sons. Had he designed to apply the principle universally he would have stated it as a general proposition—he would have laid it down in treating on other branches of the statute, as well as in the chapter respecting the coin, he would have laid it down when treating on indictments generally. But he has done neither. Every sentiment bearing in any manner upon this point, which is to be found in Lord Hale, while on the doctrine of levying war, or on the general doctrine of indictments, militates against the opinion that he considered the proposition as more extensive than he has declared it to be. No court could be justified in extending the dictum of a judge beyond its terms, to cases in which he has expressly treated, to which he has not himself applied it, and on which he as well as others, has delivered opinions which that dictum would over-rule. This would be the less justifiable if there should be a clear legal distinction indicated by the very terms in which the judge has expressed himself between the particular case, to which alone he has applied the dictum, and other cases to which the court is required to extend it.

There is this clear legal distinction, "They may, says Judge Hale, be indicted for counterfeiting generally." But if many conspire to levy war, and some actually levy it, they may not be indicted for levying war generally. The court concur in declaring that they cannot be so indicted. A special overt act of levying war must be laid. This distinction between counterfeiting the coins, and that class of treasons, among which levying war is placed, is taken in the statute of Edward 3rd. That statute requires an overt act of levying war to be laid in the indictment, and does not require an overt act of counterfeiting the coin to be laid. It is a particular case where a general indictment is sufficient, it be stated that the crime may be charged generally according to the legal effect of the act it does not follow, that in other cases where general indictment would be insufficient, where an overt act must be laid, that this overt act need not be laid according to the real fact. Hale then is to be reconciled with himself, and with the general principles of law, only by permitting the limits which he has himself given to his own dictum, to remain where he has placed them.

In page 235, Hale is speaking generally of the receiver of a traitor, and is stating in what such receiver partakes of an accessary. 1st. "His indictment must be special of the receipt, and not generally that he did the thing, which may be otherwise in case of one that is procurer, counsellor or consenter"

The words "may be otherwise" do not clearly convey the idea that it is universally otherwise. In all cases of a receiver the indictment must be special on the receipt, and not general.—The words it "may be otherwise in case of a procurer," &c. signify that it may be otherwise in all treasons, or that it may be otherwise in some treasons.—If it may be otherwise in some treasons without contradicting the doctrines of Hale himself, as well as of other writers, but cannot be otherwise in all treasons without such contradiction, the fair construction is, that Hale used these words in their restricted sense; that he used them in reference to treasons, in which a general indictment would lie, not to treasons where a general indictment would not lie, but an overt act of the treason must be charged. The two passages of Hale thus construed, may perhaps be law, and may leave him consistent with himself. It appears to the court to be the fair way of construing them.

These observations relative to the passages quoted from Hale, apply to that quoted from East, who obviously copies from Hale, and relies upon his authority.

Upon this point Keeling 26, and 1st Hale 626, have also been relied upon. It is stated in both, that if a man be indicted as a principal and acquitted, he cannot afterwards be indicted as accessary before the fact. Whence it is inferred, not without reason, that evidence of accessorial guilt may be received on such an indictment. Yet no case is found in which the question has been made and decided. The objection has never been taken at a trial and over-ruled, nor do the books say it would be over-ruled. Were such a case produced its application would be questionable. Keeling says, an accessary before the fact is *quodam modo*, in some manner guilty of the fact.—The law may not require that the manner should be stated, for in felony it does not require that an overt act should be laid. The indictment therefore may be general. But an overt act of levying war must be laid. These cases then prove in their utmost extent no more than the cases previously cited from Hale and East. This distinction between indictments which may state the fact generally, and those which must lay specially, bear some analogy to a general and a special action on the case. In a general action, the declaration may lay the assumpsit according to the legal effect of the transaction, but in a special action on the case, the declaration must state the material circumstances truly, and they must be proved as stated. This distinction also derives some aid from a passage in Hale, 625, immediately preceding that which has been cited at the bar. He says "If A. be indicted as principal and B. as accessary before or after, and both be acquitted, yet B. may be indicted as principal, and the former acquittal as accessary is no bar."

(To be Continued)

TRIAL of AARON BURR.

