, however great, cannot decide this either way. The fact is, the prisoner asks leave to bring into this Court a political question, which cannot be settled here, and has been settled elsewhere. If a government had been set up under what is called the People's Constitution, and they had appointed judges to give effect to their proceedings, and deriving authority from such a source, such a court might have been addressed upon a question like this. But we are not that court. We know and can know but one government, one authority in the State. We can recognise the Constitution under which we hold our places, and no other. All other proceedings under any other are to us as nullities. It would be improper for this Court to take any other notice of them; and, if we did, we could allow to them no effect or importance whatsoever. Besides, the prisoner asks to prove a law, and the highest law by parole. Was ever such a proposition before heard of in a court of justice? If there be any such Constitution it must be found at the head of the statutes of the State; and the Court are bound to take notice of it. It is one of the laws, and the highest law of the State. But we find no such law. And again, if the prisoner was Governor of the State, as alleged, the evidence of it is a certificate of record from the proper officer. In every point of view therefore the testimony now offered is inadmissible; and, as before observed, this question has been fully considered in another case. The Court therefore decide that the testimony offered cannot be permitted to go to the jury.

Mr. Turner.—Although this question may have been before considered, yet in a case of this importance, we may well ask to have it brought again to the attention of the Court. It is indispensable to the main point of the defence, that this testimony should be allowed to go to the jury, with all the effect that it may be entitled to. If it be excluded the Defendant is cut off from the full defence to which he is entitled; and great injustice must be done him in consequence. We contend that he was, at the time when the offence charged against him is said to have been committed, the Governor of this State, acting under valid authority, deriving his powers from a Constitution rightfully adopted by the People themselves, the highest power in the State, in the exercise of their original, sovereign capacity, and overruling and superseding by that transcendant act of sovereignty, all other rules and authorities whatsoever. Any objection to this testimony comes with bad grace from the prosecuting officer; who has been permitted to show that Mr. Dorr acted as Governor, under the forms of an election, and in the presence of a Legislature, also purporting to be chosen by the People, under the same Constitution. If Mr. Dorr so acted, as we know he did, and as has been again proved here, then we ask to show why he acted, and by what authority he acted; and to discuss that authority. We propose to show, by most abundant authorities, as a foundation for what the People did in their sovereign capacity, that they are by the theory of our institutions, and in *fact*, the ultimate sovereign power of the State, responsible to no higher authority, except that of their Creator, for the manner in which they have used this sovereign power, for their own good, and for that of the State, of which they are the judges and which judgment no other tribunal can call in question. If we cannot go into this proof, what becomes of the full, fair and impartial trial, to which the Defendant is, of common right entitled? Without the liberty to investigate this vital and momentous question, which involves the liberty of our State and country, this trial degenerates into a merely formal process, a ceremony before conviction; and he is to be deprived of his civil rights, and subjected to the extreme infliction of the law, without a hearing, and without an opportunity to justify himself before the jury; who are thus to decide his case, without hearing the whole of it, and without the due consideration of all the points and all the arguments, which is necessary to the conscientious and satisfactory discharge of the solemn and momentous duty which has been imposed upon them. And further, this is not the same Court that acted upon this question on a former occasion, at the trial of Colonel Cooley in Providence. The Court was then acting under the Charter government, which has been done away with. This Court sits under a Constitution, from which it derives its power. It is different in name, and in the number of its Judges. One of the Judges on the bench has never heard any discussion of the subjects under consideration, in his judicial capacity. Under all

these circumstances, regarding the entire novelty of this case, both here and in other States, and the careful deliberation to which, in all its important aspects and bearings, as affecting the liberty and rights of the citizens of the State and country, it is so peculiarly entitled, have we not a strong claim upon the Court, to be heard fully and dispassionately, and to the whole extent which the investigation may require, upon this the main, vital question of the case. We are prepared to show most conclusively upon principle and authority that the People had a perfect right to reorganize their government, as they might see fit, and that, in the exercise of this right they did in fact so proceed, and did adopt a Consti ution, under which the Defendant was duly elected, and exercised his appropriate power, and performed his specified duties according to the oath of office which was administered to him.

Staples J.—The admission of this testimony would be permitting the prisoner to show that we are not a Court. The authority of this Court is derived from the Constitution of the State; and that Constitution itself was formed, according to legal proceedings, originating with the government under the Charter, which has now ceased to exist. If that was no legal government, as the prisoner proposes to show, then the present is no Constitution, having no rightful origin, and we as judges have no powers under it. Can we permit such a proceeding as this—to have our own existence drawn in question? The acts set up by the prisoner in his justification were revolutionary in their character, and success was necessary to give them effect. In this event the Judges chosen would have recognized the source which created them, and would have treated the acts of the government as valid. The prisoner asks us to take notice of an organization which not only did not exist rightfully, but did not exist at all.

Mr. Dorr.—The Defendant in this case claims the right to inquire, and show who are the People of this State, what they had a right to do, and what they did, as the basis of justification of his course and conduct in the recent political affairs of this State. He proposes to show that the People in a political sense are the adult male population, including qualified voters, and those who are not qualified, the men, who do not look for their origin to the State but to their Creator, and who compose the great mass of the community, bearing its burdens, contributing to its support, the authors of its prosperity and the defenders of its rights. In the next place, it will appear, if there be any virtue in the solemn declarations of popular rights, in the Constitutions of the States, in the decisions of Courts, in the opinions and arguments of the most eminent jurists and statesmen, and of the greatest and best men who have adorned our history—that the People, as thus defined, are the ultimate, uncontrolled sovereign power, in whose hands is vested, not by grant or transmission, but by the hand of God, the right, the ability, the competency to provide for their own political safety and happiness, by devising and creating such forms of government as, in their several communities they shall deem best and most expedient, and by altering, amending, abolishing and renewing the same, at such times, and in such modes, as to them shall seem proper and necessary; of the propriety and necessity of all which proceedings they are the sole and exclusive judges. It will also appear, if the Defendant be allowed to make out his case, that in a recent exigency, the People of this State so defined, and so empowered, did see fit to put in exercise this original, ultimate sovereign power, and did form and adopt a written Republican Constitution for the government of the State, under which a government was duly elected and qualified, and among the members of which the Defendant accepted and exercised the office of the Chief Magistrate. To prove the existence and adoption of this Constitution the votes of the People are here, and we are ready to present them to the jury. The People also are not far off, and may be called upon to authenticate their own acts, if they be drawn in question.

Your Honors say that this testimony cannot be admitted. Why not? It will unsettle the foundations of the Court! Is there any justice in this objection? The Court will remain just where it is until changed by competent authority; and its jurisdiction will remain the same. This objection would have seemed to carry more weight under a state of things that now no longer exists. When the Court sat under the Charter government, it might have been said that to have that government impugned, and to admit testimony to show that it was set aside and superseded would be virtually drawing in question the existence of the Court. But this Court does not sit under the Charter government; and it can now look back with equanimity upon a past state of things, and can, for the purposes of justice, inquire what rights were then gained and lost, and upon what principles the actors in the affairs of that period are to be justified or condemned, without questioning their own existence under the present Constitution; which they are bound to regard as a *fact*, without either admitting or denying other facts present or past. The Constitution under which they act has been carried into effect. A government is in operation under it. A judiciary has been elected under it. And by what possible act of the Court or Jury can this Constitution be changed, or that part relating to the judiciary be abolished? It is not the province of Courts and Juries to make and unmake Constitutions. That is the work of the People. If after examining the votes and the proofs of his election, and weighing the authorities, the jury should come to the conclusion, that the Defendant is not guilty, what conceivable effect can this opinion have upon the stability of the Court? Another jury may be of the opposite opinion. Does this place the Court back again where they were before and save their authority? The opinion of the jury expends itself in the particular case on trial. It cannot extend beyond it. It convicts or acquits no one else. It is very difficult to comprehend the force of this objection. Why should not a jury be permitted to investigate a question of political rights as well as a question relating to person or property? We wish to ask the jury whether, upon American principles, and upon a survey of all the facts, the Defendant is guilty; if they should say not, they look at the facts and

law of this case, and not an inch beyond it. They affirm and deny nothing respecting the failure of the government under the People's Constitution. They say simply that what the Defendant did he had a right to do at the time. What became of his rights, or those of the People; why and how the government was overthrown; whether another Constitution was rightfully or wrongfully set up, and whether this Court are to continue any longer in existence, are all matters with which the verdict has nothing to do.

The present Constitution is a fact which is taken for granted on all hands. It exists and is made effectual by a government operating under it. No other Constitution has now any operation; and there is no other government in actual competition. But is this state of facts to decide a question of right? Because the Constitution and government under it have been set aside by force, and because through the fault or misfortune of its supporters and by external interference, the plan of reform in this State failed of success, is the opposite forcible success the criterion of all our rights? It may be true that the people have been defeated, or have defeated themselves, and have acquiesced, or are disposed to acquiesce in a new order of things, and yet it may be also true that they were in the right; and that those who attempted to serve them in 1842 were in the right. And this is what we now desire the opportunity to prove to a jury of the country.

The Court have taken an oath to support the Constitution under which they act; and they cannot escape from it while they continue to act, and until they are relieved by a competent authority. In what respect then can they be affected by any argument to show that the old Charter government was, two years ago, rightfully superseded by that under the People's Constitution? If the Court be convinced by this argument, still they are held by the obligation to the Constitution which they have assumed; and which they have assumed without qualification, or any reference whatever to its origin, or the question whether the Charter government was valid or not at the time this Constitution was formed. If the Court be not convinced, then they remain just as they were before. But whether convinced or not, they still remain a Court; and the Defendant, if heard, has the advantage and the justice of a full hearing, in what he deems the most vital portion of his case. In addition to this, it may be remarked that the question of the effect upon the Court of the People's Constitution, could not be a practical one, even if the Court were now sitting under the Charter government; for, by the People's Constitution, the judges were continued in their places until a new election should take place; and the Legislature under this Constitution made no such election; so, that, in the case supposed, the Court would be as much the Court of the Constitution, as of the Charter.

But beyond all this, taking for granted that the Court, by permitting the Defendant's justification to go to the jury, would be permitting its own legal existence to be drawn in question, what right have the Court to regard any real or supposed consequences, or to interpose them as barriers to a full investigation of all the principles and facts of the case? The Court sit to do justice, let what will come of it; and let justice be done, though the heavens fall. What reason is there why a Court should not hear all objections, in good faith, not only against the soundness and legality of their decisions, and against their jurisdiction, but against their own qualification or legal competency or existence as judges? Some years ago there was a controversy concerning what was called the "Perpetuation Act," relating to the holding over of a part of the government, till a new election should be effected by the voters. Now suppose this Court not to have held over by operation of law, but by act of such a perpetuated government, and the question had arisen whether the Court had a valid existence, and its powers were legally continued; would not your honors have listened to such a question? If you had entertained any serious doubts as to your legal competency, and the validity of your powers under such an act, would you not have hesitated to proceed, or have postponed your proceeding until the difficulty could be removed? Suppose that it should be now suggested that your honors are sitting here under an election, in which the prescriptions of the Constitution were not complied with, or without being properly qualified and without commissions, would not such a suggestion deserve and require your attention; and, if well founded, would not your action as a Court be at once arrested? This doctrine that a person accused of treason cannot be permitted fully to defend himself, because, if he do, certain consequences may follow, and the jury may take a different view of the constitutional or legal question proposed from that of the Court has no limitations, and may be carried out, in their discretion, so as to work an entire denial of justice, and a defeat of the trial by jury. If one consequence is to be regarded, why not another? A learned judge has recently observed, that "insanity and the alibi have become the Castor and Pollux of the criminal Court," so that the guilty have often escaped improperly under these forms of defence. Why not say at once that hereafter those grounds of defence shall be no longer permitted in this Court, because they have been, and may be, employed to the defeat of public justice?

As to the proof of the People's Constitution, and the election of the Governor under it, by parole, which is deemed objectionable, the difficulty will be at once removed, by presenting a copy of this Constitution, and a certificate of the election of the Defendant as Governor, under the hand of the person who was Secretary of State under said Constitution, in 1842. These, your honors, of course will not admit; and being thus deprived of the shortest and easiest mode of reaching the Court and jury, we will proceed with parole proof, if we are permitted, in the way that foreign laws are sometimes proved; your honors not regarding the Constitution and election as any part of the legal record of the State. This difficulty is not of our own making.

It has been already submitted to your consideration, that this is not the same Court that before decided the question now in argument. This Court derives its origin from a different source; and there is a new member on the bench. The

question before you may be regarded as new.

But it is said that the People of this State did not succeed in 1842. They did not permanently establish their Constitution and government. And what of this? Is might the standard of right in a country of republics like this? Does the existence of a right cease with the establishment, possession and enjoyment of it? Does success create rights or confirm them? In despotic countries, where rights are only concessions from the hand of force, this doctrine of contingent rights may meet with some countenance from the state of affairs, and the long suffering patience of the People; but it has no application here. If the Defendant had a right to proceed as he did, in the discharge of his appointed duties, defeat did not take it away; and he ought to be permitted to assert it in his defence against the accusation which here rests upon him. It will not do to say that this is a political question, which has been settled elsewhere. This is not an answer to the present application. One party carried the day, and the other lost it. Is it to be asserted that the party which ought to succeed is always successful, and that which does not succeed is always in the wrong? If not, then, so far as this case is concerned, the question has not been settled; and, if, as your honor says, it be political, then political facts and arguments are appropriate to it, and more especially as addressed to a political jury.

To say that the People's Constitution was formed without authority from the government then existing, and was consequently null and void, and *that* therefore it would be of no benefit to the Defendant to admit the proof of the facts, which show that this Constitution was actually the work of the People—is begging the question. We deny the assertion that the People cannot act for themselves in the construction and change of government, without the permission of that government. The Court cannot take this for granted with our consent. We strenuously assert and stand ready to prove precisely the contrary, and by a weight of authority and opinion that has never yet been successfully resisted. The Defendant does not ask as a favor or indulgence, but claims as the citizen of a free country, the right to show to the Court the entire validity of all the proceedings of the People in the adoption of their Constitution; and the same right to exhibit the evidence of their votes and of his own election. There is no conjecture in a proof like this. The People set their hands to the work of the Constitution. The prisoner offers their signatures to the jury. To refuse this inquiry of law and this examination of facts, is to cut off the right arm of his defence.

Durfee, Ch. J.—We have decided this question. I am astonished that men of high intellect can take such views of it as they have. We cannot admit this testimony. In this stage of the proceedings, we cannot hear the argument to show its admissibility. After verdict we shall be disposed to entertain the question.

The Defendant then protested against this decision of the Court, requesting the Court to note his exception. By request of the Court, the offering of the Defendant as the ground of his justification to the jury, thus rejected, was reduced to writing, as follows:

"The Defendant proposes to show by the authorities, that the People of this State have a right to adopt a written Constitution of government; and that in the exercise of that right, they did adopt a Constitution, in the month of December, 1841, under which the Defendant derived his authority; and this fact he proposes to prove by the production of the votes of the People themselves in favor of said Constitution."

Mr. Dorr inquired whether this decision to hear no argument, and to reject the testimony offered, was the decision of the whole Court?

Brayton, Justice, (newly elected) said that it was.

Mr. Dorr.—I have sought to conceal nothing in this case. I deny nothing except the falsehoods with which it has been sought to surround it. I should be the last man, I trust, to make any such denial, believing as I did, and as I now do, that I was in the right, and that my opponents were in the wrong. I have accordingly claimed here the right fully to justify myself to the jury, both in law and fact. Your honors have come to a different conclusion, but not more honestly than I have to the opposite of it. As you refuse to permit me to justify myself, I shall now once more offer the same testimony, in a more general form than when Mr. Harris was called upon the stand, to repel the charge of treasonable intentions. Levying war is not enough. In the language of Chief Justice Marshall, the levying war must be with the intent to commit treason; and treason is not to be inferred from an assemblage in arms without an examination of all the circumstances and reasons that led to it.

Mr. Turner then made a third offering as follows:

"The Defendant offers to prove, by the votes of the People, to be produced and verified, that a large majority of the whole resident, adult, male population of the State, being citizens of the United States, gave their votes for the adoption of the Constitution, called the People's Constitution of Rhode Island, in the month of December, 1841; and also to prove that under the said Constitution, the Defendant was elected Governor of this State, in the month of April, 1842. And this testimony he now offers, to repel the imputation of malicious and treasonable motives and intentions, as charged in the indictment, and urged by the prosecution, in behalf of the State."

A debate then ensued between the Defendant and his Counsel and the Court, on the same grounds that were before taken, and with the same result; the Court overruling the offer of the testimony, and the Defendant protesting and excepting as before.

Mr. Turner then proposed to offer to the jury a copy of the People's Constitution, to show that the government provided under it was republican in its form, agreeably to the requirement of the Constitution of the United States.

The offering was overruled by the *Court*, as being immaterial, irrelevant and inadmissible.—Defendant excepted.

Mr. Turner then offered the Message of Gov. Dorr, delivered May 5, 1842, before the General

Assembly under the People's Constitution, to explain the motives and objects of the Defendant.

Ruled out and exception taken by Defendant.

Mr. Turner then claimed of the Court, in behalf of the Defendant, the right of Defendant and his Counsel to address the jury on all matters of law involved in the case, as their undoubted privilege; inasmuch as the jury, in all capital cases, are the judges both of the law and of the fact, the province of the Court being, in such cases, to lay before the jury their views of the law, and of the jury to judge of them, as they do of the testimony.

Durfee, Ch. J., said, the Court entertain a different opinion. We must have the duty and responsibility of deciding upon the law.

Mr. Dorr very earnestly and strenuously urged upon the Court his right to be heard by the Court upon this question, and to argue the law to the jury, who did not sit in the box as ciphers, but to hear, judge and determine for themselves. If they could not do this, then, as the Court had made up their minds, the jury were to be governed accordingly, and this was but the shadow of a trial.

Durfee, Ch. J.—This question has been fully and ably argued in a former case before this Court, and must be considered as settled.

Mr. Dorr.—Until it be overruled. The decisions of the Court are not irreversible; and as there are no published reports, from which we can learn the reasons of them, there is good cause for asking to be heard in a case of this importance.

Mr. Turner.—I have authorities that will convince the Court, if I can be permitted to produce them, and if your honors will listen to them, which will satisfy your minds, that the prisoner has this right to go to the jury, in a capital case, upon the law; and that the jury have a right to judge of it, however they may be advised by the Court. I have, among the cases which I wish to bring to your attention, the impeachment of Judge Chase, of the Supreme Court of the United States, for official misconduct; one of the principle charges against whom was, that, in the trial of Fries, charged with treason, he refused to permit the counsel to argue the law to the jury. His own counsel on this occasion, admitted the right of Fries to have the law argued to the jury, but denied that he (Chase) had refused to permit it to be so argued.

Haile Justice.—This State must have been extremely ignorant when they passed a law making it a special duty of this Court to instruct the jury in matters of law. This question was settled at Providence, in a *licence* case, some time ago.

Mr. Dorr again urged upon the Court his right to have the authorities read, and to go on with an argument upon them.

Durfee, Ch. J.—Well, go on.

Staples, J.—I am opposed to a reargument of this question at the present time, in the course of a jury-trial. I am willing to hear it reargued when the Court are at leisure.

Haile J.—Nor am I disposed to hear a reargument during the trial, when this question has once been solemnly settled. At a proper time it can be heard. But it ought not to be heard in the hurry of a jury-trial.

Mr. Dorr.—It falls strangely upon the ear of a man in my position, when I hear the Judge of a Court, in a case of this kind, and involving principles of such moment, make use of an expression like this. The "hurry" of this trial. I must be hurried through to judgment then without a hearing; and after conviction I may be heard! Is the liberty or life of a man to be disposed of in this way? If there are any reasons why a conviction should not take place, why should they not be heard now? What reparation is it after conviction to hear the reasons why it was unjust? This is literally, according to a common observation, hanging a man first, and trying him afterwards.

[Here one of the spectators remarked in an audible voice—*That is the way of this Court.* The Court ordered him removed. But he presently returned with the Sheriff, and made an apology, stating that he was in the habit of speaking out, and had not the proper command of himself. He was permitted to return to his seat.]

Staples J.—The jury are kept here under much restraint; and can they be kept here week after week, while we are hearing arguments which belong to another stage of the case?

Mr. Dorr.—The jury do not complain. I think they will hear all my defence patiently.

Staples J.—They are men.

Mr. Dorr.—I also am a man, and claim the rights of one.

Mr. Turner.—We ask an opportunity to convince the Court, by the authority of the greatest Judges that have ever lived in this country—

Durfee, Ch. J.—The Constitution of this State settles our duty to charge the jury upon the law; and are we to sit here with our juries receiving the law from Judges of other States? The only duty of the jury is to take the law as given by this Court and to judge whether it be applicable to the facts.

Mr. Dorr.—I wish to give some reasons for the position taken from high sources. Do the Court refuse to hear authority and argument?

Durfee, Ch. J.—The Court decide not to hear any argument upon this question.

The Defendent excepted to the ruling of the Court.

The Court, after some consultation together, announced that they would hear an argument on the first point; which sets forth that treason can only be committed against the United States; as this was a new question, not heretofore discussed before them.

Mr. Turner said that he should be ready to argue this point in the morning; and the Court adjourned.

[The debate, which occupied three hours on Friday afternoon, was in some parts more in the form of a dialogue than is here represented. But the endeavour has been to bring together the remarks on both sides, and to do justice to both in giving the substance of them. The prosecuting officers took no part beyond asking an occasional question. Some warm passages occurred. The Defendant contending strenuously for his right to a hearing, and the Court manifesting some

impatience at the time spent in addressing them on what they adjudged to be settled questions.]

Saturday Morning, May 4.

Mr. Turner occupied the forenoon session of four hours, and a part of the afternoon, with an elaborate examination of, and comment upon, the authorities relating to treason, and the sovereign power against which it must be committed, if at all; incidentally demonstrating, from the highest sources, the right of the People at large to make, alter, and amend their forms of government, as they may deem expedient, without the interference or consent of the government in existence.

The levying war charged must be with the design and purpose of committing treason; which is defined by Lord Coke, 3d Inst p. 2, as "crimen læsæ majestatis"—the accusation or offence of injured majesty.

In English Liberties, p. 65, it is said to be derived from *trahir;* which signifies treacherously to betray.

Lord Hale, Pleas of the Crown, 159, speaking of the sovereignty offended by treason, calls it *jus summi imperii*, or the right of the highest or ultimate authority; which in despotic governments is vested exclusively in the reigning prince, and in other monarchical governments is divided, to a greater or less extent, with the legislature.

Hawkins' Pleas of the Crown, 1, 85, shows that treason can only be committed against the "sovereign Lord, or the sovereign power."

Foster, Crown Law, p 5, gives the indictment for treason against the Scotch rebels, which shows that the treason charged was against "their supreme, true, natural, lawful and undoubted sovereign Lord," and to deprive him "of his title, honor, and royal state, and of his imperial rule and government." Blackstone conveys the same idea in substance.

Burlamaqui, vol. 2, ch. 5, sect. 1, p. 212, says, "The sovereign in a State is that person, "or power," that has the right of commanding in the last resort"—Sect. 2, "As to the sovereignty, we must define it, the right of commanding in the last resort." P. 213, sect 5, "Sovereignty can admit of no share or partition; there is no sovereignty at all, where there are many, because there is no one, who commands them in the last resort." P. 220, ch. 7, sect. 2, "The first characteristic (of sovereignty), and that from which all others flow, is its being a supreme and independent power, that is, a power that judges, in the last resort, of whatever is susceptible of human direction, and relates to the welfare and advantage of society; insomuch that this power acknowledges no superior on earth." P. 221, sect. 5, "A second characteristic, which is a consequence of the former, is that the sovereign, as such, is not accountable to any person upon earth for his conduct, nor liable to any punishment from man; for both suppose a superior." P. 222, sect. 8, "A third characteristic essential to sovereignty, considered in itself, is, that the sovereign, as such, be above all human or civil law." Sect. 9, "But with regard to laws merely human, as their whole force and obligation ultimately depends on the will of the sovereign, they cannot, with any propriety of speech, be said to be obligatory in respect to him; for obligation supposeth two persons, a superior and an inferior.

Blackstone, vol 1, p. 48, observes that there is and must be in all governments "a supreme, irresistible, absolute, uncontrolled authority, in which the jura summi imperii, or the rights of sovereignty resides."—(See Tucker's note 5.)

3 Dallas' Rep. p. 74, "Every nation that governs itself under whatever form soever, without any *dependence* on a foreign power, is a sovereign State."—(Patterson J.)

These authorities, by pointing out the essential characteristics of sovereignty, enable us to define it to be an independent, absolute, uncontrollable, irresponsible, and supreme power in a State in the last resort; all of which is embraced by the jura summi imperii, or rights of ultimate authority. And these authorities coincide in establishing the point that Treason, no matter what particular form it may be made to assume by legislative enactments, is an offence that can be committed only against the ultimate sovereignty of a State or nation; whether that sovereignty reside in a prince as in Russia, or in a king and parliament, as in England, or, as in this country, in the *whole* people, voters or otherwise. The subordinate, fictitious treasons that have been invented by special laws, are confined to arbitrary, or monarchical governments, within a recent exception, or recent exception in this republican country. The State against which treason can be committed here must be that State or government which is invested with the higher attributes of sovereignty.

In this country that sovereignty against which only treason can be committed, is vested in the United States, to which power the people of the several States have seen fit to delegate some of the highest functions of government.

In examining the power of the People over the whole structure of government, Mr. Turner further cited Burgh, who wrote about the time of Blackstone, vol. 1, book 1, ch. 2, p. 3—"All lawful authority, legislative and executive, originates from the People. Power in the People is like light in the sun, native, original, inherent and unlimited by any thing human." P. 4, "As the People are the fountain of power, so are they the object of government." "As the People are the fountain of power and object of government, so are they the last resource when governors betray their trust." P. 227, "The authority of government is only superior to a minority of the People. The majority of the People are rightfully superior to it." P. 278, "for the People give to their governors all the rightful power they have." (Locke on Government, s. 149, 237—and Sidney, 278, 358, 415, to the same point.)

But it is unnecessary to look abroad for authorities. They are abundantly furnished at home in our own country. The Declaration of American Independence sets forth the imperishable truths, "That to secure these rights, (life, liberty and the pursuit of happiness) governments are instituted among men, deriving their just powers from the consent of the *governed*;—and whenever any form of government becomes destructive of these ends, it is the *right* of the *People* to alter or to abolish it,

and to institute new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Again, "When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

To show that the Declaration is an *authority*, and not the obsolete expression, in a rhetorical form, of rights which were limited to a single occasion, Mr. Turner cited 1 Story's Comm. 199, 299, and 2 Dallas, 470.

These passages contain, in behalf of the People of the United States generally, the first distinct assertion of their complete sovereignty in the last resort, that of governing themselves.

The Constitution of the United States was framed by a Convention of delegates in 1787, acting upon the principles laid down in that Declaration, commences—"We the People of the United States &c. do ordain and establish this Constitution," &c.; and by an amendment, made before it was adopted by the State of Rhode Island, there is an express reservation of the undelegated powers to the People.

The Federalist, No. 22, p 111, says, "The fabric of American Empire ought to rest on the solid basis of the consent of the People. The streams of National power ought to flow immediately from the pure, original fountain of all legitimate authority."

No. 46, p. 235, "They must be told that the ultimate authority, wherever the derivation may be found, resides in the people alone."

In 3 Dallas, 93, (in 1795) Iredell Justice says—"A distinction was taken at the bar between a State and the *People* of the State. It is a distinction I am not capable of comprehending. By a State forming a Republic (speaking of it as a moral person) I do not mean the *Legislature* of the State, the Executive of the State, or the *Judiciary*, but *all the citizens*, who compose that State, and are, if I may so express myself, integral parts of it, all together forming a body politic."

"The great distinction between Monarchies and Republics (at least our Republic) in general is, that, in the former, the monarch is considered the sovereign; and each individual of his nation as subject to him; though in some countries with many important special limitations. But, in a republic, *all the citizens*, as such are equal; and no citizen can rightfully exercise any authority over another but in virtue of a power constitutionally given him by the whole community; and such authority, when exercised, is, in effect, an act of the community which form the body politic. In such governments therefore the sovereignty resides in the great body of the People, but in their political capacity alone"—and not as individuals—who are not separately sovereign.

In 2d Dallas, 454, Wilson J. observes, speaking of the framers of the Constitution (he being one of them), "They might have announced themselves sovereign People of the United States. But serenely conscious of the fact, they avoided the ostentatious declaration." He then goes on to define the State and sovereignty. P, 461, "Even in almost every nation, which has been denominated free, the State has assumed a supercilious preeminence above the People, who have formed it. Hence the haughty notions of State independence, State sovereignty, and State supremecy."

P. 471.—(Jay, Ch. J.) "At the Revolution the sovereignty developed on the people; and they are truly the sovereigns of the country. But they are sovereigns without subjects (unless the *African slaves* among us may be so called) and have none to govern but *themselves. The citizens of America are equal as fellow citizens, and as joint tenants of the sovereignty.*" P. 472, "Sovereignty is the right to govern. A *nation* or State sovereign is the person, or persons, in whom that resides."

Chief Justice Marshall, in 1 Cranch 176, lays down the doctrine—"That the People have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be very frequently repeated. The principles therefore so established are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent." "This original and supreme will organizes the government, and assigns to different departments their respective powers."

Judge Wilson, of the Supreme Court, one of the framers of the Constitution, says, 1 Works p. 17, (in 1790)—"Permit me to mention one great principle, the vital principle I may well call it, which diffuses animation and vigor through all the others. The principle I mean is this, that the supreme or sovereign power of the *society* resides in the *citizens at large*; and that therefore they *always retain* the right of abolishing, altering, or amending their Constitution, at whatever time, and in whatever manner, they shall deem expedient."

He further remarks at p. 25—"The dread and redoubtable *sovereign*, when traced to his ultimate and genuine source, has been found, as he ought to be found, in the free and independent man." "This truth, so simple and natural, and yet so neglected or despised, may be appreciated as the first and fundamental principle in the science of government." P. 417—"The best and purest [species of government] that in which the supreme power remains with the People at large, is capable of being formed, arranged, proportioned, and organized in such a manner, as to exclude the inconveniences, and to secure the advantages of all the three. On the basis of goodness, we erect the pillars of wisdom and strength."

In his speech before the Pennsylvania Convention, in Nov. 1787, upon the question of the adoption of the Constitution of the United States, (Works, vol. 3, p. 291) the same learned Judge remarks—"There necessarily exists in every government a power from which there is no appeal, and which, for that reason, may be termed supreme, and uncontrollable. Where does this power reside?"

"To control the power and conduct of the Legislature by an overruling Constitution, was an improvement in the science and practice of government reserved for the American States.

"Perhaps some politician, who has not considered with sufficient accuracy our political systems, would answer, that, in our governments the supreme power was vested in the Constitutions. This opinion approaches a step nearer to the truth, but does not reach it. The truth is, that in our governments, the supreme, absolute and uncontrollable power *remains in the People.* As our Constitutions are superior to the Legislatures, so the People are superior to our Constitutions. Indeed the superiority in the last instance is much greater; for the People possess over our Constitutions control in act as well as right. The consequence is, that the People may *change* the Constitutions, *whenever* and *however* they please This is a right of which *no positive institution* can ever deprive them."

"It is essential to such a government"—(that is a republican)—says Mr. Madison, Federalist No. 39, pp 203-4—"that it be derived from *the great body of the society*, not from *an inconsiderable portion* or *a favored class* of it."

Justice Iredell of the Supreme Court, 3 Elliot's Debates, remarks, that "Our government is founded on much nobler principles. The People are known with certainty to have originated it themselves. Those in power are their servants and agents. And the People, *without their consent*, may remodel their government, whenever they think proper; not merely because it is oppressively exercised, but because they think *another form is more conducive to their welfare.*" And it is equally plain, as observed by Rawle on the Constitution of the United States, that "the People retains, the People *cannot* perhaps divest itself of the power to make such alterations." "The laws of one Legislature may be repealed by another Legislature; and the power to repeal them cannot be withheld by the power that enacted them. So the People may, on the same principle, at any time alter or abolish the Constitution they have formed." "If a particular mode of effecting such alterations have been agreed upon, it is most *convenient* to adhere to it; but it is not *exclusively binding*"

Chief Justice Durfee having remarked that the right of the People at large to change governments, that had been spoken of was a revolutionary right leading to measures of force and war. *Mr. Dorr* said he would read a passage to show, that such was not the nature nor operation of the doctrine asserted in the opinion of its teachers. He read from Judge Wilson's works, vol. 3, p. 293.

"To the operation of these truths, we are to ascribe the scene, hitherto unparalleled, which America now exhibits to the world, a gentle, a peaceful, a voluntary and deliberate transition from one Constitution of government to another," (from the Confederation to the Constitution of the United States.) "In other parts of the world, the idea of revolution in government, is, by a mournful and indissoluble association, connected with the idea of wars, and all the calamities attendant on war. But happy experience teaches us to view such revolutions in a very different light—to consider them as progressive steps in improving the knowledge of government, and increasing the happiness of society and mankind."

Judge W. calls "the force and prevalence through the United States of this principle, that the supreme power resides in the people, and that they never part with it"—"the panacea in politics." "If the error be in the Legislature, it may be corrected by the Constitution; if in the Constitution, it may be corrected by the People. There is a remedy therefore for every distemper in government, if the People be not wanting to themselves. For a People wanting to themselves there is no remedy."

The same distinguished and able writer lays it down, that "A Revolution-principle certainly is, and certainly should be taught as a principle of the Constitution of the United States, and of *every State* in the Union. This revolution-principle, that the sovereign power residing in the People, that may change their Constitution and government *whenever they please*, is *not* a principle of *discord*, rancor, or *war:* it is a principle of meliora ion, *contentment* and *peace*"—Works vol. 1, p. 21. He also says "a proper regard to the original and inherent and continued power of the *Society* to change its Constitution will prevent mistakes and mischief of a very different kind. It will prevent giddy inconstancy; it will prevent unthinking rashness; it will prevent unmanly languor," Works, vol. 1, p. 420.

Mr. Dorr also called the attention of the Court to the fact that the Constitution of the United States was not framed by virtue of the powers expressly conferred on the delegates to the Convention. They were sent to propose some amendments to the Articles of Confederation. But in behalf of the People, and overlooking the request of Congress, they threw these Articles aside, and commenced an entirely new work. The ratification by the People of the States is what gives efficacy to this Constitution.

Staples, J.—But it was ratified by the People who were qualified voters, and not by the People at large.

Dorr.—The assent however which was inferred, of the sovereign body was what gave efficacy to the ratification.

Judge Staples also observed that there was a difference between People and *the* People. The word *the* must be struck out in order to find the doctrine of sovereignty at large contended for by the prisoner.

Mr. Dorr.—The Declaration of Independence uses the word *governed* in speaking of those who hold the power to amend and change governments. And surely *the governed* take in the whole People. A non-freeholder in R. Island was most assuredly among the *governed*, and in many respects to his disadvantage.

Mr. Turner, passing from a review of the general right of the People of the State to assign and distribute to the governments of the State and of the United States such powers and functions respectively as in their judgment might be conducive to the public welfare, and having demonstrated the sovereign authority of the People, proceeded next to inquire into the nature of the grant of powers to the general government, in order

more definitely to determine the question where the power resides against which treason is committed;—contending that there cannot be two treasons, one against the State and one against the United States, but that the offence must necessarily be directed against the higher power in a union of States, like that under which all live, and which we live, and which is something very different from a mere confederation or compact by treaty, of States retaining individually their former complete jurisdiction.

He cited 3 Dallas 76 (in 1795)—"Congress had an imperfect sovereignty previous to the Declaration of Independence; and the articles of Confederation are only a definement of rights before vague and uncertain. On the Declaration of Independence a new body politic was created; Congress was the organ of the declaration; but it was the act of the People, not of the State Legislatures, which were likewise nothing more than organs of the People. And it is absurd to say that both the Federal and State governments held sovereignty in the same points."—(Patterson J.) P. 81—"The truth is that the States, individually, were not known or recognised as sovereign by foreign nations, nor are they now. The States collectively, under Congress, as the connecting point or head, were acknowledged by foreign powers as sovereign, particularly in that acceptation of the term, which is applicable to all great national concerns, and in the exercise of which other sovereigns would be more immediately interested."

In 2 Dallas 452—Blair Justice remarked, "If sovereignty be any exemption from suit in any other than the sovereign's own courts, it follows that when a State, by adopting the Constitution, has agreed to be amenable to the judicial power of the United States, she has, in that respect, given up her right of sovereignty."

Same book, p. 468, Cushing J. said, "Whatever power is deposited with the Union by the People, by their own necessary security, is so far a curtailing of the power and prerogatives of States. This is, as it were, a self evident proposition; at least it cannot be contested. Thus the powers of declaring war," &c., "are lodged in Congress; and are a most essential abridgement of State sovereignty. Again, the restrictions upon States, "no State shall enter into any treaty, alliance, (&c.)" these, with a number of others, are important restrictions of the power of States, and were thought necessary to maintain the Union, and to establish some fundamental, uniform principles of justice throughout the whole Union. So that I think no argument of force can be taken from the sovereignty of States. Where it has been abridged, it was thought necessary for the greater, indispensable good of the whole."

The limitation of State supremacy is further explained by Chief Justice Marshal, in 4 Wheaton 405—"If any one proposition could command the universal assent of mankind, we might expect it would be this, that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The Nation, *on those subjects on which it can act*, must necessarily bind its component parts. But this question is not left to mere reason; the People have, in express terms, decided it, by saying, "this Constitution, and the laws of the United States, which shall be made in pursuance thereof" "shall be the supreme law of the land," and by requiring that the members of the State Legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it."

The People of the States, in constructing the general government, have not only seen fit to curtail the State governments of many powers before possessed by them, but of those higher powers against which treason can be committed. The State officers take an oath to support this supreme government, and cannot act till they have recognized it as such.

Judge Story, 1 Comm. on Constit. 191, says, "A State which possesses this absolute power [jus summi imperii], without any *dependence* upon any foreign power, or State, is, in the largest sense, a sovereign State." And, at pp. 199, 201, 202, he goes on to negative the separate sovereignty and independence of the individual States. In every one of our States the highest authority, not foreign, but from without, is exercised within their respective limits abridging their sovereignty.

These authorities warrant me, said Mr. Turner, in laying it down as settled that, in this country, under the People, the supreme power, as it respects some of the highest attributes of government, is clearly vested in the government of the United States, by the Constitution of the United States.

But it is contended that the several States, which compose the Union, are also, at least, for certain purposes, sovereign within themselves, which is admitted. But it is important to examine the reserved powers, and to compare them with the powers of the Union, to see more particularly what has been given up. If this State be sovereign, in the sense we have been considering, it must possess the jus summi imperii; it must be a State that governs itself without any dependence on any other power, and without being controlled by any such power. A State completely sovereign and independent, among other powers, may levy war and contract alliances; send ministers and receive foreign ministers, determine, through the People, the nature of its own government: make all its own laws: divide or even dispose of its own territory: raise and maintain armies: establish and regulate commerce: coin money and regulate its currency: establish an independent judiciary: punish all offences committed within its jurisdiction: establish post offices and roads.

These are essential powers, and inseparable incidents to all fully sovereign States; and yet nearly every one of them is expressly taken away from the individual States of the Union by the Constitution of the United States; and those that are not so taken away and prohibited are more or less restricted or abridged.

Can the State of Rhode Island levy war or contract alliances? Can she send ministers abroad and receive foreign ministers? Can she adopt any other than a republican form of government? Can she make all the laws in force within her limits? She cannot naturalize a foreigner, pass a bankrupt law, certainly not while an act of Congress on the same subject is in existence. Nor can she pass a law relating to the branches of jurisdiction that have been surrendered to the general government. Can Rhode Island divide or dispose of her own territory? Can she raise or maintain armies? Can she establish and regulate commerce? Can she coin money and regulate its currency? Can she establish a judiciary independent of that of the United States? Can she punish all offences committed within her jurisdiction? Can she establish post offices and roads? Every one of these questions must be answered in the negative. This State has parted with the powers that have been described.

What attributes of sovereignty then remain to her? There resides in the People of this State the sovereign power to adopt and change their Constitution and form of government, subject to the limitation in the Constitution of the United States that the new Constitution shall be Republican. The State also possesses and occupies the field of local jurisdiction over matters confined to its own limits.

The amendment to the Constitution, Art. 11, which provides, that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced, or prosecuted against any one of the United States by citizens of another State, or by citizens or subjects of any foreign State," is only an exception, and shows the extent of the national sovereignty, and the corresponding limitation on the other side. A State is still suable. It may be brought by a State before the Supreme Court of the United States and adjudicated against. Could this be the case if it possessed the highest degree of sovereignty?

No individual State therefore either does or can possess the "jus summi imperii," the highest sovereignty in the last resort. As it is against this sovereignty that the offence of Treason must be committed, and this sovereignty resides in the United States, then, I am prepared, said Mr. Turner, to assert, that no Treason can be committed against a separate State; and consequently that no State can constitutionally punish as treason any act done toward a State. If the act amount to treason, the United States courts only have jurisdiction of the offence as a crime against the United States. If it be not treason against the United States, then it can only be considered and punished as a misdemeanor, or some less offence by the State. In either case, the present indictment cannot be sustained, and the prisoner must be acquitted.

Such I contend, said Mr. T., is the true construction of the Constitution of the United States, and such to have been the early and contemporaneous construction put upon that instrument by the States themselves.

In the debates of the Convention that formed the Constitution of the United States, Mr. Madison and other distinguished members, expressed opinions to the effect, that treason could be committed only against the United States, on the ground that it was an offence against the sovereignty, "which can be but one in the same community."

Does the Constitution of the United States justify the construction which is given to it on this point?

Two great offences requiring to be guarded against as dangerous to the general safety and peace, are Piracy and Treason; and it would seem that the framers of the Constitution intended to put them both within the exclusive jurisdiction of the Courts of the United States. For it is impossible to suppose that they deemed piracy more of a national offence than treason, when piracy has for its object a wrong to individuals only, being but "robbery on the high seas;" while treason in this country can be aimed only at political institutions, and is general in its effects, extending beyond the State where it originated. The apparent distinction made between these two offences, in the Constitution, doubtless arose from this circumstance, that, whereas the offence, which they intended to punish as treason, had been accurately and technically defined for above 300 years, in fact, ever since the act of the 25th of Edward the 3d, in 1530, it could be clearly defined in the Constitution, and so as to cut off all pretended and fictitious treasons. The Constitution did so define it, and left to Congress the duty only of providing by law for its punishment.

