war against them, or in adhering to their enemies giving them aid and comfort.

By two acts of Congress, the first passed on the third day of March, 1791, and the second on the eighth day of May, 1792, a duty was imposed on spirits distilled within the United States, & on stills; and various provisions were made for its collection.

In the year 1794, an insurrection took place in four of the western counties of Pennsylvania, with a view of resisting, and preventing by force the execution of these two statutes; and at a circuit court of the United States, held at Philadelphia, for the district of Pennsylvania, in the month of April, in the year 1795, by William Paterson, esq. then one of the associate justices of the supreme court of the United States, and the above mentioned Richard Peters, then district judge of the U. States, for the district of Pennsylvania, two persons, who had been concerned in the above named insurrection, namely, Philip Vigel and John Mitchel, were indicted for treason, of levying war against the U. States, by resisting and preventing by force the execution of the two last mentioned acts of Congress: and were, after a full and very solemn trial, convicted on the indictments and sentenced to death. They were afterwards pardoned by George Washington, then President of the U. States.

In the first of these trials, that of Vigol, the defence of the prisoner was conducted by very able counsel, one of whom William Lewis, esq. is the same person who appeared as counsel for John Fries, in the trial now under consideration. Neither that learned gentlemen, nor his able colleague, then thought proper to raise the question of law, "whether resisting and preventing by armed force, the execution of a *particular* law of the U. States, be a "levying of war against the U. States," according to the true meaning of the constitution? although a decision of this question in the negative, must have acquitted the prisoner. But in the next trial, that of Mitchell, this question was raised on the part of the prisoner, and was very fully and ably discussed by his counsel; and it was solemnly determined by the court, both the judges concurring, "that to resist or prevent by armed force, the execution of a particular law of the U. States, is a levying of war against the U. States, and consequently is treason, within the true meaning of the constitution." The decision, according to the best established principles of our jurisprudence, became a precedent for all courts of equal or inferior jurisdiction; a precedent which, although not absolutely obligatory, ought to be viewed with very great respect, especially by the court in which it was made, and ought never to be departed from, but on the fullest and clearest conviction of its incorrectness.

On the 9th of July, 1798, an act of Congress was passed, providing for a valuation of lands and dwelling-houses and an enumeration of slaves throughout the United States; and directing the appointment of commissioners and assessors for carrying it into execution: And on the 4th day of July, in the same year, a direct tax was laid by another act of Congress, of that date, on the lands, dwelling houses, and slaves, so to be valued and enumerated.

In the months of February and March, A. D. 1799, an insurrection took place in the counties of Bucks and Northampton, in the state of Pennsylvania, for the purpose of resisting and preventing by force, the execution of the two last mentioned acts of Congress, and particularly that for the valuation of lands and dwelling-houses. John Fries, the person mentioned in the article of impeachment now under consideration, was apprehended and committed to prison, as one of the ringleaders of this insurrection; and at a circuit court of the United States, held at Philadelphia, in and for the district of Pennsylvania, in the month of April, A. D. 1799, he was brought to trial for this offence, on an indictment for treason, by levying war against the United States, before James Iredell, Esq. then one of the associate justices of the supreme court of the U. States, who presided in the said court, according to law and the above mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, who sat in the said circuit court as assistant judge.

In this trial, which was conducted with great solemnity, and occupied nine days, the prisoner was assisted by William Lewis, and Alexander James Dallas, Esqs. two very able and eminent counsellors; the former of whom, William Lewis, is the person who assisted as above mentioned, in conducting the defence of Vigol, on a similar indictment. These gentlemen, finding that the facts alledged were fully and undeniably proved, by a very minute and elaborate examination of witnesses, thought proper to rest the case of the prisoner, on the question of law which had been determined in the cases of Vigol and Mitchell above mentioned, and had then been acquiesced in, but which they thought proper again to raise. They contended, "that to resist by force of arms a particular law of the United States, does not amount to levying war against the United States, within the true meaning of the constitution, and therefore it is not *treason*, but a *riot* only." This question they argued at great length, and with all the force of their learning and genius, and after a very full discussion at the bar, and the most mature deliberation by the court, the learned and excellent judge who then presided, and who was no less distinguished by his humanity and tenderness towards persons tried before him, than by his extensive knowledge and great talents as a lawyer, pronounced the opinion of himself and his colleague, "that to resist or prevent by force, the execution of a particular law of the United States, does amount to levying war against them, within the true meaning of the constitution, and does therefore constitute the crime of treason," thereby adding the weight of another and more solemn decision, to the precedent which had been established in the above mentioned cases of Vigol and Mitchel.