ON THE INDICTMENT FOR A MISDEMEANOR.

WEDNESDAY, SEPTEMBER 16.

Mr. Burr observed that he should wave the right to which he was entitled of putting an end to this enquiry at the present time; but that as much had been said boldly about his levying war in certain places, he was willing to indulge the gentlemen in the production of relevant testimony. If they, however, wandered from that line, he should immediately bring the investigation of the law before the court. He also demanded a specification of the charge made against him.—The Chief Justice observed, that the specific charge was levying war at the mouth of Cumberland river.—Mr. *Martin* denied that this specific charge had been yesterday made.

Mr. *Hay* stated that this difficulty had occurred respecting the jurisdiction of the island at the mouth of Cumberland river, that he had been informed, that this island had never been ceded to Kentucky, and that it still belongs to Virginia: that if Mr. Burr then was sent to Kentucky, he might be sent back again; and that even if he was wrong in locating the offence, it was in the power of the court to send him to another district: the only arrangement however that was now to be made, was whether Blannerhassett and Smith should be included in the same motion. Mr. Wickham objected, to this arrangement; because their counsel was different; and because the testimony applicable to each might be different.—*Chief Justice*. Let the examination proceed: and if any confusion should occur, the division may then be made.

Mr. Martin insisted on the specification of the charge.

Mr. Hay then produced and read the following paper:

The attorney of the U. S. for the Virginia district, charges A. Burr, Herman Blannerhassett and Israel Smith, with treason, in levying war against the U. S. and charges that an overt act of levying war was committed on an island whose name is not known at the mouth of Cumberland river, in the state of Kentucky, and that other overt acts of levying war, were committed at Bayou Pierre, in the Mississippi territory, and on the Mississippi river, between the places above named.

The attorney for the U. S. then called James W. Dowell, who gave the following evidence:

In December I was at Wheeling, and engaged with one William Dean to go down the river, to New Orleans, to take down a boat loaded with flour and whiskey. We went down the river with the boat from Wheeling to Shawnee town; and here I saw Mr. Blannerhasset, Smith, Tyler, and many others. From that place we went down to the mouth of Cumberland river, in company with these gentlemen.—(Mr. Hay. Where is Shawnee town? A. It is below Blannerhassett's Island.) It was at the mouth of Cumberland that I saw Colonel Burr for the first time. We all went up to the beach where he was introduced to us all, and there we formed a ring or circle, where he told us it was not a proper time to divulge his secrets; there were too many bye standers.

Col. Tyler and Mr. Smith, and Mr. Dean, and Blannerhassett stood together, and he told Col. Tyler he might tell the gentlemen engaged, what he thought proper, and Col. T. said he would inform the captains of the boats; for each boat had a captain. Col. T. said, he would let them know where they were going, when they got to Nantz de Grace, (New Madrid, as some call it.)—Mr. Dean sold the boat we went down in, to Comfort Tyler and Israel Smith.—Then we proceeded in going down, till we got to New Madrid, where we expected to hear some encouragement for going down; and there we were told by Comfort Tyler, that when we got lower down, they would tell us. They appointed two or three places, but they never saw one fit for it. We went on down to Bayou Pierre.

Mr. Burr. Gentlemen have set out to prove an act of war at the mouth of Cumberland river. We shall presently object to that kind of testimony, they are now bringing forward.—*Mr. Wickham*. It is understood that these exceptions are all before the court. Mr. *Hay*. We are not now before the court. *Mr. Wickham*. I understand the gentleman. We are not before the court to determine objections to evidence. Mr. *Hay*. All that I say is, we are not before the court to hear a regular motion, but to determine a motion for commitment. Let all the evidence be produced—and the bench will then determine upon any objections that may be urged. *Mr. Wickham*. If we start objections, I presume that it is right to hear them. The court will not surely hear irrelevant and illegal testimony. There are surely manifest reasons why this kind of evidence shall not be introduced. Every atom of it is taken down; published in the newspapers, and circulated throughout the world. As there is no reason to expect, that this prosecution will be dropped; as a motion has been made to try him in Kentucky; it is improper to publish this evidence, and to prejudice the public mind against Col. Burr?