But with regard to the other offence, that of piracy, the case was entirely different. What acts should or should not be deemed piracy, it was not well settled, and could not at that time be easily settled; and what the punishment should be was also a matter of doubt. In England formerly, piracy had been adjudged *high treason* (3 Inst. 8;) and our own history shows that other acts, the slave trade for instance, are now declared to be piracy, which 50 years ago were no crimes at all in law. [See Federalist, No. 42, p. 209, 210—No. 43, p. 216.] The framers of the Constitution therefore deemed it expedient, as Congress, of necessity, would have to pass laws providing for the punishment of both offences, and as the slave trade was to continue to a later period, to leave it to them both to define and punish piracy, while they were required only to *punish* treason. No State in the Union, it is believed, has ever pretended to any jurisdiction in cases of piracy; and to this day it is considered as within the exclusive jurisdiction of the Courts of the United States; although every State in the Union situated on the sea or navigable waters, has probably punished acts as larceny, which, if committed only a few leagues from the same place, would have amounted to piracy under the laws of the United States. And so of Treason, an act may be done against a State, which, if done against the United States, would be treason, and yet not be treason against the State, in the same way that, formerly, homicide would have been deemed *petit treason* only in respect to the individual upon whom it was committed.

What has been the practical construction put

upon the Constitution, on this point, by the several States?

During the war of the Revolution, and down to the adoption of the Federal Constitution, the States considered themselves, and considered each other as independent States, and that was the basis of the Confederation. Yet New Jersey, Delaware, Maryland, Virginia and North Carolina, all of which States adopted Constitutions in 1776, and New York in 1777, under the recommendation of the Continental Congress, made no mention of, or provision for treason in either of their Constitutions. The same may be said of Massachusetts, whose Constitution was adopted in 1780; and the same of Vermont in 1786; of Georgia in 1789; of South Carolina and Pennsylvania in 1790; of New Hampshire in 1792, being all the original thirteen States of the Union, except Rhode Island; and not one of them, by their original Constitutions, contemplated treason as a *State* offence. Kentucky, a new State, in 1792, first made it a Constitutional State offence, defining it as in the Constitution of the United States. But in 1799 she adopted a new Constitution, and omitted the provision altogether.—Tennessee in 1796, had no such provision; nor Ohio in 1802; nor Illinois in 1818. On the other hand, the new States, and especially those holding slaves, have copied into their Constitutions the article in the Constitution of the United States defining treason, and have made it a State offence. That is to say, Louisiana in 1812; Indiana in 1816; Alabama in 1819; Missouri in 1820; Mississippi in 1832; Michigan in 1835; and Arkansas in 1836.

In the meanwhile, although all the old thirteen States, except New Hampshire, New Jersey and Rhode Island, had adopted new or amended their old Constitutions, yet Connecticut in 1818, and Maryland in 1831, are the only States among them that have introduced such a provision.

Therefore it may be said that the cotemporaneous and practical construction of the Constitution of the United States has been, that jurisdiction, original and exclusive, of the crime of treason, was vested in the United States' Courts; and that the assumption of a State jurisdiction over the same offence, as a crime against a State is entirely a modern innovation, and incompatible with the sovereignty properly belonging to the individual States.

[*Mr. Turner*, being asked by the Court, whether, in several of the States, whose Constitutions contained no definition of treason, the offence was not recognised and punished by Statute, replied that he had not been able to ascertain how far this was the case, not having the laws of the States.]

Such has manifestly been the construction put upon the United States' Constiution even by Rhode Island herself. At the May session of the General Assembly, 1777, during the war of the Revolution, and before the Confederation, when all the States were severally independent, and sovereign in the highest sense, an act was passed for punishing "*treasons against the United States in general, and this State in particular.*" No doubt, it is believed, can be entertained of their right to pass such an act at that period. The State then possessed the *jus summi imperii*, the highest sovereignty in the complete sense of the term; and it retained that right unimpaired down to the period of the adoption of the United States' Constitution; because by the terms of the Articles of Confederation, that was a compact between the States, as such; and they are, by one of the articles expressly recognised as *sovereign* and *independent*. The law alluded to, continued in force as a law of the State, during the whole time of the Confederation. But after the adoption of the United States' Constitution by this State in 1790, upon the *first revision* of the Statute laws, which took place in 1798, (having commenced a year or two previous,) the *whole act was omitted* in the then digest, and repealed as obsolete; while the crime of *petit treason* was retained in the criminal code, and placed at its head. And thus, in point of fact, treason was not regarded by our laws as a State offence at all, until a revision of the criminal code in 1838; when, doubtless, influenced by the modern notions and innovations of the *new* States, treason was again declared to be a State offence, and placed at the head of the catalogue of crimes. From which we may learn that, for a period of 40 years, next succeeding the adoption of the United States' Constitution, and when its true intention and construction were most likely to be understood and practised upon, this State, both in its legislation and practice, abandoned or conceded to the United States' authorities, and left the Constitution the sole and exclusive jurisdiction over that particular offence; thus furnishing one of the strongest cases of the surrender of an interdicted right that can well be imagined. It is both practical and cotemporaneous; and as was said by the Court, in the case of Stewart vs. Laird, in 1803, 1 Cranch, 299.—"It is sufficient to observe that practice, and acquiescence under it for a period of several years, affords an irresistible answer, and indeed fixed the construction. It is a cotemporary construction of the most forcible nature." (Patterson, J.) The length of time since 1798 to 1838, gave great force to the conclusion at which the Generai Assembly arrived at the first named period.

Mr. Turner then took up and examined the clause in the Constitution that is commonly relied upon as recognising treason against a State, Art. 4, Sec. 2, providing for the delivery of fugatives from justice, charged in any State with treason, felony, or other crime, and found in another State, on demand of the executive authority. This was borrowed from a similar article of the Confederation. It will be recollected that, under the Confederation, the States were completely sovereign, and had jurisdiction of, and might punish treason, as well as other crimes of an inferior nature; therefore the Article of the Confederation was necessary, in fact indispensable, to the States for the security against offenders. And as all the States were equally sovereign, no original process issuing from one State could take a person charged with crime away from another, without violation of its sovereignty. Nor could the States exercise their rightful jurisdiction in such cases, without mutual consent and aid. Such consideration doubtless dictated the article of the Confederation.

Under the Constitution, treason against the United States, over which the Courts of the United States have jurisdiction, might be committed in one State and the person charged might flee into another as before; and there is no provision in the Constitution to arrest the person so escaping, and take him to the State where the act was committed, and where alone he must be tried, unless it be the article in question. So that the construction of this clause is not necessarily limited by terms to State offences as distinguished from United States offences. If the offence were murder the State alone would have jurisdiction; if it were a high misdemeanor, it might be, according to circumstances, either against the State or the U. States, and might be prosecuted in the Courts of the one or the other, according to the jurisdiction. If it were treason, then the United States' Court, sitting in the State from which such person fled, and where the act was committed, would have jurisdiction, and the sole right to try; and might make the demand to have the provision of the Constitution carried into effect, in order to accomplish the purposes of justice.

If the reasoning which has been employed be correct, and the views of sovereignty that have been expressed be well founded, there is nothing gained to the advocates of State treason from the phraseology of Art. 3, Sec. 3. "treason against the United States shall consist," &c. If the words "against the United States" had been omitted, then the general expression, "treason shall consist," &c., would have been claimed as including equally the offence against a State and against the Union.

Saturday Afternoon, May 4.

After *Mr. Turner* had concluded his remarks for the Defendant upon the point that Treason is an offence against the United States, and not against a separate State, he took up the second point, before adverted to, that the Algerine law, so called, which makes political offences indictable out of the county where charged to be committed, is against common right, unconstitutional and void, and claimed to be heard upon it.

The *Court* declined to hear any argument upon this point, as they had already expressed an adverse opinion upon it in a former case.

Mr. Dorr urged upon the Court the importance of this point, and earnestly contended for his right to be heard upon it. If he were wrongfully indicted here, the whole proceeding was invalid and void; and a fair trial was not a trial pursued contrary to law.

The *Chief Justice* remarked that this was not the proper time to hear an argument on this point, but that it could be properly considered after verdict, should this be desired by the Defendant.

Staples, J. remarked that this and other questions, which would now interrupt the case, would be properly heard after verdict and before sentence.

Mr. Dorr said he despaired of being able to say anything which could change the determination of the Court, though he had expected to be heard upon this question, in this stage of the case, after having withdrawn his plea to the jurisdiction. He was now satisfied from the action of the Court that they intended to withhold from him the fair trial to which by law and justice he was entitled.

Staples, J.—If I were in your place, Mr. Chief Justice, I would not hear such language as that from counsel, whatever the prisoner may take the liberty of saying.

The Defendant excepted to the ruling of the Court. Mr Turner for Defendant, then took up the third point, that, if the Defendant were properly indicted here, he could not according to law be tried here, as the Algerine act, in derogation of the right of a prisoner in the county where the offence is charged to be committed, had made no provision for a *trial* out of the county.

On this point the debate was renewed between Messrs. Dorr and Turner and the Court.

The *Att. Gen.* remarked that this and the preceding point were involved in the plea to the jurisdiction which the prisoner had withdrawn.

Mr. Dorr said, the plea was withdrawn in order to obtain a speedy trial by jury; but that he had not waived his right to raise the question in another stage of the case.

Mr. Turner referred to some authorities to show that this point respecting the jurisdiction of the Court might be raised during the trial of the case.

The *Court* refused to hear any argument until after verdict, as they had considered and decided this point in a former case.

Defendant excepted to the ruling of the Court.

Mr. Bosworth for the State then proceeded to make some remarks on the question of treason, as being, in the opinion of the prosecution, a State offence. He admitted that treason could only be committed against the sovereign power of a State, and also that the sovereign power in a State resides in the people as organised and defined by law; and it was therefore unnecessary to consider or reply to the long list of authorities which the Defendant and his counsel had introduced. He must however deny in toto the doctrine of Defendant's counsel that the whole People of the United States are sovereign in this State. The States he contended were as sovereign as ever within their own jurisdiction, although they had given up certain powers to the General Government, which was also a sovereign, but not over the States.

What reason is there why acts which amount to treason should not be punished as such by a State? Without this power to punish, a State cannot protect, defend or preserve itself.

Treason may as well be committed against a State as against the United States; and the power of punishing it has not been surrendered to the United States. The Constitution defines treason against the United States only; and it also provides that a person charged in any State with treason, &c., and who flees from the same into another, shall be delivered up on demand of the Executive, to the State having jurisdiction of the crime; thus recognising the offence of treason against a State. Besides this, in many of the State Constitutions, and in many more of the State laws, treason is defined and punished as a crime against a State, as well as against the United

States, when it takes that direction. Writers on law also so regard it; and in proof of this he read a number of authorities.—2 Swift's Dig. 264 —1 Story's Comm. on Const. 199. -6 Danne's Ab. 686-7-8.—4 Tucker's Blackst. Comm App'x. 20-21.—Rawle on Constitution 142.—14 Johns. Rep. 549.—1 Story's Rep. 614, containing Judge Story's charge to the grand jury at Newport, in June 1842; which Mr. B. said contained a clear and decided view of the powers of a State, in a case like the present, to defend itself, and to try and punish the offence of treason.

The prosecutor offered to put into the case the Proclamation of Gen. Jackson against South Carolina, at the period of a threatened nullification. The *Court* said it was hardly an authority. The Defendant did not object, but said, if it were admitted, he should offer other messages and documents of that distinguished individual.

The *Attorney General* did not put it in.

Monday Morning, May 6.

Mr. Dorr spoke at considerable length in the close of the question, on his side, respecting treason as an offence against the United States, and not against a State.

There are, he said, three questions to be considered.—What is treason? What is the sovereignty against which it is committed? Where does this sovereignty reside in our country?

Treason had been already defined and commented upon. It is the crimen læsæ majestatis, the accusation or crime of injured majesty, and was primarily aimed at the life of the King, as laid down in 3 Inst. 2. 5.—It was an attack upon the existence or authority of the head of the State. The definition of it here, (though there was an extraordinary exception in this State,) was the levying of war, or aiding and comforting public enemies.

The authority against which treason is committed is, according to the definitions of the books, the "jus summi imperii," the authority of the "supreme liege lord," or of the "supreme sovereign lord." Burlamaqui vests the sovereignty of a State in him who commands in the last resort. This rule applies to monarchies, and more especially to despotisms, in which only it can be strictly said that an individual commands in the last resort, with absolute power. In every State there is and must be an ultimate power beyond which there can be no greater, except the divine; but, in a republican country it is not vested in an individual, or in a number of individuals, but in the People, by whom and for whom governments are created, and unto whom they are responsible.

In noticing the attributes of this sovereignty, the author last cited goes on to say, that there is no sovereignty where there are many to exercise it, referring to the king as the head of the State. It is everywhere an undivided power, of which there can be no share or partition. There cannot be two sovereignties in a State. The writer adds that the sovereign has no superior on earth; that he is not liable to punishment; that he is above all human or civil law; and subject only to the divine law.

Blackstone speaks of the sovereign authority as supreme, absolute, irresistible and uncontrolled.

One of the highest attributes of sovereignty is the power of war and peace, the surrender of which by one State to another constitutes the latter a sovereign in a pre-eminent degree.

The doctrine of foreign writers, though it does not apply, in form, to American institutions derived from the People, yet applies in principle. The sovereignty here is not vested in emperors and kings, or in kings and parliaments, or in governments in any sense, but in the People themselves, who, through certain organizations of their own making, or approved by them, and with the aid of a representative action, constantly exercise what is commonly called self-government, perhaps, more properly the power of governing one another.

Vattel recognizes the right of the People to alter the arrangements of government by a new edict; and such a right is the foundation of all our institutions in this country. To deny it is to deny the right and the capacity of the People to be free, and to prefer the aristocratic and monarchical systems, which were cast away, it was supposed forever, at the period of the Revolution of 1776. The sovereign power here resides not in the Legislature, nor in either of its branches, nor in the Governor, nor in the Courts, nor in government in any mode or form. A sovereign Legislature, or Representative, or Senator, a sovereign Governor,

or a sovereign Judge, are solicisms, which would sound strangely in American ears.

[*Mr. Dorr* said that he should go into the American doctrine of the ultimate and supreme sovereignty of the People the more fully on this occasion, though the consideration might lead him away from the precise point before the Court, inasmuch as his views had been misrepresented, and in reply to the questions which the Judges had themselves propounded. While *Mr. Turner* was putting in, and commenting on, the authorities, several questions were asked by the Court, and replied to by *Mr. Dorr*, such as the following, by *Durfee Ch. J.*, whether the People mentioned in the authorities as sovereign were not the organized, legal people, recognized as such by constitutions and laws;—whether the right to make, alter and amend governments, asserted in the Declaration of Independence, were not a belligerent right, claimed for that occasion and necessarily supposing force and war; whether the sovereignty of a State be not necessarily a unit: by *Hale J.*, whether those who exercise the highest powers of government in a State are not sovereign; by *Staples J.*, whether *the* People does not mean the legally recognized political People; by *Brayton J.*, whether the sovereignty is vested in individuals, so that ten men (for instance) could make a Constitution for themselves; whether the People at large, by a vote, independently of forms, could pardon an offender against the laws. The substance of Mr. Dorr's replies is here presented in a connected form.]

None of the definitions before given of sovereign power can apply to any of the branches of a Republican government, or to any of the officers under it, nor to the political or legal people themselves, for they are the creatures of the Constitution, and act as they are there empowered. And yet there must be somewhere a power greater than political institutions, or they never could have come into existence. The People existed before the State, They were not created by it. How can there be a State without a People, before a People? The doctrine of our adversaries strangely reverses this position of things. They look to the State for the rights of man. We look to the men of the State themselves as endowed by their Creator with certain rights, which cannot be justly alienated or taken away, and in the exercise of which, political societies and states originated, and can be changed, abolished, reconstructed, amended, as convenience or necessity may require.

Of what Constitution, government, magistrate, or voting body in this country can it be affirmed, that he or it has no superior; is above all human or civil law and subject only to the divine law; is supreme, irresistible and uncontrolled? Of what magistrate or voter in any State in this country can it be affirmed, that he is not liable to punishment? We are driven to the conclusion then either that there is and must be a power greater than any Constitution, or any political body or authority established under it, or that there *is no* sovereign power in the People of any of our States or of the United States. If the latter alternative be true, then a government, having come into existence some how or other, becomes a fixture, and is clothed with a self-perpetuating power; and the only advantage that we have gained over the institutions of the old world was in making a better start, on the republican plan. If we had started on the aristocratic, then there could have been no change without the permission of the aristocracy, who would have possessed the government; and if the republican Constitution should become defective, and a minority holding power under its forms and possessing the government, should not see fit to accede to the desired reform, and should deny the petition of the majority, there is no remedy but submission or emigration. Will such a doctrine as this be tolerated for an instant by the American People? If so, then the principles of '76 are a mockery, and the People of '76 are dishonored in their graves, by their unworthy descendants, as successful traitors, instead of being venerated, in perpetual memory, as the asserters and defenders of the inherent, unalienable and unchangeable rights of their race.

If there be any ultimate sovereignty, as doubtless there is, it cannot be in the government, but must be in the People, in their original capacity, standing on the outside of the political society, living under government by consent and for the general good, and possessing of consequence the right to change it when the greatest good shall so require.

This sovereignty cannot be in the People as voters under a Constitution; for the Constitution makes them such. They act according to the rule prescribed, and are subject to various regulations affecting more or less the right of suffrage; and they are punishable in several forms for misusing the right of suffrage. How then can they be, in this capacity, the sovereigns of the State? They can be such only as members of society, and as tenants in common of its reserved and ultimate powers. The voters of the State, so far from being the sovereign power, may be a minority, and a small minority of the whole People, as in this State, under the Charter government, ruling the rest by sufferance, without responsibility, and, if the doctrine of our opponents be true, with an authority fixed and unalterable except by their own mere motion or concession. In this State we had either a sovereign minority, or a sovereignty of the People at large; for the voters were but a fraction of the adult population.

As it regards the exercise of this sovereign power itself, in the last resort independently of all Constitutional and legal provisions, although theoretical difficulties may be suggested, the usages of the race to which we belong furnish a practical solution of them; and it is not the friends of popular rights, that find any difficulty in ascertaining who are the actual residents, the mature men of this, or any other community.

What we contend for is, not a sovereignty of individuals, but a tenancy in common of one sovereign power, manifesting its will and action through the voice of the majority of the whole number of the People. The individual man cannot set himself up against the political society to which he belongs, and become, as one of the witnesses claimed to be, "a nation of himself." The natural law of the greater good here intercepts the conflicting will of the individual and of the minority. It is a part of the natural right, if not of the social instinct, of individuals to associate in the formation of government; and the object of government is the better to define, secure and to protect natural rights. If the assent of every individual were requisite to the formation of government, this great end could never be accomplished. The majority stands opposed to the minority or to the individual. Natural justice dictates which party should yield to the public welfare. This is a rule anterior to all legislation, or compacts, and lies at the foundation of the social system.

It is true that the general mode of amending the governments existing in this country is through the action of those who are qualified to vote under them, and why an exception to this mode occurred in Rhode Island will be considered presently. But we are now speaking of the ultimate right, in the last resort, underived from government itself, original and subsisting in the nature of man, but only recognized in our own country. The body of voters, who obtain their authority to vote from a Constitution, which was made before they were born, cannot be said to be sovereign under it in any other than a limited and qualified sense. When an amendment of a Constitution, or a new Constitution, is submitted to them, they exercise the high function of passing upon it, for ratification or rejection, as the agents and representatives of the whole community, of the whole body of the governed, and by their sufferance or acquiescence. The actual voters may thus be said to perform a sovereign act, in behalf of the greater body, which includes themselves and the whole mass of the People. But the power is derivative and permissive, and the act is secondary, and dependent for its validity upon the continuance of that assent of the whole People, upon which our form of government rests, and which is ordinarily implied rather than expressed.

It is only in a secondary sense that the State is sometimes called sovereign. It is a political association formed by the People and for the People, and represents their sovereignty, of which it is the reflection. The people may possess and reserve more powers than they choose to part with to the State. But the State in this country can never possess more powers than the People, except by usurpation, or gross neglect to repair the decays of existing institutions.

The difficulty in this State of appreciating the true source of power arises from the want of any visible evidence of it greater than that of the legislature. In other States the Constitution stands forth as the permanent form of the popular will. It binds and governs the legislature as well as the People. It prescribes the limits of legislative action, and is a constant restraint upon the tendency of legislative bodies to strengthen them-

selves by absorbing new powers. In this State we have been living since the revolution without any check upon the General Assembly except the Constitution of the United States, and the elections by the freeholders; before the revolution the home government was the superior and might be appealed to to redress grievances. But even then the old charter was altered at pleasure, and the elective right was enlarged and contracted at the will of the government representing a small portion of the community. The General Assembly had so long acted according to their mere will and pleasure, that they deemed themselves and became virtually omnipotent within their sphere; and we now hear the People, who had become tired of waiting to receive their right from the action of the minority Assembly, and who undertook to exercise the American right of sovereignty, denounced as conspirators and traitors against the government!

In other States the legislatures have acted within bounds. They have been restrained by a fixed Constitution; fixed till it shall be changed according to its forms, or by an act of the majority of the voters, or by an authentic act of the majority of the whole people, duly made known to the existing government. And when the People on the outside have called for an extension of suffrage, and for still more extension, and for other reforms, they have been respectfully attended to; and all the changes have taken place that have been asked for. Rhode Island furnishes the exception; and here all that has been obtained has been extorted. Let the blame rest where it belongs.

There is a gradation of powers in the Republican State and a harmony in the whole. The Executive carries into effect the laws as decided by the Court. The Court is bound by the laws enacted by the legislature. The legislature can only enact laws conformably with the authority invested in it by the Constitution. The Constitution is derived from the People, and is voted for, ordinarily, by the qualified voters at the time, acting in behalf of and with the implied assent of the whole People. Behind all stands the absolute sovereignty, (above and greater than all political forms and institutions,) of the political community, of the whole People, rarely, but freely and faithfully to be exercised, as great exigencies may require. There is no confusion, no jostling of powers. The executive does not intrude himself upon the bench. The bench do not claim to legislate. The legislature does not pretend to alter the Constitution. The qualified electors, who compose a part of the sovereign body of the whole People, but are not the ultimate sovereignty, will never, in the event of a great public exigency, be found, without unjust aid, in opposition to the will of the majority of the whole number.

Whatever may be the ultimate powers of the People who compose the sovereignty in the last resort, there is no probability that the People will deviate from the natural order which has been suggested. It is wholly impracticable if not impossible for the qualified voters, or the sovereign body, to take upon themselves the functions of making, interpreting, or executing the laws, or of pardoning offenders in States like ours. This work must necessarily be done by agents, chosen to do what the People cannot so well do for themselves, by legislators, judges, governors, and other magistrates and officers. In this State, where people have been so much abused for attempting to gain their rights, and where one might suppose from the representations that have been made, that "chaos has come again," the whole proceedings were orderly and regular; the whole system of laws was preserved, so far as not inconsistent with the new Constitution, and subject to the action of a new legislature. All officers were continued in office until their successors should be duly elected and appointed; and thus a natural and easy transition was provided from the old order of things to the new. The old machinery of the State, so far as laws, property, and civil rights are concerned, was kept a going; and the change consisted in an enlargement of the premises for the sake of greater convenience, and in the application of a new moving power.

The right asserted is not the right of stopping the wheels of government, of intercepting the administration of justice, of overthrowing the legislature and producing anarchy. The government has the force of one while it lasts; it stands till it has changed. Till it be changed, in the manner described, there is no evidence that the people have acted; and they who assail it do so at their own risk. The object of the People of Rhode Island was not to overthrow the government, but to continue it

under the definite forms of a written Constitution; and when this new government went into effect the other rightfully ceased. Those who held on to this old government after it had been thus properly superseded, were the opposers of the government, were concerned in the the work of pulling it down, and in reality committed all the treason of '42.

This principle of popular sovereignty as thus explained is of inestimable importance and value to the American People. It marks the grand distinction between their own and foreign nations. In the latter the sovereignty is vested, not by right (for the natural rights of man are the same every where) but by theory, in the government, while here it is vested in the whole People.

There is a guaranty in this principle, and by the effect of it, that all necessary reforms in government shall take place. The certainty that there is a mighty hand behind the scenes ready to be stretched out, when justice has been long withheld, and patience is exhausted, and reform through the ordinary channels is hopeless, is a perpetual caution to those who hold power to respect the will of the People, and to do right seasonably, and without the irritation of frequent refusals.

Though it is to be hoped that all reasonable amendments in our political systems will take place as the general welfare and public opinion shall demand, and through the accustomed forms, yet it may become necessary to go out of these forms, and to exert the popular sovereignty in such manner as the people at large may deem expedient. Suppose the government of a State should fall through, from neglect, or inability, (as during an invasion) to comply with the provisions of the Constitution for the election of public officers, or through the act of the legislature itself; — the staunchest friend of "law and order" would admit that in such a case, and from the necessity of it, the community might set themselves at work to reinstate the Constitution, and to put in motion the machinery of government. We extend this rule of necessity, for the public welfare still farther, in extreme cases, setting right above forms.

Suppose again that in some State, the representation, though originally fair in its distribution to the towns, has become grossly unequal, by changes of population, so that the majority of representatives are elected by a small minority of the People, and these representatives refuse to take any steps to amend the Constitution. Is there no remedy in such a case? What remedy is there, when others have failed, except the intervention of the sovereign power.

Suppose the right of suffrage also to degenerate, through some arbitrary qualifications of the voters, and to become confined to a small portion of the inhabitants, who persist in holding on to this inequality against all remonstrance, is there no remedy for such an injustice in this republican country? Put the two cases together, to make the difficulty more intense, so that the majority of the represantatives shall represent but a small minority of the inhabitants, and a small minority of the inhabitants shall choose these representatives; while the great body of the People stand without and knock in vain at the door of the legislature. Again, is there no remedy? Must the people wait for ever? Two thirds of them would say no, and would be for applying the sovereign power, after they had knocked, long enough at the bolted door. Would they not be right in so doing? If it should be said that no such case can happen, we reply that it has happened in Rhode Island, in the compound form before mentioned; and that it may happen again in the mutations which time occasions, and even in a State possessing a written Constitution.

Further, this doctrine of ultimate Popular sovereignty is necessary to give a sense and a meaning to our State Constitutions. The opponents of this doctrine are obliged to pass over, as a mere surplusage, an important portion of the declaration of rights in these Constitutions, or most of them; while, on our side, we give effect to the whole. Our opponents say that the only way in which a Constitution, containing a provision for its own amendment, can be changed, is through this article of amendment; and they are consequently obliged to treat as a nullity the clause in the declaration of rights, which affirms the right of the People, of the governed, of the community, of the majority of the inhabitants to make, alter and amend their government, when and how they please. We on the other hand, construe these parts of the Constitution together, and give full meaning and effect to both. We say that the political People, qualified under the Constitution as voters, have a right to amend it in the mode

prescribed for the sake of the convenience, and which, in almost all cases will be followed and adhered to. We also hold that, when this mode does not exist or has become defective, or is not permitted to operate for the end desired, the voters themselves, and, for a much stronger reason, the whole People, or a majority of them, have a right to intervene without forms, and to amend their political system: admitting at the same time that this is a work which can rarely be done; that Constitutions are made to last, and like the planetary system, are set in motion, with inherent sustaining powers, which cannot often require the intervention of the hand that created them. We also give a meaning to the various declarations of rights that have been put forth in our country, commencing at the period of '76, which our opponents are obliged to explain away as "flourishes of rhetoric."

And what is the answer to all this? That the doctrine of popular sovereignty is untrue; and the principal reason is because it is dangerous. We deny both the conclusion and the reason; and assert that it is both true and safe.

It is the American doctrine, the doctrine of our democratic Republic, which rests upon this basis. Mr. Dorr called the attention of the Court to the Declaration of American Independence, which was readopted in this State, and to the Declaration of the Freeholders' Convention of 1790 in this State, which was called to ratify the Federal Constitution, as most explicitly avowing the right of the *governed*, and of posterity to make, alter, and amend the forms of government. Mr. Dorr also contended, in opposition to the doubt expressed in the query of the Chief Justice, that the rights set forth in the Declaration of Independence are valid and subsisting, independently of the means to carry them into effect; that these rights are as just now as they were in '76 and were not then asserted rhetorically for a single occasion; that although force was necessary to carry them into effect, as then avowed and exercised, the Declaration would have been just as true, if Great Britain had consented to a voluntary separation. Mr Dorr said that what was a revolutionary right merely, a right of war, in countries where the sovereignty was not held to reside in the People, had here, by the act of the People, been transplanted into the pale of government itself, by our declarations and constitutions, which recognize the right of the People, on the outside of all organizations, to act for themselves. A right which is thus recognized, though in a general way, and, of course without prescribed forms of proceeding, ceases to be revolutionary, and has become regular and definite.

Mr. Dorr alluded to the opinions of some of the framers of the Federal Constitution and of the most eminent statesmen and jurists of our country, of both political parties, as asserting, in the strongest manner, the ultimate sovereignty not merely of the voters and organized, legal People in the State, but of the whole body of the People, who, in the language of Chief Justice Jay, of the Supreme Court of the United States, "are equal as fellow citizens, and as joint tenants" (more properly perhaps tenants in common) "of the sovereignty."

Mr. Dorr alluded to the consequence of the opposite doctrine, as expressed by one of the Court, that "they are sovereign, who exercise the highest powers of government;" in which case the Legislature, being sovereign, might abolish the rights of suffrage and representation, dispense with the Constitution, and vote themselves a permanent aristocracy.

Mr. Dorr regarded the fact, that the political reforms that have taken place in our States, have been made through existing organizations, not as disproving the right to make them in another way, but as showing a disposition to do justice in time, so as to save the necessity of any unusual action: a disposition, which, it was to be regretted, had not been manifested in this State.

[Mr. Turner alluded to the case of the People of Michigan, who, at voluntary meetings, voted to accept the conditions of admission into the Union, after they had been rejected at legal meetings; which vote was deemed sufficient by Congress, who looked more at the will of the People than at the form in which it was expressed.]

Mr. Dorr also recalled attention to the fact that the Convention who formed the Constitution of the United States, were not requested or authorised to perform such an act, but only to amend the Articles of Confederation; and that they proceeded on their general authority as representatives of the People. The Constitution was sub-

mitted for ratification to Conventions chosen by the voters in the States, notwithstanding that, by the Articles of Confederation no alterations were to be made in those Articles, unles such alterations, after being approved by Congress, should be agreed to by the Legislature of "every" State. The Constitution was to be considered as ratified by the votes of the Conventions of "nine" States. The People at large had more right to vote upon the Constitution than the delegates had thus to disregard the solemn pledge of the Articles of Confederation.

The doctrine of popular sovereignty is true, and it is also safe. Mr. Dorr gave some reasons to show that the fear and distrust of those, who regard it as leading to the overthrow of all valuable rights and institutions, and to general anarchy, is groundless and imaginary. Mr. Dorr said, that men are no where disposed to resort to extreme measures, and, in the language of the Declaration of Independence, "all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." We belong to a race proverbially attached to old habits and usages, and who do not change too easily. The striking fact that the People of the States have always preferred to look to the existing organizations (without however looking in vain) for such political changes as they needed, is a very strong proof that they are in no danger of abusing the sovereign power, or disposed to interfere with any existing organization, but from what they consider extreme necessity, growing out of a long continued, persevering and hopeless denial of justice.

The great security for the discreet exercise of this power lies in the establishment of Universal Suffrage; for where this exists the sovereign body, the People at large, become so nearly identical with the political or legal People, that it becomes very difficult, or hardly possible for any disputes concerning government, or political reform to take place between them. The People, except in some such extreme cases as has been before alluded to, can accomplish, under existing forms, all the changes that are desired or desirable; and are not likely to fall into controversies about the mode of action. Universal Suffrage thus becomes in the body politic like the broad base of a pyramid, giving such strength and permanence to the superstructure that it cannot be overturned, and rendering it proof against time and decay. Universal Suffrage, strangely as it has been disparaged and deprecated by some of our politicians, is thus a conservative element of our institutions; and the free suffrage States are the strongest and the safest.

In the review of political reforms, Rhode Island constituted the exception among the States. Here the People at large and the legal People were widely distinct and separated; the latter being but a small minority of the whole, holding their privileges with a tenacious grasp, and refusing to share them with their brethren of the community. Two opposing interests and parties were thus created, through the default of those, who neglected or refused, at different periods, to extend suffrage. Time widened the breach, and thus resulted the conflict of 1841-2. Such a conclusion of affairs was predicted by one of the ablest public writers of the State, twenty-two years before it took place.

Mr. Dorr then proceeded to inquire against what form of sovereignty treason can be here committed. He said, it can unquestionably be committed against this State, unless some of the attributes of sovereignty, which draw after them the offence of treason, have been parted with from the States to the United States.

The Defendent then stated that he desired mort expressly to repudiate the centralizing doctrine of an all-absorbing national government, if from the infinite language of any of the authorities, or from any of the remarks of his counsel, such a doctrine had been inferred on the other side; inasmuch as he (Deft.) adhered to the State rights construction of our national system. The National government under the Constitution of the United States was not formed by the aggregate mass of the People of the United States, but was in the nature of a compact among the several States; the People of which act in each on all occasions separately, by their own local majorities. As the Constitution was not formed by a majority of the whole People of the United States, so neither could it be abolished by them by an aggregate vote, as if it were the Constitution of a single consolidated State. The States do not stand in the relation of coun-

ties to the United States. It was not a matter here under discussion how the Constitution could be changed in a manner other than that contained in its mode of amendment. What the Defendent wished to be understood as contending for was, that this State, at the Revolution, separate, sovereign, and independent, had voluntarily become a member of an association or union of States, and had, with the rest, conveyed to the general government many of its most important original powers, retaining, however, in a sovereign capacity, all the rest as completely as before. The United States therefore could not exercise any general sovereignty over the People of this State, but only in certain delegated functions and for certain definite purposes. The People of this State are still sovereign in making and altering their government, with the single exception that it must be republican in its form.

The question is whether the power to define and punish treason be not vested in the United States exclusively by the purport of the Constitution, and from the nature of the powers conveyed.

Under the confederation of the States the general government was a government over States. Under the Constitution the government reaches individuals, thus exercising one of the highest attributes of sovereignty. The Defendent then referred to the numerous important powers which had been either given up entirely by the State, or much abridged.

Among them is the power of war and peace. A State cannot, without the consent of Congress, maintain troops and ships of was in time of peace, or engage in war unless invaded. The President is commander in chief of the army and navy of the United States, and of the militia when called into the service of the United States; and he is authorised to interfere with force in cases of insurrection and domestic violence in the States; though such interference is arbitrary and sensurable, when made upon the pretext of any right to suppress the action of the People to change their government as they may deem expedient. As treason is the levying of war, when such an offence is really committed, it must be against the war making power, which also defends against war. The offence is aimed at a State, but it involves the United States.

Conjoint powers may be sometimes exercised by the States and the United States, but there can be no conflict of powers; and when a power is ceded to the General Government, there must be some reservation, express or implied, for its exercise by the States. The argument is that treason, which is defined by the Constitution, and punished by the laws, of the United States, excludes all separate State treasons, even if the exclusion be not in express terms. If Congress had not seen fit to legislate on the subject, then it might be a question whether a State had not the power to do so, at least until the legislation of Congress. Piracy has passed entirely out of the jurisdiction of the States, in consequence of Congress being empowered to define and punish it.

A reason for confining the jurisdiction over this offence to the United States, may be found in the multiplicity of State treasons, which may otherwise spring up, for political purposes, as in England, and in the great abuses which may grow out of them. As Dr. Franklin observed in the Convention which formed the National Constitution, "*prosecutions for treason are too generally virulent, and purjury is made use of.*"

Though the debates in this Convention are somewhat indefinite, as to the settlement of this question, it should be stated that, in the opinion of Mr. Madison, the leading member in that distinguished body, treason against a State and against the United States involved each other; and, if both might exist, a person might receive two punishments for the same offence. To follow out the idea, suppose a person captured in the act of levying war by the joint forces of a State and of the United States. To which jurisdiction is he amenable? Can he be tried by a State court and acquitted, and then be tried by a court of United States, convicted and executed, or the reverse? Can State and United States offences be possibly commingled in this way.

As before observed by Mr. Turner, the early State Constitutions did not recognise the offence of treason against a State, though it may have been punished by law in some of them.

In this States treason was made an offence by law in 1777; and the act was repealed in 1798. It was revived in 1838.

Art. 4, sect. 2, par. 2 of the Constitution is cited as recognising treason against a

State; and provides that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

This portion of the Constitution is to be considered in reference to the condition of things when it was formed. The States were then connected, under the Confederation, by a very slight bond. Treason could undoubtedly be committed against them. It was defined and punished by the States. In Rhode Island the act of 1777 took cognisance expressly of treason against the United States. Now as the Constitution contemplated no such apparatus of Circuits and Districts as was afterward provided by Congress, and as the offence could only be punished in the State were it was committed, the Constitution could not otherwise provide than for a return of the fugitive to that State. Does it involve an inconsistency to suppose that the framers of the Constitution then had in view the punishnent, in and by a State, of the offence of treason, which they had established, and which had been so punishable before? What the Courts of the United States were to be, and how to be constituted, was then altogether a matter of conjecture. But the framers of the Constitution were determined, at all events, that there should be one mode provided for rocovering a fugative to the State whence he had escaped, to be tried by whatever jurisdiction there might have cognizance of the offence. When the courts of the United States were afterwards established, a mode was provided, through the warrant of a United States Judge, for transferring a person so charged to the State where the offence had been committed. But suppose no such provision had been made by law, could not the general power of the State executive, as described in the part of the Constitution that has been quoted, be made available for the same object? By the act of the United States ot 1790, if any person who has knowledge that treason has been committed, shall neglect to give information of it to the President, or to a Judge of the United States, or to the *Governor of the State*, he shall be deemed guilty of misprision of treason. If a Governor may hold an inquisition of this kind, may he not also recover a fugitive to the justice of the United States?

But, after all, perhaps the more natural construction of this paragraph of the Constitution is, that it is only intended to provide for the recovery of fugitives for the higher offences, in which treason, felony, &c. are included, by way of definition, without affirming what are or shall be State offences. The paragraph would thus mean the fugitives, who are charged with the higher offences, be they what they may, shall be reclaimed in the manner thus provided.

[It ought to have been before mentioned, that Mr. Dorr, at the commencement of his remarks on the subject of treason against a State, stated to the Court his regret, that, in consequence of the absence of his principal counsel, Mr. Atwell, whose severe illness commenced just before the setting of the Court, and upon whom he had depended for all the closing arguments in the case, he was now obliged to take up a question of law of this great importance, with little opportunity to reflect upon it, and with no other knowledge of the authorities than from hearing them read over in Court. Being, nevertheless, under the necessity of going on, he felt it his duty to say thus much in justice to the subject and to himself.]

CLOSING REMARKS OF MR. TURNER.

Gentlemen of the Jury:—

You will recollect that in the first remarks that I made, in opening the defence of the prisoner at the bar, that I proposed to rest that defence on *five points* which were then stated to you.

"1st. That in this country treason is an offence against the United States only, and cannot be committed against an individual State."

It was my purpose, and we deem it the *right* of the prisoner, to have argued this, as well as the other questions of the law, directly to you, as the judges in all capital trials, as well of the law as of the fact; but we were overruled by the Court; and permitted only to argue it to the Court, in your hearing. What their decision may be, will be made known to you, in their general charge; if it sustains the ground we have taken, then you can only acquit the prisoner, because the State

Courts can have no jurisdiction over the offence laid in the indictment.

Upon the 2d point of the proposed defence, viz: "That the 4th section of the Act of Rhode Island, of March, 1842, entitled "An act relating to offences against the sovereign power of the State," is unconstitutional and void, as destructive of the common law right of trial by jury, which was a fundamental part of the English Constitution at the Declaration of Independence, and has ever since been a fundamental law in Rhode Island"—The Hon. Court would not suffer us to use argument to you, as it was a question of law; nor would they, for reasons which you heard, permit us to argue it to them, on the ground it was a closed question, decided by them, after solemn argument, in another case.

A similar decision has been also made on the 3d point, "That that act, if constitutional, gave this Court no jurisdiction to try this indictment in the county of Newport, all the overt acts being therein charged as committed in the county of Providence." Because being also a matter of law, to be argued to the Court, they will not interrupt the progress of the trial to hear it reargued at the present time.

Upon the 4th Point. "That the Deft. acted justifiably as Governor of the State, under a valid constitution, rightfully adopted, which he was sworn to support," which was the right arm of our defence, and which if made good by the evidence, all which we had at command, must have acquitted the prisoner; the Court, by ruling out that evidence is irrelevant and unadmissible, have very much abbreviated the labors of us both; and having deprived us of all the technical and purely legal grounds of defence, leave us none except the first and the last.—"That the evidence does not support the charge of treasonable and criminal intent in the Defendant." On this point alone has all the testimony as well for the government as for the Defendant been introduced.

It has at no time constituted any part of the prisoner's plan of defence against this indictment, to disavow or deny any act by him done; nor would he allow us to do for him, that which he would not do himself. All the prominent and leading facts of the case he avows and justifies; and to save himself from misconstructions and false imputations, he has himself presented evidence before you for the purpose of removing false impressions, disabusing the minds of the jury and the public: and of placing himself, his character and his cause before you in a right point of view. With the same view also it is, that I will ask your consideration of some parts of the testimony in the case. If the Defendant in what he has done himself, or commanded others to do, has not acted justifiably and from a high sense of right and duty, he must suffer the consequences of his acts; but if the whole evidence and circumstances go to show that he has throughout acted justifiably, without traitorous intent, and believing himself to be right, with every reason so to believe, then you will give a verdict in his favor accordingly.

The counsel on behalf of the State, have been permitted to introduce testimony before you to show a criminal intent on the part of the prisoner as far back as the 3d of May, the time when the legislature first met under the People's Constitution at Providence, for the purpose of organixing the State government according to the provisions of that Constitution; it is proper therefore for me to carry your attention to the testimony, back to the same period.

It is in evidence, that on that occasion, Gov. Dorr and the members elect of the Legislature, passed from the Hoyle Tavern, on Christian Hill, through several of the streets of the city of Providence, to a building called the Foundry, where they were to convene, attended by a numerous procession of citizens: and an attempt was made by the witness Burroughs to give the affair something of a warlike character: but the testimony of Salisbury and Carter place it in its true light—it was a civic procession, with a military escort, in honor of the occasion and to manifest respect in the usual way; there was nothing extraordinary or unusual about it—it was just like that which in a few days will in all probability attend the Assembly here, at the organization of the State government for the ensuing political year, according to a long established custom. And all the testimony agrees that it was conducted in the most orderly manner. The evidence of the witnesses as to the transactions and proceedings at the Foundry fully establishes the facts, that the votes given in the election were duly returned, committed, counted and reported, that Mr. Dorr with others was declared duly elected, that he took an oath of office, that proclamation of his election was made, and that all was done for the full and complete organization of the government, required by the Constitution, with the formalities and ceremonies usual on such occasions: the organization was perfected, and all, the Governor and the two Houses, acted in every respect like other legislative bodies, and as though they had a perfect right so to act: Gov. Dorr delivered an address of the usual character—laws were enacted, and others repealed or amended—resolutions were passed—officers both civil and military were elected under the new Constitution and according to the ancient usages of the State the usual committees were appointed to attend to the transfer of the public property and records from the old to the new officers; in fact every thing that a new legislature could rightfully do, was done in a legislative and proper manner. The Prisoner was called and treated as the Governor of the State; and having received a greater majority than had ever before been given to any one for the same office, he had every reason to believe, and did truly believe, that he was the Constitutional legal Governor, elected by the free votes of the free people, of a free State. There can then be no presumption drawn from these facts, that he possessed at that time the traitorous intent charged in the indictment. If he was vested with rightful authority as Governor, then he acted rightfully in attempting to enforce that authority. His intention to take possession ot the public property for the uses of the State, was fully warranted by the provisions of the Constitution under which he acted, and which, as has been shown, he was sworn to support; as well as by a resolu-

tion passed by the Foundry Legislature at that time.

