

Without desiring to invade the prerogatives of the Jury in judging of the facts of this case, the Court feels bound to say that they do not think the transaction with which the prisoner is charged with being connected, rises to the dignity of treason, or a levying of war - not because the numbers or force was insufficient; but,

1st For want of any proof of a previous conspiracy to make a general & public resistance to any law of the United States; 2nd, There is no evidence that any person concerned in the transaction ^{there} knew, were such acts of Congress as they were charged with conspiracy to resist by force & arms, or had any other intention than to protect one another from what they termed Kidnappers (by which slang term they probably included not only actual Kidnappers, but all masters & owners seeking to recapture their slaves & the officers & agents assisting therein. -

It will be observed here that Judge Grier does not deny the treason, because of the insufficiency of the force to levy war against the United States. He has therefore virtually adopted ^{the rule laid} down by Judge Chase on the second trial of Frise, in the United States Circuit Court, where that learned Judge declared that the quantum of the force employed neither lessens or diminishes the crime; whether by one hundred or one thousand persons is wholly immaterial.

But his Honor Judge Grier places the acquittal of Castner Hamaway, on two distinct grounds. First for want of any proof of a previous conspiracy, to make a general & public resistance to any law of the United States.

He does not negative the idea that there was evidence of some conspiracy, but he decides that there is no evidence of a conspiracy to do a particular thing, viz. to make a general & public resistance to any law of the United States.

This I humbly submit, is a new qualification of the rule laid down by the distinguished Judges who had, as it was thought, settled the law of treason, in the cases growing out of the Western Insurrection, The Northampton Insurrection & the case of Bollman & Swartwout in the Supreme Court of the United States. The true rule laid down in these cases is admitted, this very charge of Judge Grier, ^{to be} in the following words, viz. "If a body of people conspire & meditate an insurrection to resist or oppose the exe-