Mr. M'Rae. The evidence that we offer relates to one of the very charges urged against him; for it embraces his conduct at Bayou Pierre.—*Mr. Burr*. It will be saving time, if the gentlemen will confine themselves to Kentucky. I shall not interrupt them: but if they go into the Mississippi territory, I shall certainly state objections, which the court will suffer to be heard.

Mr. Martin. Let them prove an overt act first; and then there will be a sufficient foundation for the introduction of this testimony.—*Chief Justice*. That suggestion is for the consideration of the counsel for the U. S. But if the accused is prepared to state any objections, to going into the Mississippi territory, I must hear them.

Mr. Hay. I will submit this idea to the consideration of the court. Ought the witnesses to be detained here day after day? Let the evidence be first heard, and the court may then determine which part of it is to be laid out of view. Mr. *Wirt* suggested that to avoid the expence of detaining the witnesses, their evidence might be reduced to depositions. Mr. *Burr*. I presume the gentlemen will first ask my consent. *Chief Justice*. If the witnesses are absent, their affidavits can be heard.—But if they are here, they must be produced.

Mr. *Burr*. Do I enderstand gentlemen as insisting on going below the line into the Mississippi territory?

Mr. *Hay*. I see no objection to going through the whole line of march.

Mr. *Botts* objected to the production of such evidence on three grounds:

1. That no evidence of acts in the Mississippi Territory was admissible, by the 33d sect. of the judicial act. Mr. Botts contended that according to this act of Congress, a person arrested is to be bailed or imprisoned for trial, before such courts of the U. States as "by this court" had cognizance of the offence: that the Mississippi court was not a court of the United States within the meaning of its 32d sect.; that by this act that court has no cognizance; that the word "district" which is so frequently used in that act applies entirely to the states and not to the Territories; and that this court cannot judicially hear what it has no cognizance of.

2. That the verdict of acquital operated as a bar to any trial for this charge now laid by the attorney; that this charge was in effect the same offence for which he had been already tried & acquitted, and that by the constitution and by common sense, no man could be twice put in jeopardy for the same offence; that treason was one continued and indivisible act; and if it was infinitely divisible, that a man might be subject to infinite persecutions; that the United States had the evidence before them: they had then the selection of place to try Col. B. in; and if they had made a wrong selection, it was their own fault: that no instance had occurred in the English rebellions of '15 or '45, wherein a rebel had two trials; and that if such had been the usage in England, Lord George Gordon might have been tried in St. George's fields and if acquitted there, at Moorfields; at Lincoln's Inn Field's; at G. Queens Street &c.

3. That col. B. had been already acquitted by an enquiry of a grand jury in the Mississippi Territory; that upon such a report here, a person in custody would be discharged; and after this discharge, could the court recommit him for the same offence?

The latter point was in effect abandoned by the accused, during the course of the argument. Col. B. however observed, it might address itself to the sound discretion of the court.

Mr. McRea, replied to Mr. Botts; and expatiated over a wide field of argument & statement.

On Thursday, Mr. Hay resumed the argument—He was followed by Messrs. Martin & Wickham, who were answered by Mr. Wirt. Mr. Botts replied to Mr. Wirt.

On Friday Mr. Randolph closed the argument; after which the Chief Justice delivered the opinion of the court; that he had no power to commit for trial in the court for the Mississippi territory, and of consequence that it would be improper in him to go into any enquiry on a subject on which he cannot act; that as to the operation of the *autre fois acquit* his judgment was not decidedly formed; and that he should therefore hear the testimony relative to the conduct of the accused within the U. S. and should in the mean time reflect farther on this subject.

The attorney for the U. States then proceeded with the examination of James M'Dowel, William Love, and Thomas Hartley, who were called in to prove the military assemblage at the mouth of Cumberland river. The testimony was not suffered to extend below the Chickasaw Bluffs; the south western frontier of Tennessee. Mr. Burr even objected to the admission of any evidence on the Mississippi; because the boundary of Tennessee did not extend beyond the margin of the river. This point was not definitely settled.