Shortly after the adjournment of the Foundry Legislature, it is in evidence that the Prisoner left the State—and it has been charged by the prosecution that he *escaped* from the State to avoid apprehension, to excite sympathy and to solicit aid in New York, Philadelphia and elsewhere, in furtherance of treasonable purposes; and by the introduction of *foreign* mercenaries, to subvert and overthrow the Charter government of the State by force of arms. Upon this point, gentlemen, the evidence is, that in consequence of indications received, that the power and force of the United States would be put in requisition to sustain the Charter government, and to defeat the operation of the People's Constitution, at a large or numerous meeting of the Suffrage Association of the city of Providence, a resolution passed unanimously, requesting the Prisoner to go to Washington and disabuse the President of the gross misrepresentations under which he was supposed to act, and to explain there and elsewhere the true nature and points of the question at issue between the two parties who were contending for supremacy in this State. The Prisoner in a few days left the State and went to Washington in compliance with the request before mentioned, and on his return, whilst in New York, he addressed a very great assemblage at Tammany Hall, explanatory of the situation of affairs in Rhode Island. The counsel for the State have said that it was an harangue soliciting aid in men and money to carry on a war against his fellow-citizens in this State. But it is in evidence by Burrington Anthony, Esq., who was present and heard the address, that Gov. Dorr in express terms "*repudiated the idea*" of using any force from without the State, except in the contingency of the troops of the United States being brought to support the Charter government, in which case he should expect and gladly receive the aid and assistance of the other States.

Pursuing the chronological order of events the evidence proves, that on the 16th day of May, Mr. Dorr arrived in Rhode Island by the Stonington train of cars, attended by a few friends who had met him for that purpose at Stonington; he was received at the depot in Providence by a large concourse of his fellow citizens and friends; the whole number assembled from curiosity or sentiments of respect, was unquestionably very great, although no witness has attempted to fix the number; a procession, however, was formed to escort him to the place of his temporary residence, at Mr. Anthony's, on Federal Hill, in that city; this procession, according to the testimony of the witnesses, was composed of from 1200 to 1800 men—in all probability, considering the population of the city, they might have amounted to 1500; a portion of whom, say 300 or 400, were under arms, and as is usual in Rhode Island, and I believe everywhere, did escort duty on that occasion. There was an attempt on the part of the government, but wholly without success, to prove that on this occasion, the military portion of the procession was furnished with *ball cartradges*, and thereby to give it a warlike, hostile, and treasonable character; but the whole evidence on this point, when taken together, shows, that like the one before mentioned, its sole purpose was *respect* and *honor* to the Chief Magistrate, and not *war* upon the citizens, or *treason* to the State.

When the procession arrived on Federal Hill, it is in evidence that the Prisoner, from the carriage in which he rode, surrounded first by the military, next by the unarmed procession, and last by the spectators at large, except that a very few personal friends were surrounding the barouche *within* the military lines,—that the Prisoner I say, addressed the assemblage at considerable length giving in detail a report of his proceedings during his visit to Washington, his reception in Philadelphia, New York, and elsewhere.

The address delivered by Mr. Dorr, on the occasion, has been the source of much misrepresentation, not entirely confined to irresponsible newspaper publications, but widely circulated throughout the State and the country. He is represented as having, while abroad, excited sympathy, and solicited the aid of men and money to carry into effect the government under the People's Constitution, against that portion of the citizens of Rhode Island which adhered to the Charter government; and through the instrumentality of such means, to effect his purpose by force of arms and civil war. The opening counsel for the government took the same ground, and the effort on their part has made to support such representations by proof. The falsity of these statements, gentlemen, is clearly established by the testimony of the government witnesses. On this point the testimony of Mr. Pierce, who was in New York, Philadelphia and Washington, at the same time with Mr. Dorr, and who was also one of the commissioners sent to communicate with President Tyler, on the subject of Rhode Island affairs, is clear and explicit. "The prisoner repudiated the idea of bringing force from other States, unless in the event of the interference of the General government." Mr. Burrington Anthony, who heard Mr. Dorr's address delivered at Tammany Hall, in the city of New York, the tenor of which Mr. Dorr was recapitulating at Federal Hill, uses the language: "He repudiated the idea of bringing forces from without the State, unless to repel the force of the U. States." These two witnesses, both summoned by the government, testify to the expressions of the prisoner, made before and at the time of the Tammany Hall address; while the only testimony of a contrary character is that of Col. W. P. Blodget and Edward H. Hazard, to which, as it is relied on by the government, I will ask your attention for a moment. Blodget says, "The prisoner said, he had been accused of having procured the aid of 500 men from abroad, but the charge was false. He had been promised the aid of 5000 men, and could have them at any time. He drew his sword and said, it 'had been dipped in blood, and, rather than yield the rights of the people of Rhode Island, it should be buried in gore to its hilt.' I cannot recollect his other expressions used at that time." "I heard no reference to the General Government." Mr. Hazard's testimony is to the same effect, and in nearly the same words; he, however, added, "I am not positive that he made any explanation;"

and on cross examination, he said, "I have no recollection that the prisoner said the aid would be furnished him in the event of the interference of the General government—he might have so qualified it." These are the only witnesses sworn in behalf of the State, who have testified to this point, except Orson Moffatt, whose testimony is quite vague and indefinite. On the other hand, gentlemen, and in confirmation of the statements sworn to by Messrs. Pearce and Anthony, we have the testimony of Col. B. M. Darling, Col. S. Wales, Mr. Anthony and Mr. N. Porter; Col. Darling sat in the barouche, in which Mr. Dorr was standing at the time, the other three witnesses stood around it, within the space occupied by the armed escort; whilst by their own showing, Blodget and Hazard, as mere spectators or rather hearers, were situated entirely without the circle formed 1500 or 1800 men, who had composed the procession; they must, therefore, have labored under great disadvantages in hearing accurately and may have been mistaken; I think and I fancy you will think, they *must* have been mistaken:—Because, Gentlemen of the Jury, you will recollect what was sworn to by Mr. James Thurber, Jr., in relation to Col Blodget who smarting under a conviction of Kidnapping, at a Court in Dedham, came up here to procure the conviction of the Prisoner, *if he could;* you can judge then under what feelings he must have testified on this trial; and you could not but notice the manner of Mr. Hazard, his apparent willingness to put into this case, much, that as a lawyer himself, he must have been sensible was not legal testimony. What had the foolish fears of Jo. Sweet to do with the crime of Treason, charged against the Prisoner, by this indictment. What a cutler said about Parmenter buying a pistol. Or the floods of tears that deluged Weybosset Street. And who on another judicial trial before him, is reported to have said, that he "did not care a d—n for the letter of the law!!" The evidence is with you, and will decide, whether, in any degree, the expressions, of the Prisoner, on that occasion, support the allegation of criminal and traitorious intent charged in the indictment. It is in evidence that when speaking of the apprehended interference of the President with U. S. Troops, in favor of the Charter Government, Mr. Dorr, represented such to be the state of public feeling abroad, that in that event he should call on other States for aid, in the cause of the People against the President, and such had been the assurance given him, that he could rely, not on 500 only in such event, but on 5000 or more if he wanted them; but as between the two parties in this State, the Suffrage party and the Charter party, the former, being the large majority, needed no aid; and if they did not choose to maintain their own rights, they were unfit to enjoy them. But if the President should employ U. S. Troops to suppress the People's Constitution, and the Government under it, other States would be then equally interested, and would be called on for aid:—In such case, the question would be entirely changed, because if the President could in this summary way decide on the validity of the new Constitution of Rhode Island; he might do the same of other States also. How far the President, by the course he did pursue, by the aid he gave and promised—and by ordering at that time U. States Troops, of a certain description into Rhode Island succeeded in the overthrow of the People's Constitution, is not a fit subject of enquiry here, it is however a subject now undergoing enquiry before a Committee of Congress.

But, Gentlemen, further use has been made of the proceedings on 16th day of May, and in order to give plausibility to the charge of long premeditated treasonable intents on the part of the Prisoner, the same witnesses have sought to represent him, in manner and action, as a desperado, and a fiend; a man bent on destruction, reckless of civil and social duties—wantonly regardless of human life; and a slave to the worst sort of mad ambition; they have commented on his fiendish looks and appearance, whilst making his address; and have spoken of the cheers with which some passages of it, were received by the audience, as the yells of fiends from the infernal regions; although I lived through the Log Cabin and Hard Cider campaign I have little knowledge of such things; these gentlemen, however, seem well acquainted with the appearance and yells of fiends; but I shall leave you, to compare their testimony, with that of Darling, Wales, and Porter, who describe the day as dusty, the wind very fresh, and Mr. Dorr as having been riding bare headed, in an open barouche, through nearly the whole city of Providence; and you will then say, whether the facts in proof before you, will warrant you in drawing the same conclusion that they seem to have drawn from the Prisoner's appearance.

It next appears in evidence, that, on the afternoon of the next day, the 17th of May, the Prisoner, in broad and open day, sent a small detachment of men, from Federal Hill, to take possession of the Cannon of the United Train of Artillery, in the name and for the use of the State, the result of a deliberation previously had by Gov. Dorr, and a council of his officers; it has been charged by the prosecution that these guns were stolen, and it constitutes one of the many calumnies which have been heaped upon the head of my distinguished client. If the Prisoner was Governor of the State, he not only had a right to order possession of these guns to be taken, if they belonged to the State; but he was bound to do so, by his oath of office, as well as by a special Resolve of the Foundry Legislature.

There was, however, nothing secret, felonious or like stealth, to mark the transaction, notwithstanding Col. Blodget says they were stolen. In the first place the guns did not belong to the State, but to the Company; they were taken as appears from the testimony of Capt Reed and Lieut. Studley, by an arrangement made with the Prisoner, by consent of all the members of the Company; the key was passed to them to open the door for the purpose; and as has been stated all was done in open daylight, in the very heart of the city of Providence, without any attempt, at privacy or concealment. Upon such evidence can you believe that these guns were feloniously taken; that the Prisoner, to accomplish any object, however important in his estimation, could commit a felony of that description. You do not believe it, Gentlemen, nor does any one who has

ever known him. The foul and slanderous charge has been made, and reiterated against him, solely for the purpose of attaching a stigma to the purity of his motives, and the honorable consistency of his character.

It has also further appeared in evidence, that at the council of officers mentioned, it was determined that on the same night, of the 17th of May 1842, an attack should be made on the State Arsenal, situated not far fro n Federal Hill, where were kept in deposit the arms belonging to the State, with a view to obtain possession of them, and thereby prevent their being turned by the Charter government against that established under the People's Constitution, and secure the use of them for its support, against any unwarranted interference on the part of the President, in the pending difficulties. It was known that aid and support had been pledged from that quarter, to Gov. King; and it was also known, as has been shown by the evidence, that the Arsenal was manned, (to what extent was uncertain,) and under the command of a brave officer, Col. Leonard Blodget, who has been examined before you as a witness for the government, (you are in no danger, I think, of mistaking him for *the other* Col. Blodget,) with a view to the contemplated attack, the cannon mentioned had been procured, and other necessary arrangements made or ordered by the Prisoner. It also appears by the testimony of Col. Carter, a witness summoned on the part of the State, that, when it was understood that Gov. Dorr, intended to conduct the attack in person, he (Carter) and a number of the officers present endeavored to dissuade him from so doing, as unnecessarily exposing the person of the commander-in-chief; to all which the Prisoner — so liberally slandered for cowardice — made this pithy reply — "That he had often publicly stated at the Town House, that when danger should happen he wished to be found anywhere but in the rear; that he should be as good as his word, and would not send others where he was not willing to go himself."

You will bear in mind also, Gentlemen, as relating to this period of time, the testimony of Walter S. Burges, Esq., by which it appears, that the Prisoner, on the evening of that day, previous to the advance upon the Arsenal, had an interview with his confidential friend the witness, and with him made all the necessary arrangements of his business concerns, private, professional and fiduciary, for the worst and most fatal event. It seems the Prisoner at that time held several important trusts, yet on the very eve of a desperate adventure, as though to give the lie to all the floating calumnies against him, could deliberately a range and securely guard all the diversified trusts confided to him, whether of a pecuniary, or public nature; exemplifying by that act, the high and honorable character of his own mind.

To return hewever to the attack on the Arsenal. The number of men engaged in that attack has been greatly exaggerated, and is differently estimated by the witnesses who have been called to the stand, as well by the Prisoner, as by the Government. On the part of the government witnesses, they are variously estimated at, from 300 to 500. Henry S. Hazard says 400 or 500. George O. Bourne says 400 or 500, and a large body unarmed; on the other hand, we have the testimony of Col. Carter, Darling and Aldrich, all of whom were present taking part in the affair, and as you will observe had much better means of knowing the actual number, who estimate them at, from 200 to 250. None go beyond that number, and Colonel Carter swears that before they lett Federal Hill, he counted them by sections and found their number to be 234. So that it seems certain that it could not have exceeded 250 men. It had also appeared in evidence before you, that the night of this attack could not have been selected on acc unt of its darkness, as the first part of it was moonlight, and that after the moon set a heavy dense fog came on, settled on the earth and enveloped every thing in its folds. So noticeable was it that Col. Carter, in speaking of it said, "It seemed ike an interposition of Divine Providence." The witnesses agree, that the force under the command of the Prisoner, on arriving near the Arsenal, took their position in its front, within musket shot of its walls, the two pieces of Artillery on a line, at some distance asunder, levelled at or flanking the door or gateway; and a small party of Infantry, lying in ambush, on the ground, at the left, in advance, and quite near the gate, so as to rush in, whenever that should be opened, to return the fire of the assa.lants. These dispositions having been made, the Prisoner, directed the usual and proper formalities in attacking a garrison, to be observed: An officer with a flag of truce, was sent to demand a surrender of the Arsenal, which was refused, nothing then remained, but to take it by force of arms, or for the Prisoner to suffer the People's Constitution, and the government organized under it, to fall to the ground; so far as it depended on him, he resolved on the former alternative. The plan was to make a simultaneous attack with the artillery for the purpose of forcing the doors of the Arsenal, or cause the defenders to throw them open, to return the fire, and then for the flanking party lying in ambush, as has been stated, to rush in at once, and overpower the men, who were in possession of the lower floor of the Arsenal, the number of whom must necessarily be very limited; when all those in the upper part of the building, could in the end, do nothing but surrender. It was however ascertained, in consequence of the density of the fog, and darkness of the night, that a change of position of the two pieces of Artillery was desirable, and they were severally removed nearer each other, and more directly in front of the Arsenal gates, remaining, according to the testimony about twenty feet apart, or as near as they could be conveniently worked. In the mean time, it appears, that portions of men, especially after the return of the flag of truce, availing themselves of the surrounding obscurity, began to retire, some leaving the field entirely, and others seeking shelter behind piles of wood, that were somewhere near. Even the gallant Col. Despeau, according to Charter's testimony, who commanded a Volunteer Company of ninety men, about two fifths of the whole force, then before the Arsenal, awakes suddenly to the idea *that there was danger there*, and marches his men from the field!! Col. Wheeler, who had been entrusted

by the Prisoner, with the immediate command of the attack, who had, himself, sent to demand the surrender of the Arsenal, and who probably thought "*discretion the better part of valor*," before Col. Carter could look to the further end of the line and back, "*had gone off in the fog.*" Finding that the commanding Col. Wheeler, and Col. Despeau with his command, had left the field, covered, by the fog, if not with laurels, parties of other men followed, and passed Carter, who had gone to persuade Despeau to return; so that when the moment arrived for the firing to commence, the force of the Prisoner, had dwindled down from 250, to from 40 to 50 men only; and the command of them was by the Prisoner conferred on Col. Carter.

When the order was given to fire, the pieces in succession flashed only; and being reprimed flashed again, both pieces thus proving unserviceable, at least for the time being. In consequence of these misadventures, and the delays occasioned by them, the time for successful action had passed. It was now after daylight — the force remaining was totally inadequate—the men hungry and tired — the fog liable to disperse in a moment, and the City troops might place them between two fires, whenever they choose to do so. Under this accumulation of untoward circumstances, the Prisoner felt himself compelled to order a retreat, which was accordingly executed, with only about 50 men; Col. Carter, with a part of them carrying off one of the guns, and the Prisoner, with the remaining men, assisted in taking off the last; reaching Anthony's, on Federal Hill, at about sunrise on the morning of the 18th.

Such, Gentlemen, is the history of the attack on the Arsenal, furnished by the evidence in the cause; you will however recollect, Gentlemen, that you were told by the opening counsel for the State, that "the Prisoner sought the bad eminence of distinction in crime," "and descended from the *dignity* of a *rebel commander*, and condescended with his own hand to apply the match to light the torch of civil war." The uncalled for and unwarranted coarseness of these epithets, will be passed over without notice; the language was used as applying to the conduct of the Prisoner, on this occasion, and with much of a similar character, was doubtless intended to create in your minds the most unfavorable prepossessions toward him, and his general character and conduct. The Prisoner is charged with having taken in his own hand a torch, and touched off one of the guns at the Arsenal himself; had such been the case, in my opinion, it would have been neither criminal nor derogatory for the Prisoner, under the circumstances to have done so; the counsel for the State have thought otherwise, and have introduced a witness, Orson Moffat, to prove it. This witness swears, that the order to fire was given by the Prisoner, whilst he (witness) "was in the midst of his lines," and "near enough to have touched him easily," when the gun flashed, "heard Mr. Dorr call for the torch"—"saw him holding the torch," and "saw the other gun flash." Yet, gentlemen, this witness, who swore that he had once or twice that night, made report to Col. Blodget at the Arsenal, of movements on the outside; and also, that he knew the Prisoner perfectly, upon his cross-examination, could not name another person upon the ground — could not tell whether the Prisoner wore a hat or cap — a belt or not — nor describe the position of either of the guns. You will recollect, Gentlemen, that these guns were about twenty feet apart, and within musket shot of the Arsenal, which was thoroughly defended by Artillery and Infantry both; and in case of an assault, the doors were to be thrown open, and five six pounders were to be run out and fired—that the witness, if his statements be true, which by the way is far from confirmed by that of Gen. (then Col.) Blodget, must have been aware of these facts; yet this witness tells you that he stood near enough to Mr. Dorr, to touch him, when he flashed the gun, at a moment too, when he might instantly expect to receive the whole deadly fire from the Infantry and Artillery of the Arsenal, without any possible motive, other than mere curiosity. Now, Gentlemen, can you believe one word of the testimony of this Mr. Moffat? I do not, and upon the testimony taken by itself, no man but a mad man or a fool, could or would needlessly put himself in such a situation; it is not in human nature to suppose it possible, and I trust that you will not give to his testimony a particle of weight, the more especially, as the teitimony of several other witnesses proves it to be groundless. Capt. Wade stood within two feet of Mr. Dorr, when the first gun was flashed, and swears that he did not know the man, but that it was not Mr. Dorr. Col. Carter, then in command, swears, that he, himself, gave the several orders to fire; that Mr. Dorr stood close by him, all the time, between, and a little in the rear of the guns; that a man named Andrews flashed one, and a man named Hathaway, the other, that Gov. Dorr, had no torch or port-fire in his hand that night, and that Moffat's testimony, which he had heard, was false. Thaddeus Simmons, was one of Gov. Dorr's body-guard, was near his person all night, and swears positively that Mr. Dorr did not flash the gun. The statement of these witnesses are confirmed by the negative testimony of several others, all of whom would be more likely to know the facts than Mr. Orson Moffat.

At about 7 o'clock on the morning of the 18th, after the return to Anthony's house, on Federal Hill, it was ascertained that 27 men only remained under arms, attached to the cause, and the fortunes of the Prisoner. In the meantime the guns had been examined, bored out, and reloaded; no plugs were in them, according to the testimony of Hathaway, who bored them out with a gimlet, as had been reported and sworn to by Hiram Chappel. His testimony on this point, however, was sufficiently contradicted by that of Col. Dispeau; upon the examination it appeared, that the powder was bad; that in consequence of the dampness of the night, it had first dissolved, then hardened, and would not ignite.

By this time, the charter troops of the city of Providence, reinforced by those from Newport, Bristol, and Warren, were in motion. The concerted signal, a gun on Federal Hill, had been fired for a rally of the supporters of the *People's* government, but instead of being answered to, by men in arms, as had been pledged to Gov. Dorr,

he received a written communication, from some of his friends in the city, that he could not expect such support, under present circumstances; those circumstances were the strength of the charter military force, then embodied in the city—the aid promised them of U. S. Troops from Fort Adams, and the apprehensions entertained by many of the legal consequences of coming in conflict with the General Government. Under all these circumstances, according to the proof in the cause the prisoner urged by the advice of the few gallant officers, who still adhered to him, and his hopelessness of maintaining a position on Federal Hill, issued orders for the few remaining men to retire and disband themselves, and withdrew himself, beyond the lines of the State; assuring his officers, however, at the same time, that whenever the *People*, were ready to support their own government, in the great cause in which they were engaged, he should be prepared to return and join them. And for this act of prudence and necessity, also, had the prisoner been branded as a coward!

From this period, up to about the 20th of June following, the Prisoner appears to have remained out of the State; it is in proof, however, that, in the north and northwest part of the county of Providence, a determination still existed, to sustain and establish the government under Mr. Dorr, and as the People's Legislature had adjourned, to meet again on the then coming 4th of July, a collection of military officers, and partizans, met at Woonsocket, it was resolved, to purchase a suitable lot of land, for an encampment, and put themselves in a situation to sustain, and if need be, to defend the Legislature during its proposed session. This was as early as about the 12th of June. A committee was appointed and Acott's Hill, contiguous to the village of Chepatchet, in the town of Glocester, about sixteen miles from the city of Providence, was the spot selected. It appears to have been understood, Gentlemen, that the People's Legislature would convene and sit in that village. According to the evidence, companies and parties of armed men began to assemble there on the 22d of June. Gov. Dorr was known then to be at Killingly in the State of Connecticut. It further appears that a written communication was made to him by some of the military officers, urging his immediate return, to assume command; and giving assurance, that 1500 men were detailed from different parts of the State, to support him:—such at least is the testimony of Col. Carter—600 of whom were to be furnished from the city of Providence, alone.

Upon such representations and assurances, thus urged, the Prisoner, escorted by a very few officers who had gone from Chepachet to Killingly for the purpose, arrived at the former place on the morning of Saturday, June 25th—the day on which the overt act of levying war, in the third count of the indictment is laid. Upon his arrival, instead of the fortified camp, and a garrison of 1500 men, which he had a right to expect, he found in arms about 200 men; a camp, on two sides partially defended by very slight embankments or breastworks, composed of brush and earth, and five mounted and one unmounted old pieces of artillery, of different calibres and descriptions. Evidence has been introduced on the part of the prosecution, however, [the Court overruling our objection, that it was irrelevant to either count in the indictment,] showing that, several days before Mr. Dorr came into the State, and before he was in any way connected with the military movements of Chepachet; in consequence of a rumor, that the Charter troops were about to attack the place, and arrest Lieut. Gov. Eddy, who resided in Chepachet, Charles J Shelley, an emissary from Providence, had been on the 22d taken as a spy, and detained as such until the next day, when he had been discharged, two days before Mr Dorr arrived there; which, as I have before said, was on the 25th. This evidence was thrown in as matter of aggravation, although it is manifest that the Prisoner could in no way be legally implicated by it, nor held responsible for it.

It has appeared in evidence that Mr. Richard Knight was also made a prisoner on the evening of the 25th June, the day of Mr. Dorr's arrival at Chepachet; and I call your attention to this testimony, with a view of noticing some of his statements, which are calculated to create false impressions on your minds, and intended to confirm newspaper assertions. He has testified, that on his entrance into the village, he was fired on by one of two men, who were running down the hill, as if with design to head him off. Upon this point, we have the testimony of Mr. Dorr's Adjutant General, William H. Potter, who was on the ground, and swears that he never heard of it, and that if such had occurred, *he must have known it.* Mr. Knight also swore that at the same time he saw three black men on the hill, one of whom had a gun also. Gentlemen, you all know how often, during the period of these troubles, it had been asserted that Gov. Dorr's forces at Chepachet were the off-scouring of the land, black, white and gray; and this testimony is given by Mr. Knight, who had been a prisoner there, to give color to such reports, and to convey the idea that blacks constituted a part of the soldiery, and were on the hill serving as troops, that a prejudice might be raised in your minds against the Prisoner. But what is the true state of the case, as shown by the whole evidence on the point? That there were but three blacks connected in any way with the troops there, and that they were merely waiters or servants, attached to the Commissary department of the camp, as sworn to by B. M. Slade, who acted at the head of that Department.

The evidence produced relative to the gathering at Acote's Hill, from the time when the prisoner arrived there, and it is with that only we have to do, shows that it was throughout conducted in a most orderly and proper manner; orders were immediately issued by him, that all private rights and private property should be respected; and three instances only of the violation of those orders occurred; they were insignificant in themselves, but promptly repaired by the prisoner's orders, and in one instance he made pecuniary reparation out of his own pocket. As one means for the preservation of order, he caused the bar of the tavern of Gen. Sprague to be shut, so that no liquor should be sold, and none was furnished to the men. It appears in evidence, that on the

afternoon of that day, the 25th, the Goverhor examined the works of defence on the hill, the munitions of war there collected; reviewed and ascertained the number of effective men assembled, and made a speech to them. Very exaggerated and extravagant accounts of the number of those men have been made and circulated, by those opposed to Gov. Dorr, and the cause he was engaged in, as an additional pretext for charging him with poltroonry and cowardice, in abandoning the post as he did, on the evening of the 27th. But it appears by the evidence of Potter, Comstock and Carter, confirmed by others, that the force of men under arms, was fluctuating —constantly coming and going. On Saturday, the 25th, there were 225; on Sunday, the 26th, somewhat more; on Monday, the witnesses agree that they did not exceed 250 in all. The proclamation which had been issued by the prisoner, calling for the men promised before he came into the State, and on the military of the State generally, did not respond to his call; of those present about two-thirds were sufficiently armed, the residue were miserably equipped.

Some expression used by the prisoner in the speech delivered to the troops, has been seized on, and tortured into fancied evidence of traitorous malignity, derogatory to the character and to the purity of the motives of the prisoner, and two witnesses, Willis Bowen and Caleb E. Tucker, have been called on to establish the fact and prove the expression, the attempt, however, signally failed of success, and was disproved by a number of witnesses called for the prisoner.

On Sunday, the 26th, the interview took place at Gen. Sprague's then Gov. Dorr's head quarters, between the prisoner and Mr. D. J. Pearce, the particulars of which have been fully detailed to you by Mr. P. on the stand, giving expressions and stating the views, objects and intentions of the prisoner; and I leave you to judge, gentlemen, whether the testimony does not negative in the clearest and strongest terms the corrupt and traitorous intent with which the prisoner, by the indictment, is charged.

You will bear in mind also, gentlemen, some important facts, sworn by the witness, as having been stated to Gov. Dorr, in that interview—that he had seen 2300 Charter troops pass by his boarding house in Providence, the day before; that 5 or 600 in addition were then expected from the counties of Kent and Washington; that a requisition had been made on the President, which would without doubt be favorably answered on Tuesday morning; that Col. Bankhead was in Providence, awaiting the arrival of orders; and that many of his warmest political friends, and officers under the People's Constitution, had not only resigned their offices, but he had seen some of them the day before in the ranks of the Charter troops.

Some stress has been laid on the attack, which it is supposed was intended, on the advanced post of the government troops, stationed at Greenville, but it does not appear by any evidence that such an attack was ever contemplated by the prisoner. His object throughout appears to have been, and was avowed to be, to protect the People's Legislature, which was to be convened at Chepachet on the 4th of July, and it was clearly intended to adopt, as far as practicable, every measure necessary for that purpose, and to sustain and defend the People's Constitution and government, and nothing more; the purpose being *defence* not *offence.* The private opinion of Col. Carter, respecting the taking possession of the Colleges in Providence, converting them into barracks, and preparing a furnish for heating shot, is not material to the issue you are trying, and in fact has nothing to do with the present indictment. The prisoner had no knowledge of, and is not implicated in such intention; nor is there the slightest proof or ground for supposing that he ever contemplated any such movement.

Early on Monday, June 25th, the prisoner received intelligence that the Charter troops were at Greenville and Scituate; in the meantime his friends in the city of Providence were deserting him and the cause; fourteen members of the People's General Assembly had resigned their offices at one time; no additional force coming to his aid and support; the Charter and Government force then, according to the information of Mr. Pearce, amounting probably to 3000 men, within 6 or 8 miles of him; his own position unskillfully situated; other heights in the vicinity commanding his slight fort; having no extensive or adequate Commissary department; no ammunition sufficient for an action of more than 15 or 20 minutes duration; his military chest containing only $70, raised among the officers by voluntary contribution;—under these pressing circumstances the prisoner deemed it his duty to call a council of war, and disclose the true situation in which they were placed. A council was accordingly called, and held at Gen. Sprague's, his head quarters. All these facts were fully laid open to his officers, and deliberately discussed. The final result of their deliberations was a resolution to disband forces, forthwith, as a measure dictated by the severest necessity. The order for this purpose was issued at about 4 o'clock, the same afternoon, sent to the Hill by Gen. D'Wolf, accompanied by Col Comstock, and was then and there duly read to the soldiery; upon which the men immediately separated, and as expressed by Col. Comstock, "dispersed as is usual after dismission," and as stated by Col. Carter, "without any haste or disorder." It appears also by the evidence of Gen. Sprague and Col. Carter, that Gov. Dorr himself remained in the village, at Sprague's until about sunset, which, at that season, would be about half past seven o'clock; when accompanied by Col. Carter, and a driver, he went to Thompson, Conn., passing in the route several parties of the retiring men. And yet, gentlemen, Gov. Dorr has often been charged with precipitately running away from his men at Chepachet.

It is also in evidence, that on the same day, after the order for disbandment had been issued by the prisoner, he enclosed a copy of it for publication, in a letter to his friend Mr. Burges. It will be recollected that the prisoner's head quarters were in Chepachet, sixteen miles from Providence—that one body of the Charter troops were at Greenville, on the direct road, and another body in Scituate, on the south road; so that the

messenger, Mr. Eddy, was intercepted and probably somewhat delayed; yet Mr. Burges states, that he received the communication at about dark, the same evening, while he was reading a newspaper, by the remains of daylight—that he read the letter in the presence of the two officers who brought it to him, and *immediately submitted both the letter and the copy of the order for disbanding to Gen. McNeill, and to the Governor and Council. The next day*, at about 8 *o'clock in the morning*, their troops took possession of the evacuated fort; and, I had almost said, sacked the village of Chepachet. While the place was in possession of the forces of the prisoner, the rights of person and property were held sacred, with the slight infringements before explained; and when *they* left, they left it in peaceful security. What the condition of the Village and its inhabitants was when the Charter troops abandoned it, I am not permitted by the Court to prove or state. And such was the victory of the Charter troops at Acote's Hill, and the termination of the Chepachet war—*Entering a deserted fort, twelve hours after it was known to be abandoned!!*

But, gentlemen, it has been charged upon the prisoner, here and elsewhere, that he brought to Chepachet from New York, the *Spartan Band*, with the design of leading them to the city of Providence, to sack the city and cover themselves with spoils. Of the Spartan Band, I know only, that in the popular slang of the day, they, with Gov. Dorr, and all his friends, and the adherents to the People's Constitution, were classed under the general name of *rowdies*, and these were said to be *foreign* rowdies; and it has been said they were to advance to the work of violation and havoc, under the watch words of "*The Banks and the Beauty of Providence.*" Of all the thousand slanders circulated in the community to the prejudice of the prisoner, this was the most infamous and base as it was false. But with regard to the Spartan Band -the only evidence in the cause touching the point is, that there from 10 to 15, (being differently estimated by different witnesses,) who joined the encampment at Chepachet, on the 24th of June, the day before the arrival of Mr. Dorr, from Connecticut—the came direct from New York, and there is no evidence going to show any connexion or concert between them and the prisoner; he found them as he found the others, on the hill, at his arrival—they were there as military men, they were treated, and did their duty in common with the others as such, and for aught that appears were as orderly and well behaved. They may have been foreigners, or they may not; they were not Rhode-Islanders; and there were also two persons there from the adjoining State of Massachusetts, Gen. D'Wolf and a private; if however this be matter of reproach to the prisoner, the Charter government are equally liable to it. Maj. Gen. McNeill, and some of his officers were invited here from other States—and why, I can scarcely tell. It could not be from any deficiency of native military talent or capacity. That we have men among us, "Fit to stand by Cæsar, (or Napoleon,) and to give directions," we have the very best evidence; it may be derived from the mouths of some of the government witnesses themselves, when speaking of their own exploits!! With the exceptions, however that I have mentioned, the men composing Mr. Dorr's force were all Rhode Island men—men of landed estates, or hard handed, enterprising mechanics—men who had voted for the adoption of the People's Constitution, and for Mr. Dorr as Governor under that Constitution. Such men, (and I can say nothing *against* those excepted,) as would be no disgrace to the service and the cause of political freedom.

I have now, gentlemen, briefly gone over the prominent points of the testimony in the cause, so as to give you a clear and connected view of all the transactions in which the prisoner was concerned, during the period of time embraced in the several counts in the indictment, which charges the overt acts of levying war against the State, on the 17th and 18th days of May, and the 25th and 27th days of June. I have done this for the further purpose of calling your attention, more particularly to the question of *criminal* and *malicious intent*, on the part of the prisoner.

There can be no crime, where there is no criminal intention—intention is the very essence of all crime. There can be no *treason* where there is no *traitorous intention;* the mere act of levying war, whether it be actual or constructive, does not, necessarily amount to treason; to constitute that crime, it must be levying war with a *malicious* and *traitorous* intent, and such is the averment of each count of the present indictment. If no such averment were there, the indictment would be fatally defective, and you could not find the prisoner guilty under it; and the question here is, does the evidence offered on the part of the prosecution, support the allegation, so as to justify you in finding a verdict against the prisoner?

You have been already told by the Court, that there was no evidence or pretence of *express* malice, or treasonable design on the part of the Traverser; but that such malice and such intent, where an overt act of levying war was proved, was a *presumption of law*, and changed the burden of proof from the government to the prisoner, as in homicide, the intentional killing a man, the law presumed to be murder, until the person charged offered evidence that should reduce the offence to manslaughter, or something less. This *presumed traitorous intent*, after all, is but a *presumption*—not a fact proved; and may be rebutted by facts and circumstances disproving the possibility of its existence. Such, gentlemen, we contend, is the present case. You will recollect that, according to the testimony of the witness, it was with much reluctance, and after at least three other persons had been put in nomination and declined, that the prisoner consented to a nomination as Governor, at the election in April, 1842; that he received upwards of 7000 votes for that office; that the votes were duly returned to the Foundry Legislature; that a committee was appointed to count them; that the committee reported that the prisoner was duly elected; that the usual proclamation of such, his election, was made; that he took the required oath of office; that he delivered an inaugural address or message to the legislature; and that a government under the People's Constitution, was fully organized

and put in operation, *superceding*, *as we contend*, all other governmenent in this State. You will also bear in mind, an admission made by the Attorney General, (Blake) that, "if the prisoner was in fact Governor, he was justified in all he did. Now, gentlemen, taking that evidence and that admission along with you, trace every act done, every expression used, and every measure proposed by the prisoner, from the assemblage of the People's Legislature, on the 3d of May, to his leaving Chepachet, on the evening of the 27th of June, 1842; compare and weigh the evidence whenever it conflicts, and say, if you can, where you find any evidence calculated to support this charge of *treasonable intent*. On the other hand, gentlemen, you will find him actuated by principles of the highest standard; intent, not on *subverting*, but on *establishing* the government of the People; controlled by an all-pervading sense of official duty, and governed by a religious sense of the oath he had taken to support the People's Constitution, and discharge his duty faithfully to the People of the State. I shall not attempt here to recapitulate the evidence of these particulars, having somewhat glanced at them in passing; but it is such as frees the character of the prisoner from every imputation upon the purity of his motives, and the unshaken consistency of his conduct. You have the evidence all before you, gentlemen, and, under your oaths as jurors, you are "true deliverance" to "make between the State and the prisoner at the Bar."

After all, gentlemen, who is the prisoner at the Bar? And how came he now before you for trial? Mr. Dorr is an educated gentleman—of the most respectable family and connexions. It is also in evidence that he, personally, has stood high in the confidence and esteem of his fellow citizens. He has represented the city of Providence in the General Assembly. At the time he is charged with having levied war against the State, he was the Treasurer of the Rhode Island Historical Society, and had in his hands, the funds of that institution to a large amount. He was a Commissioner of the Scituate Bank, having control of its funds and securities, under an appointment of the legislature. And he was President of the School Committee of the city of Providence. It appears also, that as administrator or trustee, he had in his hands large amounts of the property of private individuals. During the troubles that followed the affair at the Arsenal—the destitution of men, arms, ammunition, provisions and money of the Chepachet campaign—during his protracted exile from the State, did Gov. Dorr embezzle, divert or misapply these funds, or a farthing of them? No, gentlemen, as is shewn by the testimony of Mr. Burges, he guarded the whole with the most scrupulous care, guided by the highest sense of honor; and placed them, undiminished, beyond the reach of the perils which environed his own position. With this evidence before you, does he carry about with him any of the marks of that *rowdyism*, of which we have heard so much? Has not his whole course of life, his sentiments and his actions, been such as to free him from the imputation of having in any thing been governed by other motives than a desire and a zeal for the best interests of his fellow citizens and of the State?

It has been urged by the opening counsel for the State, that the prisoner, taking counsel from his fears, at Chepachet, *ran away* from the State. It would have been an act, not of wisdom or courage, but of the wildest folly for Mr. Dorr, to have bared his devoted head to the whirlwind of popular fury, that then swept over the State; or under *legislative* Martial law, to have confided his fate to the tender mercies of a Drum head Court Martial. But when the tempest had apparently passed over, when the excitement had become somewhat allayed by time, when martial law no longer fettered the legal tribunals of the State, he came voluntarily back to the State and submitted himself to its tribunals. He came, when large rewards failed to bring him, because this was his native State, his home; and because he expected, and had a right to expect that he should be tried by a jury of his peers of the vicinages, amongst whom he had always lived; and for whose benefit alone he had acted. He is now *in your hands*. And I repeat, gentlemen, that in deciding on his case, you *may* decide upon your own fate and that of your posterity. Your decision *may* involve the fate of American Freedom, nay, of Civil Liberty itself.

Finally, gentlemen, if the evidence to which I have directed your attention, should fail to satisfy your minds fully, as to the purity of the prisoner's intentions, and the absence of treasonable design on his part, and doubts remain on the subject, you are bound, and will be so instructed by the Court, to throw those doubts into the cale of the prisoner, and return a verdict of acquittal. I now leave him with you, under the conviction, that the moment you take his life and liberty into your hands, you at the same time commit your characters through life, and your memories after death, to the award and decision of the great tribunal of Public Opinion; and I hope and trust, that at its hands you may *receive* that justice, which, in behalf of the prisoner, I *claim* at your hands.

CLOSING REMARKS OF MR. DORR.

After *Mr. Turner* had concluded his summing up upon the evidence, *Mr. Dorr* addressed the jury for three hours in the close of the defence. The following is the summary of his remarks.

Having addressed to the Court all he had to say on the subject of treason, which he had contended was an offence against the United States, without admitting that any such offence had, in this instance, been committed, he now turned to the Jury, and thanked them for the patience which they had thus far manifested in attending to the proceedings of a trial necessarily protracted beyond the usual length. Although the duration

of the trial had been more than once alluded to by one of the Honorable Court, he desired to assure the jury, that he had not intentionally trespassed on their time. Much of it had unavoidably been spent in empannelling the jury, which in a case of this moment could not be hastily done. The Defendent had a right by law to twenty peremptory challenges; and a large number of those who had been called as jurors had disqualified themselves as they were called, by replying to the questions proposed to them, that they had formed and expressed an opinion upon the charges laid in the indictment, rendering in necessary to issue new process for summoning an additional number. It would also be recollected that the Defendent had been brought here from the county to which he belonged, professedly for a more impartial trial, and among those with whom he was but little acquainted, and whose qualifications and opinions could not be investigated and ascertained without special inquiry, which it had been sometimes necessary to make through witnesses, to whom the jurors were better known than to himself. The jurors now empannelled had severally responded, under the oaths, that they had neither formed nor expressed an opinion upon the matters now in issue; and only through their avowed impartially could the object be obtained, for which the case had been, in this unusual manner, removed from the county where the offence was charged to have been committed, into another, which had been equally pervaded by the political feelings and discussions, which had pervaded the whole State, in the eventful period of 1842.

As so much had been said about foreign notions and foreign interference, it was proper for him to remind them that he was no stranger in their midst. He had not come here from abroad to proclaim new and strange words, at war with the original doctrines upon which our government was established. He was a native citizen of Rhode Island; and a portion of those from whom he claimed descent had been among the earliest settlers of the State. He was by birth, and still more he trusted, in principle and feeling a Rhode Island man. He did not stand before them as an alien to the common inheritence; and he was ready to meet his opponents in any attempt they might make to show that his efforts had been directed to any other object than the reassertion of the ancient liberties of the State, and the inherent rights of the People.

The case now presented to the jury is one of no ordinary importance, and is not lightly to be disposed of by a hasty and inconsiderate judgment. It is not a matter of dollars and cents to be decided by an average of opinions, but a question affecting the rights and freedom, and, to all intents, the life of the accused. The sentence consequent upon conviction, is perpetual imprisonment, with the attending deprivation of the social and political privileges of a man and a citizen,—an infliction which might induce some minds to prefer the more friendly missive of the military tribunal. It is the duty of the jury to contemplate the results of their verdict. For though they are not directly responsible for the law, and sit here not to make but to administer it, they may well be inspired, when they regard the personal rights which are now put in issue, with a solmn caution, with a spirit of sincere and earnest inquiry; fearful themselves of doing a greater wrong than that which is alleged against the individual they are called upon to try, and bearing in mind that the justice of the law is not revenge, and insists upon no doubtful constructions of the acts of the accused. The jury must be satisfied beyond a reasonable doubt not only of the facts, but of the legal meaning and purport of the facts, and they are not called upon to offer sacrifices to State policy or to the dignity of the law. At this distance of time from the date of the transactions in controversy, a more dispassionate and candid investigation was to be expected and demanded.

