Case No. 16,621. UNITED STATES v. VIGOL.[1]

{2 Dall. 346; Whart. St Tr. 175.}

Circuit Court, D. Pennsylvania. May 22, 1795.

TREASON—WHAT CONSTITUTES—DEFENCE OF DURESS.

{1. To go with a large party in arms, marshaled and arrayed, to the houses of officers of the excise, and there commit acts of violence and devastation, with the avowed object of suppressing such offices, and compelling the resignation of the officers, for the purpose of nullifying an act of congress, is treason, under the constitution and laws of the United States.}

{2. The putting in fear which the law will recognize as sufficient duress to excuse the perpetration of a criminal act must proceed from an immediate and actual danger threatening the very life of the person accused. The apprehension of loss of property by waste or fire, or even an apprehension of a slight or remote injury to the person, is not sufficient}

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

As no question of law arose upon the trial, but the case rested entirely on a proof of the overt acts by two witnesses, M. Levy and Lewis, for the defendant, and the attorney of the district agreed, without argument, to submit to the decision of the jury, under the charge of the court, which was delivered to the following effect:

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

With respect to the evidence, the current runs one way. It harmonizes in all its parts. It proves that the prisoner was a member of the party who went to Reigan's house, and,

afterwards, to the house of Wells, in arms, marshalled and arrayed; and who, at each place, committed acts of violence and devastation.

With respect to the intention, likewise, there is not, unhappily, the slightest possibility of doubt. To suppress the office of excise in the Fourth survey of this state, and particularly, in the present instance, to compel the resignation of Wells, the excise officer, so as to render null and void, in effect, an act of congress, constituted the apparent,—the avowed,—object of the insurrection, and of the outrages which the prisoner assisted to commit. Combining these facts and this design, the crime of high treason is consummate in the contemplation of the constitution and law of the United States.

The counsel for the prisoner have endeavored, in the course of a faithful discharge of their duty, to extract from the witnesses some testimony which might justify a defence upon the ground of duress and terror. But in this they have failed, for the whole scene exhibits a disgraceful unanimity; and, with regard to the prisoner, he can only be distinguished for a guilty pre-eminence in zeal and activity. It may not, however, be useless on this occasion to observe that the fear which the law recognizes as an excuse for the perpetration of an offence must proceed from an immediate and actual danger, threatening the very life of the party. The apprehension of any loss of property, by waste or fire, or even an apprehension of a slight or remote injury to the person, furnish no excuse. If, indeed, such circumstances could avail, it would be in the power of every crafty leader of tumults

and rebellion to indemnify his followers by uttering previous menaces; an avenue would be forever open for the escape of unsuccessful guilt, and the whole fabric of society must, inevitably, be laid prostrate.

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

Verdict, guilty.

NOTE. The court, having waited about an hour for the jury ('till half past 10 o'clock at night), adjourned 'till 11 o'clock the next morning. Just after the adjournment took place, the jury requested to see Foster's Crown Law and the acts of congress, which, by consent, were accordingly sent to them. I am told, that they remained together 'till between 3 and 4 o'clock in the morning, when they wrote, signed, and sealed up their verdict, and adjourned. On the next morning (the 23d of May, 1795) they appeared at the bar and, being called over, offered the written verdict, sealed up, to the clerk. But the court said that the paper could not be received. The foreman then pronounced the verdict viva voce, and again offered the written verdict, but the court repeated: "We cannot open or receive it" Nothing was said publicly of the jury's having adjourned. The defendant was eventually pardoned.

[1] {This was one of the trials arising out of the so-called "Whiskey Insurrection," occurring in Western Pennsylvania in the year 1794. For a full account of the proceedings of the disaffected parties, see U. S. v. Insurgents, Case No. 15,443.}