Mr. Hay observed, that he had one other witness to produce (Jacob Dunbaugh) relative to the assemblage at Cumberland river, who would prove a quantity of arms there collected; that he would then refer to the court, how far the evidence produced proved an overt act of treason; and if it did, that then he understood he was at liberty to proceed to produce his other testimony (within the U. S.) in the nature of collateral or auxiliary testimony.

Mr. Wickham proposed to introduce at the same time the witnesses of the accused relative to this same point.—*Agreed.*

WASHINGTON CITY,

FRIDAY, SEPTEMBER 25.

NOTICE of the observations of Pacificus and other writers.

(CONCLUDED.)

Pacificus next charges the National Intelligencer with admitting that 250,000 merchants would be ruined and beggared by a war with Britain. Nothing can more completely prove the unfairness of this and other anonymous writers. No such admission has been made. No such intimation has been given. It is too absurd for any rational being to have conceived. For the whole number of merchants in the U. S. does not amount to one tenth part of the number. The view taken was this. It was admitted that a war would immediately derange the affairs of our mercantile citizens; that it might entirely interrupt their regular business; and that they would consequently be the first to feel its pressure. But it was not said they would be ruined, or ultimately be more injured than the other classes of society. On the contrary, the very hypothesis that converted our merchantmen into privateers and calculated on their making numerous captures, equivalent to our loss of regular trade, implied the continuance of much mercantile business, however the ordinary course of that business might be changed.

It was contended in this paper as far from improbable that the value of our domestic productions would not greatly sink in case of a war with Britain. This is disputed by Pacificus. It will be admitted to be a disputable point, as the value of our produce will depend upon the nature of the war, and of the provisions that shall be adopted by our government.

It is most certain that G. Britain will, if she can, obtain from us those supplies of articles of subsistence and raw materials either essential to her existence or power, and for this purpose be ready, if other modes are not adopted, to open neutral channels for her supply. It is equally certain that she will be solicitous for us to continue the consumers of her manufactures, and will adopt the same mode of supplying them, if we permit her. In this case there would be no great fall in the price of produce, after the first shock occasioned by the war. In this event the loss of trade to each nation would be the same. But there would be this difference in the effect produced. In this country, such is the immensity of the field for capital, that the merchant would without any great injury employ his capital in internal occupations; while in England, where every thing is overdone, this could not be effected without great loss. Let us, likewise, take this consideration along with us, that the very circumstances, which in this country offered new and additional inducements to manufactures, would in that country even diminish the ordinary inducements to carry on those already in existence.

In the next place, should our privateers be as successful as they might be, it will not be denied that either no reduction, or a very small one would take place.

But supposing neither of these results, it is probable that the government would adopt measures whose tendency would be to establish a large body of manufacturers in addition to those in existence. Now, supposing the production of the laboring class to be equal to their consumption, and it does not greatly exceed it, and estimating our surplus produce at fifty millions, 60,000 adult males, with a proportionate number of women and children, at present engaged in agricultural pursuits, withdrawn from the plough and engaged in manufactures, would have the two fold effect of lessening the quality of our surplus produce, and increasing manufactures among ourselves to such a degree as to render us entirely independent of foreign trade, on the supposition that we could supply among ourselves all our wants. This is not, however, precisely the case. But a full exertion of all our faculties towards the supply of our own wants among ourselves would leave but a small balance of wants to be provided for in foreign commerce. On this point there is one most important consideration, and it is here stated, principally for the purpose of repelling the insinuation that the New England states would be the victims of a war with Britain. That very section of the union, at present eminently the seat of trade and navigation, would, should our foreign trade be cut off, become the seat of manufactures. If this should not prove a full equivalent for the loss of her trade, it would undoubtedly lessen it in a high degree. Indeed, if the opinions of intelligent men be consulted, it does admit of question, whether the profits of manufactures in the U. S. do not exceed those of trade.

But it seems the revenue of the government would be greatly diminished by a war, and the means of carrying it on be correspondently impaired. Indeed, in case of a war we are threatened with a total destruction of the whole revenues of the U. S. which are said to be exclusively derived from commerce. Our commerce, it is alleged, would be totally destroyed, and the duties would fall with it.