The offence charged is *political*, not against individuals, but against the State, under a system now no longer ex sting. The Defendent necessarily does not stand alone. He acted for others. In trying him you try also the 14,000 citizens, who voted for the People's Constitution in 1841, and who, if there be any guilt in the doctrines of '76, are equally guilty with him; nay, more, you will try the principles of the American government and the rights of the American People; and you yourselves will in turn be tried for any wounds you may inflict upon American Liberty. You are not sitting here in one corner of a small State, out of the reach of observation; and beware that no political bias incline you to do any injustice to the Defendent, by way of retribution to the party with which he is connected; or how you permit yourselves to defeat the ostensible object of a fairer trial in the removal of this case; and let the public have reason to believe that it has been more fair than was intended.

The opening counsel for the State (Bosworth) had not been satisfied with the customary epithets which the forms of indictment bestow on those who are brought within the pale of the Courts; but he had launched out into the language of vituperation and calumny, the not uncommon substitutes for reasoning and argument. These ebullitions of malignity do not so much indicate the character of the object upon which they are poured as the condition of the source from which they spring. Real valor never seeks to magnify itself by depreciating the character of those who have been overcome by the fortune of the day, and avoids all questionable exultation. An honorable mind, in a great political controversey like this between the two parties of the State, conscious itself of good motives, will be slow to impute the reverse to a fair and open political opponent. The coarse remarks of the assis ant to the prosecutor are left to you with all the weight to which they are entitled. If he be not ashamed of them, they may cause some of his friends to be ashamed of him.

Without any proof that it was known at the time to the Defendent, the aid of the prosecutor has laid much stress on the fact that some of his relatives by law or blood, were found in array against him on the 17th of May, 1842; and it is insinuated, by way of arousing the prejudices of the jury, that the object of the Defendent was the destruction of his own relatives and friends. In

reply to this false and malicious charge, *Mr. Dorr* said, that, in periods of excitement, it might happen, and sometimes did happen to those who were near, and painfully to those who are also dear to each other to be widely separated even to the conflict of war. He stood almost alone in his political opinions among those who were connected with him by blood. Without consulting interests he had asked for himself what was right and pursued it. If his views of the sovereignty and action of the People were correct then, they who placed themselves in opposition to the government, and attempted to prevent the recovery of the public property, whether strangers or relatives, did so in their own wrong, and might with equal propriety be said to have been bent upon his own particular destruction. He left them to their motives and claimed respect for his own. There are obligations of duty from which no interest or consanguinity can furnish a discharge. *Mr. Dorr* said that he was not aware at the time that any person related to him was engaged in the defence of the arsenal; but, from what had fallen from one of them, he had supposed that he intended to be. This person was not his brother, (now absent from the country) whose name had been forced in here with a very apparent object, and who, though opposed in politics, was entirely capable of appreciating his motives, as he was of making the same estimate in return. But if he had been aware that all his clan were enlisted against the law and Constitution of the State, he should not have been deterred from discharging the oath of duty which rested upon him.

The offence charged is somewhat of a vague nature. What is levying war? It is not a gathering of men merely with arms in their hands. This is the description of every military training or review. Against whom is it levied? The State. Who represented the State at the time in Rhode Island? Which was the true government, or, more properly, which was the government? And again, for what object was war levied, if at all? Was it for any lawless, unjustifiable purpose, or in defence of government and the most valued rights of the citizens? Here we have, in addition to the mere question of fact, were certain things done or not, the much larger and more important questions of rights, of motives and intentions. The indictment charges that the acts laid in it were maliciously and traitoriously done. To constitute a levying of war, as it was held in 4 Cranch 75 &c., there must be an assemblage of persons for the purpose of effecting by force a treasonable purpose. Enlistment of men to serve against government is not sufficient. It is not treason, it thus seems, to enlist men for service even against a lawful government, much less is it to enlist them and to bring them into service against an unlawful one, existing by usurpation and contending with force against that by which it has been rightfully supplanted. You will also bear in mind the admission of the Attorney General, who properly stated in the outset of the case, that, if the Defendant were the Governor of the State, he had a right to do what he did. It is thus perfectly evident that the true question, essential to a fair trial, is that of *Rights* and *Motives*. There must be a treasonable intent in the levying of war to constitute any treason at all; not a mere knowledge of what one is about, but a deliberate, set purpose and treason of mind; as in cases of homicide the act may be murder or manslaughter, or no offence at all, according to circumstances and intentions.

Mr. Dorr said, that in the argument of this case, he had the disadvantage of appearing before the jury without the aid of his principal Counsel, Mr. Atwell, upon whom he had relied for all the closing arguments, who had been overtaken and disabled by a severe illness, just before the commencement of the case, when it was too late for the Defendent to make any preparation. While he desired to acknowledge the zeal, fidelity, ability and industry of the gentleman who assisted him, he could not but feel the absence of a counsellor, whose legal eminence and eloquence, practical experience, and just weight as a lawyer in this Court, were of so much importance to his clients. If the Defendant have any thing to advance in his own favor, it will be said to come from a too partial source, and it weighs nothing. What he admits is taken strongly against him, and what he may say concerning himself may be, for the most part, better said by another.

The defence, as well as the prosecution, has drawn out upon the examination of witnesses a long detail of facts. My great object, said *Mr. Dorr*, has been to have all the facts of the case correctly ascertained, to disabuse it of all the falsehoods and calumnies with which it has been invested, by the malignant ingenuity of political enemies, and to disprove all the pretended charges that have been so often repeated against myself, my political associates and the political party with whom we have acted. I have aided by questions, and by witnesses in bringing all the facts to light. There are and have been no secrets in the cause in which I have been engaged: there is nothing, so far as I am aware, that might not safely be brought to the light of day. In August last, I published, over my name, a statement of all the transactions now in controversy, from beginning to end, which was generally circulated in this State. It does not differ perceptibly from the present testimony. I am willing to put it into the case, as a part of it, if the prosecutor do not object. I should have been willing to save this investigation by so doing; but it was not for the Defendant to prescribe the mode of proceeding by the prosecutor, who of course would not have admitted the account of the Defendent to be correct, and expected to make a case much more favorable to his own side of the question.

And here let it be asked, in common candor and fairness, after listening to the testimony, what has become of the shameful and groundless imputation conveyed in the fabricated watchword of "beauty and the banks," of the "foreign desperadoes," who were to plunder and burn the city of Providence, and to invade the domestic purity of its homes, of the intervention of citizens abroad for any other object than to arrest the unjustifiable interference of the President with State rights, of the general appropriation of private property to military uses; of "the lawless and intemperate character" of those engaged in the People's cause; of the "forcible enlistments;" of the "State

scrip;" of the "sword dyed in blood;" of the "waving of the torch and the firing of the gun;" and the hundred other stories and inventions that were got up by political managers and editors for effect, and have had their day, and have answered all that was expected of them? They were no doubt believed by some with that credulity which alarm creates. And there were others who availed themselves of this slight pretence to go over and basely and treacherously abandon the cause of the People to the enemy. Henceforth let the retailers of these calumnies, which have been put down in and out of Court, hold their peace.

The alleged invasion of private property by the suffrage men at Chepachet, of which so much had been attempted at the time to be made by their opponents, was reduced to three instances: a horse borrowed, used and returned; a cow taken and paid for; and a few boards burnt on the hill!

The question was asked whether the village of Chepachet, the day after it was left by the suffrage men, was not sacked by the charter troops. But this we were told had nothing to do with the issue and could not be gone into! It was irrelevant. There was a contrast to be disclosed.

Of all that was really done by me, said *Mr. Dorr*, (aside from the fabrications alluded to,) or that I had a part in doing, I deny nothing. I should disdain to make such a denial here or elsewhere, to preserve either liberty or life. Defendant said that if any fact had not been brought out in the testimony, which the jury were desirous of knowing, and which was within his knowledge, he was ready to state it.

My defence before you, said Mr. Dorr, is a JUSTIFICATION throughout. What I did I had a right to do, having been duly elected Governor of this State under a rightfully adopted, and valid Republican State Constitution, which I took an oath to support, and did support to the best of the means placed within my power.

He then alluded to the extraordinary embarrassment in which he was placed in this portion of the defence, by the refusal of the Court to permit him to make good his justification by exhibiting the proofs of his election as Governor, and the proofs of the adoption of the *People's Constitution*, under which he had been elected, the votes given upon it having been brought here for the express purpose of authenticating it to the jury. Nor was he permitted directly, or otherwise than in incidental remarks, to maintain either to the Court or jury, the right of the People of Rhode Island, upon American principles, to form and adopt this Constitution; nor to argue any other question of law to the Court or jury than, whether treason be an offence against a State or against the United States; nor to introduce proofs of his election and of the Constitution to repel the charge of malicious and traitorous motives; nor to show by authorities that the jury are in capital cases the judges both of the law and of the fact.

It was with extreme surprise and regret that he thus found himself debarred from his true defence. The facts being thus plain before the jury, that the Defendant had on several occasions attempted to carry into effect by military force the Constitution and government of the People, and as the Chief Magistrate of the State, the jury will very naturally ask—how did all this come to pass? By what authority did the Defendant these things? The reply to your very natural inquiry is a blank. The Defendant is most anxious to proceed before you, and to establish all these rights; but he is not permitted. He must look to you to take care of them. He is in the condition of the mariner whose bark has been stript by an adverse gale, and who in directing his course to the land, can expect to reach it only with the aid of a jury-mast.

The votes that were cast for the People's Constitution are at hand. They who gave them are not far off. The acts of the People's Legislature under this Constitution can be proved in a moment. These and the unanswerable proofs that popular sovereignty is the just source of government, were what it was desired to lay directly before you. By the refusal of the Court, the Defendant feels that he has been deprived of a great right, and that justice has been denied him. Whether the doctrines on which the Republic rests be admitted here or not, they are unchangeably the same. The Defendant has no desire to retract his subscription to them.

Some ages ago a natural philosopher was accused and silenced before the Inquisition, for teaching that the earth turned on its axis. As he retired, after his forced confession to the contrary, from the presence of the officers of the justice of *that* day, he exclaimed, "still it turns;" and, in spite of all opposition of false philosophy it has turned ever since. There are other immutable doctrines, and other honest convictions which cannot be forced out of a man by any human process.

The sun will not rise, said Mr. Dorr, upon any recantation by me of the truths of '76, or of any one of the sound principles of American freedom.

The servants of a righteous cause may fail or fall in the defence of it. It may go down; but all the truth that it contains is indestructible, and will be treasured up by the great mass of our countrymen.

If I have erred in this Rhode Island question, said Mr. Dorr, I have the satisfaction of having erred with the greatest statesmen and the highest authorities, and with the great majority of the People of the United States; and I have the satisfaction also of reflecting that all errors of judgment here will be corrected by the great tribunal of public opinion, which assures to all ultimate and impartial justice.

Here the defence might end. The facts are before you. You cannot avoid the question of right imperfectly as it comes to you. But there is one remaining point, the amount and purport of the evidence. It is due to himself that the Defendant should make some further allusion to it by way of explanation of his conduct and motives during the period of affairs that has passed in review. To this subject the remainder of his remarks will be confined.

Monday Afternoon, May 6.

Mr. Dorr resumed his remarks.

It had been charged against him, that he had

originated an unnecessary movement in this State, and that it had been persevered in without good reasons. Both these charges he proposed now to consider.

It is impossible that any man should stand alone in any attempt at political reform like that which has recently taken place in Rhode Island. It is not within the compass of human ability to create a set of circumstances to suit a scheme of ambition involving any considerable change in the affairs of a State. The utmost that any individual can do, is to be present and to take a part more or less efficient in a movement originating in general causes, and affecting large portions of the People. The People of this country, and of this State, and it may be added, of the race to which we belong, are not addicted to change for the sake of change merely. It is a libel upon them to say that they are not capable of thinking and acting for themselves. In all those movements, relating to the organization and the amendment of forms of government, there are deeply laid causes beyond the control of individuals, and most frequently of remote origin and long continuance, to which the final result it to be attributed. The events of 1842 grew naturally out of a long train of evils and abuses running far back, and which require a brief consideration, in order fairly to indicate the remedy which was proposed, and to explain the conduct of those who were concerned in applying it to the existing condition of affairs. A glance at our political history will exhibit the origin of all the troubles which have of late agitated and distracted this State

Mr. Dorr said he desired to repel the imputation, which had been cast on those with whom he had acted and himself, that they commenced their undertaking with a disparagement of their ancestors, the venerable founders of our civil polity. Much had been said about the Charter government and the early institutions of the State. He then paid a tribute to the character of Roger Williams, as the founder of American Democracy, and the author of the true system of religious liberty, in its relation to the political system, and the inalienable rights of conscience and private judgment. To this illustrious man, (the greatest in the ante-revolutionary history of the country) was the Colony of Rhode Island mainly indebted for the unexampled degree of freedom here enjoyed, and for democratic institutions, to the origin of which every right minded son of this State must look with a just and honorable pride. In the heat of political controversy the sins of the royal grantor of the charter, and of those, whose mal-administration of the government under it had subsequently planted the seeds of future evils, had been laid upon the charter itself, which was in its day, and long subsequently, a monument of liberty. The charter had well done its office; and, at the period of the revolution, or as soon afterward as circumstances would permit, should have been consigned to the archives of the State, to be held in perpetual veneration for the benefits that it had bestowed. Mr. D. referred to his past addresses and appeals to freeholders and non-freeholders during the course of the controversy, from the first period of his connection with it, in proof of the statement he had made.

It was the patrimony of Roger Williams and his associates which this Colony long enjoyed. It possessed the freest government on earth, with a remote dependence on Great Britain. The result of the efforts and doctrines of Williams was the formation here of a peculiar people, in advance of the times in which they lived, jealous of their rights, fixed in their opinions, disposed to think and act for themselves, and to exercise freedom of speech without regarding personal consequences. This spirit was confirmed by the local position of the colony, with a limited domain, between two stronger neighbors, bent on aggrandizing themselves at its expense, and never relinquishing, down to the period of the adoption of the Federal Constitution, the design of annexing it to their respective territories. The way of our fathers was to hear freely, discuss openly, to conceal nothing and to act without fear. They were not to be driven by authority or dictation of any kind. This old fashioned spirit, it is to be regretted, has been depressed by recent events; but, let it be hoped, not beyond the possibility of ultimate recovery.

This originally free Democratic government passed through a period of degeneration, from which it has of late been partially restored It is now 120 years since the first definite landed qualification of voters was established by law. It was at first a qualification for suffrage; it became at length a limitation of suffrage, and a badge of exclusion from political rights. Nearly all the adult inhabitants, were at first, as now, among the western settlements, the owners of land. This landed qualification may have been justified at the time by the State policy, of resisting undue influences from abroad, through a requisition upon all, who came to incorporate themselves with the colonists, that before they became a part of the political body, that they should identify themselves with the population by this visible sign of adhesion and permanent residence. But such a policy has long ceased to exist; and through the property restriction, as this qualification at length became, the government of the State was transformed into a landed oligarchy.

Up to the period of the revolution, when the population was about three-fifths of its present number, there were no complaints. But with the increase of population they were manifested; and, through neglect, were deepened into a strong disaffection toward the existing order of the State.

A committee consisting of the Governor and other distinguished individuals, was appointed, at the breaking out of the revolution of 1776, to inquire what changes in the government were requisite to adapt it to the new order of things. But the committee made no report. The subject was again revived about the period of 1799, without a result. In 1811 a bill, (drafted by the present District Judge,) to extend suffrage to all persons paying taxes and performing military duty, was passed by the Senate and was laid on the table in the House of Representatives. A bill of halt a dozen lines would at any time have accomplished the desired end, and have prevented all the subsequent difficulties. In 1819 the defects in the State government were again brought

under consideration, principally as connected with the grossly unequal representation in the lower House; the county of Providence, in its ratable property, being liable, through direct taxation, to the principal burdens of the State, while it was entitled to a disproportionate force in the body by which they were imposed. [Mr. Dorr here read an eloquent passage from the political writings, in the year 1820, of the late lamented James D. Knowles, in which the consequences of this unwise delay of a political reform of the State were strongly pointed out, and the necessity which might occur to the People of taking the matter into their own hands, as an ultimate resort, for the redress of grievances, was clearly predicted.]

In 1824 a freeholders' Convention was held for the formation of a State Constitution, which was rejected. A proposition made in this body to extend suffrage beyond the landed qualification received three votes. The next attempt to obtain an extension of suffrage was commenced in 1829, by the non-freeholders, whose memorials to the General Assembly were treated with contumely in the report of a committee of the House, which described them as unworthy of any serious consideration. In 1834 the attention of the freeholders was again called to the restricted condition of suffrage in the State. In that year the Defendant was elected a representative from Providence, as the advocate of political reform, and of a Republican State Constitution; and should his political life be now brought to a close, as one of the results of this protracted contest, it will end as it began, in the just cause of the disfranchised inhabitants claiming their due share of the birthright of American citizens. The Constitutional party of freeholders, which was this year formed, received but little encouragement, and expired after an ineffectual struggle of nearly four years.

The condition of things brought to the consideration of the legislature was hardly to be paralleled in any of the States. A majority of the House of Representatives in this body was chosen to represent less than one-third of the inhabitants of the State; and the electors of these representatives were about a third of the adult male population in the towns that sent them, so that the conjoint operation of unequal representation and of limited suffrage was to vest all the political power of the State in about one-ninth part of the resident citizens of the U. States in Rhode Island; an inequality too unjust and oppressive to be much longer tolerated in the land of Roger Williams, so long as there survived among the People any portion of the ancient spirit of the State.

A freeholders' Convention was again called in 1834, in which, as a member from Providence, the Defendant, as he had before done in the legislature, urged upon his associates the immediate duty and expediency of redressing the political inequality of the State, through the forms of law. A proposition made by him for the extension of suffrage, received but seven votes; and the Convention dissolved without proposing any Constitution to the freemen.

The natural conclusion, from this brief view of the facts, in the mind of every man of ordinary intelligence and candor, will be that the responsibility for all consequences is on the heads of those who have so long denied, or have exerted themselves to defeat the just rights of the People of this State. And every one will see at a glance the futility of the attempt to ascribe to the dissatisfaction, or to the ambition of any individual, or a few individuals, the rising up of the men of Rhode Island, under a sense of common wrongs, for the final attainment of just and equal rights.

It was in vain, on the part of those who undervalue the right of suffrage, and who flatter themselves with the ability to govern others better than they can govern themselves, to repel the non-freeholders with the answer that they were better off under the protection of the landed system. While the British subjects claim to be well governed, it is the birthright and glory of American citizens to govern themselves. The right of suffrage is the guardian of civil liberty. The only security for just and impartial and beneficent legislation is in the universal right to participate in choosing those who make and administer the laws. The non-freeholder, who was worthy to be counted among the represented population, felt himself equally worthy to vote for the representative himself. He came to this conclusion from a just estimate of his own character; of his worth and natural equality as a man; of his proportionate contribution to the support of the public burdens, State and national; of his productive industry in creating the common wealth, and contributing to the common welfare of the State; from a view of the free institutions of other States, by which he was constantly reminded of his own privations, and which held up before him rights, from which he felt himself to be debarred by no natural mark of inferiority or incapacity, but by the arbitrary and selfish exclusion of men no better than himself.

The result of this long denial of justice was the creation of two distinct classes of citizens, the People at large, claiming, by virtue of the revolution, the sovereignty of the State, and the qualified freemen, who possessed and exercised the political power, and governed the rest, according to their will and pleasure. And this state of things, always dangerous to the tranquility of a country where all are professedly equal, led to a collision between the two classes, and to the events of 1841–2

The next and final attempt to obtain their rights was begun by the non-freeholders in 1840, through the general organization of a political party. With its proceedings you are already acquainted. The non-freeholders were excluded, as they always had been, from any participation in the choice of delegates to the Convention, to frame a Constitution, which was called by the General Assembly, in January, 1841. They knew from experience what was to be expected from such Conventions. But before they proceeded to assert their own rights, they looked once more to the legislature for a concession to their reasonable claims. At the subsequent May session a bill was presented to the House of Representatives by Mr. Atwell, which was drawn by the Defendant, and which provided that the citizens generally should be authorized to vote for the delegates to the Convention. At the June

session it was amended of his own motion, by the member who had introduced it, so as to confine that temporary extension to tax payers only; a proposition which received but ten votes.

The door was thus closed upon the non-freeholders of the State; and they turned away from the existing government with the entire conviction that the time had now arrived to redress their own grievances through that power which is the superior of all others. They called a popular Convention on a free basis. That Convention framed a Republican Constitution, which, three months before the rejection of that of the landholders' Convention, was adopted and ratified by the votes of a vast majority of the whole People. This would have been demonstrated to you, if the Court had permitted the votes, which have been brought here for the purpose, to be presented for your examination, as the Defendant most earnestly desired. Under this Constitution the Defendant was duly elected to the office of Governor of the State; a fact which he is debarred from proving by the prohibition of the Court. In the name and by the authority of those, who are the true source of power, he has acted in the capacity to which he was assigned, not to do his own will but the will of the People of this State. This is his true and sufficient defence.

Mr. Dorr then passed to the remaining topic, the manner in which his duty had been discharged, in connection with the question of motives; giving an outline of affairs relating to the organization of the People's government, and of the subsequent proceedings.

The Defendant was nominated for Governor shortly before the publication of the letter of President Tyler, in which he threatened his intervention in the political affairs of the State. The Defendant accepted the nomination, though his means did not warrant him in so doing, at the urgent request of political friends, after three others, one of them connected with the opposite political party in general politics, had declined it, and it had become apparent, that unless the Defendant accepted there would be no candidate, and an organization under the Constitution might be defeated. This he would not suffer to occur, if he could prevent it. As chairman of the State Committee, he would not see the Constitution die in his hands. He did not seek the nomination, nor did he decline it, when the absolute necessity had arisen, nor shrink from any duty or responsibility connected with the office. He was elected by the People. At the appointed time the General Assembly was convened; and was attended by a military escort to the place of meeting. It is unnecessary to repeat the proceedings of that body, many of which have been detailed to you. By a remarkable oversight they permitmitted the judiciary to remain unchanged.

Upon a proposition, made in the House of Representatives, to instruct the Sheriff to take possession of the State House, for the use of the Assembly, there was a division of opinion; three-fourths of the members being opposed to such a step, and in favor of a simple request only for the opening of the building. This ill-judged omission was of fatal consequences. The day was thus lost, and ultimately the cause itself, through the vacillating and retreating disposition of its friends. They held, on that day, every thing in their own hands. All might then have been accomplished without loss or injury to any one.

My views to the contrary of the course then adopted, said Mr. Dorr, are well known to you and to my fellow citizens. I have been accused of dictating to others the conduct of our affairs. If this had been the case, and it had been in my power to enforce an implicit compliance on their part, it is not a little singular that, at this most important crisis, my associates should have sacrificed my judgment to their own. Believing that a government on paper was no government at all, I desired to see it put immediately into action, by taking possession of the public property, and bringing the whole case to a practical issue at once. This was my opinion, desire and advice. They yielded to other feelings and opinions, dreading also the interference of the National Executive. The first and best opportunity was suffered to pass by. The cause declined and died. Had the Legislature been disposed on that day to avail themselves of that "tide in the affairs of men, which, taken at the flood leads on to fortune," the People's government would have gone fully into operation and the State would have peaceably acquiesced. But although the Legislature did not incline to active measures at this time, they nevertheless, very near the close of the session, passed a resolution, requiring all persons having possession of any of the public property to surrender it to their successors in office; leaving to the Defendant, as Governor, the responsibility of carrying this act into effect, under his oath of office to execute the laws.

The time of the Defendant was occupied with the signing of commissions and with the other business of the Executive, until he left for Washington, at the request of a number of his friends, and of a large public meeting, held by the Suffrage Association in Providence. The object of this visit to Washington, was to make a true representation of our affairs to the President, and to avert his intervention to suppress the rights of the People. No favorable result was obtained nor attained.

The Defendant remained some days on his return at New York, and conferred with friends in that city, upon one special subject, by which he had been mainly induced to leave Providence, at this interesting period of events. He referred to obtaining assistance of men from abroad to repel this threatened interference of the President; which he and others believed to be unconstitutional, and a most unjustifiable outrage on the rights of the People of Rhode Island. He addressed the democratic citizens of that place at Tammany Hall; stating to them most explicitly the sole ground on which they were called upon to act, not as intermeddlers between two political parties in a State, but only in the case distinctly proposed, freely avowing that, if the People of Rhode Island, when left to themselves, without the interference of the United States, were not capable of maintaining their own rights, they did not deserve to be free. The appeal was cheerfully responded to. The answer was the outburst of warm and generous hearts, devoted to

the great cause of popular rights. Five thousand, nay, almost any number were disposed to pour themselves out to arrest this great injustice now threatened to the more numerous party in Rhode Island by throwing into the opposite scale the military forces of the United States.

The Defendant then alluded to his interview at New York with Major Wm. G. McNeill, who had stated here in his testimony, that Defendant had, in a half jesting way, offered to him the command of his men, and who, as Defendant supposed, was friendly to the Suffrage cause. The comments on Mr. Pearce's testimony, which fell from McNeill, had been occasioned by a misapprehension by Mr. Pearce of Defendant's conversation with him. Defendant did not say that at Chepachet he had been a few days before advising with McNeill respecting military affairs. Defendant meant to be understood that he had seen this gentleman not a long time before, alluding to this meeting in the city of New York. Defendant had never seen him since, nor had any correspondence with him during the recent difficulties, nor had he any reason to suppose that he had not been faithful to the Charter government; though Defendant was surprised to hear of his appointment as the Charter General, having supposed him to be favorable to the other side.

Mr. Dorr then passed to the public meeting on Federal Hill, upon the day of his return to Providence. The reason of his producing a number of witnesses, who stood very near him, when he made his address on that occasion, was to refute the testimony which had been given by two political opponents, respecting "the sword dyed in blood," an expression which they had attributed to him. This testimony was not founded in fact and had been clearly and sufficiently contradicted. The object evidently was to hold up the Defendant as blood-thirsty and desiring destruction for its own sake—a representation which would not be readily credited by those who were acquainted with him.

The Defendant alluded to the taking of the cannon of the Artillery Company, on the afternoon of the 17th of May, as having been done by his order, and with the consent of the company themselves.

Affairs had now arrived at that point, where the Defendent must either surrender to the Charter government who aimed at his arrest, resign his office, or enforce the laws under the government of the People. The defendent had no disposition to abandon the cause, while there was any ground to stand upon. He could not retire from the contest, believing himself to be on the just side of it, and encouraged by the voice of the citizens, who had so often and unequivocally avowed their intention and readiness to support the government, whenever they should be called upon. Not to have proceeded would have been to incur imputations which no honorable man would suffer to rest upon him.

The time had now come to carry the laws into effect. The Assembly had directed that all the public property should be delivered up. This resolution had not been complied with. It was of great importance that the arms of the State should be recovered from the opposing government, which had rightfully ceased to exist. After consultation with the military officers present at a meeting in the evening of the 17th of May, the defendent ordered that a movement should be made to gain possession of the Arsenal in Providence, where these arms were deposited. A force of 234 men proceeded to execute this purpose, not far from two o'clock on the morning of the 18th May; first repeating the demand, which had been already made by the General Assembly, for the surrender of this portion of the public property.

Mr. Dorr then described the proceedings at the Arsenal, after a demand for its surrender had been made and refused; the placing of the men and pieces in position; the change of position in consequence of the darkness, occasioned by a dense fog, which had come up after the force had been put in motion for the Arsenal ground; the detachment of a body of men to lie very near to the building, to carry it by assault, so soon as the door should be opened to return the first fire of the artillery without; the order to fire; the flashing of the pieces, which were rendered unserviceable by dampness or water, and could not be discharged; the immediate disorganization and retreat of the men without orders; the withdrawal of the pieces, and the return of the defendent after daylight, with the last of the men, about thirty in number, to head quarters at Anthony's house.

The statement that the defendent had attempted to fire one of the artillery pieces was not true. The tendency, if not the intention, of this story, was to show a development of destructiveness on the part of the defendent, which could not entrust to subordinates the performance of duties, which they were ready and more competent to discharge. The defendent did not that night wave a torch, or apply it to either of the guns A commander may be placed in a position where it devolves upon him to do the work of others. No such necessity there occurred. The defendent gave the order to fire the pieces. The whole responsibility rests on him.

The defendent then further proceeded to describe the occurrences of the morning of the 18th; the return to Anthony's house of only sixty men; the appointment of new officers; the preparation to maintain the ground; the firing of the signal guns at 7 o'clock without the return of more men; the receipt of a letter from several members of the Legislature in Providence, stating that the members in the city had resigned their places, and that all support was withdrawn from the Governor; the report to defendent of the commanding officer that the men who had remained were leaving; the alternatives of a surrender or a retreat; the order to the commanding officer to fall back with those who were left, and to dismiss them in his discretion; the departure of defendent at half past eight o'clo k; the arrival of the Charter forces, 600 to 800 in number, from one to two hours afterward in the forenoon; the conduct of the 27 Suffrage men who fell back with the pieces and kept them; the pretended "compromise" with which defendent had, and could have nothing to do, the suggestion to compromise a Constitution bearing absurdity on its face.

Defendent said that if a rally had taken place

in Providence, after he left on the 18th, it was his intention to return.

Defendent went directly to the city of New York, where he remained till the 21st of June, when he left that place for Norwich in the State of Connecticut.

It will here be asked, why, after so unpromising a result, and such a failure of support, any further attempt was not abandoned as impracticable and hopeless, and the defendent did not regard himself as discharged from any farther obligation to the cause and the government, which he had thus ineffectually endeavored to carry into effect. The reply is that rights and duties are not to be measured by degrees of success or failure. The cause was the same; the obligations resting upon the commander-in-chief were not relieved by any events which had as yet occurred. The Constitution was valid and subsisting. The People could abandon it by their votes or by their acts. They had done neither. This misadventure in the city of Providence was attributed to unforeseen circumstances, to accident, to the want of a more general notice in the country towns for a general rally at the head quarters of the State, to a temporary panic in the city, to the pusillanimity of leading friends of the cause in that place, from whom better things were expected, and whose hearts had failed them in the moment of trial. Encouraging reports and statements were received by the defendent, through letters and by visitors, from various parts of the State, all indicating an earnest desire to retrieve the late disaster, to regain the position that had been lost, and to carry into complete effect the Constitution and government of the People. A second opportunity, he was assured, would not be lost upon the defenders of the common cause, whom defeat had aroused to new exertions. Favorable expectations were entertained by them from the transfer of the Legislature to the country from the city; and which would have the effect of drawing together a great body of men for its protection, and to overcome resistence to its laws. The quotas of men in the several towns, including Providence, who were pledged to support the defendent, whenever he should call upon them, amounted to thirteen hundred.

It was my duty, said Mr. Dorr, to give the People another opportunity to sustain their government; and if it had not been given, the loss of the cause and the death of the Constitution would have been laid at my door and by many who had promised to stand by them to the last. No such charge now rests upon me or can impeach my memory.

I left New York, said Mr. Dorr, with the general intention of carrying into effect the government under the People's Constitution, but not without a proper consultation as to the time and manner of proceeding.

The defendent reached Norwich on the 22d of June, and sent an order to Glocester to convene a council of military officers, who were to consult whether any steps could now be taken, and, if so, what. If they should deem it expedient to select a spot of ground for defence, they were cautioned to find a position that was tenable. No council was held. A precipitate gathering of men took place at Chepachet, without orders, on the 23d. The capture of Shelley and his associates gave the first impulse. They were supposed to be the scouts of an attacking party on the village of Chepachet. When Col. Comstock in his testimony stated that this was an "accidental meeting," he meant to be understood that it was voluntary and without command, or the specification of any definite object beyond the present protection of the place.

Having been informed that 500 men in arms were already thus assembled at Chepachet, the Defendant set out and arrived there on the morning of the 25th of June. He forthwith issued a proclamation to convene the Legislature at that place, instead of Providence, on the 4th of July. He also issued, and repeated, special written orders to the military in all the towns of the county of Providence, and as much farther as practicable, to repair to head quarters, and support the government of the State, against all oppositions, present or intended. Ample notice was given to a large majority of the friends of the Constitution of the exigency which now required their services; and those who had pledged themselves to respond to the call of their commander, had now the desired opportunity to manifest the sincerity of their professions, and the reality of their devotion to the cause of the People.

The appearance of things on his arrival was to the Defendant justly the occasion of surprise and disappointment. A slight breastwork was found thrown up on two of the sides of a hill, which was commanded by several other heights. There were then about 140 persons in arms. On Saturday afternoon an order was given on the hill by Defendant to count all the armed men; and the return consisted of one hundred and eighty or ninety; some thirty of whom shortly after left the ground and returned to their homes. It was a volunteer movement. None were forced into the ranks, and, until Monday the 27th, all were at liberty to depart as freely as they came. On that day all who took up arms were required to retain them, and to submit to the usual discipline of the camp.

Of the large number of spectators from various quarters, few remained to share the fortunes of the field with those who occupied Acote's Hill. Their curiosity was satisfied and they departed. Of the 400 to 600 who were pledged in the city of Providence, 35 men and 10 officers arrived at the camp. The greatest number of the military at any one time, during the affair at Chepachet including all in the place who were under arms, and subject to orders, was about 225. This was the average statement also of all the witnesses who were in the best position to know; and you have heard their testimony. Among them are the Colonel in command, the acting Adjutant General, one of the Aids of the Commander-in-chief, and several spectators who visited the hill. and who took no part in the transactions of the time.

The Defendant alluded to the perversion by political malice of some of the expressions in an address to the troops; to the thirteen "Spartans," as they were called, from New York, (whose numbers and designs were so much magnified at the

time by opponents for political effect,) as a company of mechanics, whose leader was an engraver, and a man of remarkable abilities; to the capture of Mr. Knight as a spy, from whom it is now first heard that he was fired upon before his capture by one of the guards; to the national flag under which the men were assembled; to the defective supply of provisions, sufficient only for a few days, and received by contribution, or purchased with means collected on the ground; to the want of balls for the artillery, there being only enough for an engagement of about fifteen minutes; to the means for carrying on a campaign, which were too small to be named, the reliance being on the prompt action of the great mass who voted for the People's Constitution; to the temperance which was maintained by closing, and keeping closed, at Defendant's request, the bar of the public house; to the respect paid to private property, which was enjoined on all by the commander-in-chief.

With regard to the design to take the city of Providence, of which so much has been said, all that could have been implied in it was to seat the Legislature in the House which was appropriated to them, to defend them there; to place the public officers where they belonged, and to sustain them and the government generally by all necessary means. But there was nothing in the condition of affairs at Chepachet to suggest this step, and no such plan was ever suggested among the officers, whatever might have been the wishes or the words of individuals. Of course there was no proposit on for occupying the College buildings in Providence as barracks; though they were tendered by the President of that institution to the Charter troops, and occupied for this purpose. All the surmises of an intention on the part of the Suffrage forces, to enter Providence, with the watchword of "beauty and the banks," and to invade the property and the homes of the citizens, were the base inventions of the enemy.

The Defendant pointed the jury with feelings of just pride, to the general appearance of the "men of Chepachet" who had been summoned here as witnesses, it the jury were desirous of seeing what description of persons they were, who took up and retained arms for the Constitution and rights of the People. It appears from the testimony that these brave and true hearted men were, for the most part, hard handed farmers and mechanics already possessed of suffrage themselves and coming forth to contend for the rights of their unfranchised fellow citizens, who chose to stay at home. Let no reproaches be cast on these men, said Mr. D. Let them rather fall on me, in whatever form, or whatever pretence, rather than on the associates, who so nobly responded to the call of duty, in the discharge of which they were ready to sacrifice their lives. They were not only, with the vast odds against them, ready to defend their post, but to meet their opposers half way, upon the road. When the rumor of an approaching forch reached them they stood at their quarters, to return with interest whatever they might receive. However it might now be the fashion to disparage the men of Chepachet the time was not distant, when a general public opinion would attribute to their agency all the political liberty that is now possessed in Rhode Island. It is a fact, that may be denied, but which is fully sustained by evidence, that the bill to call a Convention to frame a Constitu ion was not introduced and passed in the charter Legislature of 1842, until the Legislature had become satisfied, that an actual gathering of men in arms had taken place at Chepachet. The shield of their attack upon one Constitution was the promise to substitute another.

The Defendant then referred to the mortifying but indisputable evidence, presented to himself and his associates, that the People of the State had ceased to desire that their government should be defended and carried into effect. They had been called like "spirits from the vasty deep," but they did not come. No attention had been paid to the military orders sent to the towns. We were not supported by the People. We had assembled at Chepachet not as a faction, to contend for our own special interests, but for the common welfare. We were not only abandoned by our party men, but remonstrated with, denounced and condemned by them. They were even taking up arms against us. We were reduced to the necessity of fighting both our friends and our enemies. The will of the People thus manifested was obeyed, and we ceased to contend.

The Defendant then went on to describe the call and proceedings of the council of military officers, and their deliberations on the course which it was most proper to pursue. The Defendant laid before them the state of affairs, and his own opinion that it was impracticable for them, of themselves, and in the midst of a general desertion, to maintain the position which they had assumed. The conclusion of the council was that duty required us to disband. The order to this effect was approved by the separate voice of the members. It was communicated to the men in camp by the general commanding, between six and seven o'clock in the afternoon of June 27th. As it had not been discussed among the men, it may have occasioned surprise and dissatisfaction with some who were not aware of all the facts. But the feeling was momentary. And we separated though with bitter regrets, yet with the conviction, that our duty had been fully discharged, to ourselves and to the cause. - The order to disband was given when no enemy was near, and it could be issued and obeyed without dishonor. The charter forces did not present themselves in the village of Chepachet till the next day, 13 hours after the disbandment; and then they would have found no trophies, had the order to dismantle the hill been complied with.

A letter containing the order to disband was forthwith communicated to Mr. Burges, a friend in Providence, for publication in the Express, the paper of the suffrage party; but the order was intercepted in Providence, de ivered to Mr. B., read by him in the presence of the captors, and shortly after, in the same evening, before the Governor and several of his council, and the commanding General McNeill; all of whom were thus early informed that they had no enemies to contend with, and were able to govern their future movements accordingly.

The Defendant left Chepachet about an hour after the disbandment had taken place, at a quar-

ter before 8, in company with Col. Carter, one of his aids.

Thus ended all attempts to carry into effect the government set up under the Constitution of the People. It was abandoned by those who had most solemnly resolved to maintain it by all necessary means, and who had given to the Defendant the assurance of their prompt and unfailing support, whenever it should be called for. He retired from the field conquered, not by his enemies, but by his friends.

Defendant then proceeded to speak of his motives in returning to this State. He had intended to do so before the revocation of martial law; and aware of the consequences, but not at liberty, in the view of honorable considerations, or desiring to avoid them, he addressed a letter to some of his friends in Providence, early in August 1842, to ask them if any duty in their political service remained undischarged; and if they had any further claims upon him. The reply was, that his personal liberty was still of value to them, and that he might serve their cause by preserving that liberty, and prolonging his absence from the State; while they were exerting themselves to retrieve their losses and save themselves by the power of the ballot box. But this instrument the suffrage men of Rhode Island seemed to hesitate in employing at the vitally important election of April, 1843, as they had before hesitated to employ the cartridge box, when force had become indispensable to the safety of their cause. Through desertions they were overthrown at this election. The Defendant's resolution was immediately taken to return to the State; and his return was deferred to the month of October, only by his private concerns and by bodily illness. He returned here not in the spirit of defiance, or courting persecution, but as a Rhode Island man who had a right to be here, who desired or sought no domicil abroad, and was unshaken by defeat in the avowal of the doctrines of liberty, which he had ineffectually attempted to reassert in the land of Roger Williams. The return of the Defendant was voluntary and free. He was not forced back by the efficacy of rewards promised his captors, or by any compliance abroad with the requisition of this State, in a case when no wrong was deemed to have been committed. The consequence of having thus obeyed, by his return, a sense of honor and duty, is attested to you by the proceedings which have now so long occupied your attention.

Mr. Dorr enforced upon the jury the conclusion, which fairly and unavoidably resulted from this rapid survey of the course of action which he had pursued; that as the rightfully elected Chief Magistrate of the State, he had acted strictly in conformity with his duty and obligations, not omitting on the one hand what the Constitution and laws required of him, or exceeding on the other the bounds of authority in the adoption of measures, which the necessity of his position required; not inviting other men into dangers which he was not ready to share with them, not drawing the sword for mere destruction, but in the support and defence of the government, which had been intrusted to his charge. The jury were thus brought back again to the great and vital question of the case, a question of rights and of principles, affecting not merely the fortunes of the Defendant, but the liberty of the People, and reaching to the foundation of our republican institutions.

But he had already trespassed upon their time and would hasten to the close of his remarks.

Gentlemen, said Mr. Dorr, if I am in the right as I then believed, and now believe with an unshaken confidence—in the truths for which I have contended in this State, then the blame, if any, is not that I served too well, but that I did not serve still better in this righteous cause. Claiming no exemption from the frailties of our common humanity, but at the same time, conscious of having been animated by good motives in the pursuit of justifiable and honorable ends, I commit my cause into your hands, with a just hope of your favorable consideration, and with a firm confidence in the final verdict of my countrymen.

CLOSING ARGUMENT FOR THE STATE;

By JOSEPH M. BLAKE, (Att. General.)

Mr. B. began by remarking, that there had been introduced such a mass of testimony in the case, so many motions made, and enquiries started, with which the *jury* had nothing to do, that he feared they might lose sight of the true question; and the only one they had to decide—whether in fact the Deft. levied war against the State, as alleged in the indictment. He said, there were many subjects intimately connected with the crime for which the Deft. was on trial, about which great diversity of opinion had been entertained; and which, on a proper occasion, were worthy of serious discussion; but that on the trial of the issue before them, the jury were not required or expected to give any opinion.

Mr. B. then went on to enumerate some of them, such as, whether a majority of the male adults of the State, actually voted for the *so called* People's Constitution; and if they did, whether they *intended* anything more than a simple expression of opinion in favor of a written Constitution for the State; how far *suffrage* should be extended; and what *residence* should be required as a qualification; whether a *majority* of the People of a State, without the assent of the *minority*, and without an authority *by law*, have a natural right, at their pleasure to change a government founded on compact, and declare and make such new government binding on all. With all these, however important, and greatly as they had been agitated during the late disturbances, the jury were not to meddle; all evidence on those points having been ruled out by the Court, leaving them only to decide, whether the Deft. had levied war against the State. If he did so levy war, then he was guilty of treason—the highest crime known to the law. That it embraced or led to all other crimes—murder, rape, robbery and the whole

catalogue of human trangressions. That it aimed at the sovereignty of the State, and the subversion of all government. That no attempt at revolution can, by any government, be admitted as legal. That there could be no ranker absurdity than a *legal* or *constitutional* rebellion. That the *success* of rebellion gave it its legality. That in despotic governments, attempts at revolution were often morally right and patriotic, even when unsuccessful; because, in them, there might be no other available mode of redress of grievances; and justifiable, as in the language of the Declaration of Independence, when government becomes destructive of the true ends of government—the security of life, liberty and the pursuit of happiness—and when *all* other means of redress have been resorted to perseveringly, in good faith, *and failed*. In no case can such an attempt be justified, unless the change would promote the general good—or unless the *means* are obviously adequate to the *end*. Bad government is better than none—and no condition of a people can, from oppression, be so bad, as not to be made worse, by frequent insurrections and civil war.