Under this opinion of the court on the question of law, the jury, having no doubt as to the facts, found the said John Fries guilty of treason, on the above mentioned indictment. But a new trial was granted by the court, not by reason of any doubt as to the correctness of the decision on the question of law, but solely on the ground, as this respondent hath understood and believes, that one of the jurors of the petit jury, after he was summoned, but before he was sworn on the trial, had made some declaration unfavorable to the prisoner.

The yellow fever having appeared in Philadelphia in the summer of the year 1799, the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania, did according to law appoint the next circuit court of that district, to be held at Norris Town therein: Pursuant to which appointment, a circuit court was held at Norris Town aforesaid, in and for the said district, on the 11th day of October in the last mentioned year before Bushrod Washington, Esq then one of the associate justices of the supreme court of the United States and the above mentioned Richard Peters; at which court no proceedings were had on the aforesaid indictment against John Fries, because, as this respondent hath been informed and believes, the commission of the marshal of the said district had expired, before he summoned the jurors to attend at the said court, and had not been renewed; by reason of which no legal pannel of jurors could be formed.

On the 11th day of April, A. D. 1800, and from that day until the 2d day of May in the same year, a circuit court of the United States was held at Philadelphia, in and for the district of Pennsylvania, before this respondent, then one of the associate justices of the supreme court of the United States, and the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania. At this court, the indictment on which the said John Fries had been convicted as above mentioned, was quashed ex officio by William Rawle, Esq. then attorney of the United States for the district of Pennsylvania, and a new indictment was by him preferred against the said John Fries, for treason of levying war against the United States, by resisting and preventing by force, in the manner above set forth, the execution of the above mentioned acts of Congress, for the valuation of lands and dwelling-houses and the enumeration of slaves, and for levying and collecting a direct tax. This indictment, of which a true copy marked exhibit No. I, is herewith exhibited by this respondent, who prays that it may be taken as part of this his answer, being found by the grand jury on the 16th day of April, 1800, the said John Fries was on the same day arraigned thereon, and plead not guilty. William Lewis, and Alexander James Dallas, Esqs. the same persons who had conducted his defence at his former trial, were again at his request assigned by the court as his counsel; and his trial was appointed to be had, on Tuesday the 22d day of the last mentioned month of April.

After this indictment was found by the grand jury, this respondent considered it with great care and deliberation, and finding, from the three overtracts of treason which it charged, that the question of law arising upon it, was the same question which had already been decided twice in the same court, on solemn argument and deliberation, and one in that very case, he considered the law as settled by those decisions, with the correctness of which on full consideration he was entirely satisfied; and by the authority of which he should have deemed himself bound, even had he regarded the question as doubtful in itself. They are moreover in perfect conformity with the uniform tenor of decisions in the courts of England and Great Britain, from the revolution, in 1688, to the present time, which in his opinion, added greatly to their weight and authority.

And surely we need not urge to this honorable court, the correctness, the importance, and the absolute necessity of adhering to principles of law once established, and of considering the law as finally settled, after repeated and solemn decisions by courts of competent jurisdiction. A contrary principle would unsettle the basis of our whole system of jurisprudence, hitherto our safeguard and our boast; would reduce the law of the land, & subject the rights of the citizen, to the arbitrary will, the passions, or the caprice of the judge in each particular case; and would substitute the varying opinions of various men, instead of that fixed, permanent rule, in which the very essence of the law consists. If this respondent erred in regarding this point as settled, by the repeated and solemn adjudications of his predecessors in the same court and in the same case; if he erred in supposing, that a principle established by two solemn decisions, was obligatory upon him, sitting in the same court where those decisions had been made; if he erred in believing, that it would be the highest presumption in him, to set up his opinion and judgment over that of his colleague, who had twice decided the same question, and of two of his predecessors, who justly rank among the ablest judges that have ever adorned a court; if in all this he erred, it is an error of which he cannot be ashamed, and which he trusts will not be deemed criminal in the eyes of this honorable court, of his country, or of that posterity by which he, his accusers and his judges, must one day be judged.