In what degree our imports and exports would be diminished is extremely problematical, or whether they would be diminished at all. Our regular trade would unquestionably be decreased; but it does not follow that we should not be supplied as fully with goods either taken by our privateers, or received through neutral channels, in which case the revenue would remained unimpaired.

But admitting, for the sake of argument, that our importations would be considerably diminished, does it follow that the ability to obtain revenue would be proportionably diminished, much less that the whole revenues would be annihilated?

Even supposing a total cessation of imports—a supposition too Quixotic to be entertained by any rational being—have we no other sources of revenue, either actually opened, or capable of being opened? Where is the great resource of Western lands, and the great sum due in the shape of custom house bonds? Would these too be annihilated? These are sources of revenue actually opened. Where too is the immense mass of real and personal estate equally subject to taxation, and the extensive list of articles of consumption, all of which are the subjects of federal taxation. But, says Pacificus, the government dare not resort to these revenues—direct taxes and exises are odious—they would not be submitted to; they would destroy the popularity of those who imposed them.

Miserable sophistry! Because the imposition of these taxes, backed by an alien and sedition act, and various other abuses of power, humbled a former administration, is it to be inferred that it would destroy the present administration? Has it never once beamed on the mind of Pacificus, that it was not so much the nature of those taxes that rendered them odious, as the manner of their imposition, and still more, the alleged objects for which they were imposed. It was because the measures of the government were odious which produced a necessity for their imposition that principally made them unpopular; it was because the people had no confidence in those who imposed them; it was because a general alarm had gone forth that they would be the means of enslaving the nation. These are the principal reasons why they were odious. They were not deemed necessary for subserving the general interests. This impression was of itself sufficient to damn them. For it has been almost universally admitted that nothing short of necessity can justify their imposition. At the adoption of the constitution such was the declaration and pledge of its greatest advocates.

But let this necessity once exist—let an occasion present itself that requires an exertion of all our resources—let a war with Britain for the maintenance of our essential rights be once begun, and it will be found, we boldly say it, that the people of America will unhesitatingly carry into effect every measure that an honest and beloved government shall propose, which they possess the power of doing. A direct tax and an excise will, under such circumstances, have no terrors. The people will be satisfied that these taxes are only imposed from necessity; and that they will be relieved from their pressure the moment such necessity ceases to exist. They will see that they are required by the public good, and directed to its advancement.

It is not, however, probable that a resort to these taxes will, in case of a war, become necessary.

For we shall have—

In the first place, a sum of eight millions of dollars in the treasury;

Secondly, We shall have about twenty millions in custom house bonds, payable within two years.

And thirdly, We shall have a vast resource in public lands, which already yield above a million of dollars every year; and which might, by a reduction of the price, yield at least three millions.

Supposing then we should not receive a dollar for imports, we might, notwithstanding, from these resources command the following revenue.

The first year.

	DOLLARS.
From money in the treasury	8,000,000
From custom-house bonds, say one half	10,000,000
From sale of public lands,	3,000,000
	21,000,000

Making altogether twenty-one millions, which exceeds the ordinary annual receipts by above seven millions.

The second year.

From balance of custom-house bonds,	10,000,000
From sale of public lands,	3,000,000
	13,000,000

Which is about equal to the present revenue of the U. States.

Of the revenues of the government, about five millions is devoted to the gradual extinguishment of the principal of the debt. This might, during a period of war, be suspended with the consent of the public creditors, which would be given with cheerfulness, and would leave for objects connected with the prosecution of the war, thirteen millions of dollars the first year & five millions the second year.

Supposing that only half the ordinary importations should continue during a period of war, without any augmentation of duties, there would be a revenue, applicable to these objects, of eighteen millions the first, and eleven millions the second year.

Is there any reason for despondency at this picture, the fidelity of which cannot be impeached? Let not then this view of the subject instil fear into our minds, or confidence into that of our enemies, internal or external. Should the contest in a just cause prove ever so expensive, we should teach our enemies that taxes equally laid, and impartially applied to the public good, may be collected, under a free government to almost any amount. Such is the declaration of Montesquieu himself, a splendid authority on subjects of political economy, and the more to be depended upon in this just eulogium on republican go-