Mr. Blake, next spoke in terms of commendation of the principles of Rhode Island government, as securing the people from oppression, and of its correcting itself through the force of public opinion; and instanced the existing State Constitution, made and adopted by the Freeholders liberally extending and securing the right of suffrage.

He, (Mr. B.) next took up the history of the suffrage cause in this State, in reply to the remarks of the prisoner. He denied that there was any evidence that the Legislature had at any time refused to conform to what they *knew* or *believed* to be the wish of a majority of the People upon this subject. That prior to 1841 there never had been a majority in favor of a written Constitution:—he stated that even a small party in its favor, could keep up its organization, but for short times:—and that the Prisoner himself, after he had been instrumental in that organization, had once been a candidate for Congress, without making that a test question, or placing his pretentions to support on that ground:—that he was run as a Democrat merely, and on that principle received the support of the Democratic party.

He then proceeded to a review of the Legislative proceedings upon the petition of Elisha Dillingham and others, presented in January 1841, praying for an extension of suffrage; stating that the General Assembly promptly responded thereto, by calling a Convention to frame a Constitution; and went on in attempting to shew, that the object was defeated by a few scheming politicians, and by creating an excitement, to restore the ascendency in power, to the defeated Democratic party of the State, by taking exception to the mode in which the Delegates to the Convention were, by the act of the Assembly, to be elected, and by thwarting in every thing the action of the General Assembly.

After disposing in his own way of this part of the subject, he went on to a consideration of the connexion subsisting between the general and State governments, attempting to shew the great superiority of the American, over all other forms of government, and the confidence felt in the stability of the former, derived from the general diffusion of intelligence among the people—their unlimited confidence in public opinion as a corrective—and in their reverence for the laws until changed in conformity to law.

"But, (said Mr. B.) the sages who founded our institutions were fully aware of the danger, and with the wisest forecast provided against it. And constructed as our national government is, and as our State Governments are, and connected together as they are, we have a more effectual safeguard against revolution, than is possessed, or ever was possessed, by any other nation on earth. We look to the Federal Government to regulate our intercourse, with foreign nations, and to protect us against foreign aggression; but it is not a more effectual defense against assaults from without, than against domestic faction and insurrection. The states are sovereign within their spheres, but all are intimately connected together. The sovereignty of one cannot be affected, without affecting the sovereignty of all. No one of them can be stricken from its orbit, without disturbing, if not destroying the whole system."

"By the federal Constitution, the United States are to guaranty to the several states the republican forms of government *existing when the constitution was adopted*, and protect them against domestic violence. The State governments being thus protected by the General Government, it is hardly possible that a faction can ultimately prevail by force in any of the States." From these premises Mr. B. argued that no successful *rebellion* or *revolution* could ever occur in this country—however it might originate or however widely spread, until a great majority of the people of a majority of all the States shall become infatuated for the horrors of war, rather than resort to the peaceful remedy of the ballot box.

Mr. B. next proceeded to say, that the Deft. was aware that the United States would be bound upon application of the Governor or the Legislature, to protect the State against domestic violence; and intended to call in forces from other States to resist the power of the general government and commit Treason against the United States also: and insisted that admitting the extent of the grievances to have been such as would justify revolution, still, he had no *right* to resort to arms, unless he had adequate means to insure success, or strong reason for believing so. That with all the aid derived from the *sympathizers* at the Pewter Mug and Tammany Hall, New-York, his whole force either at Federal Hill or Chepachet, was but 300 or 400 men! This was the extent of his means, and with them he commenced a revolution of this State and the United States. "But, (said Mr. B.) *the prompt action of our own authorities, and of our own citizens rendered the interposition of the power of the general government unnecessary.* Rhode Island proved able to take care of herself. The spirit that was with her early citizens in their struggle for regulated liberty, is still alive, and her sons still possess hearts to cherish, and arms vigorous to defend her institutions, against assaults from within or without!!

[At this point Mr B. intimated to the Court, that he proposed now to consider the question which had been previously argued to them by the Prisoner's counsel and himself, viz: whether *Treason* can be committed against an individual State.

Durfee Ch. Jus.—It is unnecessary for you Mr. Attorney to take up any time on that point. The Court are unanimous in opinion on that point.

Mr. Blake.—Since then, gentlemen of the jury, the Court deem it unnecessary for me to say anything on that subject, we may well take it for granted, that treason may be committed against a State. That levying war against a State is not necessarily treason against the United States, but is treason against the State. There is no dispute as to what is levying war. "An assemblage of men for the purpose of making war against the government, and in a condition to make it, (not to make it successfully) is levying war—is treason. Enlisting and marching men, are sufficient overt acts, without coming to battle. If an army avowing hostility to the government, should march and countermarch before the enemy, and then disperse, without firing a gun, it would be levying war." Mr. B. said he had intended to go into an examination of the testimony, but the Deft. had admitted the facts, and he did not know that he might not with safety have asked for a verdict against him, *as upon a confession made in open Court.* It was, however, he said, proved and admitted, that the Deft. collected forces, commissioned officers, and directed the troops as their commander, in May at Providence, and in June at Chepachet—that he attempted to take the public property, and ordered the guns to be fired upon those who defended it—that the troops under his command took prisoners of war, and conducted in all respects like a hostile army.—That the object of all these movements was to overthrow the existing government and to establish another in its stead. That the whole case was made out. But it is contended (said Mr. B.) that in all these proceedings, the *motives* of the Deft. were pure and patriotic, and not traitorous. You can judge of a man's motives only by his acts. There is no process for seeing the workings of the heart, by which to determine the secret springs of action. The Deft. says he did not intend to commit treason. But he intentionally levied war against the State, and the law makes *that* treason, whatever else he might have intended. The law affixes the intent to the act. A man who should *burn* his neighbor's dwelling, might as well set up in defence that he did not intend it should be *arson.* A man accused of *theft*, might have a good defense on the ground that he took the goods by *mistake;* but it would hardly do for him at this day, to admit the intentional taking, and contend that he did not intend to commit theft, for the owner was rich, and he sincerely believed a more equal distribution of property would promote the public welfare. I suppose (said Mr. B.) there never was a *rebellion,* in which some of the parties implicated did not believe their conduct justifiable; *but a jury cannot consider that question.* The pardoning power may; Juries and Courts must be governed by the law and the evidence. Did the Deft. levy war? is the only question you have to answer by your verdict; and there is no way for avoiding the question, for the facts are all proved and admitted. He has given you a history of his arraying troops, of the attack upon the arsenal, of his leaving the State, of his encampment at Chepachet, and his plan of attacking the forces of the United States. Is it not astonishing that a man of intelligence, in a country like this, more blessed in her political institutions than was ever any other country on earth, should openly admit his intention to overturn the government of his native State by civil war, and carry on the war, if need be for the attainment of his purposes, against the United States, and detail the particulars of the whole affair, as though it were a matter of every day occurrence, and as coolly, and with as little emotion, as he would detail the progress of a negotiation for merchandise, or any other business transaction! He would even arraign the Counsel who opened for the Government, and place him on the defensive, because he characterized the treasonable acts of the Deft. as they are characterized by law. He would have had him concede that in his attempts to shoot down his fellow citizens, his motives were most honorable and disinterested, and for aught I know most *benevolent* and *christian.*"

Mr. B. proceeded to say, that no small portion of the Defts. testimony was irrelevant to the issue the jury were trying; but intended for effect out of Court; that although he well might, he did not object to its introduction;—yet that on the part of the Government, none had been offered, which had not a direct bearing on the question before the Jury. Such matters as had been thus thrown into the case by way of embellishments he should not stop to discuss; but merely allude to some portion of the testimony in justice to some of the witnesses whose credibility was impeached.

[Here Mr. Blake at some length attempted to sustain the testimony of Mr. Orson Moffatt, but offered no additional light on the subject; by the time he concluded the topic it was quite dark, and the Court took a recess until half past 8 o'clock P. M. at which time Mr. B. continued his argument as follows:]

Mr. Blake next commented on the testimony of Col. W. P. Blodget and E H. Hazard, that they without doubt heard what they swore, although none of the Deft's. witnesses should have heard the same, they might also have sworn to expressions used by the prisoner, which neither Blodget nor Hazard could recollect; and that the character of the two government witnesses were too well known to require any vindication.

Mr. B. next reviewed and commented on the testimony of Richard Knight, taking occasion to sneer at the prisoner for attempting to vindicate himself from the charge of the opening counsel that some portion of the troops at Chepachet were blacks—and because the attempt was made arguing that the prisoner did not admit that blacks had any *souls* or any civil or political rights.

It is contended said Mr. B. that whatever acts were done by the Deft. connected with the charges laid in the indictment, he did as the agent, in the name and for the benefit of the People, and therefore you are urged to infer the purity and patriotism of his motives. Now what *portion* of the People was he the agent of? and how many of them were in favor of civil war? There could not at that time have been in the State, less then six or seven thousand men in arms; how many of them were his followers? Why 234 at the Arsenal and 250 at Chepachet, these were for subverting the State government by a civil war and their will he was willing to regard as law and to sacrifice himself in effecting it.

His own Legislature in May would not give him countenance in using force; so, soon after he on his own responsibility resorted to it in open defiance of their will and authority, and here Mr. B. commented with some severity on the prisoner's motives, urged to it as he said by the attack made upon the council, and concluded by saying that "He (the prisoner,) may have been governed by principle; if so, it was a cold, abstract principle, a principle which petrified the heart."

The counsel for the Deft. has undertaken to ridicule the testimony of Mr. Hazard, as to the alarm, which pervaded the city of Providence on the night the Arsenal was attacked, and here Mr. B. gave the jury a highly wrought picture of the real or imaginary terrors that pervaded the city at that time, but as it did not seem to bear upon the guilt or innocence of the Deft. under the indictment, no attempt is here made to trace it

Mr. B. resumed the argument by stating that the Deft. declared he should not resort to other States for aid, unless upon a requisition the President should order U. S. Troops to support the State authorities; in that event, he did expect aid, and intended to resist the troops of the United States; and he very coolly tells you his design was in that event to commit treason as well against the United States as against this State. For such is the law as laid down by Judge Story in his charge to the Grand Jury, in this Court House, in relation to this very case.

[Here the Att Gen'l read a part of the charge found in 1st Sto. Rep. and then proceeded.]

It was the Deft's intention then, as he admits, to levy war against the U. States, at the risk of involving the whole country in all the horrors of civil war—was ever so great a work undertaken with means so disproportionately small? with so little prospect of success?—was there ever a calamity so great produced by so trifling a cause. Admitting the establishment of the People's Constitution to have been just and desirable after the question of suffrage had been conceded, I ask if the cost, of affecting it, as estimated by the Deft. himself, would not have been greater, infinitely greater, than the good sought to be obtained.

Mr. Blake next drew a picture of some of the consequences that must have been caused by such an attempt; and went on to say, that many of the original members of the *Suffrage party* when they found the Deft. intended a resort to force, deserted—denounced him, and took up arms, with the Charter Troops to oppose him; ascribing after all the bloodless issue of the contest, to the overruling care of a special Providence, that would still continue to guard and protect us.

But it is urged by the Deft. (said Mr. B.) that in trying him, you also try the 14,000 men who voted for the People's Constitution; if you were trying him for voting for the Constitution, that might be true; but you are trying him for *levying war;* and if any body else, it would be more proper to say the 200 or 300, who were with him, and willing to carry out his plans by force. You however are not trying the validity of that Constitution, or the legality of the existing government; but a naked question of fact. Did the Deft. levy war, or not? If he did, he committed treason

Mr. B. next enlarged on the duty of the jury in standing by the law, their own interest and the peace and security of the whole alike requiring it. Mr. B. conceded there *might* have been *brave* men with the Deft, but very few, and Colonel Wheeler, who ran off in the fog, he considered a good type of the *insurgents*, as he styled them, generally.

Mr. B. told the jury that all the points of law raised by the Deft. had been ruled against him by the Court, but the Deft. after a *verdict against him* could move the Court, for a *New trial* or in arrest of Judgment; or apply to the Legislature for a pardon. That if the Deft did levy war, they must find him guilty—that had nothing to do with the law, the Court would take care of that. That the Deft. himself, had confessed all the facts, and if they refused to find him guilty, it would be the severest blow which they could inflict upon the judiciary of the country—the Palladium of their rights and liberties. The Deft. says that the public will hold you responsible for the verdict you may render in this case; well be it so, gentlemen, and recollect that nothing will so brace up a man, amidst friends or foes, in the conflict of parties, as being conscious, that in trying times, regardless of consequences to himself, he had performed his duty.

Gentlemen, you are the sworn guardians of the law, in a case of momentous importance—one involving principles that reach to the very foundations of civil government; I will not doubt that you will prove true to the trust; without regard to personal, or political or party considerations, nor suffer them to deter you from a faithful performance of the obligations imposed upon you by your oaths.

The charge of the Court to the Jury, was then given by Chief Justice Durfee.

Gentlemen: In delivering the charge in this case, I shall confine myself very strictly to the notes which I have prepared for the purpose, making, however, such remarks in illustration of the general propositions which may be advanced, as may seem necessary, in order to render them more intelligible. I take this course that we may not be misunderstood here, nor misrepresented elsewhere, without having it in our power to apply a corrective. We find it necessary in this case to guard against misrepresentation, not particularly against misrepresentations made to the people of this State, who know us, but against those which may be made to the people of the United States, and perhaps to posterity. For no one wishes to disguise it, aye, let it be proclaimed to the whole world, and through all time to come, that the principle which is involved in this issue, lies at the very foundations of all our political and social institutions, and that upon your verdict does the future confidence of all considerate men in the durability and safety of our institutions depend. We have, therefore, some ambition to appear as we really are.

The constitution of this State, and the act under which this Court is organized, make it our duty to deliver to the Jury, in all cases, the law in charge — no very desirable responsibility in any case; least of all, in one that has so roused the passions and deeply stirred and agitated the popular mind; but bound from the nature of our organization as a Court, and with the oath of God upon us, we shrink from no duty, we recoil from no consequences.

In discharging this duty, (I speak not for myself merely, but for the Court,) it is of some importance to know what the duties of a Court are, and what the duties of a Jury are, for they cannot be one and the same in relation to the same case. If it be our duty to decide what the general law of the land is, it is not your duty also to decide it. If it be your duty to ascertain what the facts are, and then apply the law to the facts as you find them, it is not our duty to do the same. A judicial tribunal, which is but a growth of the wisdom of ages, is not so absurdly constituted as necessarily to bring the Court into conflict with the Jury, and the Jury in conflict with the Court; and thus to defeat all the ends of justice. If such were the state of things, we could have no law; what the Court did the Jury might undo; what the Jury did the Court might undo; and thus at the very heart of the system would be found in full operation the elements of anarchy and discord. Let us see if our duties are so jumbled together, that we, as a Court, can perform the duties of a Jury, and you, as a Jury, can perform the duties of a Court, It is the duty of this Court, and of all other Courts of common law jurisdiction, to decide upon what evidence shall pass to the Jury, and what shall not. Questions as to what is evidence and what not, will arise, and in all time it has been made the duty of the Court to decide them. It is the duty of this Court, as of all others of like jurisdiction, to decide what shall pass to the Jury as the law of the land, touching the indictment on trial, and what shall not; for questions as to what is law, and what is not law, will in like manner arise, and the law has appointed none but the Court to decide them. If it errs in its decisions, it can correct them on a motion for a new trial if the verdict be against the Prisoner; if it willfully decides wrong, its members are liable to impeachment and disgrace. When the evidence has passed to the Jury, it is their duty to scan it closely, to decide what is entitled to credit, and what not; and when they have determined what the facts are, that are proved or confessed, they apply the law which has been given them to the facts thus ascertained, and then acting as judges both of the law and the evidence, return a verdict, as to them, deciding under their oaths, may appear to be right. Here is no conflict of duties. The Jury acts in harmony with the Court, and the Court with the Jury.

Gentlemen, it has been our desire in this case, to adhere strictly to our ordinary course of ruling upon all questions that were brought before us. We were determined, if possible, to go not one hair's breadth beyond our duty, nor fall one hair's breadth short of it. In the eye of the law, all men who stand at the bar of this Court, accused of crimes, stand equal. We have no favors to deal out to the man of distinction or notoriety, which we deny to the lowly and obscure. In the eye of this Court all are equal, and while we allow them the same rights, we subject them to the same rules. We have been earnestly pressed in this case to depart from our ordinary course of ruling in criminal cases. This I attribute mainly to the want of familiarity on the part of the accused and his Counsel with our usual course of ruling here in criminal trials. We have been urged to permit them to argue questions of pure law to you, gentlemen, questions touching the jurisdiction of this Court; questions touching constitutional law; to argue over again questions which have once been solemnly decided after full argument by eminent Counsel, and which we considered closed questions, and that in the midst of a Jury trial. All these motions we have been obliged to overrule, reserving to the accused the right to be heard, should it become necessary, on a motion for a new trial. Not that we have any doubt of the correctness of our former rulings, but that we will not refuse him a hearing in the proper stage of the proceedings. And now after those rulings, the case comes to you to be decided according to the evidence which has passed to you, and the law which shall be found applicable to it.

What is the crime set forth in the indictment? It is treason against the State — the highest crime known to the law; in this State, punishable with imprisonment for life, in all others where it is named, punishable with death; and if we pass from our own to foreign lands, and particularly to that country whence we derive all our political and legal institutions, punished with death inflicted under circumstances calculated to strike the greatest terror, and to fix on the memory of the criminal the most lasting infamy. I mention this, not forgetting that many noble hearts have fallen victims to the accusation of treason under arbitrary Governments; but simply that you may estimate the universal sentiment of abhorrence with which this crime is regarded, and that you might, while you thus estimate it, feel that it is your duty to require the most satisfactory evidence that it has been committed, and that the Defendant is guilty, before you return a verdict against him on the one hand, and that you may feel on the other, the necessity of discharging with firmness and fidelity that duty which every Juror owes to his country, under the oath which he has taken; to return a verdict of guilty on legal proof of guilt. It is no less the duty of the Jury than of the Court, to secure the peace of the State, by aiding in the firm and impartial administration of the laws.

Now, the first question is, can this crime be committed against one of the States of this Union? This question can be considered wholly irrespective of this indictment, wholly irrespective of the guilt or innocence of the Prisoner. It involves no fact *in pais*. It is a question of mere constitutional law, and for the Court alone to decide. And as the organ of the Court, I say to

you, gentlemen, that wherever allegiance is due, there treason may be committed. Allegiance is due to a State, and treason may be committed against a State of this Union. The Defendant and his Counsel have gone into an argument to show where the sovereign power is, and that it is in the people of the United States considered in their primary or natural capacity, and that it is that people which is sovereign in the State of Rhode Island, and not the organized people of the State itself. In answer to that it is sufficient to say, that we know of no people of the United States, save that which the constitution of the Union has organized and formed, and they are sovereign only to the extent and in the qualified sense, which that instrument expressly grants and defines. Against the natural people, the *primary capacity* people, (I wish I could command a better phrase,) no crime whatever can be committed, save that, which, in violation of the laws of God, one man may perpetrate on another. It is against an organized people only, that any crime, and especially the crime of treason, can be committed. We cannot enter into those speculative inquiries as to the origin of Government. Sufficient for the Court and Jury is it, that Government exists. They must take it as it is, and where the plain letter of the law prescribes to them their course, that course they are bound to pursue, no less from a sense of duty, than by the requirements of the oath of God which is upon them. The constitution of the United States itself, an instrument in which it is hardly to be sought for, recognizes the fact that treason may be committed against a State, by an implication too strong to be resisted. It expressly provides, that a person accused of treason in any State, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

The result of the debate in the convention that formed the constitution of the United States, in reference to the article defining treason, is in accordance with this view. The decision of all the Courts of these States, that have had occasion to touch the question, the opinions of all our commentators on comstitutional law, recognize the same fact. The Circuit Judge of the United States who presides in this district, Justice Story, in his recent charge delivered in this district, in contemplation of the then unsettled disturbance in this State, repeating almost verbatim the language of the Virginian commentator on Blackstone, distinguishes between treason against a State and treason against the United States. As I understand his views, treason against the State, and treason against the United States, are to be distinguished, the one from the other, by the immediate objects and designs of the conspirators. If the blow be aimed only at the internal and municipal regulations or institutions of a State, without any design to disturb it in the discharge of any of its functions under the constitution of the United States, it is treason against the State only, though, if the object be to prevent it from discharging those functions, as the election of Senators or electors of President and the like, it becomes treason against the United States. If any further judicial opinions, delivered with reference to our recent troubles, were wanting, in order to confirm these views, we have them in the opinion of the same Court, and the same Judge, deciding on the sovereign authority of this State to proclaim martial law. Can it be doubted, that that power, which, of its own constitutional authority, can proclaim martial law, is sovereign, or a delegated sovereignty, and that it may define and proclaim what treason is? If any further authority were requisite on this point, we have it, in the fact shown in the argument of the question to the Court, that eleven out of twenty-six States of our Union, have inserted an article in their constitutions, defining the crime and providing for its punishment, and that two others have made the same provision in their statute laws. The statutes of no other of the States have been referred to, nor have been examined by the Counsel. The probability is, that, if they were examined, we should find, not that thirteen only of the States, but that the whole twenty-six, have defined this crime, and made provision for the punishment of it.

The power to provide for the punishment of this crime, the Legislature derives, not from the United States, or the people thereof, but from our own people, from the organized sovereign people of the State. That Legislature exercising this power has declared, that treason against this State shall consist only in levying war against the same, or in adhering to the enemies thereof, giving them aid and comfort. This law, we now say to you, is *constitutional* and binding on all, and that the sovereign authority of this State is such, that treason can be committed against it.

We are now prepared, gentlemen, to consider the indictment. The indictment consists of four distinct counts, upon either or all of which you are to return a verdict of guilty or not guilty, according to the evidence which has passed to you, and upon that evidence alone. Nothing that comes within your mere personal knowledge, is to be taken into account. You are to presume that the Defendant is innocent at the outset, and to be led to a conviction of his guilt, if to that conviction you come, solely by force of the evidence given to you, or of the admissions made.

Each of these counts substantially charges, that the Prisoner, being under the protection of the laws of this State, and owing allegiance and fidelity to the said State, not weighing the duty of his said allegiance, and traitorously devising and intending to stir up, move, and excite insurrection, rebellion, and war against the said State, with force and arms, unlawfully and traitorously, did conspire, compass, imagine, and intend to raise and levy war, insurrection, and rebellion against the said State, and, in order to perfect, fulfill, and bring to effect the said compassings, imaginations, and intents of him, the said Thomas Wilson Dorr, he, the said Thomas Wilson Dorr, with a great multitude of persons, amounting to a great number, armed and arrayed in a warlike manner, being then and there unlawfully, maliciously, and traitorously, assembled and gathered together, did falsely and traitorously

assemble and gathered themselves together against the said State, and then and there, with force and arms, did falsely and traitorously, and in a war-like and hostile manner, array and dispose themselves against the said State, and then and there, in pursuance of the said traitorous intentions and purposes aforesaid, he, the said Thomas Wilson Dorr, 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 war against the said State, contrary to the duty of his said allegiance and fidelity, against the form of the statute in such case made and provided, and against the peace and dignity of the State.

The particular overt act charged on the Prisoner in each count, is, that he, together with the armed multitude described, with force and arms, did falsely and traitorously, and in a war-like and hostile manner, array and dispose themselves against the State. The only essential difference in the counts is, that the first two charge the overt acts to have been committed in Providence, the first on the 17th of May, 1842, the second on the 18th of the same month. The two succeeding counts charge the overt acts to have been committed in Gloucester, in the County of Providence, one on the 26th day of June, 1842, the other on the 27th of the same month.

The overt act charged in each of these counts, must be proved by at least two witnesses, or by the Prisoner's confession in open Court. They may be the same two witnesses, or other two witnesses, but two witnesses at least there must be. There must be two witnesses to prove the particular overt act or part which the Prisoner is in each count charged with having taken in the levying of war; and when once any particular overt act is fixed upon him by the two witnesses required, or by the confession, he must be deemed guilty of levying war, as described and proved under that particular count which contains such overt act. The acts of the armed assemblage then become his, unless he prove that he had abandoned the conspiracy, or was so absent that he could not have participated in it.

Now, the first question of law is, what is it which constitutes the levying of war within the meaning of the act? In giving you the meaning of these words, we shall rely as little as possible upon our own judgment. We shall endeavor to be governed as much as possible by the opinions of those able jurists, who, undisturbed by the excitement and alarm of an agitated community, have, after calm and deliberate consideration, pronounced their meaning. "To constitute," says Justice Story in the charge to which I have already referred, 'an actual levy of war, there must be an assembly of persons met for the treasonable purpose, and some overt act done, or some attemp. made by them with force, to execute, or to ward executing that purpose. There must be a present intention to proceed in the execution of the treasonable purpose by force. The assembly must now be in a condition to use it, if necessary, to further, or to aid, or to accomplish their treasonable design. If the assembly is arrayed in a military manner, if they are armed and march in a military form, for the express purpose of overawing or intimidating the public, and thus attempt to carry into effect the treasonable design, that will of itself amount to a levy of war, although no actual blow has been struck, or engagement taken place." This construction of the meaning of the words levying war against the State, accords entirely with the opinion of Chief Justice Marshall, delivered in the case of Aaron Burr, and in the main with that of all eminent American jurists and writers on the same subject; and we now give it to you as the construction which this Court places upon those words.

Let us now consider this construction of the meaning of those words with reference to the evidence which has passed to you under the first two counts in this indictment. It is for you to say what that evidence proves, but I may put these questions to you. Has it been proved by two or more witnesses, or by confessions in open Court, that on the 17th and 18th of May, or either of those days, there was assembled in Providence, a body of armed men, arrayed in a military manner; that they had provided themselves with artillery, musketry, or like implements of war, for the express purpose of making an assault upon, or taking possession of the State's arsenal or magizine of arms in Providence; that they marched on the night of the 17th, or morning of the 18th, with intent of carrying into effect their design; that they arrayed themselves in arms before the arsenal; that the arsenal was at that time in the actual occupation of the military forces of the Government of the State; that they sent a messenges with a flag to demand its surrender; that upon the refusal to surrender the messenger returned, and that upon his return, or before it, one or more of the guns were aimed at the building; that there were two attempts made to discharge them into the building. If you believe these facts have been proved by the two witnesses, or by the confession of the Prisoner, it is the opinion of this Court not only that war was levied, but actually carried on against the State, although not a single gun was discharged and no engagement actually took place.

But supposing you should be satisfied that war had been thus levied, this will not justify you in returning a verdict of guilty; you must be satisfied by the two or more credible witnesses, or by confessions in open Court, that the Prisoner took a part in it; in other words, his particular overt act must be thus proved upon him. It is observed in the case of Bollman and Swartwout, that if a body of men be actually assembled for the purpose of effecting by force, a treasonable object, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors. Both circumstances, says Judge Marshall, must concur. They must perform a part which will furnish the overt act, and they must be leagued with the conspirators. He who comes within this description levies war, arrays and disposes armed men against the State. If this applies to the private in the ranks, it pre-eminently applies to the Commander-in-chief. As to him, it can only be necessary to prove that he claims to be such Commander, and to prove his presence at the

scene of action, for it cannot be supposed that an assault can be made on an armed arsenal or fortress, in the presence of the Commander-in-chief, without his orders, unless it me made so to appear. Indeed, it has been declared by the highest authority, that to appear at the head of a rebel army, is itself an overt act of levying war. The main question, then, is, did the Prisoner march with this body of men to the arsenal, or was he then and there present, and is the fact proved by the two or more credible witnesses, or confessed by him in open Court? If you believe from such evidence or confession, that he was leagued with the conspirators and performed a part, the overt act or acts charged are fixed upon him, and there is no alternative but to return a verdict of guilty on one or both these counts in the indictment.

I now pass to the other two counts in the indictment. These charge the levying of war against the State, in Glocester, on the 25th and 27th of June. Was war then and there levied within the meaning of the law? That is the first question which you have to decide. An assemblage of armed men for a treasonable purpose, may sometimes accomplish its object by the terror which it inspires, and hence it has been decided, that actual violence to external objects, is not necessary to constitute the levying of war It can hardly be doubted, that "if a rebel army," to use the language of Chief Justice Marshall, "avowing its hostility to the sovereign power, should front that of the Government, should march and countermarch before it, should manœuvre in its face, and should then disperse from any cause whatever without firing a gun," it can hardly be doubted, I say, that it would amount to an act of levying war. True, the Government troops were not present and under the eye of the insurgent force at Chepachet, as at the arsenal, but a portion of the State, if not actually invaded by a foreign force, was nevertheless, as all the testimony goes to show, in the actual occupation of a body of armed men hostile to the Government. The laws of the legal Government did no longer there afford protection to its peaceful citizens. Men were taken and treated as Prisoners of war; property was seized by the strong arm of military force. The hostile force occupied an entrenched camp, on a hill commanding the public highways, and a number of pieces of ordnance were mounted, and loaded, and so directed as best to defeat an assailing force. Ammunition was there; a Commissary department was established, and from two to three hundred men were daily drilled on the height, as preparatory to further operations. Everything indicated preparations for a permanent military occupation of a portion of the State. Knowledge of these facts threw the whole State into military array, and subjected it to martial law.

This was the external appearance of the movement, and certainly it does present an appearance of a movement of a warlike character, and equalling, at least, a mere military manœuvring in front of the Government forces, as mentioned by Chief Justice Marshall.

Should you be satisfied by the confession in open Court, or by other evidence, that an armed force of two or three hundred persons was actually embodied at the time and place mentioned in the indictment, there entrenched in a fortified camp, with the avowed object of overturning the existing Government, and establishing a new one on its ruins, and to that end taking prisoners of war and seizing private property, there is no doubt in the mind of this Court but that such acts amount to a levy of war within the meaning of the statute. But though from the proof in the case, you should come to this conclusion, you still cannot find the prisoner guilty, unless you are also satisfied by the two or more credible witnesses, or by his confession, that he performed a part which will be the proof of the overt act. Here also to prove that he was present acting as Commander-in-chief, is, as under the two preceding counts, at once to prove that he took a part and was leagued with the conspirators.

The material point here to be proved, is the overt act, and any two credible witnesses who swear that they saw him with the insurgent force, armed, marching with them, or performing any other part in furtherance of the common design, are sufficient to establish the overt act. The intent with which he was there, or the character which he, as their Commander-in-chief, assumed, may be established by proof of his own admissions, or by his declarations in open Court, or by his acts, and may be proved by one, or any number of witnesses, each testifying to a distinct admission or a distinct fact. Now, gentlemen, if it has been thus proved, under either or both these counts, that he performed a part with the insurgent force, that he was their Commander-in-chief, these two counts also are sustained, and it will be your duty to return a verdict of guilty; otherwise, a verdict of not guilty on the same counts or either of them.

But it is due to the Prisoner, since such has been his course, to say, that from the testimony which he has put in, and his declarations here in Court, he has seemed to be rather ambitious to show that he was there performing a part, what that part actually was, and how he stood related to his associates.

It may be, gentlemen, that he really believed himself to be the Governor of this State, and that he acted throughout under this delusion. However this may go to extenuate the offence, it does not take from it its legal guilt. It is no defence to an indictment for the violation of any law, for the defendant to come into Court and say, "I thought that I was but exercising a constitutional right, and I claim an acquittal on the ground of mistake." Were it so, there would be an end to all law and all government. Courts and Juries would have nothing to do but to sit in judgment upon indictments, in order to acquit or excuse. The accused has only to prove that he has been systematic in committing crime, and that he thought that he had a right to commit it, and, according to this doctrine, you must acquit. The main ground upon which the Prisoner sought for a justification was, that a constitution had been adopted by a majority of the male adult population of this State, voting in

their primary or natural capacity or condition, and that he was subsequently elected, and did the acts charged, as Governor under it. He offered the votes themselves to prove its adoption, which were also to be followed by proof of his election. This evidence we have ruled out. Courts and Juries, gentlemen, do not count votes to determine whether a constitution has been adopted, or a Governor elected, or not. Courts take notice, without proof offered from the bar, what the constitution is or was, and who is or was the Governor of their own State. It belongs to the Legislature to exercise this high duty. It is the Legislature, which, in the exercise of its delegated sovereignty, counts the votes and declares whether a constitution be adopted or a Governor elected or not, and we cannot revise and reverse their acts, in this particular, without usurping their power. Were the votes on the adoption of our present constitution now offered here to prove that it was, or was not adopted, or those given for the Governor under it, to prove that he was or was not elected, we could not receive the evidence ourselves, we could not permit it to pass to the Jury. And why not? Because, if we did so, we should cease to be a mere judicial, and become a political tribunal, with the whole sovereignty in our hands. Neither the people nor the Legislature would be sovereign. We should be sovereign, or you would be sovereign; and we should deal out to parties litigant, here at our bar, sovereignty to this or that, according to rules or laws of our own making, and heretofore unknown in Courts. In what condition would this country be, if appeals could be thus taken to Courts and Juries? *This* Jury might decide one way, and *that* another, and the sovereignty might be found here to-day, and there to-morrow. Sovereignty is above Courts or Juries, and the creature cannot sit in judgment upon its creator. Were this instrument offered as the constitution of a foreign State, we might, perhaps, under some circumstances, require proof of its existence, but even in that case, the fact would not be ascertained by counting the votes given at its adoption, but by the certificate of the Secretary of State under the broad seal of the State. This instrument is not offered as a foreign constitution, and this Court is bound to know what the constitution of the Government is under which its acts, without any proof even of that high character. We know nothing of the existence of the so called "People's Constitution" as law, and there is no proof before you of its adoption, and of the election of the Prisoner as Governor under it; and you can return a verdict only on the evidence that has passed to you. Our ruling on this point, is in exact accordance with that on the same point in the trial of the indictment of the State against Franklin Cooley, where, after an elaborate argument, it was unanimously decided, that no such evidence could be received by the Court or pass to the Jury.

This case is now with you, gentlemen; you can find the Prisoner guilty on one or more counts in the indictment, and not guilty on the residue, or you may return a verdict of guilty or not guilty, generally, according as you find the law applies to the evidence given you.

The Court has now performed its duty; go ye, gentlemen, and do yours.

Mr. Turner.—We wish the Court further to charge the jury, that in criminal trials for capital offences, the jury are the judges of the law, as well as of the facts in the case: and also, that the evidence for the State does not support the charge of traitorous and criminal intent, as laid in the indictment.

Chief Justice Durfee.—We can charge the jury only as we have charged them: they are to apply the law, as laid down to them by the Court, to the facts as they may find them proved before them. On the other point, the only question of intent which the jury have to consider, is, if they find all or any of the overt acts of levying war sufficiently proved, whether the Defendant at the time, intended to commit those acts.

The jury then, at a quarter before 11 P. M., retired, and the Court took a recess. At 20 minutes before 2 o'clock on Tuesday morning, the jury came into Court and pronounced a verdict of Guilty, which being duly recorded and read, the Prisoner was remanded to the custody of the Sheriff, and the Court took a further recess until 8 o'clock, A. M.

[After the verdict of the jury had been received and recorded by the Clerk, Mr. Justice *Haile*, (the Ch. J. Durfee being absent,) in dismissing the jury, *thanked them "for their punctual attendance, and for the faithful manner in which they had discharged their duty."*

One of the jury, immediately after they separated, being asked whether there had been any division among them, about their verdict, replied, "*No. There was nothing for us to do:—the* COURT *made every thing plain for us.*"

Another juror, being asked why they remained out so long, said, "*they agreed upon their verdict immediately; but remained out, so that the crowd might disperse to their homes.*"]

Tuesday morning, May 7th, 1844.

At 8 A. M., the Court met. All the Judges present.

Mr. Blake, Att. Genl., moved that Thomas W. Dorr be brought into Court to receive sentence, upon the verdict rendered against him.

Mr. Turner, when Mr. Dorr came in, moved the Court to stay the sentence, until he could

prepare a Bill of Exceptions, and file a motion for a new trial.

Mr. Blake did not object, as the Legislature was then setting in the House, and both he and his associate Counsel would be necessarily engaged there; but wished to be furnished with a copy of it as soon as possible.

After some discussion between the Counsel, the Prisoner, and the Court, as to time, the motion was granted. Ten days were allowed for filing the motion, and the Court adjourned for the hearing, to the second Monday, (the 10th) of June.

(On the 15th of May, Mr. Dorr, by his Counsel, Mr. Turner, filed in the Clerk's office, the following Bill of Exceptions and motion for new trial, viz:)

NEWPORT, ss.

Supreme Court, March Term, A. D. 1844.

INDICTMENT.

THE STATE, *vs.* THOMAS W. DORR.

And now on this fourteenth day of the term of said Court, after verdict and before sentence, the said Dorr moves the Honorable Court, that said verdict may be set aside, and that no judgment be rendered thereon, and that a new trial of the said indictment may be awarded to him by the same, for the reasons following, viz:

1. Because Joseph Paddock, jun., the foreman of the jury, and, also, William L. Mellville, Jr., and Benjamin Carr, members of the jury, before the jury were empannelled, had, each of them, formed opinions of the guilt of the Defendant, and had expressed such opinions, and in terms of prejudice and crimination toward the Defendant personally; thereby manifesting toward him feelings of vindictiveness, and hostility, that disqualified them to act as impartial jurors.

2. Because, Abner Tallman, who was called for a juror, and testified that he had neither formed nor expressed an opinion upon the charges laid in the indictment, and was otherwise competent, was set aside upon insufficient testimony.

3. Because, a challenge against Samuel Westcott, for cause, by the Defendant, as having formed and expressed an opinion of the guilt of the Prisoner generally, though not upon the charges as specifically set forth in the indictment, was overruled by the Court, and Defendant was compelled to set him aside by a peremptory challenge.

4. Because the writ of venire for the twelve additional jurors, issued on Friday the 26th day of April, 1844, and served and returned by George Howland, a deputy Sheriff of said County of Newport, was wrongfully and illegally served and returned, in that the said jurors returned on said writ of venire, or some of them, were so returned at the nomination and suggestion of William H. Cranston, Esq., Attorney and Counsellor at Law, and an officer of this Court, whose frequently expressed opinions are inimical to the traverser, and who, since the commencement of the present trial, has acted apparently as an Attorney with, and as an agent in the employment and under the direction of the Attorney General, and has summoned witnesses in behalf of the State, from remote parts of the Island; and a material portion of the testimony to prove said allegations having come to the knowledge of the traverser, since the filing of this original challenge to the array of the jury, so illegally returned, and since the verdict in this cause.

5. Because neither the Defendant nor his counsel were furnished with copies of either of the four last panels of jurors, returned upon writs of venire, two full days before the said jurors were called and sworn, as the Defendant was entitled to be; and in one instance he was furnished with a copy of a return only about three hours before the time for canvassing the same in Court; whereby the Defendant's right of challenge for cause, was greatly and injuriously abridged.

6. Because, before the full jury was sworn, the Defendant's Counsel moved the Court to permit the Defendant to recall his peremptory Challenges, to six of the persons examined for jurors and set aside, and to challenge said persons for cause, upon proof to be produced, of their incompetency; which motion was denied by the Court.

7. Because the Defendant was not furnished with, although he seasonably applied for, a list of the government witnesses, two full days before the trial of said indictment commenced, as he was entitled to be; and because several witnesses were sworn and examined, of whom he had no previous notice whatever.

8. Because, before any evidence was introduced to prove either of the overt acts laid in the indictment, the Court permitted evidence to go to the jury, of acts done by the Defendant and others, at a period of time long before the first overt act charged in said indictment.

9. Because, the prosecutor was permitted to offer to the jury, proof of acts, in aggravation of the charges in the indictment, in which the Defendant had no part, and of which he had no knowledge.

10. Because, the Court would not permit the Defendant to justify himself, by offering to the jury the votes given by the people, and other testimony to prove the adoption of the People's Constitution in December, 1841, by a majority of the adult male citizens of the United States, resident in this State; and to prove that under said Constitution, and according to the provisions thereof, in April, 1842, the Defendant was duly elected Governor of this State; although the prosecutor admitted that "if the Defendant was Governor, he had a right to do all that he did," and was permitted to introduce evidence to prove that on the 3d day of May, 1842, in General Assembly, sitting in Providence, the Defendant took an oath as Governor of the State, and openly and avowedly acted, and was treated as such by said Assembly.

11. Because, the Court, after the testimony recited in the preceding 10th Specification had been ruled out, when offered to justify the acts and proceedings of the Defendant, also refused to permit the Defendant to offer said testimony, to repel the charge of malicious and treasonable motives and intentions as laid in the indictment.

12. Because, the Court refused to permit to pass to the jury, a copy of the People's Constitution, to show that a republican form of government was provided for in the same, according to the guaranty in the Constitution of the United States.

13 Because, the Court would not permit the Defendant, or his Counsel, to argue to the jury the several matters of law, deemed important for his full defence, and epecially the following, viz:

1. That, in this country, treason is an offence against the United States only, and cannot be committed against an individual State.

2. That, the 4th section of the act of Rhode Island of March, 1842, entitled, "An Act relating to offences against the sovereign power of the State, whereby indictments may be found out of the County where the offences were charged to have been committed, is unconstitutional and void, as destructive of the common right of trial by jury, which was a fundamental part of the English Constitution, at the time of the Declaration of American Independence, and has ever since been a fundamental law in Rhode Island.

3d. That said act, if Constitutional, gave this Court no jurisdiction to try this indictment at that time in the County of Newport; all the overt acts being therein charged as committed in the County of Providence, where the Defendant is by law entitled to be tried.

4. That, in law, the Defendant acted justifiably as Governor of the State under a valid Constitution, rightfully adopted, which he was sworn to support.

14. Because, the Court overruled the first point in the preceding 13th Specification, and instructed the jury that treason might be committed against a State.

15. Because, the Court refused at that time to hear any argument from the Defendant, or his Counsel, upon the 2d, 3d, and 4th points in said 13th Specification; and instructed the jury that the Defendant could not have been justified by any evidence offered by him, in acting as Governor of the State.

16. Because, the Court then refused to hear an argument from the Defendant, or his Counsel, to show, that, in capital cases, the jury are the judges, both of the law and of the facts; and misdirected the jury, in charging them, that they were not the judges of the law and of the facts in said cases, but were bound by their oaths to take the law as laid down by the Court, and were no further judges of it than simply in applying it, as given to them by the Court, to the facts which they deemed proved in the case.

17. Because, the Court misdirected the jury, in charging them, that the only question of intention on the part of the Defendant, which, under their oaths, they could consider, was, whether the Defendant, at the times laid in the indictment, intended to commit the acts charged against him in the same.

