

**Bench notes on the Whiskey Rebellion trial, United States v. John Barnet**

s.l., 29 May 1795.

Autograph manuscript, 30 pages.

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[19] ...Submission paper read.

M<sup>r</sup>. Lewis'. A question of constructive treason – Treason an offence ag<sup>t</sup> the sovereignty of a state – Apt to be pursued with keen ardor. Not 2 witnesses – if so - not [*struck*: evidence] sufficient to constitute treason – 300 miles off. Trial in the neighbourhood ... If men combine to effect the alteration of governmental measures, or to repeal a law, by force, &c is treason – The going to Couch's post did not amount to treason – a battle not necessary.

1. A predetermination thereof,
2. A marching forward in consequence ...

[21] ...In determining upon the charge cont<sup>d</sup> in the indictm<sup>t</sup> ag<sup>t</sup> the prisoner, it will be necessary to consider the facts and the intention. The latter may be subdivided into a general and particular intention or design – The general intention goes hand in hand with the facts.

Facts.

The people in the 4 western counties of this State were extremely averse to the excise system, and had committed [*struck*: in] several irregularities, before they rose in open rebellion against the U. States. The opposition, which was gradually ripening [*inserted*: forming] into a regular system, was [*inserted*: perhaps,] precipitated [*inserted*: into acts of hostility,] [*struck*: perhaps;] by the arrival of the marshal to serve process in that part of the country. It appears then from the testimony, that an attack was made on the 16<sup>th</sup>. of July last upon the house of Gen<sup>l</sup>. Neville, the excise affair, but being in a state of preparation it was successfully repelled. The party was repulsed and retired with some loss. The news of [22] attack and defeat were quickly and industriously circulated; and we find, that a party met in the evening at Col<sup>o</sup>. Phillips house in order to concert measures respecting future operations. A com<sup>te</sup>. was appointed, who agreed, that persons should be instantly dispatched to spread the intelligence, and to convene the people [*struck*: at Couch's] next day at Couch's as the place of general rendezvous ...

[26] ...This brings us to consider the particular case of the p<sup>r</sup> at the bar; and to examine how far he was traiterously [*sic*] concerned – The traiterous [*sic*] purpose is a necessary ingredient – The mind of the prisoner must be manifested by some [*struck: open*] [*inserted: overt*] act, and it is your province, gen<sup>n</sup>, to collect or infer the intention from the testimony said before you. A person may be present from curiosity or from accident, but if he does not [*struck: from*] by [*inserted: his*] conduct indicate to a traiterous [*sic*] spirit or intention, he is not to be criminated. If on the other hand it appears, and you are of opinion, that the pris<sup>r</sup> knew of the object, that it was, to compel the revenue officer by intimidation or force, to resign, to suppress the office of excise, to resist and prevent the execution of the law, or to procure its repeal by intimidation, by violence, by numbers, by an armed force, and if he willingly embarked [*inserted: and aided*] in the insurrection, then his guilt rises into treason...