

Respublica Vs. Malin

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Court : US Supreme Court

Decided On : 1778

Appeal No. : 1 U.S. 33

Appellant : Respublica

Respondent : Malin

Judgement :

RESPUBLICA v. MALIN - 1 U.S. 33 (1778)

U.S. Supreme Court RESPUBLICA v. MALIN, 1 U.S. 33 (1778)

1 U.S. 33 (Dall.)

Respublica

v.

Molin

Court of Oyer and Terminer, at Philadelphia

September Sessions, 1778

Indictment for High Treason. The prisoner, mistaking a corps of American troops for British, went over to them. And now the Attorney General offered evidence of words spoken by the Defendant, to prove this mistake, and his real intention of

joining and adhering to the enemy.

This was opposed by the counsel for the Defendant, who contended, that as words did not amount to treason, no general evidence [*Respublica v. Malin* [1 U.S. 33](#) (1778)

could be given of a man's sentiments; but that the intention expressed by any words offered in evidence, must relate immediately to the overt act laid and proved on the indictment; that although an adherence to the British troops was treason, yet, an adherence to American troops, even under a supposition that they were British, did not amount to that crime; and that the opinion, that words joined with actions made treason, however ingeniously supported, failed in point of law. See 3 Cro. 332.

The Attorney General, on the other hand, admitted that words alone do not amount to treason; but, he insisted, that they were proper evidence to explain the Defendant's actions on a trial for that crime. 1 Hawk 39. Fost. 202. For, though barely being within the enemy's camp might be innocent; yet if it could be shown, that the intention of going thither was to join and adhere to them, the evidence ought to be received.

BY THE COURT: No evidence of words relative to the mistake of the American troops, can be admitted; for any adherence to them, though contrary to the design of the party, cannot possibly come within the idea of treason.

But, as it appears, that the prisoner was actually with the enemy at another time, words indicating his intention to join them, are proper testimony to explain the motives, upon which that intention was afterwards carried into effect.

The Attorney General then called a witness to prove that the Defendant was seen parading with the enemy's light horse in the city of Philadelphia.

But to this, also, his counsel objected: For, they urged, that every criminal act must be tried in the county in which it is committed. Cro. C. 247. 4 Bl. C. 301. 3 Inst. 48. 49. 80. And that the circumstance of merely joining the enemy's army, being

neither treason, nor misprision of treason, unless done with a traitorous intention, no overt act had been proved in chester, which was a prerequisite to any evidence being heard of an overt act committed in any other county. To evince that this was, likewise, the sense of the legislature, the Defendant's counsel read the act of Assembly giving the Supreme Court a special power to try offenders in Lancaster, for crimes committed in the counties of Chester and Philadelphia.

The Attorney General answered, that when an overt act is proved in the county where the trial is held, corroborative evidence may be given of overt acts committed in any other county. Fost. 9. 2 Hawk. 436. And that having established the prisoner's presence with the British army, nothing, but the proof of actual force, and its continuance, could excuse him from the charge of adhering to the enemies of the Commonwealth. Fost. 11. For, joining the army of an enemy, has always been held prima facie evidence of an overt act. And--

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BY THE COURT it was accordingly ruled, that evidence might be given of an overt act, committed in another county, after an overt act was proved to have been committed in the county where the indictment was laid and tried.

The Defendant was acquitted.

The Attorney General and Reed for the Commonwealth.

Wilson and Ross for the Defendant.

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