18. Because, the officers charged with the service of writs of venire for the return of 108 jurors, selected and summoned the whole number, except one, from the members of one political party in the State, whom political feelings and prejudices are inimical to the political party to which the Defendant is attached, and to the Defendant himself.

Monday, June 10th, 1844.

The Court met at 3 o'clock, P. M. All the Judges present.

The Attorney General, (Blake) upon Mr. Dorr's being brought into Court, renewed his motion for sentence; but was reminded by Mr. Turner, that the motion for a new trial took precedence of that motion.

Durfee, Ch. J.—We are ready to hear the motion.

Mr. Turner.—Since the filing of the motion, evidence has come to our know edge, of good cause of exception to another of the jury, and I therefore move for leave to insert in the 1st Specification, the name of Benjamin Carr.

Mr. Blake.—I don't know that we have any objection; insert as many names as you please.

The Court saw no reason, if we wished it, why the amendment should not be made.

The amendment was made accordingly.

Mr. Turner then read the exceptions at full length, (see ante.) and in support of the *first*, read an affidavit as follows:

NEWPORT, SC.

Supreme Court, March Term, A. D., 1844.

INDICTMENT.

THE STATE *vs.* THOMAS W. DORR.

On motion for a new trial.

And now, on the 15th day of the term, the said Dorr, on solemn oath declares and says, that he verily believes, and expects to prove, that *Joseph Paddock, jr., William L. Melville, jr.* and *Benjamin Carr*, three of the jurors empannelled to try said indictment, and who rendered a verdict thereon against him of GUILTY, had, each of them, before they were sworn on said jury, formed and expressed an opinion of his guilt of the offence charged in said indictment, and unfavorable to him personally and generally, and that this affiant had no knowledge of the fact, that either of said jurors had so done, whereon to ground a *challenge for cause* against either of them, until after they had been empannelled; and no knowledge in relation to the ground of challenge against said Paddock and Carr, until after said verdict had been rendered as aforesaid.

(Signed) THOS. W. DORR.

Filed 15th day of the term, and sworn to in open Court.

WM. GILPIN, Clerk.

It was proposed by Mr. Turner, and assented to by the Attorney General and the Court, that the several specifications should be separately taken up, argued and disposed of, in their order, and that mode was pursued, as to the argument, until Tuesday noon.

Mr. Turner.—I will now call the witnesses in proof of the 1st specification.

Mr. Blake.—I object to any testimony being offered against any juror, as being too late, an examination of the jurors having been fully gone into at the time they were empannelled.

Mr. Turner contended that this was the legal and proper time for taking the exception, where the facts, as in the present case, were unknown to the party affected, or his counsel, when the jurors were sworn; he read 11 Pick. Rep 466.

Mr. Blake.—Was that a *capital* case?

Mr. Atwell.—(Who at this time was well enough to be in Court.) No, a *fourpence-half-penny* case, and *liberty* is worth *more* than that.

Mr. Turner read 3 Dall. Rep. 515, Fries' case, 2d Chitty's Black. 272. 4th Tuck. Bl. 350, 352. Hales Com. Law, 257. 1 Chit. Cr. L. 442, 443, 437, and 438, and commenting upon the authorities as warranting the examination of witnesses on a motion for a new trial, to prove the disqualification of Jurors.

Mr. Blake.—I am wiling the testimony should be taken, reserving the objection.

Turner.—We prefer to have the questions settled as we go along.

Blake went on in reply. In England (he said,) no such evidence or objection would be listened to a moment. He read 17 Mass. Rep. 515. 1 Pick. Rep. 41. 6 Dane Dig. 233. Dig. N. Y. Rep. 318, 320, and 5 Mass. Rep. 78. The Court must look at the facts of the present case, and before they grant a new trial upon this or any other ground, consider whether a new jury could return a different verdict; the prisoner admitted all the facts at the trial—a new trial would, therefore, in no respect subserve the purposes of justice. I object to the testimony.

Turner read 14th Mass. Rep. 205, and from 1 Pick. Rep. 41, cited by Attorney General.

Bosworth.—When the prisoner has had an opportunity to challenge the juror, it cannot be proper to allow him again to go into the matter, any more than it would be, if the Defendant had neglected any other portion of his defence, which, after trial, it might be considered best for him to put in. If this doctrine prevail, the evils of such a precedent would be great—cases might happen that the juror, weeks and months after the trial, might be far absent, and might not give the explanations necessary to sustain his declarations on the *voire dire.* No cause of objection to a juror, will set aside a verdict, unless it appear that that cause in some way or degree, did actually influence the verdict. Reads 2 vol. Dig. N. Y. Rep. 320.

Atwell.—There is no one authority amongst those cited by the gentleman, that shakes the position, that whatsoever would have been good cause of challenge before trial, would be good ground for a new trial, if discovered after trial, as is here stated in the Defendant's affidavit. The Attorney General contends that these jurors have been once tried. We then failed to prove the partiality of Paddock, the Foreman, by the witness we produced; since then we have ascertained the existence of evidence, which, if then produced, must have set him aside. It is said the Defendant has confessed everything in open Court! His plea is NOT GUILTY:—true, he has stated the facts, but taking all he said together, he was, in fact, *not guilty.*

If the right of trial by jury be worth anything, it should be securely guarded in cases like the present: a *fair* trial has not been had. We can, and we wish to prove that *three* of the jury, had formed and expressed opinions hostile to the Defendant; such opinions as should utterly disqualify any man from being a juror; the objection can now be well taken advantage of, in the mode we are pursuing, and is, of itself, if made good by the proof, a sufficient ground for a new trial.

It must be recollected that the Defendant is not in his own county: he is a stranger to the people from whom the jurors come—knows them not even by sight, name or reputation. It is

known that some of the pannels were returned but a very short time before the Defendant was called on to make his objections to them. He had not time to ascertain whether these strangers had expressed hostile feelings or not. He did not know their neighbors or associates, or to whom to apply himself, to learn their qualifications or disqualifications as jurors. We did all we could in canvassing their qualifications; and the Court, from all they could hear to the contrary, adjudged them qualified, and let them sit. Since that time, the evidence of their unfitness has come to light; and we crave permission of the Court to introduce it.

After a brief consultation by the Court,

Durfee, Ch. J.—Proceed Mr. Turner, to the next article; the Court will consider of this.

Turner read the 2d article. [The taking Abner Tallman off the jury, without sufficient cause.] Your Honors will recollect the circumstances under which Mr. Tallman was ordered off the jury. Upon being called, and examined on his *voire dire*, by the Attorney General, he answered the questions promptly, and unequivocally, that he had neither formed or expressed any opinion of the guilt or innocence of the prisoner. The Attorney General, however, asked the Court to let the juror stand by for the present, so that he might hunt up witnesses against him; and it was on this business that Mr. Cranston was despatched to Portsmouth on the afternoon of the 26th of April. The object was accomplished; the next morning, a man named Waite, a Blacksmith, was produced on the stand, who swore that, on a certain occasion, at his shop, Tallman, in conversation with him, (Waite) when no person was present, had said that if he was a juror, he would not convict Dorr, "*till all was blue*," or "*as long as he had a drop of blood in his veins.*" Upon cross-examination, he stated that he had never mentioned this conversation with Tallman to any person whatever, and that when first called on by Mr. Cranston, he could not recollect anything at all about it, but told Mr. Cranston "he guessed it would come to him in an hour or two." He also stated, that on the occasion when he had the conversation with Tallman, they also conversed about Tallman's dog having been charged with killing sheep, and Tallman being called on to pay for them, about which Tallman was quite wrathy; and that Tallman used one of the expressions about trying Mr. Dorr, and the other about paying for sheep his dog did not kill; but which he used to the one, and which to the other he could not even then remember. [*it had not all come to him.*] The juror, when called on after hearing the testimony of Waite, denied the statement as to Mr. Dorr, totally, and went on to give a clear, connected, and distinct account of the whole conversation that took place between them, showing, I think plainly and conclusively, that the language used, whatever it might have been, had relation entirely and exclusively, to the affair of the dog, as Tallman swore. I at that time contended, and I contend now, may it please your Honors, that Tallman should not have been set aside upon that evidence: there was at most only oath against oath. It should be considered, however, that Waite's recollection was most imperfect; he wanted an hour or two to remember anything. Tallman's is ready, consistent, and perspicacious—and besides, Waite, here on the stand, swore without qualification, that no person was present—that he had never told it to any person whatever—yet Mr. Cranston, when sent out on an exploring expedition, goes right to Mr. Waite, and finds him the very man he wanted. It was contended, however, that the one was *positive*, the other *negative* testimony; but I do not think this case falls within the rule of *negative* and *positive* testimony. That rule is intended to apply to cases where both witnesses are merely hearers; in which case he who swears he did hear, is entitled to belief, not him who only swears that he did not hear. I submit, may it please your Honors, that the decision was against the right of the Prisoner and the weight of the evidence.

Mr. Dorr.—The testimony of Tallman is *positive*, it being what he said, and when and how he said it; whilst that of Waite contradicts itself, and is *negative*. Tallman not only tells what he *did not* say, but precisely what *he did* say.

Blake.—This matter at the time of it, was fully argued, and the Court, in their discretion, ordered the jurors to stand aside. The objection is now made, that the juror was set aside on insufficient testimony. The testimony of Tallman was *negative*, because Waite swore to what he heard him say; and all that Tallman said *amounted* to no more than that he did not *recollect* it, although he swore positively enough that he had not used any such language. On the other hand, Waite's was *positive*, and should prevail against that of Tallman, on all the principles of evidence. I really do not think this matter calls for anything further from me.

Mr. Turner next considered and argued Art. 3d of the exceptions. [That the Court overruled a challenge for cause to Samuel Westcott, and thereby compelled the Prisoner to waste a peremptory challenge.] The Court will recollect in the case of Mr. Westcott, that, in answer to the standing interrogatories put by the Attorney General, the juror stated that from all he had seen and read in the papers, and heard talked along street, if one half of it was proved, he believed the Prisoner was a guilty man; in addition to which, we believed, notwithstanding his answer to the contrary, that we had positive evidence of his having both formed and expressed opinions to the same effect, and he was accordingly challenged for cause. Benjamin H. Lawton, a witness, swore that about the time of the Chepachet affair, "Westcott was in a *great stew*," and said, "he hoped they would get the *villain* Dorr, and the rest of them." We rested the challenge upon that evidence, and the juror's own answers, insisting that it was a much stronger case than the one of Tallman, which the Court had decided against us. Yet the Court overruled us; and although that did not

complete the pannel, the Prisoner was compelled to apply his last *peremptory* challenge, to get rid of him. With perfect deference to the Hon. Court, I then thought the challenge for cause well sustained, and I think so still; and have an authority in point, which I will read, and submit to your Honors, that the decision in that case was erroneous. Reads 9 Pick. Rep. 499.

Blake.—The Court upon the evidence and argument, decided this juror to be competent; there was no evidence, nor is there now, of any settled hostility against the Prisoner, in the mind of the juror. If the Court had gone upon the ground of excluding from the jury everybody that had talked about Gov. Dorr, he would never have had a trial at all. *For there is nobody in the State but what has expressed his opinion one way or another.*

Atwell asks—Was the question as put, formed *and* expressed, or formed *or* expressed on opinion?

Durfee, Ch. J.—The former.

Dorr.—I believe the juror was not set aside for having *formed* an opinion, if he had not also *expressed* it.

Atwell.—If a man has *formed* an opinion, it is not in accordance with the right of the subject, or the *old-fashioned* notions of the right of trial by jury, that a subject should have such a man for a juror to try him. If a man has *formed* an *opinion*, he is no longer impartial—he has prejudged the cause. It is of no importance whether he has expressed it or not, or how he may have formed it, whether from newspaper statements, proclamations, handbills or hearsays, the lodgment is there in the mind, and the juror no longer "stands indifferent, as he stands unsworn."

The Court adjourn until 9 o'clock to-morrow morning.

Tuesday Morning, June 11th, 1844.

The Court being opened as usual, and the Prisoner brought in.

Blake.—(Across the table.)—Can you not *melt down* some of your points and run them together?

Turner.—Not in a case involving a man's liberty.

Blake, (to the Court.)—I hope the Counsel for the Prisoner will so far change their mode of proceeding, as to open upon all their points and authorities first, in the usual way.

Turner.—It will avoid much confusion, so far as authorities and arguments are concerned, to finish each point as we proceed.

Bosworth.—The great trouble is, that in this way we are called upon to answer impromptu, all the array of authorities which they bring. We have had no notice of the authorities relied on.

Durfee, Ch. J.—The proceedings went on yesterday more by an understanding between the Counsel, than by any direction from the Court. If that arrangement is not further consented to, the Court will proceed in the usual way. The Counsel for the Prisoner will make his full opening on all the points at once.

Turner.—We are by no means strenuous about it, if the Court find it more convenient to take that mode; but as the several questions are so distinct in their nature, and can so well be argued separately, we still think that much time and much confusion will be saved by continuing the course pursued yesterday. I would, however, ask, before your proceeding either way, whether the Court have decided upon our right to go into evidence on the first exception argued yesterday?

The Court, after a short consultation, said, "we will let that question pass for the present."

Turner.—I will then proceed to the fourth exception. (Here Mr. Turner read the Art. see ante.) Upon this point, may it please your Honors, I propose to prove by witnesses, who have been duly summoned, and in attendance, that on the 26th of April, W. H. Cranston, Esq., went into Portsmouth, about ten miles from this place, to find witnesses for the Attorney General, by whom to disqualify the juror Tallman; that whilst so engaged, he made enquiries of persons there, for the *names* of such as would be *suitable persons* to serve on the jury, and wrote down their names; I shall prove by a certified copy of the summons, (which I have,) that it was fully served, returned, and sworn to, all on *that* day, the 26th, and by the witnesses I expect to prove, that he was called up by the Deputy Sheriff, Howland, between daylight and sunrise — went with the officer in the same chaise, attended him throughout the service of the venire, having apparently no other business — that certainly *some*, if not *all* the persons, returned upon the venire, were the same individuals whose names Mr. C. had listed the day before —that the officer saw, and passed by unnoticed, during the time, a number of qualified jurors, knowing them to be such — that the last person summoned, was a Newport man, pointed out by Mr. C. to the officer, and first spoken to himself, by Mr. C. — and we shall also prove by the original in Court, that the officer's return thereon, with the exception of the signature, is all in the proper hand-writing of Mr. Cranston.

Staples, J.—You have not set forth in your exception the facts you offer to prove.

Atwell.—The only difficulty is in the wording of the exception; it seems not to be broad enough in form; I wish it amended so as to admit *further* evidence in support of the old allegations — no new allegations are intended to be made.

Bosworth.—The *challenge to the array* was made at the proper time, but being supported by no evidence, was very properly overruled.

Turner.—The Court said there *was* evidence; but that it was *insufficient.* We now wish to supply the deficiency with new and further evidence. I move to amend the exception so as to admit evidence to show that the Sheriff summoned the Jury at the nomination of Mr. Cranston.

Staples.—You wish the Court to infer from

two facts al'eged, a suspicion against the Sheriff — both of which may well be *true* and yet furnish no just ground of suspicion against the officer.

Blake.—I object both to the amendment, and to offering any evidence under it — "It will spin this matter out to an interminable length, and we did not come here prepared to meet any *new case.*" Besides, this has been once tried and overruled. I object!

Atwell.—This argument, "*it has been once tried,*" so often used by my very learned friend on the other side, is very new to me; for every motion for a *new* trial, pre-supposes one trial already. They say this cause of challenge has been once tried — allow it, and what then? We say the decision was wrong, and wish an opportunity to prove it. In every motion of this sort, nine out of every ten reasons given for it grow out of alleged wrong decisions and rulings of the Court during the progress of a trial; which in this way are sought to be corrected and set right.

Now what is the right of every man when he is accused? Why, it is to have a *fair* trial by a jury of *fair*, *impartial* men. This is a sacred right, the ægis thrown between the accused and his enemies. Suppose the accused to be on trial away from home — that he knows not the juror nor aught against him — the man appears to be fair — swears that he has no prejudice or bias on his mind, and so places himself on the jury, and it afterwards appears that he felt deadly hatred against the Prisoner and swore himself on the jury for the express purpose of producing a conviction. The Prisoner then finds that he has not had that *fair trial*, which the law tells him he is entitled to. A *new* trial may be denied him; but what sort of a jury trial is this? It is but the merest mockery of *fair trial* and of *justice.*

If the Prisoner is to be deprived of the opportunity of proving the legal incompetency of the juror by facts he knew not of when the juror was sworn, and which, if known, would have set him aside, then your Jury trial is but a *shadow* — not a *substance*; and might as well at once be abolished.

The Court decided against the amendment, and also against the sufficiency of the exception without amendment. After some irregular discussion, it was passed for the present, with an understanding that a substitute for it should be presented.

Turner.—We proceed to the fifth Art. (Mr. T. read the exception — that Prisoner was not duly served with copies of the pannels of Jurors returned on venires.) The Court will recollect that at the sitting in March, when the first venire for sixty jurors was ordered, returnable on the 26th of April, and when there was intervening time enough, I suggested that it should issue for a greater number, and moved that the Prisoner should be furnished with a copy of the pannel at least ten days before the trial commenced, urging as a reason, the improbability of obtaintaining a full jury out of a pannel of sixty, in a case where opinions had so generally been expressed; and to give the Prisoner, who was an entire stranger to the county, full opportunity to ascertain the qualifications or objections to the jurors, without delaying the progress of the trial, for that purpose after it should be once commenced. The Court, however, for reasons which they gave at the time, did not think proper to increase the number, and directed the Sheriff to furnish us with a copy of the pannel only *two full days* before the time for trial, this was accordingly done — the whole sixty being utter strangers to the Prisoner, and most of them unknown to me. The sixteen drawn jurors and the sixty summoned on the venire were all exhausted on the first day of the trial, and but eight jurors sworn. The Court then, before its adjournment, ordered the Clerk to issue two additional writs, for twelve each, one of them to be returned at 9 o'clock the next morning — the other at noon, directing the officers to furnish us with lists of the persons summoned, as soon as those writs were served. The first of those lists, was handed me about 8 o'clock the next morning, and the other in Court at 10 o'clock; the Court and ourselves being then engaged in trying the challenge of Abner Tallman. As soon as that and another challenge had been disposed of, then near noon, I moved the Court to adjourn over till Monday, in order to give us time and opportunity to canvass the lists, and if occasion required to make and sustain our challenges; explaining to the Court that, of course, up to that time no opportunity had been afforded us for that purpose. My motion, however, was only so far granted, as to allow us until three o'clock, P. M. on the first list, and until Monday morning on the other; so that instead of having *two full days* to canvass the fitness of the jurors, we had but about three hours in the one case, and only from the adjournment of the Court on Saturday evening, until 9 o'clock on Monday morning in the other. The next venire for twelve was issued at the adjournment of the Court on Saturday evening, returnable on Monday morning:—a fourth, on Monday evening, returnable on Tuesday morning, allowing, under the circumstances, no adequate or reasonable time to ascertain the feelings, sentiments or opinions of the persons, who were to be called and sworn; one of the consequences was, as your Honors are aware, that the Prisoner was driven, in *six* instances, to make use of his *peremptory* challenges, when, if more time had been allowed him, the same men would have been set aside upon challenges *for cause.*

It is very true, that in this State we have no statute on this subject, and as we have hitherto had no such *cases*, we can have no established *practice* to regulate us. But the statute of the United States enacts that the prisoner in cases of Treason, shall be furnished with a list of the jurors *five* days; and in England, the statute of Anne in the same cases, extends the time to *ten* days; now supposing neither the English or the U. S. law to be binding on the Courts in R. Island. Yet it is obvious that both make a marked distinction, in this respect, between cases of Treason, and all other capital offences, so that the Courts here may well follow the *practice*, if they are not bound by the *authority*

of one or the other of those statutes. We say, therefore, that in this respect, the right of challenge in the Defendant was injuriously abridged, but to what extent we cannot tell. But be it more or less, we ask for a new trial to correct it.

Staples, J.—Did you make any complaints that you had not had time enough, when the jurors were called?

Turner.—I did not deem it *decorous*, after the Court had fixed the time; we had repeatedly asked the Court to give us longer time; and we now ask if this was long enough time to canvass the qualifications of so many strangers.

Staples, J.—It would have been as decorous *then* as it is *now*. The Court in several instances, when challenges were made, did give you further time. Such an exception *ought not* to be taken here.

Dorr.—The Court fixed the time beforehand, for taking up the several pannels, and the Defendant then made no objection, because it was too late. The Court had decided how much time he should have. The point is, that for want of time, we could not ascertain objections, which we have since ascertained. It is true, when an objection was made to any particular juror, the Court did allow time for witnesses to be produced.

Turner.—I proceed to the seventh Exception. (As to withdrawing six peremptory challenges, and challenging for cause.) Your Honors will recollect, that in the course of the morning of the third day of the trial, and before a full jury was empannelled, I moved the Court in behalf of the Prisoner, for leave to withdraw or revoke his *peremptory* challenges, to *six* of the persons called and examined for jurors, and to challenge each of them *for cause;* and stated to the Court that the witnesses, by whom we expected to sustain those challenges, had been summoned in behalf of the Prisoner, and were then in attendance. The Court overruled the motion, on the ground that the jurors were not then in Court, and had in fact been excused from further attendance—to which ruling the Prisoner took exception at the time. I contend, may it please your Honors, that a prisoner has a right to withdraw his *peremptory challenges* and challenge *for cause*, at any time before the full empannelment of the jury. If the persons had remained in Court, I doubt not we should have been allowed to withdraw them for the purpose we intended —that they did not remain in Court is no fault of the Prisoner. If the objection be available at all, it is only on motion for new trial.

I proceed to consider the next, the seventh Exception. (Mr. T. reads exception as to Prisoner not being furnished with a full list of Government witnesses, &c.) Before the adjournment in March, we called for a list of the Government witnesses, claiming a right to have it two full days before the trial; we were then furnished with a list of thirteen, and assured by the Attorney General that as soon as he ascertained the names of the others, we should have them. Several additional lists were from time to time furnished as we called for them, but never of *all of them;* and in the progress of the examination, I designated several as they were examined, as being *entirely new* to us. (Mr. T. here gave the names of three.) This exception, however, need not be dwelt on, as it falls exactly within the *reason* and the *law* applicable to the fifth Exception. (Mr. T. read 1 Chitty, C. L. 420.)

I proceed to the eighth Exception. (Mr. T. read the exception, relating to admissibility of other evidence before proof of *overt act.)* This question was first raised before any evidence was put in by the Government, and we insisted that according to the course of authorities, both in this country and in England, no other proof could be admitted to pass to the jury, until some *overt act* was sufficiently proved by two credible witnesses, and relied for authority in support of that position, on 4th Cranch, 489, 490, 493 and 497--Foster's C. L. 149—Hawk, P. C. § 8, and Greenleaf on Ev. 293, (first edition.) The Court, however, overruled my objection, and permitted the other side to introduce evidence relating to a period of time long anterior to that of the first overt act charged in the indictment;—this ruling also, was excepted to by the Prisoner. With deference to the Court, I still think their decision incorrect, and that the Prisoner's means of defence were prejudiced thereby. The same reasoning and the same authorities are relied on now.

I pass to the 9th Exception.

"9th Exception. Because, the prosecutor was permitted to offer to the jury, proof of acts, in aggravation of the charges in the indictment, in which the Defendant had no part and of which he had no knowledge."

(Upon this article a desultory discussion took place between the Court, and Messrs. Turner, Atwell and Dorr, in relation to the relevancy of Shelly's testimony—it all relating to what took place at Chepachet three or four days before Gov. Dorr came into Rhode Island, and when he was neither *actually* nor *constructively present.* The discussion so much assumed the nature of dialogue that it was impossible to report it.)

The next Exception is the tenth. (Rejecting the evidence of the adoption of the People's Constitution, &c. See ante.) Much of the argument and many of the authorities applicable to this exception, as the Court will recollect, were urged in the argument of the question of State Treason. I do not, therefore, propose to do more on the present occasion, than to state the propositions I contend for, and furnish the Court with a list of authorities in support of them; for I feel assured that the Court will found their opinion upon their own examination of them, rather than upon any reasoning I may use upon the subject. My propositions are these:

A Constitution is superior only to a *minority* —the *majority* is superior to that.

As they *make* the Constitution, they have the power and the right to *alter* or even *abolish* it.

The *People*, (viz.) the community—the governed, are *superior* to the *Legislature*—the Legislature being the *creature* of the *Constitution.*

The *People* can therefore derive no *power* and acquire no *right* by any *legislative* act.

They can therefore *change* their *Constitution* without any *legislative* sanction whatever.

They can change it *whenever* they please.

And by *any mode of proceeding* they may deem expedient.

That even an *express provision*, in a written Constitution, that change shall only be made in a certain specified way, is not exclusively binding, and cannot preclude the action of the People in such other mode as they may deem expedient.

And I shall contend that the People of Rhode Island had a right to proceed as they did in the making and adopting the People's Constitution; that upon its adoption, it became the *supreme law* and of binding force on all *persons* and all *bodies* in this State, including the Legislature and the Courts, (notwithstanding another constitution may have been since adopted, and may be valid.) And I ask the gentlemen on the other side to point out any case where a *Legislature* has given the *People* the *power* to make a *Constitution*, and where *they* got the *power* to bestow it. The *People* give power to the *Legislature*—the Legislature to the *Courts*—the Courts to its *officers*—for *power* to reascend in the scale is nothing less than absurd. The proof offered by the Defendant of the adoption of that Constitution, and of his election under it, was the *very best* and *all* the evidence that *the nature of the case* afforded and should have been admitted to go to the jury in his justification; for this was not a case where strict, *legal*, I may say *legislative* rules of evidence applied, and if that evidence had been admitted to pass, and had proved every thing we sought to prove by it, it would not at all have affected the *present Constitution* of the State, nor the *present Court*, although the Court seemed so to suppose; but it would have triumphantly acquitted the Prisoner, and proved his complete justification.

Durfee, Ch. J.—A *constitution* cannot be proved by *parol*. The *Court must choose* one Constitution or the other.

Dorr.—This is a point of great importance—the right arm of my defence. I do not know of any reason for a change of views on the principles of my conduct. I believe I am right—and this principle that the People can make, unasked their constitutions, constitutes the great dividing gulph between us. Now we have many exceedingly strong authorities upon this point.

The Court have suggested a difficulty; but really I do not ask your Honors to decide upon the validity of the present Constitution, or the government under it; I do not ask your Honors to decide that you are no Court, or that you do not rightfully hold your offices. We only ask you to look to a point anterior to the formation of the *present* Government, and enquire what was the *then* state of things? what did the People do? what had they a right to do? how far was I justified by their action? This is my great defence. The Court charged the Jury that if I did certain acts, they were done *maliciously* and *traitorously*. I wish to show that what I did was not *thus* done; but in pursuance of *the great ruling American principle*—THE SOVEREIGNTY OF THE PEOPLE. I pray the Court to carefully review their opinions on this point, in order that we may be allowed opportunity to prove this, the great point of *justification*.

The Court adjourned until 3 o'clock, P. M.

Tuesday Afternoon, June 11th.

Mr. Turner continued.

Turner.—(Reads the 11th Exception.)—This Exception varies from the last only with respect to the purpose, for which the evidence was sought to be introduced; the evidence under that was offered for *justification*, under this it was offered merely to repel the charge of having acted with any *criminal intent*, even if the act were an offence. The same reasoning will apply to both.

(He next read 12th Exception, and insisted that the People's Constitution should have passed in evidence to the Jury as proof, that in compliance with the guaranty in the Constitution of the United States, it established a Government republican in form. A discussion ensued between him, the Court, and Mr. Dorr, not strictly confined to the point, but embracing many topics connected with the adoption of that constitution.)

He then passed to a consideration of the 13th Exception, and upon a suggestion from the Bench, took up the 16th in connection with it.

[Exceptions 13 and 16 considered together.]

Mr. Turner.—Mr. T. began by stating, that in all *civil* suits, without exception, and in all *criminal* prosecutions for offences *less than capital*, there is no question but the maxim, "*ad questiones, &c.*" "to questions of *law*, the *Court*—to questions of *fact*, the *jury* are to answer," would apply. In all such cases, *all* questions of law are to be argued to the *Court*, and questions of fact only can be properly augued to the jury. But *capital* offences constitute a most important exception to the rule; and so far vary the ordinary mode of trial, as to give the jury *power*, and to make it their *duty* to judge of the *law*, as well as of the *facts* of the case. This power is given "*in favorem vitæ;*" for a most obvious reason, which is, that in all capital offences, the *guilt* or *innocence* of the accused, depending upon *intention* as well as *acts*, is a mixed question, and always combined of both *law* and *fact*.

Mr. T. cited 6 Danes Digest, 693, c. 199, A. 6, § 12, "Levying war is an act compounded of *law* and *fact*, of which the *jury*, *aided by the Court*, must judge."

Durfee, Ch. J.—Of what use are the Court, if the jury are the judges of the law?

Turner.—Of very great use. They are the proper and sole judges of every thing relating to the impannelling of the jury—they decide all questions as to the admissibility of evidence—and after the argument at the bar, they advise, instruct, or charge the jury, as to what the law is, *in their opinions;* but after all that, the jury

are to judge for themselves, otherwise the Court decide the case and not the jury.

[Mr. T. proceeds with the argument.]

It is unquestionably true, that juries generally are not so competent to decide questions of law, as the Court, but as they are the *sole* judges of the *guilt* or *innocence* of the accused, and are by no law bound to find a *special* verdict, referring the questions of law to the Court, and as all capital trials necessarily involve questions of law, as well as of fact, reason and common sense would dictate that before being called on, under an oath, to decide, they should hear the question thoroughly argued, on both sides, to enable them the better to decide it, under the instruction that the Court may give them, after such arguments are had.

This is not only *common sense*, but I will endeavor to show that, in this country, and in this State, it is also *common law*.

I will, however, in the first place, introduce such English authorities, as seem to place the law, in that country, on the same footing, in this respect, with the law here.

Hale's P. C. vol. 2, p. 313, "It is the conscience of the jury, that must pronounce the prisoner *guilty or not guilty*." "And to say the truth, it were the most unhappy case that could be to the Judge, if he at his peril must take upon himself the *guilt* or *innocence* of the prisoner, and if the judge's opinion must rule the matter of fact, the trial by jury would be useless." This same authority is thus quoted by Sir W. Blackstone: "For, as Sir Mathew Hale well observes, it would be a most unhappy case for the judge himself, if the prisoner's fate depended upon his directions—unhappy also for the prisoner; for if the judge's opinion *must rule the verdict*, the trial by jury would be useless."—4 Tuck. Bl. 361.—And in the same paragraph he says: "And such public or open verdict may be either general, guilty, or not guilty; or special, setting forth all the circumstances of the case, and praying the judgment of the Court, whether, for instance, on the facts stated, it be murder, manslaughter, or no crime at all. This is where they *doubt* the matter of law, and therefore *choose* to leave it to the determination of the Court; though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict, if they think proper so to hazard a breach of their oaths." Mr. T. cites English Lib. p. 226, § 4, and Hale's Com. Law, 293.

[*Atwell.*—Trial by jury *now*, is getting to be almost a mere farce.]

Sir Micheal Foster, who wrote his treatise on Crown law, about the period of the Scotch Rebellion, and was himself a distinguished judge, in the case of the Kinlochs, who asked to have counsel assigned them, and time granted to plead special matter of law in defence, "told them withal, that if the matter contained in their papers would avail them at all, they would have the full benefit of it *upon not guilty;* since it amounts to no more than that their cases are not within the act of the last session, by authority of which act alone this court sits. They then severally pleaded not guilty."—Foster's C. L. 15. Now what can be clearer, than that here the judge intended that matter of *mere law* might and should be argued to the jury, by the prisoner's counsel, under the general issue, the plea of *not guilty*—the Defendant's plea in the present case.

1 Chitty's C. L. 383—"Upon all capital accusations, the plea of *not guilty* puts in issue the whole of the charge; not merely whether the Defendant actually did the fact stated in the record, but the criminal intention with which it is alleged he was actuated, and the legal quality of the guilt to be deduced from the whole, (cites 4 Bl. C. 338. 1 Erskine's sp. 278.) In this respect there is *a very important distinction* between *civil* and *criminal* proceedings;—in the *former* where the facts are admitted, and the defence is that they were rendered legal by circumstances, a *special justification must be pleaded;* but in the *latter* no *justification can be admitted to limit the Defendant's means of defence;* nor is it at all necessary, for if it appear," (to the jury,) "that the facts though *true* were *legal*, the Defendant, will, of course, be acquitted." Cites 2 Hale 258, 4 Bl. C. 338, 1 Ersk. sp. 278.)

Now, in what way can matter of justification be available before a jury, without the argument of counsel? But I think this authority goes much farther than we now claim; I understand from it, that even if a special plea be interposed and ruled out by the Court, yet the Prisoner's Counsel might even then go with it to the jury, under the general issue, because "*no justification can be admitted to limit the Defendant's means of defence.*"

Your Honors will recollect the decision of this Court in the *Cooley* case, where, on motion, the special pleas of the Defendant were ruled out by the Court.

Same page, 384. "So also in indictments for *Felony* and *Treason*; if the facts stated amount to neither of them, the prisoner will be discharged under the general issue, for the terms '*feloniously* and *traitorously*,' by which the crimes are designated, are the gist of the charge; and unless they are shown to be properly applied, the indictment cannot be supported." (Cites last mentioned authorities.)

If it be incumbent on the prosecutor to show that the terms *feloniously* and *traitorously* are well applied, he must do so by *authorities* and *argument;* and it would seem very strange, if authorities and argument for the *government* might not be met and answered by authorities and argument for the *Defendant*.

Again, page 511. "That plea (not guilty,) refers the whole matter of *guilt* or *innocence* to the jury; the *intention* as well as the *facts*, and the *legal complexion* of the transaction, as well as the transaction itself. It followed, therefore, that he may show the innocence of his *intention*, as well as negative the facts of the charge. And it is laid down as a general rule, that whatever he could not have pleaded specially, he may justify under the general issue."

How can a Defendant ever show the *innocence* of his *intention*, if the Court, in the first place, refuse to let him in to proof of the facts in his justification; and in the next place, prevent him from arguing the law to the jury, upon which his intention, in other words, his *guilt* or his innocence depends?

These authorities seem to me to establish the following points:—That even in England, at common law, all pertinent questions of law, in capital trials may be, and ought to be, argued to the jury under the general issue of not guilty; that even the matter of a special plea, that had been overruled by the Court, may be so argued, and that any and all matters of legal defence, that could not be taken advantage of by way of special plea, may also be argued to the jury, to prove the innocence and good intentions of the prisoner. And such I take to have been common law of England, ever since trials by jury have been known. In fact, *in such cases*, their powers, their duties, and their oaths as jurors, place them, for the time being, in a similar situation to the English House of Lords, on the trial of a Peer of the Realm; each of them, the Jury in the one case, and the House of Lords in the other, are trying *one of their peers*. And the Court, in the one case, are the law advisers of the jury, as in the other, *all the judges of England* are the law advisers of the House of Lords. Fosters C. L. 143, &c. 4 Tuck, Bl. 263.

The same thing may be said of the U. S. Senate, when it sits as a high court of impeachment upon a *President:* then the *Chief Justice* of the Supreme Court of the U. S. is the presiding officer, and the law adviser of that body.

In this country, in 1804, this same question arose upon the impeachment of Samuel Chase, one of the Judges of the Supreme Court of the United States, before the Senate of the United States.

The impeachment consisted of *eight* distinct articles. We have nothing to do, except with the *First Article*, which contains three distinct *specifications*, and is as follows:

"ARTICLE I."

"That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them 'faithfully and impartially, and without respect to persons,' the said Samuel Chase on the trial of John Fries, charged with high treason before the Circuit Court of the United States, held, for the District of Pennsylvania, in the City of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his official capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion in writing, on the question of the law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence.

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain Statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client.

3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel,) on the law, as well as the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict, which they were required to give.

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties, as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard by counsel, in his defence; to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the right of juries, on which ultimately rest the liberty and safety of the American people."

To the 3d specification I would direct your attention, for the purpose of showing that the House of Representatives of the United States, 40 years ago, considered it a constitutional privilege in the prisoner to address the jury upon the *law* as well as the *fact*, and the indisputable *right* of the jury to hear argument and determine as to both, upon the questions involved in the verdict they were required to give.* Mr. Chase himself, in his answer, admits the doctrine, but denies the *fact*, and† Hopkinson, his counsel, defends him on that ground, whilst Martin‡ and Harper§ alone deny both the right and the fact, and would restrict the jury to taking the law from the Court.

Upon taking the final question upon that *article*, of *guilty* or *not guilty*, the vote I think, stood 18 to 16 for a conviction. The two members from R. I., viz. Messrs. Ellery and Howland, both voting upon that article, *guilty*. There was, however, not a constitutional majority of *two-thirds* of the whole, and so the learned judge escaped conviction.

2d Wilson's Works, 372. "But in many cases, the question of law is intimately and inseparably blended with the question of fact; and when this is the case, the decision of one necessarily involves the decision of the other. When this is the case, it is incumbent on the judges to inform the jury concerning the law; and it is incumbent on the jury to pay much regard to the information, which they receive from the judges. But now the difficulty in this interesting subject begins to press upon us. Suppose that, after all precaution taken to avoid it, a difference of sentiment takes place between the judges and the jury with regard to a point of law; suppose the law and the fact to be so closely interwoven, that a determination of one must, at the same time embrace a determination of the other. Suppose a matter of this description to come in trial before a jury, what must the jury do? *The jury must do their whole duty;* they must decide the law as well as the fact. This doctrine is pecu-

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* Chases Trial, Appendix, page 12.
† Chases Trial, pages 142, 143, 145.
‡ Chases Trial, pages 182, 183, 184, 185.
§ Chases Trial, page 216.

liarly applicable to criminal cases, and from them, indeed, derives its peculiar importance. When a person is to be tried for a crime, the accusation charges against him, not only the particular fact which he has committed, but also the motive to which it owed its origin, and from which it receives its complexion. The first is neither the only, nor the principal object of examination and discussion. On the second, depends the innocence or criminality of the action. The verdict must decide not only upon the first, but also, and principally, upon the second; for the verdict must be co-extensive and commensurate with the charge. It may seem, at first view, to be somewhat extraordinary, that 12 men, untutored in the study of jurisprudence, should be the ultimate interpreters of the law, with a power to overrule the directions of the judges, who have made it the subject of their long and elaborate researches, and have been raised to the seat of judgment for their professional abilities and skill. But a deeper examination of the subject will reconcile us to what, at first, may appear incongruous." Read also, 381, and 382.

In an indictment for Treason, the United States vs. Mitchell, in 1795, 2 Dall. 350. The whole argument was upon points of law, suggested to the Defendant's counsel by Judge Patterson, the presiding Judge. There was no dispute about the facts in the case, they being all clearly proved. But if any doubt remain as to this right in capital trials, I will show by a Legislative act of Rhode Island herself, that for many years past, our Courts have uniformly recognised the right in practice, and that the Assembly have even extended it to minor offences.

Dig. 1822, page 426. "An Act authorising any person prosecuted for a libel, to give the truth in evidence."

"Be it enacted, &c., That if any person shall be prosecuted by indictment or information, for writing, or publishing, or causing to be written or published, or aiding or assisting therein, any defamatory, libel or libellous matter, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence, in his defence, the truth of the matter contained in the writing or publication charged as a libel; and the jury who shall try the cause, shall have a right to determine the *law* and the *fact*, under the direction of the Court, as in other cases." (Passed in 1804.

The Court were understood at the trial, to say that the Jury had the *same* right of determining the law in *every case*, civil as well as criminal; and that it was in all cases confined to the *applicability* of the law as laid down by the Court to the facts as they were proved to the Jury. To us it would seem that the Legislature of Rhode Island, in 1804, when the act just read was passed, entertained intentions and views widely different from those now advanced by the Court.

If at that time there were *no* cases in which the Jury were to determine the *law* as well as the *fact*, the legislature surely would not have used the language they did use, "*as in other cases.*" If they were as the *Court* contend, to determine the *law* as much in one case as in another, no such power would have been necessary and it would not have been granted—nothing would have been said about it—it would have been passed over in silence as a merely incidental power, pertaining to the Jury in *all cases.* Therefore to us it would seem, that the Legislature intended to recognize, as existing law, the right of the Jury to determine the law as well as the facts in *capital cases*—and justly deeming *reputation* and *character* no less dear than *life itself*, also intended by the act in question, to clothe the Jury with a *new* and *further* power to the *same effect*, in all criminal prosecutions for *defamatory libels.* The whole act taken together, seems to us to admit of no other construction.

Then what were the "*other cases*" referred to in this act? Why, clearly, *criminal trials for capital offences*, at the head of which stands High Treason. It is perfectly well known, that up to a much later period, in fact, until within a few years, our Courts did not charge juries at all in *civil* cases; and very rarely, if at all, unless asked by the Jury themselves in *criminal cases*, whether capital or otherwise.

The practice of arguing matter of law in such cases to the jury, not only in our own Courts, but throughout the country, has been such as we now contend for as a *right.* In the trial of Chase, already cited, ample proof of this may be found. We therefore insist upon it as the *right* of the Defendant, through his Counsel. As the *right* also of the Jury; and as an inseparable incident of the common-law jury trial—the great bulwark of our liberties.

Of that great right, without the full exercise of which, he *could* not have a FAIR TRIAL, the Prisoner at the bar has been deprived by what we consider the erroneous ruling of the Court; and upon this ground, also, we ask that a NEW TRIAL may be granted.

Haile, J.—The Constitution clearly points out our duty. It directs the judges to "*instruct*" the jury in all cases.

Turner.—So it does, may it please your Honors; but to convey the same idea, the books use the words *instruct*, *direct* and *charge* indiscriminately, and they are all of them synonymous, in this case, with the word *advise.*

Durfee, Ch. J.—If the Jury do not take the law from the Court, how are they to know what it is?

Turner.—The Jury hear the law read and argued at the bar, and thus obtain their information; as also from the opinion given by the Court.

The Court adjourn until 9 o'clock to-morrow morning.

Wednesday Morning, June 12, 1844.

The Court met as usual. Mr. Dorr brought in.

Mr. Dorr.—I wish to say further in reference to exceptions 13 and 16 that we urge the point only as applicable to *capital cases.*

Again. If the Court have considered the first exception, so far as the admission of testimony to

prove the disqualification of certain of the jury is concerned, I should like to know the decision on account of the witnesses, who are here at great inconvenience to themselves and expense to me, which I cannot afford.

Mr. Blake —I wish to be heard.

Dorr —The matter was argued on both sides and submitted on the first day.

Blake.—As other exceptions have a bearing on that, I should like to be heard on all the exceptions together.

Durfee Ch. J.—My difficulty is that the jurymen may not have been prevented from giving a *fair verdict*, in a *very plain case like this*—whatever the cause of challenge might have been, it is not shown that it had any influence in the formation of the verdict.

Blake.—The juror must have given an *unfair* decision—*Prejudice* however strong is not enough. No matter what the juror may have *said* against the prisoner—did he *act* fairly ?—that is the question.