Under the influence of these considerations, this respondent drew up an opinion on the law, arising from the overt acts stated in the said indictment, which was conformable to the decisions before given as above mentioned, and which he sent to his colleague the said Richard Peters, for his consideration. That gentlemen returned it to this respondent, with some amendments affecting the form only, but not in any manner touching the substance.

The opinion thus agreed to, this respondent thought it proper to communicate to the prisoner's counsel—several reasons concurred in favor of this communication.

In the first place, this respondent considered himself and the court, as bound by the authority of the former decisions; especially the last of them, which was on the same case. He considered the law as settled, and had every reason to believe that his colleague viewed it in same light. It was not suggested or understood, that any new evidence was to be offered; and he knew that if any should be offered, which could vary the case, it would render wholly inapplicable both the opinion and the former decisions on which it was founded. And he could not and did not suppose, that the prisoners counsel would be desirous of waiting very precious time, in addressing to the court an useless argument on a point which that court held itself precluded from deciding in their favor. He therefore conceived that it would be rendering the counsel a service and a favor, to apprise them before hand of the view which the court had taken of the subject; so as to let them see in time the necessity of endeavoring to produce new testimony, which might vary the case, and take it out of the authority of former decisions.

Secondly. There were more that one hundred civil causes then depending in the said court as appears by the exhibit marked No. I, which this respondent prays may be taken as part of this, his answer. Many of those causes had already been subjected to great delay, and it was the peculiar duty of this respondent, as presiding judge, to take care, that as little time as possible should be unnecessarily consumed, and that every convenient and proper dispatch should be given to the business of the citizens. He did believe, that an early communication of the court's opinion, might tend to the saving of time, and consequently to the dispatch of business.

Thirdly. As the court held itself bound by the former decisions, and could not therefore alter its opinion in consequence of any argument; and as it was the duty of the court to charge the jury on the law, in all cases submitted to their consideration, he knew that this opinion must not only be made known at some period or other of the trial, but must at the end of the trial be expressly delivered to the jury by him, in a charge from the bench; and he could not suppose and cannot yet imagine, that an opinion, which was to be thus solemnly given in charge to the jury, at the close of the trial, could make any additional impression on their minds, from the circumstance of its being intimated to the counsel before the trial began, in the hearing of those who might be afterwards sworn on the jury.

And, lastly, it was then his opinion, & still is, that it is the duty of every court of this country, and was his duty on the trial now under consideration, to guard the jury against erroneous impressions respecting the laws of the land. He well knows, that it is the right of juries in criminal cases, to give a general verdict of acquittal, which cannot be set aside on account of its being contrary to law, and that hence results the power of juries, to decide on the laws as well as on the facts, in all criminal cases. This power he holds to be a sacred part of our legal privileges, which he never has attempted, & never will attempt to abridge or to obstruct. But he also knows, that in the exercise of this power, it is the duty of the jury to govern themselves by the laws of the land, over which they have no dispensing power; and their right to expect and receive from our court, all the assistance which it can give, for rightly understanding the law. To withhold this assistance, in any manner whatever; to forbear to give it in that way, which may be most effectual for preserving the jury from error and mistake; would be an abandonment or forgetfulness of duty, which no judge could justify to his conscience or to the laws. In this case, therefore, where the question of law arising on the indictment, had been finally settled by authoritative decisions, it was the duty of the court, and especially of this respondent as presiding judge, early to apprize the counsel and the jury of these decisions, and their effect, so as to save the former from the danger of unwittingly an improper attempt, to mislead the jury in a matter of law, and the jury from having their minds, preoccupied by erroneous impressions.