Turner.—The prisoner by law is entitled to a *speedy*, a *fair* and an *impartial* trial;—if the jury was composed of partial and prejudiced men —men who had prejudged the cause—I care not what their verdict may have been, nor how they arrived at it; he cannot be said to have had a *fair* trial by an *impartial* jury, and might full as well have been tried in the county of Providence where he belonged.

Dorr.—It is the right of the accused to have an impartial jury—If the facts and the testimony had been known when the jurors were sworn, they would have been challenged, and must have been taken off—no verdict they can give, will cure a radical defect in the organization of the jury.

Haile J.—The juror swore he had no prejudice—now if he had a prejudice, he was guilty of perjury and the evidence to be produced against him should be such as would secure a conviction of perjury. The juror once being tried, it strikes me, by all the authorities, that we cannot go into the question of partiality again.

Turner.—How was it in Tallman's case ? After he had been examined the witness Waite was called; would Waite's testimony convict Tallman of perjury ?

Staples J.—I was inclined to hear and weigh the evidence at first; but the opinion of the Court, being as it is now, on the *effect* of the evidence, I am on the whole decidedly against the admission of evidence.

Haile J.—I deem the matter foreclosed by the swearing of the juror.

Brayton J.—I am willing to *hear* the evidence.

Durfee Ch. J.—The Court being *divided* I suppose the evidence must be admitted.

Staples J.—The argument was on the objection of the Attorney Gen'l to the Court's receiving evidence. I was in favor of it, and the Court were divided on the question; but now, as Three judges think the testimony if admitted would not be a ground for a new trial, as there is *now no fact* for a jury to try, and the Court is divided about other matters, I am against admitting it.

Dorr.—Your Honor seems to take it for granted that the jury had *nothing of fact* to try. Now I deny that I did the acts as charged in the indictment, with the intents and motives imputed to me, which could alone determine my guilt or innocence, and therefore I say that I am not guilty.

Staples J.—I have no doubt of the purity of the motives of the Defendant. This is the view I have always taken; but there was no *legal excuse*, and there was nothing for the jury to try :—therefore whether the jurors were all free from prejudice. is of less importance.

Dorr.—Well ! how does your Honor know but some of the jury might have thought so too, if we had been allowed to show and prove to the jury what the foundations of my actions were ?

The Court gave no decision on the subject.

Mr. Turner proceeded, taking 14th Exception. He said it was not his intention, as the Court had *indulged* him with an argument on the subject of *State Treason*, during the trial, to go over the same ground again upon the same authorities, he should ask the attention of the Court to those authorities now, when they could give the subject greater deliberation than was expected of them in the progress of an important jury trial. (Mr. T. gave the Court a list of the authorites, see ante page, from 43 to 48.)

He said that at the former argument, he had inadvertently omitted one authority, as to the *contemporaneous* and *practical* construction of the Constitution on the subject of Treason, which he now wished to put in. In Massachusetts in 1787, before the adoption of the U. S. Constitution, a law was passed very similar to that of Rhode Island already cited, for punishing Treason against the State, and it was repealed, as that of Rhode Island had been, upon the first revision of their statutes, (after the U. S. Constitution was adopted,) in 1801—furnishing another instance of the construction contended for.

Dorr.—I will add one suggestion, if the Court please, on this point of Treason against a State, which, perhaps, was not sufficiently dwelt on, at the former argument.

At the time when the U. S. Constitution was framed, there were no District, or Circuit Courts:—there were no judicial divisions of the U. States; the only ones known, were the States themselves: at that time there was no general judiciary system; it could not then be known, how the U. States Courts would be organized; or their jurisdiction limited and arranged. For aught that could be then foretold, Congress might by law provide, that Treason, thereafter, as it theretofore had been, should be punished by the Courts of the respective States. So that the framers of the Constitution, in order to secure a trial of the offender, where the offence was committed, whether before an United States. or a State tribunal, could only provide, as they did, in the Article respecting fugitives from justice, for their being returned to the State having jurisdiction of the crime, leaving it to be determined by the future law of Congress, whether that jurisdiction, within the State, should be vested in a Court of the State, or of the United States. Thus we now find, that by the act of 1790, it is *misprision* of Treason, to conceal Treason from the *Governor* of a State, although it be Treason against the United States.

Atwell.—My idea is that the constitution provided temporarily for the punishment of the crime in the *State Courts*, until the United States should arrange their judicial power to take cognizance of it. The Article in the Constitution does not

say, he shall be sent to the State "against whom the offence was committed," but to the State "having jurisdiction." Before this Constitution was adopted, the States alone had Courts. Then the Constitution must have meant the State judiciaries in the 3d Article, and of course they were providing for the punishment of Treason against the United States.

Mr. Turner —next took up the 15th exception:—This exception is founded, in part, on the act of Rhode Island of March, 1842, commonly called the Algerine Law, and involves a consideration of the constitutionality of the 4th section of that act, so far as it provides for the *finding* and *trial* of Indictments, in any county, other than the one in which the offence is charged to have been committed. The Court at the trial said that this question having been *once* solemnly argued and decided by the *same Court*, in the Cooley case; they considered it a *closed question*, and gave that as a reason why they, *then*, would not hear it re-argued. If the opinion of the Court is made up on this point, I should not deem it proper to re-argue it, on the same authorities; if it is an open question, then we claim it as a privilege and a right to be heard. Is this the *same Court*? This is a question partly of *law* and partly of *fact*. We beg leave to differ from the Court in this matter. The Court that decided the Cooley and Joslin cases, by a different *title*, acted under the old *charter government*:—This Court with a *new* title, hold under a *new* Constitution and *new form* of government—that was composed of *three* judges:—This of *four*. *That* was elected *annually*:—*This* hold their offices during good behaviour, or until removed, impeached or otherwise disqualified. That they sit in the same place, exercise the same jurisdiction, and use the same seal, does not make them *the same Court*. But deriving all their powers from a *new and different form of government*—being composed of *a different number of members*, and holding their offices by a *new tenure*, create them both in point of *law* and *fact*—a *new Court*.

But, admitting that your honors think otherwise, and still deem this to be the same Court in law, that made the decision in the cases referred to, even then we say, that on a question of this importance, whether we consider its bearing on the present case, or the course of future adjudications; neither respect for authorities, nor mere pride of opinion, ought in justice to prevent *this* Court, from reviewing, and, if need be, reversing any decision of *that*. Examples of such a practise, are of frequent, or at least occasional occurrence, in other Courts, even in the Supreme Court of the United States—the highest judicial tribunal in the country. As an instance I refer your Honors, to the case of Bollman and Swartwout, in 1807. Reported in 4 Cranch 103, where Ch. Jus. Marshall says—"I am very far from denying the general authority of adjudications. The uniformity in decisions is often as important as their abstract justice. But I deny that a Court is precluded from the right, or exempted from the necessity of examining into the correctness or consistency of *its own decisions*, or those of any other tribunal. If I need precedent to support me in this doctrine, I will cite the example of this Court, which in the case of *United States versus Moore*, Feb. 1805, acknowledged that in the case *United States versus Sims*, Feb. 1803, it had exercised a jurisdiction it did not possess.

Strange indeed would be the doctrine, that an inadvertency once committed by a Court, shall ever after impose upon it the necessity of persisting in its error. A case, that cannot be tested by *principle*, is not *law*, and in a thousand instances have such cases been declared so by Courts of justice."

In a case then, like the present, where a decision depends upon, or is fortified by no *precedent*, and the *principle* of it is at least doubtful, how much more should the Court be willing to reconsider an adjudication of its own.

The Court directed Mr. Turner to proceed with the argument.

Mr. Turner went on as follows:—

"The Indictment in this case, is founded on the 1st Section of the 1st chapter of the criminal code of 1838, but it is preferred and prosecuted in this Court, under the 4th Section of the act of March 1842, entitled "An act in relation to offences against the sovereign power of the State."—[See act in appendix]

The part of the Section material to this case is as follows, "All indictments under this act, and also all indictments for treason against this State, may be preferred and found in any county of this State without regard to the county in which the offence was committed; and the Supreme Judicial Court shall have full power for good cause, from time to time, to remove for trial any indictment which may be found under this act, or for treason against this State, to such county of this State, as they shall deem best for the purpose of ensuring a fair trial of the same" This act it is contended, is unconstitutional and void, as destroying or abridging the right of the common-law-trial by jury, which right is of itself a fundamental part of our Constitution.

In order the better to understand the nature and force of our objections, it may be proper to enquire into the *constitution* and *incidents*, of the jury trial as established by the Common law, especially in criminal matters. When we speak of the Common law jury trial, we use language in law *strictly technical*; and such trial is intended and understood as embracing all the circumstances and incidents, that pertain to such trial, as much as though they were all particularly expressed or enumerated. As was expressed by Mr. Madison, in the Virginia Convention on the adoption of the U. S. Const. 2d vol. Elliott's Debates p. 389, on the same subject. "He (Mr. Mason,) is displeased that there is no provision for peremptory challenges to juries. There is no such provision made in *our* Constitution or laws. The answer made by an Honorable member lately, is a full answer to this. He said, and with great propriety and truth, that where a technical word was used, all the incidents belonging to it, necessarily attended it. The right of challenge is incident to the trial by jury; and therefore, as the one is secured, so is the other."

The first great feature in jury trials in criminal cases, at Common law, is that the indictment shall be found by a grand jury composed of good and lawful men, of the county in which the offence is committed, this was a right of our English ancestors, long before Magna charta, and ever after, to the settlement of the American colonies;

and its violation was one of the causes of the Revolution.

(For authorities see next point.)

The next in order was, *that the trial should be had in the same county where the indictment was found*, being that in which the offence was committed.—25 Ed. 3. c 4.—4 Hawk. P. C. 371. 3 Coke Inst. 27 Eng Lib 213, 221, 229 and 24.—2 Hale P. C. 264, 163 and 164. 4 T. Black. 349. 1 Trials per pais 115, c. 8.—3 Inst. c. 2, p. 24, 25, 26, 27, 33.—1 Hale P. C. 221, 298, 299.

Hawk. P. C. 2. c. 23. s. 92.

Rhode Island Res. 1790, art. 8.

Crim. Code of 1838, p. 992, s. 26.

The next was, *that all the jurors sworn should be of the same county* of the vicinage, or neighbors of the accused.

(For authorities see last point ante.)

The writ of venire was to be served *by a sheriff who was without suspicion of partiality, or unduly influenced by any one.*

1 Chitty C. L. 437 and 438, and authorities there cited.

The jurors themselves were not only to be of the county where the offence was committed, but also to be men of substance in point of estate, and individually, above all objection or exception. "*Omne exceptione majores*"—and *probi et legales homines.*

Another incident in capital cases was, a right to peremptory challenge of jurors—in Treason, to the number of thirty-five—and as many more for cause, as good objections could be made to.

And, one of the most important of all, the jury in criminal trials were judges both of the law and the fact.

4 Tuck. Bl. Tit. Jury.

They were all to be under oath,—and

Lastly—they must all unite and agree upon the verdict they might render under their oath.

These are the principal features and incidents of the trial by Jury, at common law, and the great and good Lord Hale had them all in view when two hundred years ago he pronounced "the trial by a jury of twelve men, as settled in England, to be the best trial in the world." Hale's Com. Law, 286.

It was under a full consideration of all this combination of circumstances and incidents that Sir W. Blackstone in his commentaries, vol. 3, p. 349 and 356, passed his encomiums upon it, and at page 380, declares it to be "therefore upon the whole, a duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable constitution in all its rights; to restore it to its ancient dignity, if at all impaired by the different value of property, or otherwise deviated from its first institution; to amend it, where ever it is defective; and above all, to guard with the most jealous circumspection against the introduction of *new* and *arbitrary* methods of trial, which under a variety of plausible pretences, may in time imperceptibly undermine this best preservative of English liberty."

Under similar views of trials by jury—and an enlightened view of the powers and rights of Juries, was it, that Lord Brougham, in his speech in the English House of Commons, Feb. 7, 1828, on the state of the law, thus expressed himself—"The House will permit me to say a few words upon the subject of Juries, the rather because this venerable institution has, I lament to say, been of late years attacked by some of the most distinguished legal reformers. Speaking from experience, and experience alone, as a practical lawyer, I must aver that I consider the method of juries a most wholesome, wise, and perfect invention, for the purposes of judicial enquiry.—In the first place, it controls the judge, who might, not only in political cases, have a prejudice against one party, or a leaning towards another, but might also, in cases not political, where some chord of political feeling is unexpectedly struck, *if left supreme*, show a bias respecting suitors, or what is as detrimental to justice, their counsel or attornies. In the second place, it supplies that knowledge of the world, and that sympathy with its tastes and feelings, which Judges seldom possess, and which from their habits and stations in society, it is not decent that they should possess, in a large measure, upon all subjects. In the third place, what individual can so well weigh conflicting evidence, as twelve men indifferently chosen from the middling classes of the community, of various habits, characters, prejudices, and ability? The number and variety of the persons, is eminently calculated to secure a sound conclusion upon the opposing evidence of witnesses, or of circumstances."

"The system is above all praise—it looks well in theory, and works well in practice—it wants only one thing to render it perfect—namely: that it should be applied to those cases from which the practice in equity has excluded it; and that improvement would be best effected by drawing back to it the cases which the courts of Equity have taken from the common law, and which they constantly evince their incapacity to deal with, by sending issues to be tried whenever any difficulty occurs."

Such was the trial by Jury claimed of the British Crown, as a fundamental law of the realm by the Continental Congress in their Declaration of Rights, October 14, 1774, Art. 5, where they say "That the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried

by their peers of the vicinage according to the course of that law."

Such was the trial by Jury claimed and demanded by Rhode Island, in their Resolutions of October 1769. "That the seizing of any person or persons, residing in this colony, suspected of any crime whatever,committed therein, and sending such person or persons to places beyond the sea to be tried, is highly derogatory to the rights of British subjects; as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused."

Such was the trial by Jury, for the deprivation of which, the Declaration of Independence, charged the British King with having given assent to acts of Parliament, "For protecting by a mock trial, from punishment" his troops "for any murders committed on the inhabitants of these States." "For depriving us, in many cases, of the benefits of trial by jury," and "For transporting us beyond seas, to be tried for pretended offences," and "for altering fundamentally the forms of our governments."

Such was the trial by jury, which the liberal minded friends of civil liberty, in the British House of Lords, by their Protest against the "act for the better regulating the Government of the Province of Massachusetts Bay, May 11, 1774, asserted in behalf of the colonies," "because the Governor and Council thus entrusted with powers with which the British Constitution has not entrusted his Majesty and his Privy Council, have the means of returning such a jury in each particular case, as may best suit with the gratification of their passions and interests. The lives, liberties, and property of the subject are put into their hands without control, and the invaluable right of trial by Jury is turned into a snare for the people, who have hitherto looked upon it as their main security against the licentiousness of power," and made on the 18th of the same month a similar protest against the act for removal of persons to England, to be tried there for offences committed here—4th ser. Am. Archives, p. 127, 94.

Such was the trial by Jury in Rhode Island in June 1777, during the Revolutionary War, when a part of our State was in the hostile occupation of an open and avowed enemy, and Toryism and Treason were sown broad cast through the State; then a Legislature of Rhode Island repealed an act of the previous session that authorized the taking up of a jury by venire to try such offences, without the regularly drawn jury, because as they say it was "contrary to the ancient laws, usages and customs of this State."

Such was the trial by Jury here also in 1787, when the case of Trevett & Weeden was tried, in which it was maintained "that the trial by Jury"—(that is to say the common law trial by jury) was "a fundamental right, a part of our legal constitution: that the Legislature cannot deprive the citizens of this right." (Trial page 11.) And the Supreme Court of this State at that day, so decided in defiance of an act of the Legislature. The Judges who had the manly independence so to decide, were summoned to appear forthwith before the Assembly "to render their reasons for adjudging an act of the General Assembly unconstitutional and so void;" and they did so attend,and they did render their reasons as required; and upon being fully heard by counsel at the bar of the two Houses, to the lasting honor of a Rhode Island Legislature, which I delight to recal, they were all honorably discharged.

Such now also is the common law trial by Jury, which every other State Constitution has declared shall be forever held *sacred* and *inviolate*, and which is also secured in express terms by that of the United States also.

Such was the trial by Jury in 1830, when Judge Story, in the case of Parsons vs. Bedford and al. 3. Peters. Rep. declared that "the trial by jury is justly dear to the American People. It has always been an object of deep interest and solicitude, and every encroachment upon it, has been watched with great jealousy. The right to such a trial is, it is believed, incorporated into, and secured in every State Constitution in the Union. One of the strongest objections originally taken against the Constitution of the United States,was the want of an express provision securing the right of trial by jury in civil cases. As soon as the constitution was adopted, this right was secured by the seventh amendment of the Constitution proposed by Congress, and which received an assent of the people so general, as to establish its importance as a fundamental guarantee of the rights and liberties of the people. At this time there were no States in the Union, the basis of whose jurisprudence was not essentially that of the common law in its widest meaning."

Such may it please your Honors, is the Constitutional trial by Jury, in its unshorn state, both in England and this country: such is the trial by jury, it may be presumed, that the Convention which framed our present Constitution *probably* intended by that article of the Bill of Rights attached to it, which declares that it shall remain sacred and inviolate. I say probably intended, for this very obnoxious act was then in full force, and was the law of the State regulating jury trials; and it cannot in justice to humanity be supposed, that the Convention ever intended to make such a law *fundamental* and *perpetual*, by placing it beyond the reach of all future legislation.

And now, may it please your Honors, having shown in what the common law trial by jury consists, by an enumeration of its inseparable incidents; and having attempted by authorities, to establish it as a part of our fundamental or constitutional law; let me ask your Honors' attention to the alarming inroads made upon its very vitals by the act of March, 1842.

The 4th sec. of the act, provides that, "All indictments under this act, and also all indictments for treason against this State, may be preferred and found in any county of this State, without regard to the county in which the offence was committed." It leaves it, therefore, entirely at the discretion or caprice of the Attorney General to proceed against a supposed offender in any county he pleases, no matter how remote or how hostile to the accused; and according to the construction given to the act, by the Court, it authorizes a trial to be had in the county where such indictment may be found, "without regard to the county in which the offence was committed," thus enabling the prosecuted to take the accused away from his own county, under an indictment found

by a Grand Jury of another county; and there try him by a petit jury, equally unknown to him and his friends, if he have any—beyond the reach of witnesses in his own favor—beyond the means of such challenges as he might make to jurors of his own county; and alike beyond the means of contradicting or discrediting the witnesses brought against him.

The extent of territory of this State, to be sure, is small; but principle is the same everywhere. Suppose the legislature of one of the large States, New York, Pennsylvania or Virginia, for instance, should pass such an act; it is hardly to be believed that the Supreme Court of either of those States would declare such an act to be law. Suppose that Congress should pass an act, authorizing indictments for treason against the U. States to be found and prosecuted in the same way in any of the U. States, without regard to the State or District, in which the offence was committed; and by parity of reason, they well might do so—is it possible to doubt that the Supreme Court of the United States would, at once pronounce it unconstitutional and void?

Durfee, Ch. J.—The only question is whether the General Assembly can, by statute, alter the common law.

Turner.—That depends on another—whether that common law was a part of the fundamental or constitutional law. If it were—then the legisture could not alter it. [Turner proceeds.]

The right of trial by jury implies and includes all the incidents that I have enumerated. Ordinary legislation cannot rightfully abridge them. Yet this act at one dash of the pen, abolishes the necessity of an indictment found in the county, and by jurors of the county where the offence was committed; subjects the accused to be tried in a foreign or remote county, by a jury of that county; and essentially alters the nature of the common law, and constitutional jury trial.

If the legislature had gone a step farther, and completely abolished the right to peremptory challenges—as they have already reduced the number of them from 35 to 20—the form of trial by jury would be hardly worth preserving—for, as it is not every decision of twelve men that constitutes a trial by jury, in legal acceptation, the purposes of justice might have been as well subserved by a military, as by such a civil tribunal.

I contend. therefore, that that portion of the 4th sec. of the act of March, 1842, was unconstitional and void; that the ruling of the Court was erroneous, and that a new trial ought to be awarded.

The Court adjourned until 3, P. M.

AFTERNOON.—The Court met as usual. Mr. Dorr brought in.

Mr. Turner, took up the 17th exception, viz: "Because the Court misdirected the jury, in charging them, that the only question of intention on the part of the Deft., which, under their oaths, they could consider, was whether the Deft., at the times laid in the indictment, intended to commit the acts charged against him in the same"—and urged to the Court, that the guilt or innocence of the prisoner, was principally a question of general intent; that any presumed criminal intent might be legally rebutted, by evidence drawn from facts and circumstances proved on his part; that for this purpose, he had offered proof of the adoption of the People's Constitution, by both votes and voters; of his election as Governor; the Constitution itself and the address which he delivered to the People's Legislature, besides a great mass of oral testimony drawn from his own and the government witnessess; that the testimony thus offered and ruled out by the Court; together with that which was introduced and charged by the Court as irrelevant; was *legally* sufficient to rebut all presumption of criminal intent on his part; and that the charge of the Court to the jury, not to consider it, but to confine themselves to his intent to commit the acts charged against him, at the times laid in the indictment, was clearly a misdirection on their part, for which a new trial should be granted.

Mr. T. then took up the 18th exception, viz: "Because the officers charged with the service of writs of venire for the return of 108 jurors, selected and summoned the whole number, except ONE, from the members of one political party in the State, whose political feelings and prejudices are inimical to the political party to which the Deft. is attached, and to the Deft. himself.

Durfee, Ch. J.—What do you propose? That *we* shall determine what makes a Democrat or a Whig?

Dorr.—We offer to prove the facts alleged by competent witnesses.—[Reads 1 Chitty, &c.

Turner comments on the singular fact that where public opinion had been so generally divided as on recent Rhode Island affairs, the sheriff should have summoned 107 out of 108 men of the opposite party.

Blake.—A good deal is said about party—What party do you mean?

Turner.—I have so far, may it please your honors, avoided the use of any term that might be offensive either to the Court or the government; but being so pointedly called on, I say that I mean the Algerine, the "*Law and Order*"; the ANTI-SUFFRAGE PARTY. The party that with exasperated and embittered feelings are opposed to Mr. Dorr and the party with which he has acted.—These parties at one time constituted the two great political divisions of the people of this State. I therefore say that it does not seem to me the best way in the world to get an *impartial* jury, to look for them all among political enemies.

Durfee, Ch. J.—Would it be fairer to take them from the other party?

Turner.—No. But from both indiscriminately.

Durfee, Ch. J.—All who were not for the government were against it.

Turner.—We offer evidence to prove what we allege as to their hostile political party feelings.

Dorr.—What I complain of is, that the sheriff studiously avoided the members of one party, apparently deeming them not the most advantageous triors, and selected them all from another party. It looks a little like an unfairness which is inconsistent with my right to an impartial jury.

Atwell (makes an allusion to the Convent case.)

Dorr.—Mine is a much stronger case than that of the Catholics in the recent case of Daniel O'Connell.

Bosworth.—None of those summoned took part in the *rebellion.*

Blake.—There were several who left Mr. Dorr when he used force.

The Court refuse to admit any evidence as to the political character of the jury.

The Exceptions having now been all considered in course, Mr. Turner takes up the substitute for Exception No. 4, relating to the challenge to the Array. He read the exception, and an affidavit filed by the Prisoner, as follows, viz:

SUPREME COURT, March Term, A.D. 1844.

Newport, sc.

Indictment, the State vs. Thomas W. Dorr.

On motion for new trial.

And now on this 17th day of the term, the said Dorr on solemn oath declares and says, that upon a challenge to the array, made on the trial of said indictment, and overruled by the Court, this affiant has new and further evidence in its support, which has come to this affiant's knowledge since the verdict in said cause was rendered, and of which he was then ignorant

(Signed) THO'S. W. DORR.

Sworn to in open Court.

WM. GILPIN, Cl'k.

Blake.—We are not prepared to meet such a charge and object to its being filed.

The Court permit it to be filed.

Durfee, Ch. J., then delivered the opinion of the Court upon the objections made by the Attorney General to the 1st Exception.—That no evidence should be received to disqualify the jurors, by proof of previous hostility to the Prisoner.

MR. BLAKE, ATTORNEY GENL., IN REPLY TO MR. TURNER'S OPENING ARGUMENT, ON MOTION FOR NEW TRIAL.

Mr. Blake, said that although it was then pretty late, yet he would go on to reply to the Bill of Exceptions that evening, as he had very little to say on the subject, and thought it probable that he should not occupy their Honors' attention more than about FIFTEEN MINUTES.

(It was then about 5 P. M.)

Mr. Blake said, As to the 1st exception, it had already been sufficiently argued and disposed of by the Court's having refused to admit testimony in support of it, he however, commented on Mr. Turner's authorities, and read 17th Mass. Rep. 515, 1 Pick. Rep. 41, 6 Dane Dig. 233, Wend. Dig. N. Y. Rep. 318, and 320 and 5 Mass. R. 78. As to Tallman, said Mr. B., it is going a good ways to make such an exception. The objection, to be available to the Prisoner, must not be for light and trivial, but for vitally important grounds. In this case, Waite, the witness, swore positively, Tallman only negatively, and by all the rules of evidence he ought to be, as in fact he was, set aside.

As to Westcott, said Mr. B., he was challenged for cause, and upon trial the challenge was not sustained, it is too late now to try the matter over again, he was challenged peremptorily, and of course did not sit on the jury. Mr. B. commented on the authorities cited, and insisted that they did not meet this case.

As to the 4th exception, touching the challenge to the array, I consider this exception as virtually settled by the decision of the Court. If evidence cannot be admitted after verdict to disqualify a single juror, *a fortiori*, it will not be received to set aside a whole pannel.—[Reads 1 Chitty C. L. 545, Har. Dig. 522-4, S 8, 6 Dane's Dig. 253, cites 3 John. N. Y. Dig. 320.

As to the 5th exception, that the Prisoner had not sufficient time to canvass the qualifications of the jurors. The law gives *no time.* But no Prisoner ever had more time in the whole, than Mr Dorr had; the most he could expect was a reasonable time, and of that the Court alone are the judges.

As to 6th exception. There is nothing in this exception as to loss of peremptory challenges;—because when the motion was made at the trial, the *six* challenged jurors had been discharged, or excused by the Court, and were no longer within the power or control of the Court—in fact were no longer jurors: and I know of no law that requires the Court to ask permission of a prisoner on trial, when they are to excuse from further attendance, such jurors, as he, by his peremptory challenge, has himself told that he would not have to sit on his cause.

As to the 7th exception, that Prisoner was not furnished with a full list of the Government witnesses, I have the same to say, that was said with regard to copies of the pannels of jurors. He was not by any *law* entitled to any notice. It was otherwise in England, to be sure, *in cases of constructive treason.* This is a case of actual *levying war*, and not of constructive treason. In point of fact however he did have notice of them, as fast as we ourselves knew who they were, at least all of them but *one.*

As to the 8th exception. The introduction of other evidence before any *overt act* was proved. This objection was made and argued at the trial, and the Counsel read authorities upon the point; but the Court upon the authority of Chief Justice Marshall, in Burr's trial, decided that we might introduce it. Now I agree, if we had not subsequently proved an overt act of treason, and the Prisoner's participation in it, all such evidence *would have gone for nothing.* It is merely a question of the order in which the evidence should be introduced, and entirely in the discretion of the Court.

As to the 9th exception, admitting aggravating testimony as to facts beyond the knowledge of the Prisoner. This testimony was introduced to *characterise* the assembly which was subsequently joined by the Prisoner. Besides, before the

Court will grant a new trial, they must be satisfied, that if this testimony had been ruled out, the verdict would have been different from that found by the jury.

As to the 10th exception. I shall pass by all the authorities on this right of the People to make a Constitution; the question had been fully and elaborately argued and re-argued, and little now can be said on the subject. It was Mr. Dorr's intention to subvert the Government of the State. He had no right to use force.

Bosworth.—His own legislature were opposed to it.

Blake.—Mr. Dorr was not injured by the refusal to receive the votes, as proof of the People's Constitution, they could not have been produced if the Court had admitted them; and it would have been utterly impracticable to prove them by so many witnesses as the votes themselves; this was all intended for *mere show.*

Dorr.—There was no *show* about it. The votes themselves were actually here—ready to be produced and verified.

As to the 11th exception, I shall say nothing. It is nearly like the last, and has once been passed upon.

The 12th exception is about the same.

As to the 13th exception, whether the jury are the judges of the law, &c. The Court already understand all about that; but I will notice some of the gentleman's authorities.

In the trial of Judge Chase, it appears to me that he laid down the law very much as this Court has, and a portion of his counsel put it on the same ground; whereas, on the grounds contended for by the Prisoner's counsel, in this case, the Court and jury would be coming continually in conflict. Mr. B. read Thos. Coke, 355, 2 Sum. Rep. 241, 7 Dane Dig. 382, 3 Wend. 318, and commented on them.

As to the 14th exception, I need say nothing, as I presume the opinion of the Court, on the subject of State treason, remains the same as at the trial.

As to the 15th exception, I pass that over also, for the same reason, it having been solemnly decided by the Court, upon a very learned and elaborate argument.

As to the 16th exception that was embraced in the argument of the 13th.

As to the 17th and 18th exceptions, as it is now late, I will say, what I have to say about them, in the morning, when I wish to remark on the whole subject of the Bill.

The Court adjourned until to-morrow morning, 9 o'clock.

Thursday morning, June 13th, 1844.

The Court met as usual. Mr. Dorr brought in.

Mr. Blake, Att. Genl., continues his argument on the motion for a new trial.

Mr. B. said. As to the 17th exception, the ruling out evidence as to *intent*, he was satisfied then, and now, that the evidence was inadmissible, for that or any purpose, and very properly ruled out by the Court.

As to the 18th exception, he could say nothing. The Court refused to admit any evidence in relation to it, and therefore it all went for nothing.

Mr. B. then recurred to the 4th exception, upon the substitute and affidavit offered by the Prisoner, and contended that the objection could only be made before the jurors were sworn, and that after they had been sworn, even though an unsuccessful challenge to the array had been interposed at the proper time, no exception could be taken to it *after verdict*, upon which to ground an application for a new trial; that it was then too late. That more evidence was required to set aside a verdict in a *capital* case than in any other, because, in the former, the Prisoner had the benefit of his *peremptory* challenges. That a juror may have had *prejudices*, that might be proved, and yet before he was sworn, might have overcome them and so *truly* have sworn that he had none. That, as had been ruled by the Court, if after verdict, evidence would not be received to disqualify a *single* juror, *a fortiori*, it would not be received to disqualify *many*, far less to set aside a whole array. That before the Court would grant a new trial, they must be satisfied that some injustice had been done the Prisoner by the verdict, which might be remedied on a new trial; that another jury might find a different verdict;—but that, in this case the Prisoner, had himself admitted the facts against him on the trial, and no intelligent jury, who regarded their oaths, could find a different verdict. He admitted, that if there had been a *mis*-trial, a new trial should be granted.

Durfee, Ch. J.—What is a *mis-trial?*

Blake.—A void trial—no trial at all.

The additional authorities read by Mr. B. were, 2 Chitty C. L. 545, Har. Dig. 1522-4, 17 Mass. 538, 4 do. 399, 6 Dane Dig. 251, and N. Y Dig. 320.

The argument was briefly closed by Mr. Turner for the Prisoner.

Mr. Turner said he thanked the learned Attorney General for having given him, as he thought, very little to do, although he had stretched out *fifteen minutes*, to somewhat more than *four hours*.

He said, this motion resolved itself into two questions, for the consideration of the Court.

1st. Can the Court by law grant a new trial in a capital case, like this? and

2d. Has the Prisoner, by his motion, fairly brought himself within the legal discretion of the Court in granting one.

The *first* question, whatever the law or the practice may be elsewhere, is settled in this State by Statute, which expressly vests that power in this Court. Mr. Turner read R. I. Digest, of 1822, p. 110, § 6.

Upon the other question, I have little to add to that which has been already submitted to the Court.

In reply to the arguments and authorities of the Attorney General, Mr. T. went into a full reconsideration of the matter of challenge to the

array, on his part insisting that the evidence (which he minutely stated at full length) ought to be received by the Court. That it proved much more than the "*tolerable cause of suspicion*," of improper interference with the duty of the officer in taking up the jury, mentioned in several of the books he had read; that it was, of itself, if there was no other point in the case, good and ample cause for a new trial; that it affected and destroyed the legal competency of the whole jury, and that no trial could be *fair*, that was had before a totally incompetent and illegal jury. That this was the only legal way in which a remedy could be reached. That the challenge was seasonably made, and being overruled, the Prisoner was driven to the necessity of challenging the Polls, or of submitting to have the whole illegal pannel packed upon him.

The Court ruled that the evidence shall not be admitted, on the ground that the challenge was tried at the time it was made.

Staples, J.—If all the facts were proved, they would be insufficient for setting the verdict aside; they would amount to nothing.

The Court adjourned until 3 P. M.

Thursday Afternoon, June 13, 1844.

The Court met as usual. Mr. Dorr brought in.

Durfee, Ch. J.—The Court is not yet ready to deliver an opinion.

The Court adjourn until 9 o'clock to-morrow morning.

Friday morning, June 14, 1844.

The Court met as usual. Mr. Dorr brought in.

Durfee, Ch. J.—The delay in delivering the opinion of the Court, has been occasioned by an effort to reduce it to writing; it has not yet been completed, and cannot be done now, for perhaps some days. We will state the general result arrived at *now*, with a view to any further proceedings, and when completed, have the written opinion put on the files in the Clerk's office. The motion for a new trial is overruled.

MOTION IN ARREST OF JUDGMENT.

Mr. Turner then put in and read a motion in arrest of judgment, as follows, viz.

NEWPORT, sc.

Supreme Court, March Term, A. D. 1844.

IN THE CASE OF THE INDICTMENT.

THE STATE *vs.* THOMAS W. DORR,

FOR TREASON.

And now on this nineteenth day of the Term, after verdict given, and before judgment rendered in said cause, the said Thomas W. Dorr, here moves this Hon. Court to arrest the judgment to be rendered on said verdict, for the following objections and causes of error, which arise upon the face of the record of said cause here remaining.

1. Because it appears by the Indictment that the offences charged to have been committed by the said Dorr, are charged to have been committed by him in the County of Providence, and the said Indictment is found and returned a true bill by a Grand Jury, composed of citizens of the County of Newport, summoned, sworn and empannelled as the Grand Inquest of said last mentioned County and not otherwise and by them returned for trial to this Hon. Court at their August Term, 1842.

2. Because it appearing by said Indictment, as aforesaid, it also further appears by the record aforesaid, that the said Thomas W. Dorr was tried and convicted of the several offences charged against him in said Indictment, at the present session of this Hon. Court, held in and for said County of Newport, and by a Jury composed of the citizens of said County of Newport, summoned, empannelled and sworn as such and not otherwise, all which is contrary to law:—whereupon he moves the Court, here, to arrest the judgment in said cause.

(Signed) THOMAS W. DORR,

Mr. Atwell.—I move the Court to assign some future day for the argument. The great importance of the question itself, as well as the effects of the decision, requires that it should be fully argued. I have once argued this question, and wish to argue it fully to the Court, having prepared myself to do so. Mr. Turner's attention having necessarily been occupied in the consideration of other points of the case. My state of health, which your Honors know, will allow me, I hope, to do this at any day after the rising of the General Assembly. My confidence in the question is very great.

Bosworth.—I object to any delay—the Prisoner has had much delay already. It was known that Mr. Atwell would be unable to attend. This same question was originally one of the grounds for a new trial, and they professed to be ready to argue it.

Turner.—For myself I say so now. But Mr. Atwell was always relied on to argue this question. It is on account of his ill health that any delay is now asked.

Dorr.—On this question of delay, I wish it to be entirely understood that it is a matter between the Court and Mr. Atwell, whose services I have much needed, and which in this matter would be of great importance. I ask for no delay on my own account.

Blake.—I am opposed to any delay—the argument ought to proceed immediately.

Haile, J.—Could not the trial proceed so far as the opening is concerned, and Mr. Atwell close the argument in writing. This would be a great relief to him in his state of health.

Atwell.—That would be satisfactory; more so than to take the chances of being able to argue

it after the rising of the Assembly. Every thing Mr. Dorr has stated as to his expectations of my services, is strictly correct.

Durfee.—I do not see but that would be a very good arrangement.

Staples, J.—I would extend every indulgence to Mr. Atwell; but not even to him as he is situated without the assent of the Prisoner.

Atwell.—Mr. Dorr assents to it.

Durfee, Ch. J.—Then Mr. Turner you will proceed.

MOTION IN ARREST OF JUDGMENT.

OPENING ARGUMENT OF MR. TURNER.

May it please your Honors—

The question now to be presented for the consideration of your Honors, is *whether the Indictment in this case could be legally tried in this County.*

I am aware that the same question which arose on the Indictment against Judge Joslin, has been once argued before the former Court, and that the decision was against us. The question, however, is one of such great importance to our client, Mr. Dorr, and of such deep interest to the community at large, that we have felt ourselves excusable in strongly urging upon your Honors, its reconsideration upon this motion. The Court need not to be informed, that in that case, the decision was not the unanimous opinion of the Court; and we think, even if it had been, as it was the first and only case which had arisen under a new law, and as the Court now is differently constituted, composed of a different number of Judges, one of whom has never heard the point argued, it is not derogatory to the Court to consider it as still an open question and a proper subject to be re-argued.

The Court, or a majority of them, are also aware that I was not present, and took no part in the argument of that case; and I may properly state that I have seen no report of it; so that in attempting the argument in this case, I have no aids beyond my own views of the law, and my own researches for authority.

But when so great an innovation is attempted upon the jurisprudence of the State, it is most expedient that what is to be considered law, should be deliberately and well settled in the first instance. The views I may take of the subject, it would be egregious vanity in me to imagine will compare with those of the profound and learned scholars who argued the question before; but they will be my own, and I doubt not that the Court will bestow upon them all the consideration they may be entitled to.

In the first place, then, I shall contend, and attempt to show by authorities, *that by the common law and ancient statutes of England, all which were a part of the common law of Rhode Island, a citizen who stood indicted, was triable only in the* COUNTY *where the offence was charged to have been committed, and by a jury of the* VISNE OR NEIGHBORHOOD.

(Here Mr. T. read, and commented on as he read, the following authorities: Stat 25. Edw. 3. C. 4.—4 Hawk P. C. 371.—2. Hawk. P. C. 403. —3 Coke's Inst. 27. Eng. Lib. 213. 221. 229. and 24. 2 Hale's P. C. 264.—163, 164.—4 Tuck. Bl. 340.—1 Trials per Pais 115. C. 8.)

Blake, Att. Gen.—We admit, that as *common law*, the Defendant *had a right* to be tried in the County: but a great many statutes in England have altered common law in that particular. Chitty is full of them.

Turner.—I am aware of it, as you will perceive by the next position that I take; and that, may it please your Honors, is, that *as far as the common law in England has been altered by statute, the authority* TO TRY *is expressly given.*

These statutes are quoted in the context of the 1. Chitty's C. L. from page [180.] to [190.] inclusive, where he treats of *Venire* and *change of venue;* and are as follows, viz:—13. Geo. 3. C. 31. S. 4. 5.—44. do. C. 92. S. 7. 8.—43. do. C. 113 S. 5. 6.—2. Geo. 2. C. 21.—2. Jas. 1. C. 11. —53. Geo. 3. C. 108. S. 25.—42. Geo. 3. C. 81. S. 3 and 85.—26. Geo. 2. C. 19, S. 8.—8. Geo. 2. C. 20. S. 3.—13. Geo. 3. C. 84. S. 42.—38. Geo. 3. C. 52.—51. do. C. 100.—33. Hen. 8. C 23.—9. Geo. 2. C. 35. S. 26.—19. Geo. 2. C. 35. S. 5. —do. do. C. 30. S. 1.—37. Geo. 3. C. 70. S. 7.—26. Hen. 8. C. 6.—34 and 25 Hen. 8. C. 26. S. 75. and C. 2.—28. Hen. 8. C. 15.—39 Geo. 3. C. 37.—6. Geo. 1. C. 19 —11. do. do. C. 29. S. 7.—33. Geo. 3. C. 67.—39. Geo. 3. C. 44. S. 7. 8. and 12. Geo. 3. C. 24. S. 2.

All these statutes, said Mr. T., down to the 30th year of George the 3d—(1790)—that being the latest period to which I have had the means of access, have been carefully examined; and excepting the 2d of Geo. 2. C. 21. and the 19th of Geo. 2. C. 35. S. 5. which relate to incidental matter merely, whenever they authorize the *finding* of an Indictment in any county other than the county or place in which the offence may have been committed, do in the most explicit terms, at the same time *give the power to try.* There is, to be sure, great variety of language used for this purpose; but yet, in every instance, it is such as puts that purpose and that intent beyond the shadow of a doubt. In some cases, the phraseology is to "hear, try and determine;" in others, "to be enquired of, examined, tried and determined;" in others, "enquire, hear and determine;" in others, "to be prosecuted;" in others, "to be heard and tried;" and in others still' "to indict, try and punish." There is no instance in which the statute waves the *power to try*, as *incidental* to the power to *indict*; or to be *inferred* by the Court.

With regard to the statutes of England, it may be remarked further, that none of them passed subsequent to the Revolution, in the 15th of George the Third, are of any authority in, or furnish precedents for, the Courts in this country, notwithstanding Mr. Chitty relies much on them in his book, and that book is relied on every day, as authority, in our Courts; in fact several of the statutes passed prior to the Revolution, in the 8th 12th and 13th years of George 3d, also quoted by Chitty, are among those enumerated as *oppressive* and *unconstitutional*, by the Conti-

nental Congress, in their Declaration of American Rights, of Oct. 14, 1774, and were in themselves, prominent causes of the War of the Revolution; and they, also, are now brought up as good authority against us, on a question of the right of a Rhode Islander, to be tried in his own County, and by a jury of that County.

Having thus shown how the right of trial in England stood at common-law; and how it has been altered and abridged by statute; I will proceed to the consideration of another point in the case; which is, *That by the general law of Rhode Island, concerning crimes and punishments, the person indicted is to be tried in the County where the offence is charged to have been committed.*

[Mr. T. here read from the Revised Criminal Code, State Laws, page 992, chap. 9, section 26, as follows, viz.]

"Every person who shall be accused of any offence, shall be proceeded against in the county in which the offence shall be alleged to have been committed, *and not elsewhere.*"

This was not the enactment of *new law* in this State in 1838, when this revision was made; it had always been the law here; our ancestors brought it with them from the mother country. In the Digest of 1822, page 345, section 27, a similar provision is found in these words. "Nor shall any person charged with either of the (capital) crimes aforesaid, be tried, except by the Supreme Judicial Court, holden in and for the county wherein the offence shall have been committed;" and at page 353, section 60, it is repeated in these words, "That persons accused of any crime or crimes, shall be proceeded against either in the Supreme Judicial Court, or the Court of General Sessions of the Peace of the County, wherein the crime or crimes charged may be committed, unless in cases where by law *special provision* is or shall be made."

In the Digest of 1798, page 604, section 56, is the same provision, expressed in the same words, the former being a literal transcript of the latter.

In the Resolutions adopted by the Legislature of Rhode Island, communicated to Congress, upon the adoption of the U. S. Constitution in 1790, section 1st, Elliott's Debates, 370, in articles 8 and 18, the right of trial by a jury of the vicinage, is declared to be a constitutional right, that "*cannot be abridged.*"

So stood the law in Rhode Island up to March 1842, when the Legislature passed the "Act in relation to offences against the sovereign power of the State"—upon the construction of the 4th section of which the present question arises. It may, however, as well be here observed, that the *general law* of Rhode Island, on the subject is the same, in principle, with the 6th Article of the Amendments of the Constitution of the United States.

The 4th section of the Act of March, 1842, is in these words, "All offences under this act shall be triable before the Supreme Judicial Court only. Any person or persons arrested under the same, and also for treason against the State may be imprisoned or held in custody for trial in the jail of such county of the State, as the judge or justice issuing the warrant may order or direct, and the Sheriff or other officer charged with the service of such warrant, shall without regard to his precinct, have full power and authority to take such person or persons, and him or them to commit to any county jail in this State, which may be designated by such judge or justice. and it shall be the duty of all Sheriffs, deputy Sheriffs, town sergeants, constables, and jailors to govern themselves accordingly. *All indictments under this act, and also all indictments for treason against this State, may be preferred and found in any County of this State, without regard to the County in which the offence was committed;* and the Supreme Judicial Court shall have full power for good cause, from time to time, to remove for trial any indictment which may be found under this act, or for treason against the State, to such County of the State, as they may deem best for the purpose of ensuring a fair trial of the same; and shall upon the conviction of any such offender or offenders, have full power to order, and from time to time to alter, the place of imprisonment of such offender or offenders to such county jail within this State, or to the State's prison, as to them shall seem best for the safe custody of such offender or offenders, any act, law or usage, to the contrary notwithstanding."

To this act of March, 1842, *there is no repealing clause.* And I contend in the next place, *that it does not, in express terms, or by necessary implication, repeal the common law, or the General Statutes before referred to, as to the place of trial of indictments.*

It is not pretended by any one, that this statute *expressly repeals* the general law of the State, as last re-enacted in 1838: but that it is by *implication* repealed, as to this, by the provision contained in the Section read, that Indictments, under it, and for treason against the State, "*may be preferred and found in any County of the State, without regard to the County in which the offence was committed.*" Now, we say, that if such had been the intention of the Legislature, they would so have expressed it, and instead of saying, "*may be preferred and found,*" they would have said "may be preferred, found *and tried* in any county," the legal presumption even, is that a Legislature always *does say*, precisely that which it *intends;* and when it intends to repeal an existing law, it will express itself in such terms, as by a material and unforced construction, will declare that intent. Again, a subsequent law, does not *necessarily* repeal a prior law upon the same subject; and where no express words of repeal are made use of, the first inquiry is to ascertain from the whole act, what the intention of the Legislature was, in order to see, if both the old and new act may not well stand together.

In this case, we contend, that it was not the intention of the Legislature, to take away from the accused, in the first instance, the old, cherished common-law right, of a trial in the County where the offence was alleged to have been committed; but to provide in times of great civil commotion, that, in order to ensure *some* trial of offenders, they might be *indicted* elsewhere than in that County; and that all such indictments should be continued from term to term, until they

could be fairly and impartially tried in the proper County.

I am aware that on a former occasion it was said by the Court, that if they could not *try here* an indictment found *here*, for an offence committed in the County of Providence, or elsewhere, until it had been removed *for good cause* shown, the indictment might never be tried; but we apprehend that no such difficulty exists; we know of no reason, or law, that would prevent this Court, ex-officio, or on suggestion of the Attorney General, from taking this indictment by certiorari, according to the practice of the English Court, into the County of Providence for trial, the overt acts of treason, being alleged to have been committed in that County, and of continuing it there until it could be fairly tried: if no fair trial could be had there, then of removing it, under this act, for trial, to some County where it might be fairly tried.

This construction of the 4th section of the act of March, 1842, *implies* no repeal of the general law of 1838—and yet gives to the section *full* and *complete* effect: the fair and legitimate object of the legislature—that of holding an offender so as to be certain of *a trial somewhere*, is attained on the one hand; whilst on the other, the "inestimable privilege" of a fair trial, by an impartial jury of the peers of his vicinage, is secured to the accused, in the County where his offence is charged to have been committed.

But should ours not be considered the true construction, and I see not what other construction it justly admits of, then, may it please your Honors, at it neither repeals the general law, nor any where expressly gives the power to *try* indictments any where out of the County where they were triable, as common law, and under the old Statute, I cannot see how this Court can sustain their jurisdiction over this indictment, and try it in the County of Newport.

The omission, on the part of the Legislature, to do the one or the other, most clearly constitutes a *casus omissus*, which no Court can supply by forced analogies or strained construction; but which can be remedied only by the future action of the Legislature.

Suppose the authority granted by this section had been only that all indictments, &c., "may be *tried* in any other County, &c., I ask if your Honors would have conceived yourselves warranted in charging the Grand Jury of *this* County, to *find Bills of Indictment*, against citizens of Providence County, for offences committed there? If not right, then by parity of reason, they have no right to *try*, when the authority given, is only that they may be *preferred* and *found*, and says nothing whatever about the *trial*.

The Court has repeatedly told us, that they do not sit here to *make laws*, neither do they sit here, as we suppose, to *unmake* them: for it requires the same power to *repeal* a law, that it does to enact one; it must stand as it is, and be construed by a fair interpretation of its own language.

[Mr. T. read 1 Hale's P. C. 221, 298, 299.]

This statute is in derogation of the common-law and common-right, and highly penal in its nature; and we contend, *that in the construction of such a statute by the Court, they are to be construed in favor of the common-right, and the right of the Prisoner, and strictly toward the Government.*

[Upon this and the last preceeding point, the authorities read and commented on, were as follows, viz: Dwarris on Stat. Law Lib. vol. 9, page of the treatise, 30, 31, 50, 51, 55, 56, 58; 4 Mass R. 471, and 439; 15 do. 205; 3 do. 254; 5 do. 380; 6 do. 40; 14 do. 286; 7 Bac. Abr. 351.]

With these views, said Mr. T., I submit to the Court, that the trial of Mr. Dorr, in Newport County, was contrary to law, and that no judgment ought to be rendered on the verdict of guilty, found against him.

ARGUMENT OF THE ATTORNEY GENERAL, (MR. BLAKE.)

On motion in Arrest of Judgment.

Mr. Blake.—I intend to make but few remarks on the construction of this act. There has already been a decision of this question, by *this* Court. At that time all the reasons on either side were given; I do not propose to introduce any new ones. This trial has already lasted a great length of time, and for my own part, I am anxious to see some end to it.

The Act, by the terms of it, gives power to *indict* and to *remove* indictments. The great object in the construction of all statutes, is in the first place, to ascertain, from the language used, and the surrounding circumstances, what was the *intention* of the Legislature at the time of its enactment. You may find in the books, maxims for construction, adapted to maintain almost any position you may desire; the grand cardinal maxim, however, is to give effect to the *intention* of the Legislature; and that can be best ascertained from the circumstances and situation of things, at the time, which called the act into being. [Mr. Blake here commented shortly on the authorities read on the other side from Dwarris, and read, himself, from the same work, p. 39, 40, 42, 43.]

When the *words* of a statute are not in themselves explicit, the construction must be drawn from the condition of things, at the time of its passage. I agree that at common-law, trials were required to be had in the County where the offence was committed; but in England, particular circumstances, or new situations of affairs, have led to the passage of many statutes, altering the common-law, in that country, and I do not know of any instance, in which their Courts have decided such laws to be unconstitutional; or trials had under them to be illegal or void.

Now, what were the circumstances, and situation of affairs, in Rhode Island, at the time the Act of March, 1842, was passed? There was a very great excitement throughout the whole State; but the principal theatre of commotion and confusion, was in the County of Providence;

an outbreak and resort to arms were at any moment to be expected. An attempt was then being made, to overturn the State government, and plant on its ruins a new one by civil war. The circumstances of the times afforded no immediate or reasonable prospect, if the anticipated evils should overtake us, of any speedy and fair trial, for any offence growing out of that state of affairs, in the County of Providence, where offences, if committed at all, would most probably be committed. To provide for, and if possible to guard against such a contingency, the act in question was passed by the legislature.

No construction should be given to a Statute, which will defeat its own ends. The construction contended for on the other side, would defeat the whole object the legislature had in view in the passage of the act; that was not only to secure a *trial*, but a *speedy*, and *impartial* trial; and knowing that *such a trial* could not be expected in the County of Providence, the very scene of war, by this act provided for its being had in some other county.

Such beyond all question was the *intention* of the Legislature: and the only question is whether the language of the act admits of its being construed, so as to give effect to that intention.

The act was passed for a wise and beneficial end; and should receive a wise, a liberal and beneficial construction. [Here Mr. B. read and commented on 8 Barn. and Cress. 104: Dwarris on Stat. 51: 1 Chitty C. L. 338, 365, 422, 501: 4 Tuck. Bl. 322.]

The next ground taken by Mr. Blake was that the *Indictment* and *trial* were parts of the same thing. That if the Indictment could be *found* in the *County* of Newport, it might, as a *necessary* and *inseparable incident*, be also *tried* there. That in fact, according to the books, *indictment* and *trial* were *convertible terms*. (Mr. B. read 1. Chitty C. L 186. 315. and Foster's C. L. 235.)

To show that the common law and *general* statute law right of trial in the County, and by a jury of the County, had been altered in Rhode Island much in the same way as it had been in England—to wit by *special statutes*, Mr. Blake read from the Dig. R. I. of 1822, page 159, sect. 12, which provides "That all indictments for any crime or misdemeanor, committed on the waters of Narragansett Bay, shall be *triable* in any county of this State, at the discretion of the Attorney General." His argument being that the Legislature might with equal right, alter it in the one case as in the other.*

In conclusion, Mr. Blake insisted that the trial was well had in the County of Newport, and that the judgment of the Court should follow the verdict.

The Court adjourned until the 24th, at 10 o'clock, A. M. In the meantime Mr. Atwell furnished his argument in the close, as before stated.

Newport, Monday, June 24th, 1844.

The Court met, pursuant to adjournment. Mr. Dorr brought in.

Mr. Atwell not being yet present, the Court asked Mr. Turner if the written argument of Mr. Atwell had been furnished. His answer was in the affirmative; and at a suggestion from the Court, Mr. Turner then read

MR. ATWELL'S CLOSING ARGUMENT FOR DEFENDANT,

On motion in Arrest of Judgment.

May it please your Honors,

The question now submitted to the consideration of this Hon. Court is one of no inconsiderable importance as affecting the case at bar and as affecting the general principles of our jurisprudence. The Deft. is indicted in the county of Newport for the crime of Treason alleged to have been committed in the county of Providence. He is brought to the county of Newport by process issuing from the Court here for trial. He is here tried by a Jury of this county and by them convicted and the question now is, was he properly tried and convicted according to law?

It is admitted on all sides, that by the common law and ancient statutes of England, which together formed the common law of this State at the time of the revolution, the citizen, accused of any felony, was entitled to be tried in the county where the offence was charged to have been committed, and by a Jury of the visne or neighborhood. This was the "fair and impartial trial by a Jury of peers"—"the Palladium of English liberty" so often mentioned and lauded by the old English writers. It was of Anglo Saxon origin, and in cases of Treason was never attempted to be disturbed until the reign of the VIII Henry, whose tyrannical jealousy led him not only to create new and unheard of Treasons but also new and unheard of modes of trial. This act (33 Hen. VIII.

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* The section of the Act immediately preceeding that read by the Attorney General, is in these words: "Sec. 11. *And be it further enacted*, That all the waters of the Narragansett Bay, situate to the northward of Field's Point, shall be deemed a part of the County of Providence, and be within the jurisdiction of that County; and that *all the other waters* of the said Bay shall *not* be deemed to make part, or be within the *sole jurisdiction* of any one particular County in this State; but it shall be lawful for any Sheriff, or other officer duly authorised, belonging to either of the Counties of this State, to serve any writ or other process, whether of a civil or criminal nature, within any part of the said Narragansett Bay."

So that, as *every County* in the State is bounded on the Bay, the Legislature very wisely gave them all a *concurrent jurisdiction* over its waters, except the little portion of it entirely within the County of Providence. No argument therefore can be drawn from that case, to warrant the change of the place of trial of an indictment from *one County to another County*, for the waters of the Bay are as much a *part* of one County as they are of another.

ch. 23,) was repealed in his daughter's reign (1 and 2 P. and M. ch. 10 s 8,) and now it is believed Treason, (with the exception of some minor offences called by that name and committed without the realm,) is tried in England "by the course of the common law and in no other way whatever." There would seem to be a peculiar propriety as well as necessity in preserving the integrity of this time honored principle of the common law in the case of Treason, which being an offence striking at the very existence of the Government, would, from an instinct of self-preservation, array against the supposed offender its whole power and influence, and if the Government could at its pleasure, as in Henry the VIII day, take the accused away from his witnesses, his neighbors and his friends, and carry him for trial to a place known to be filled with his enemies and political opponents, his chance for a fair and impartial trial would be small indeed. I address these remarks to the Court in order to show to them that the old common law rule, before alluded to, is not to be disturbed or changed, without great and sufficient cause emanating from a superior power and imperative upon the Supreme Court. This cause too should be clearly and unequivocally expressed and not depending upon doubtful analogy, or nice and technical deductions, which are sometimes but the devious ways through which error seeks to supplant truth.

The question then is in Rhode Island, has the common law principle that the accused shall be tried in the county or vicinage where the offence is charged to have been committed, and by a Jury of the same, been altered, changed or abrogated by any statute or custom adopted as law?

It is not pretended that any such custom has existed or now exists. On the contrary, up to the present time, the course of proceeding here has been in strict accordance with the common law, except when the Legislature has authorized a departure at the instance of the accused. Has it been altered, changed or abrogated by statute? Let me glance at the legislation on this subject. While we were a colony the mode of proceeding in this respect was governed by the common law and statutes of the mother country. In 1798 the legislature in affirmance of the common law, provided that persons accused of any crime or crimes shall be proceeded against either in the Supreme Judicial Court, or the Court of General Sessions of the Peace of the county wherein the crime is charged to have been committed, unless in cases where by law, special provision is or shall be otherwise made. A similar provision was also incorporated in the digest of 1822. It is believed, the reserved power contained in the exception was never exercised by the Legislature, save at the instance of the accused. By the revised criminal code of 1838, chapter 9 section 26, it is provided that every person who shall be accused of any offence, shall be proceeded against in the county in which the offence shall be alleged to have been committed *and not elsewhere.* This statute is emphatic, and explicit language re-asserts and enforces the common law principle we have spoken of. The chapter of the last statute cited, relates to the proceedings for the prevention of crime and for the apprehension, examination and trial of offenders. Thus stood the law in this State in 1838—the ancient common law principle was acknowledged and enforced, and the right of the accused to a trial by a Jury of the vicinage was as strongly secured to the subject as in the days of the great Alfred. Has this security been impaired or taken away? If so it must have been by some statute passed by some competent authority which in express terms, or by necessary and unavoidable implication produces that result. Such a statute ought to receive the strictest construction, for it tends to take away the trial by (a proper) Jury and abridges the liberty of the subject (Dwarris 76.) It also creates a new jurisdiction (idem 77.) Again it is a question of construction on every act interfering with the provisions of a former law whether it operates as a total, partial or temporary repeal, and it is only to be presumed that the legislature when it entertains an intention will express it and that too, in clear and explicit terms, (Dwarris 56.) A casus omissus can in no case be supplied by a Court of law, for that would be to make laws, (Dwarris 53.) An act was passed by the legislature of this State, being a competent authority, at their March Session, 1842, entitled "An act in relation to offences against the sovereign power of this State" which, it is said in its 4th section has taken away the right in question. Let us see if it be so under the rules of construction before cited.

The Section in question *by its terms* changes the law of 1838 in three important particulars only.*—1st as to right of the magistrate to commit persons charged with the crimes therein mentioned to some jail in a county other than that in which the offence is charged to have been committed.—2d. As to the right of the Attorney General to prefer, and a grand jury to find indictments for such offence in a county other than that in which the offence is charged to have been committed; and 3d, as to the power of the Court to remove, for good cause, indictments so found, for trial to such county in this State as they shall deem best for the purpose of ensuring a fair trial of the same. The two first particulars relate exclusively to the proceedings before trial which are wholly beyond the power of the Court to control, except when judging of their legality, the one relating to the apprehension—the other to the accusation of the supposed offender. These are but incidents to the trial, the trial being the principal thing. As to the *place* where the trial is to be had the act makes no provision contrary to, no alteration of the old laws, except when the Court exercise the power given to it of removing the trial of the indictment to some county other than that in which it is found. With this exception, the old right of the prisoner stands unimpaired. If he commit one of the offences mentioned in the act, in the county of Providence, he may be arrested and committed in the county of Newport, he may be indicted in that county—he may be arraigned and put to plead in that county—these are all but preparatory *incidents* to the trial—and when the question of the *place* of trial arises, he may well claim the ancient privilege and say I must be tried in the county of Providence, where the offence is charged to have been committed and not elsewhere, unless for good cause shown, the trial is removed to some other county in this State.

Such, I apprehend, is the construction the Court

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* See "Act" at length in appendix.

is bound by law to give to the act in question; and by such construction only can the act stand, without invading the liberty of the subject, and destroying a right, once considered invaluable.

[See R. I. dec. of Rights, 1790, art. 8.]

Again the act of 1842, in this section, is a repealing act, and it specifically repeals certain parts of the law of 1838. Now the well known rule is, that when a statute enumerates certain matters or things, other matters and things are excluded.—Here the place of commitment, the place of indictment and the place of trial, under certain circumstances, are specifically enumerated, but the place of trial under the circumstances of this case is not mentioned. The legal conclusion then is, that the legislature intended it should remain as it was before the passage of the act, subject only to the exception mentioned in the 4th sect.; thus shewing their desire to preserve entire the accustomed and long cherished usages of the State, and to change them only when absolute necessity required it.

Does this construction or exposition, drawn from the plain words of the statute, render nugatory or inconsistent any of its provisions? I think not. It by no means follows that, because the Court have obtained jurisdiction over a prisoner, by reason of his having been indicted in a particular county, that they must of necessity try him in that county. Why should it be so? The arraignment creates no such necessity—plea pleaded creates no such necessity. And to say that in this case there is no authoritive act which requires the Court to hold the trial in another county, is begging the question. The Court of King's Bench remove indictments for trial to other counties, by virtue of their statute and common law power, after arraignment and plea pleaded, and this by an ordinary process known to the law.—(1 Chitty on C. L., 402.) I say after arraignment and plea, because without these the Court could not know that any thing was to be tried. Where then is the difficulty theoretical or practical in carrying out the plain and literal construction of the statute? It is supposed that it may interfere with the bill of rights, which guarantees to every citizen a speedy trial by an *impartial* jury. But how so? The delay is only from the time of the sitting of the Court in the county where the indictment is found, to the sitting of the Court in the county to which the trial is removed; and an *impartial* jury is of much greater consequence than a speedy trial. But the Court will perceive that this objection, if it have any force, applies with equal power to all the cases manifestly embraced in the act; for the Court cannot, in any case, exercise the power of removal therein given them without divesting the Deft. of this right to a speedy trial, and thus be at war with the bill of rights, which then formed a part of the Constitution of Rhode Island.

Neither has this Court a right to presume that the county in which the indictment is preferred and found is of all others the most suitable county within which the indictment can be tried. Upon what legal grounds does this presumption rest? The indictment is preferred by the Attorney General, upon his individual responsibility, without the assent and control of the Court, and without any reference to the place of its ultimate trial.—Upon these facts, how can the Court raise the presumption in question? How can they presume a fact from other facts, having no real or necessary connexion with the fact presumed? I might follow this train of reasoning much further, were it necessary, but I trust I have shewn the Court that the construction of the statute I contend for is not opposed by any difficulty arising out of the mode of legal proceedings under it.

The Attorney General contends that the authority to find an indictment carries with it the power to try, and this doctrine he attempts to support by authorities going to shew that sometimes text writers use the words "indictment" and "trial" as convertible terms. I think the Court will perceive that the authorities do not bear him out in his position, neither has it been or can it be shown that the indictment or accusation is the principal thing, and the trial or determination of the truth or falsehood of the accusation the mere *incident*, a proposition almost offensive to common sense and yet necessary to be supported, before his argument can have any weight.

In England, it has been decided that where a Statute authorizes a trial in a different county the Grand jury of course acquire the right to investigate the complaint (1 Chitty C. L. 259.) Why of course? Because that investigation is an antecedent incident, necessary to a trial. And it is worthy of remark that most of the statutes of this description use the words "hear, try and determine" or others analogous, without referring to the indictment in express terms, including it only as an incident. I will not trouble the Court in pursuing the Attorney in his curious disquisition on the subject of out-lawry, as I am at a loss to discover how the right to punish a man for contempt of the King's authority, no matter how severe the punishment may be, could confer upon the Court the right to declare him guilty of an accusation of murder without trial, and convert the accusation into the principal, and the trial into the incident. Under these considerations, and for these reasons, I submit to this Hon. Court, that the motion in arrest of judgment, filed by the prisoner, in this cause ought to prevail.

(Signed) SAM'L Y. ATWELL.

Mr. Atwell not having yet arrived, the Court adjourned until 2 o'clock, P. M.

Tuesday afternoon, June 24th, 1844.

The Court met as usual. Mr. Dorr brought in.

Mr. Atwell having arrived and being present in Court, asked and obtained leave to add a few words to the written argument read in the morning in his behalf, by his friend Mr. Turner, giving his severe and continued illness, as an apology, for the brevity and condensed shape in which that argument appeared. He then in a speech of a little more than twenty minutes, and by one of the most brilliant efforts of his powerful mind, reviewed the whole subject of jury trials, eulogizing the institution, and portraying in the most eloquent and impassioned terms, the consequences of innovations on its sanctity. It is to be regret-

ted that even an outline of it cannot be furnished.

The Court after a very brief consultation, overruled the motion in arrest of judgment, whereupon

Blake, Attorney General, moved for sentence.

Atwell—moves the Court that sentence be suspended, until a Bill of Exceptions to the ruling of the Court on the question of State Treason, can be prepared and tendered for allowance by the Court; with a view to suing out a Writ of Error from the Supreme Court of the United States.

The Court grant for that purpose until tomorrow morning at 9 o'clock, and adjourn accordingly.

Tuesday morning June 25th, 1844.

The Court met in the Town Hall. (The State House in which the Court usually sit being occupied by the Legislature.) Mr Dorr brought in.

Blake, Attorney General, renews his motion for sentence.

Durfee Ch. J.—Mr. Clerk, ask the prisoner at the bar, if he has anything to say why sentence should not now be pronounced against him.

The Clerk.—Thomas Wilson Dorr, I am directed by the Court to ask you, if you have anything to say why sentence should not now be pronounced against you ?

Mr. Dorr, then rose and addressed the Court in substance as follows.

REPLY OF MR. DORR TO THE COURT, WHEN ASKED WHY SENTENCE SHOULD NOT BE PRONOUNCED UPON HIM.

The Court have, through their officer, addressed to the Defendant the usual questions, whether he have anything to say why sentence should not now be pronounced upon him. I have something to say, which shall be brief and intelligible to the Court, though it must be necessarily unavailing. Without seeking to bring myself in controversy with the Court, I am desirous to declare to you the plain truth.

I am bound, in duty to myself, to express to you my deep and solemn conviction that I have not received, at your hands, the fair trial by an impartial jury, to which by law and justice I was entitled.

The trial has been permitted to take place in a county where, to say the least, it was doubtful whether the Defendant could be tried according to the law of the State; and in a case of doubt like this, he ought to have had the benefit of it, especially as the trial here must be in a county to which the Defendant was a stranger, in the midst of his most excited political opponents.

All but one of those freeholders, 108 in number, who were summoned here for the purpose of selecting a jury to try the Defendant., were of the opposite party in the State, and were deliberately set against the Defendant with the feelings of partizan hostility. The single democratic juror was set aside for having expressed an opinion. Of the drawn jurors, 16 in number, two only were members of the democratic party; and one of them for cause, and the other for alleged cause, was removed.

Every one of the jury finally selected to try the defendant was, of course, a political opponent.

And even as so constituted, the jury were not permitted to have the whole case presented to their consideration. They were not, as in capital, if not in all criminal cases, they are entitled to be, permitted to judge of the law and of the fact. The Defendant and his Counsel were not permitted to argue to the jury any matter of law.

The Court refused to hear the law argued to themselves, except on the question whether treason be an offence against a State or against the United States.

The Court refused to permit the Defendant to justify himself by proving the Constitution, the election and the authority under which he acted; or to permit him to produce the same proofs, in order to repel the charges of malicious and traitorous motives made in the indictment, and zealously urged against him by the counsel for the State.

By the charge of the Judge, the jury were instructed that the only question which they had to try was, whether the defendant intended to do the acts which he performed: a question of capacity rather than of motives and intentions.

It is true that the jury were absent more than two hours; but not for deliberation. One of them was asked, immediately after the verdict was delivered, and the jury was discharged, whether they had been detained by any disagreement. He replied, "we had nothing to do. The Court had made every thing plain for us."

On hearing a bill of exceptions to the verdict thus rendered, the Court promptly overruled all the points of law.

The Court also denied to the Defendant an opportunity of showing to them, that three of the jurors, before they were empanelled, manifested strong feelings, and had made use of vindictive and hostile expressions against him personally; after the Defendant had established by his affidavit the fact that he was not informed of this hostility of feeling and expression before they were empanelled, and with regard to two of them, before the verdict was rendered. The Defendant expected to prove, by twelve witnesses, that one of these jurors had expressed a wish to have the Defendant put to death, and had declared, shortly after the verdict, to a person inquiring the result, that "he had convicted the Defendant, and that this was what he intended to do;"—that another juror had also declared, that the Defendant ought to be executed; and that the third had frequently made the same declaration, with a wish that he might be permitted to do the work of an executioner, or to shoot him as he would a serpent, and put him to death.

Nor would the Court permit the Defendant to show by proofs, which he declared on oath to have been unknown to him at the time of the

empanelling of the jury, that an array of 12 men, summoned on venire by a deputy sheriff, were, or a considerable part of them, at least, the same persons who had been selected by an Attorney of this Court, who assisted the officer in the service of the summons.

These, and other matters which I will not stop to enumerate, show that this trial, which has been carried through the forms of law, was destitute of the reality of justice, and was but a ceremony preceding conviction. That there is any precedent for it, in the most acrimonious period of the most excited party times in this country, I am not aware from any examination or recollection of its political history.

In a trial of an alleged political offence, involving the feelings of the whole community, and growing out of a condition of affairs which placed the whole people of the State on one side or the other of an exasperated controversy, the strictest and most sacred impartiality should have been observed in the most careful investigation both of law and fact by the jury, and in all the decisions and directions of the Court. In what case should they have been more distrustful of the political bias of their own minds, more careful in all their deliberations, more earnest in the invocation of a strength above their own, that they might not only appear to be just, but do justice in a manner so above all suspicion, that the Defendant and all those with whom he is associated, might be satisfied that he had had his day in court, and that every requisition of the law had been observed and fulfilled. In how different a spirit were the proceedings of this trial conducted! And with what emotions must the Defendant have listened to the declaration of one of your honors, that "in the hurry of this trial" they could not attend to the questions of law, which he so earnestly pressed upon their immediate consideration, as vitally important to the righteous determination of his case!

The result of this trial, which your sentence is about to proclaim, is the perpetual imprisonment of the Defendant, and his seclusion from the face of society, and from all communication with his fellow-men.

Is it too much to say, that the object of his political opponents is the gratification of an insatiable spirit of revenge, rather than the attainment of legal justice? They are also bent upon his political destruction, which results from the sentence of the Court, in the deprivation of his political and civil rights. They aim also at a social annihilation, by his commitment to that tomb of the living, from which, in ordinary cases, those who emerge are looked upon as marked and doomed men, to be excluded from the reputable walks of life. But there my opponents and persecutors are destined to disappointment. The court may, through the consequences of their sentence, abridge the term of his existence here; they can annihilate his political rights; but more than this they cannot accomplish. The honest judgment of his friends and fellow citizens resting upon the truth of his cause, and faithful to the dictates of humanity and justice, will not so much regard the place to which he is consigned, as the causes which have led to his incarceration within its walls.

Better men have been worse treated than I have been, though not often in a better cause. In the service of that cause I have no right to complain that I am called upon to suffer hardships, whatever may be the estimate of the injustice which inflicts them.

All these proceedings will be reconsidered by that ultimate tribunal of Public Opinion, whose righteous decision will reverse all the wrongs which may be now committed, and place that estimate upon my actions to which they may be fairly entitled.

The process of this Court does not reach the man within. The Court cannot shake the convictions of the mind, nor the fixed purpose which is sustained by integrity of heart.

Claiming no exemption from the infirmities which beset us all, and which may attend us in the prosecution of the most important enterprises, and at the same time conscious of the rectitude of my intentions, and of having acted from good motives, in an attempt to promote the equality and to establish the just freedom and interests of my fellow-citizens, I can regard with equanimity this last infliction of the Court; nor would I, even at this extremity of the law. in view of the opinions which you entertain, and of the sentiments by which you are animated, exchange the place of a prisoner at the bar for a seat by your side upon the bench.

The sentence which you will pronounce, to the extent of the power and influence which this court can exert, is a condemnation of the doctrines of '76, and a reversal of the great principles, which sustain and give vitality to our democratic Republic; and which are regarded by the great body of our fellow-citizens, as a portion of the birthright of a free People.

From this sentence of the Court, I appeal to the People of our State and of our country. They shall decide between us. I commit myself without distrust, to their final award. I have nothing more to say.

Chief Justice Durfee, after a few remarks, in which he observed that the matters stated by the prisoner had all been considered by the court, that the court had been swayed by no political motives, and had been governed in their proceedings by the law of the land; and that, in consequence of the terms of acquaintance which had existed between himself and the prisoner, he now discharged with regret this last duty which the law imposed upon him—then said—Listen, THOMAS WILSON DORR, to the sentence of the Court, which is "THAT THE SAID THOMAS W. DORR BE IMPRISONED IN THE STATE'S PRISON, AT PROVIDENCE, IN THE COUNTY OF PROVIDENCE, FOR THE TERM OF HIS NATURAL LIFE, AND THERE KEPT AT HARD LABOR, IN SEPARATE CONFINEMENT."

As soon as the sentence had been passed, *Atwell* read and tendered to the Court for allowance

and signature a Bill of Exceptions, for a Writ of Error as follows.

BILL OF EXCEPTIONS

FOR A WRIT OF ERROR FROM THE SUPREME COURT OF THE UNITED STATES.

NEWPORT, ss.

Supreme Court, March Term, 1844.

Twenty first day—June 25, 1844.

Samuel Y. Atwell, Esq., of Counsel for Prisoner, moves the Court for leave to file a Bill of Exceptions against the ruling of the Court during trial, "That treason might be committed against a separate State" and that the Court allow and sign the same.

The Court order the Bill of Exceptions to be entered on the minute book.

Be it remembered, that upon the trial of the aforesaid indictment, upon issue joined before the jury duly empannelled to try the same, it was contended in behalf of the Defendant, that under the Constitution and the laws of the United States, the crime of treason against a State, could not be committed against a separate and several State of the Union, but against the United States only, and that the statute of Rhode Island passed January, 1838, entitled "An act concerning crimes and punishments, chapter first, for defining and punishing treason against the State of Rhode Island and Providence Plantations, is repugnant to the Constitution and laws of the United States; and it was also further contended that the Deft. could not be tried and punished by said Court for the crime of treason against the State of Rhode Island and Providence Plantations by reason of the exceptions contained in the third section of the third article of the said Constitution of the United States; and requested the Court so to instruct the jury; which the Court then and there refused to do, and on the contrary did instruct the said jury that the said crime of treason might be committed against a separate and individual State, and could well be tried and punished as such, to which refusal of the Court so to instruct the jury as prayed for as well as to the instruction so as aforesaid given by the Court to the jury, the Defendant excepting prayed the exceptions to be allowed by the Court. And after the said instructions were so refused and so given as aforesaid, the jury withdrew and afterwards returned their verdict of guilty against the Defendant. And as inasmuch as the several matters of law insisted on and objected to on the part of the said Defendant and his counsel in manner aforesaid do not appear by the record and verdict aforesaid, the Counsel for the Defendant did then and there propose the aforesaid exceptions to the said refusals and opinions of said Court and requested them to put the seal of said Court to this bill of Exceptions, containing said several matters so urged and so refused as aforesaid.

NEWPORT, SC.

[L S.] CLERK'S OFFICE, SUPREME COURT.

I hereby certify, that I have compared the above and foregoing copy of the Bill of Exceptions, with the original entered on the minute Book of said Court, and found the same to be a true and correct copy of the same.

In witness whereof, I, William Gilpin, Clerk of said Court, have hereunto set my hand and affixed the seal of said Court this Thirty first day of July, in the year of our Lord one thousand eight hundred and forty four.

WM. GILPIN, Clerk.

Upon a suggestion from the Court, an alteration was made in the Bill of Exceptions, at the bar, and after a short discussion between the Bench and the Bar, whether, without a Bill of Exceptions signed, the record did not of itself show sufficient matter, to take the case by Writ of Error, up to the Supreme Court of the United States, the Court ordered the Bill to be entered on the Minute Book of the Court.

Mr. Atwell then moved the Court to suspend the execution of the sentence, in order to await a decision of the case, by the Supreme Court of the United States upon a Writ of Error. The Defendant, by the imprisonment which the sentence imposed, would be disabled from prosecuting his suit.

Durfee Ch. J.—The Court have no power to suspend the execution of the sentence:—it can only remain for the officer, the Sheriff, to carry into effect the judgment of the law.

The prisoner was then remanded, and the Court adjourned until the next regular term.

On Thursday afternoon June 27th, Mr. Dorr was removed by the Sheriff of Newport County, from the County Jail in Newport, and committed to the State's Prison in the City and County of Providence, pursuant to sentence.

APPENDIX.

AN ACT

In relation to offences against the Sovereign power of this State.

Be it enacted by the General Assembly, as follows:

SECTION 1. All town, ward or other meetings of the freemen, inhabitants or residents of this state, or of any portion of the same, for the election of any town, county or state officer or officers, called or held in any town, of this state or in the city of Providence, except in the manner, for the purposes, at the times, and by the freemen by law prescribed, are illegal and void: and that any person or persons who shall act as moderator or moderators, warden or wardens, clerk or clerks, in such pretended town, ward or other meetings hereafter to be held, or in any name or manner receive, record or certify votes for the election of any pretended town, county or state officers, shall be deemed guilty of a misdemeaner, and be punished by indictment with a fine not exceeding one thousand nor less than five hundred dollars, and be imprisoned for the term of six months: *Provided, however*, that this act is not intended to apply to cases, in which, by accident or mistake, some prescribed form or forms of calling town or ward meetings of the freemen of the several towns of this State, and of the city of Providence, shall be omitted or overlooked.

SEC. 2. Any person or persons who shall in any manner signify that he or they will accept any executive, legislative, judicial or ministerial office or offices, by virtue of any such pretended election in any such pretended town, ward or other meeting or meetings, or shall knowingly suffer or permit his or their name or names, to be used as a candidate or candidates therefor, shall be adjudged guilty of a high crime and misdemeaor, and be punished by indictment in a fine of two thousand dollars, and be imprisoned for the term of one year.

SEC. 3. If any person or persons, except such as are duly elected thereto, according to the laws of this State, shall under any pretended constitution of government for this State, or otherwise, assume to exercise any of the Legislative, Executive or ministerial functions of the offices of Governor, Lieutenant Governor, Senators, members of the House of Representatives, Secretary of State, Attorney General, or General Treasurer of this State, or within the territorial limits of the same, as the same are now actually held and enjoyed, either separately or collectively, or shall assemble for the purpose of exercising any of said functions, all and every such exercise of, or meeting for the purpose of exercising all, any, or either of said functions, shall be deemed and taken to be a usurpation of the sovereign power of this State, and is hereby declared to be treason against the State, and shall be punished by imprisonment during life, as is now by law prescribed.

SEC. 4. All offences under this act shall be triable before the Supreme Judicial Court only. Any person or persons arrested under the same, and also for treason against the State, may be imprisoned or held in custody for trial in the jail of such county of the State as the Judge or Justice issuing the warrant may order or direct; and the sheriff or other officer charged with the service of such warrant, shall, without regard to his precinct, have full power and authority to take such person or persons and him or them to commit to any county jail in this State, which may be designated by such Judge or Justice; and it shall be the duty of all sheriffs, town sergeants, constables and jailors to govern themselves accordingly. All indictments under this act, and also all indictments for treason against the State, may be preferred and found in any county of this State, without regard to the county in which the offence was committed; and the Supreme Judicial Court shall have full power for good cause, from time to time, to remove for trial any indictment which may be found under this act or for treason against the State, to such county of the State, as they shall deem best for the purpose of ensuring a fair trial of the same, and shall upon the conviction of any such offender or offenders, have full power to order, and from time to time to alter the place of imprisonment of such offender or offenders to such county jail within this State, or to the state prison, as to them shall seem best for the safe custody of such offender or offenders, any acts, law, or usage to the contrary notwithstonding.

AFFIDAVIT OF LIEUT. H. N. TRACY.

[See first reason for Prisoner's motion for new trial, page 86 of the report.]

I, Horatio N. Tracy, of the town and county of Newport, of lawful age, on solemn oath, do depose and say—

That I am well acquainted with William M. Mellville, jun., of Newport, and have been so for ten or a dozen years. In the latter part of July, or first of August, 1843, I was one evening at Mr. Nicholas Hazard's; I saw Mr. Mellville there; when I went in the conversation related to the indictment of Dorr for treason; Mellville said that he was guilty, and ought to be hung, and that he would like the privilege of being hangman. I asked him if he would dare to say this in the presence of Dorr himself; he said he would, and any where else. There were a good many present; I think that Hazard and Edward and Deakon were there; I can't recollect any body else; Mellville spoke coolly, and did not appear under any excitement. The conversation was not more than usual excited. Some time in the month of February last, in the fore part of February, I should think, I called in Mr. Mellville's shop on business, and went into his back work-shop; while there, the conversation came up in relation to the trial of Dorr. Mellville said that "you suffrage men are all bad men, and ought to be hung, and Dorr with the rest," or words to that effect. There were some two or three present; I don't recollect who they were. Mellville was good humored, and smiling at the time, and pleasant, and talked as if he was in earnest, and I could not then believe him to be sincere. I don't recollect having any other conversation with him on the subject. My recollection was drawn to these conversations by hearing the Attorney General ask other jurors questions as to guilt or innocence. I expressed my surprise to Mr. Hazard at the time.

HORATIO N. TRACY.

NEWPORT, SC.

Newport, May 13, 1844.

Then personally appeared before me, Horatio N. Tracy, and after being sworn, gave the aforegoing deposition, which was by me reduced to writing in his presence, and by him signed in mine.

WM. GILPIN, Just. Peace.

EXTRACTS FROM THE COURT RECORD.

June 12th, 3 P. M.—17th day of the term.—Thomas W. Dorr brought into Court. Turner continues argument. "The Court rule that no testimony snall be introduced in relation to any expressions made by, or partiality of, jurors."

[See Exception No. 1, page 83, of the Report.]

18th.—"The Court rule that no evidence be introduced on the part of the prisoner, to prove that the Sheriff made improper return on venire facias for jurors."

[See Exception No. 4, page 86, of the Report.]

ERRATA.

On page 14, 1st col., 13th line from top, for "father" read "farther."
" " 20, " " 32d " " " " "or" read "of".
" " 24, " " 16th " " bottom, for "new" read "knew."
" " 30, " " 12th " " top, after "verdict" insert "may."
" " " 2d " 20th " " " for "present" read "Prisoner's."
" " 46, 1st " 7th " " " before "all" insert "we."
" " " " " 8th " " " strike out "and which we live."
" " 48, 2d " 9th " " bottom, for "the" read "their."
" " 49, " " 14th " " top, after "act" insert "is."
" " " " " 16th " " " before "had" insert "and".
" " 56, 2d " 21st " " bottom, for "mort" read "most."
" " 57, 2d " 30th " " top, "purjury" read "perjury."
" " 59, 1st " 15th " " " after "ground" insert "that."
" " 60, 2d " 31st " " " for "has made" read "has been made."
" " 61, 1st " 19th " " top, after "formed" insert "by."
" " 62, " " 38th " " " for "for cowardice" read "by cowards."
" " " 1st " 14th " " " for "desperate" read "dangerous."
" " 62, 2d " 6th " " bottom, for "Charter's" read "Carter's."
" " " " " 34th " " " after word "fire" read "after receiving a direction to this effect from Gov. Dorr."
" " " " " 26th " " bottom, for "statement" read "statements."
" " 64, 1st " 33d " " top, after "Woonsocket," insert "and."
" " " " " 23d " " bottom, strike out "known" and "to be at Killingly."
" " 65, " " 1st " for "Goverhor" read "Governor."
" " " " " 22d " " top, for "did not respond to his call," read "was not responded to."
" " " 2d " 9th " " " for "furnish," read "furnace."
" " " " " 27th " " " " "situated," read "selected by others."
" " " " " 6th " " bottom, after "publication," insert "in the party news-paper."
" " 66, 1st " 6th " " top, for "two officers," read "two Charter officers."
" " " " " 7th " " " after "and," read "though not by the request of Gov. Dorr."
" " " " " 9th " " " for "Governor and Council," read "Charter Governor and Council."
" " " " " 23d " " " strike out "a deserted fort, twelve," and insert "an intrenchment, thirteen."
" " " " " 21st " " bottom, strike out "connexion or concert between them and the Prisoner," and insert "improper design on their part."
" " " " " 9th " " bottom, after "Gen." insert "Wm. Gibbs.'
" " 67, " " 35th " " top, after "gentleman—" read "a professional man, a member of the R. I. bar, and."
" " " " " 39th " " top, after "represented," read "for three years and a half."
" " " 2d " 5th " " top, for "ran away," read "escaped."
" " " " " 9th " " " for "popular fury," read Algerine fury."
" " " " " 12th " " " strike out "apparently."
" " " " " 17th " " " strike out "and submitted himself to," and insert "within the reach of."
" " " " " 23d " " " strike out all in the sentence after "lived."
" " 68, 1st " 28th " " " for "impartially," read "impartiality."
" " 73, 2d " 24th " " " strike out "obtained nor."
" " 75, 2d " 29th " " " for "father" read "farther."
" " 76, 1st " 15th " " bottom, after "men," insert "of Chepachet.
" " " " " 13th " " " after "or" insert "upon."
" " " " " 26th " " " after "them" insert "and."