It was for these reasons, that on the 22d day of April 1800, when the said John Fries was brought into court, and placed in the prisoners' box for trial, but before the petit jury was impanelled to try him, this respondent informed the above mentioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas not being then in court, "that the court had deliberately considered the indictment against John Fries for treason, and the three several overt acts of treason stated therein: That the crime of treason was defined by the constitution of the U. States; that as the Federal legislature had the power to make, alter, or repeal laws, so the judiciary only had the power, and it was their duty, to declare, expound and interpret the constitution and laws of the United States: That it was the duty of the court, in all criminal cases, to state to the petit jury, their opinion of the law arising on the facts; but the jury in all criminal cases were to decide both the law and the facts, on a consideration of the whole case. That there must be some constructive exposition of the terms used in the constitution, "levying war against the United States;" That the question, what acts amounted to levying war against the United States, or the government thereof, was a question of law, and had been decided by Judges Patterson, and Peters, in the cases of Vigol and Mitchell, and by judges Iredell and Peters, in the case of John Fries, prisoner, at the bar, in April 1799: That judge Peters remained of the same opinion, which he had twice before delivered, and he, this respondent, on long and great consideration, concurred in the opinion of judges Patterson, Iredell and Peters; that to prevent unnecessary delay, and to save time on the trial of John Fries, and to prevent a delay of justice, in the great number of civil causes depending for trial at that term, the court had drawn up in writing, their opinion of the law, arising on the overt acts, stated in the indictment against John Fries; and had directed David Caldwell their Clerk, to make out three copies of their opinion, one to be delivered to the attorney of the district, one to the counsel for the prisoner, and one to the petit jury, after they should have been impanelled and heard the indictment read to them by the clerk, and after the district attorney should have stated to them the law on the overt acts alledged in the indictment, as it appeared to him.

(To be continued.)

FRIDAY, February 8.

The court opened precisely at twelve o'clock.

Present, the Managers and House of Representatives in committee of the whole—and,

Mr. Chase, and his counsel, Messrs. Martin, Harper, Hopkinson and Key.

The cryer, having agreeably to a prescribed form, notified all those concerned to come forward and make good the charges exhibited against Samuel Chase:—

Mr. *J. Randolph*, the leading manager, requested that the witnesses, on the part of the prosecution, might be called, to ascertain who were present.

They were accordingly called, to the number of twenty-four, as follow:—those who answered are marked (p)—and those absent (a.)

Alexander James Dallas, p; William Lewis p; William S. Biddle, p; Edward Tilghman, p; George Read, p; James Lea, a; John Crow, a; Bishop, a; John Montgomery, p; John Stephen, p; Aquila Hall, a; Phil. Stewart, a; John Thompson Mason, p; Samuel H. Smith, p; Thomas Hall, a; John Taylor, p; George Hay, p; Philip Norbonne Nicholas, a; William Wirt, p; John Harvie, a; Meriweather Jones, a; John Heath, p; James Pleasants, a.

Fourteen being present, and ten absent. Of those marked absent, we understand that Philip N. Nicholas is in the city.

Mr. *J. Randolph* observed, that various considerations, which it was unnecessary to detail, induced him, on behalf of the managers, to move a postponement of the trial till to-morrow, when they hoped to be prepared to proceed therewith.

Mr. *Harper* said that, on behalf of Judge Chase, he would not object to the motion.

The *President* informed the Managers, that the Senate acceded to their request, and added that the Senate would attend to-morrow at 12 o'clock for the purpose of proceeding with the trial.

At the request of Mr. Harper, the witnesses on the part of Judge Chase were called over, to the number of forty one; as follows:—those present are marked (p)—and those absent (a.)

Witnesses summoned by Judge Chase.

William Marshall, p; David M. Randolph, p; Edmund Randolph, a; John A. Chevalier, p; Robert Gamble, a; John Marshall, p; John Hafter, p; Cyrus Griffin, p; David Robertson, p; John C. Barret dead; John Hopkins not found; Philip Geech not found; William Minor not found; James Winchester, p; Philip Moore, a; Cornelius Conway, a; John Pawlance, p; Thomas Chase, p; John Stewart, a; William Hawle, p; Bunning Bedford, p; Nicholas Vandyke, p; A. Hamilton, p; B. E. Moore, p; W. C. Fra-