

Respublica Vs. Carlisle

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Court : US Supreme Court

Decided On : 1778

Appeal No. : 1 U.S. 35

Appellant : Respublica

Respondent : Carlisle

Judgement :

RESPUBLICA v. CARLISLE - 1 U.S. 35 (1778)

U.S. Supreme Court RESPUBLICA v. CARLISLE, 1 U.S. 35 (1778)

1 U.S. 35 (Dall.)

Respublica

v.

Abraham Carlisle

Court of Oyer and Terminer, at Philadelphia

September Sessions, 1778

This was an indictment for High Treason, which was set forth in the following words:

'The Jurors for the Commonwealth of Pennsylvania, upon their oaths and affirmations, do present, That Abraham Carlisle, late of the city of Philadelphia, in the county of Philadelphia, carpenter; being an inhabitant of and belonging to and residing within the State of Pennsylvania, and under the protection of its laws, and owing allegiance to the same State, as a false traitor against the same, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, the fidelity which to the same State he owed wholly withdrawing, and with all his might intending the peace and tranquillity of this Commonwealth of Pennsylvania to disturb, and war and rebellion against the same to raise and move, and the government and independency thereof, as by law established, to subvert, and to raise again and restore the government and tyranny of the king of Great Britain within the same Commonwealth: On the first day of January, in the year of our Lord one thousand seven hundred and seventy eight, and at divers days and times, as well before as after, at the city of Philadelphia, in the county aforesaid, with force and arms, did falsely and traiterously take a commission or commissions from the king of Great Britain, and then and there, with force and arms did falsely and treacherously also take a commission or commissions from general Sir William Howe, then and there acting under the said king of Great Britain, and under the authority of the same king, to wit, a commission to watch over and guard the gates of the city of Philadelphia, by the said Sir William Howe, erected and set up for the purpose of keeping and maintaing the possession of the said city, and of shutting and excluding the faithful and liege inhabitants and subjects of this State and of the United States from the said city: And then and there also maliciously and traiterously, with a great multitude of traitors and rebels, against the said Commonwealth, (whose names are as yet unkown to the jurors) being armed and arrayed in a hostile manner, with force and arms did falsely and traiterously assemble and join himself against this Commonwealth, and then and there, with force and arms, did falsely and traiterously, and in a warlike and hostile manner, array and [*Respublica v. Carlisle* [1 U.S. 35](#) (1778)

dispose himself against this Commonwealth; and then and there, in pursuance and execution of such his wicked and traitorous intentions and purposes aforesaid, did falsely and traiterously prepare, order, wage and levy a public and cruel war against this Commonwealth; then and there committing and perpetrating a miserable and cruel slaughter of and amongst the faithful and liege inhabitants thereof; and then and there did, with force and arms, falsely and traiterously aid and assist the king of Great Britian, being an enemy at open war against this State, by joining his armies, to wit, his army under the command of general Sir William Howe, then actually invading this State; and then and there maliciously and traiterously, (with divers other Traitors to the jurors aforesaid unknown,) with force and arms, did combine, plot and conspire to betray this State and the United States of America into the hands and power of the king of Great Britian, being a foreign enemy to this State and to the United States of America, at open war against the same; and then and there did, with force and arms, maliciously and traiterously give and send intelligence to the same enemies for that purpose, against the duty of his allegiance, against the form of the act of Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.' The Attorney General offering a witness to prove, that the Defendant had taken a quantity of salt from persons whom he termed Rebels, as they were passing out of the city of Philadelphia; and that he had a power of granting passes; his counsel objected, that this was impertinent to the overt act laid in the indictment, and therefore not admissible. 2 Wils. 148. 9. It was urged that at common law, no evidence could be given of a fact, which was not stated in the declaration. L. N. P. 21. 192. 3. And that this caution, with respect to the *allegata et probata*, in a civil cause, ought, a *sortiori*, to be exercised in a capital prosecution. The overt act must be particularly laid, and strictly proved. 1 H. H. P. C. 121. For, justice requires that the Defendant should be fully apprized of the charge, so that he may have an opportunity of encountering it with his evidence. When, indeed, one overt act is established, evidence may be given of another overt act, relative to the same treason, but not before. The only overt act laid in the present indictment, is taking a commission; and it is no proof of the Defendant's taking a commission, that he seized the salt in question, or possessed a power or authority to let people out of the city. Merely to say, likewise, that he was aiding

and assisting the enemy, without laying something more, is no offence; to ascertain the crime, it must be by joining the armies of the enemy; by furnishing them with provisions; by enlisting, or procuring others to enlist in their troops, or by carrying on a traitorous correspondence with them. The aiding and assisting is the Treason, but these are the overt act, which must be laid and proved, in order to convict the Defendant of the charge. The Attorney General, in reply, observed, that by the pleadings in a civil action, the issue must be reduced to a single point; and he admitted that in all indictments for treason, an overt act must be laid

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and proved. But, he contended, that it was unnecessary to fill the indictment with a detail of the whole evidence in support of the prosecution; for, if the charge is reduced to a reasonable certainty, it is all that justice can require, and it is all that is to be found in any former precedent. Divers overt acts may, also, be laid in the same indictment; and, though some of them are faulty, if one be well proved, it is sufficient to entitle the Commonwealth to a verdict. Where a person was charged with compassing the king's death, evidence was allowed to be given of the prisoner's assembling with forty men, though that overt act was not laid in the indictment. Fost. 245. id. 9. 10. 22. As to what amounts to levying war, it is said Id. 216. that the joining with rebels in an act of rebellion, or with enemies in an act of hostility, will make a man a traitor. So, likewise, shutting gates against the king, or his troops, in confederacy with enemies, or rebels, comes within the same description of treason. Id. 218. and the same overt act may be applied to several distinct branches of treason, Id. 196, 7. 8. where, it appears, the lord Preston's taking boat at Surry stairs, with the intention of carrying treasonable papers into France, for treasonable purposes, was a sufficient overt act in Middlesex, to maintain the indictment there. Id. 217. 218. The form of the present indictment is similar to that against Eneas M'Donald. Id. 5. The charge of levying war is made in the same manner, as in the proceedings against the rebels in the year 1746. And the arraying and marching are also laid agreeably to the terms of all the precedents.

The Chief Justice delivered the opinion of the Court to the following effect:

M'Kean, Chief Justice.

There are * three species of treason in Pennsylvania: First, To take a commission or commissions from the king of Great Britain, or any under his authority; secondly, To levy war against the State or Government thereof; and thirdly, Knowingly and willingly to aid and assist any enemies at open war against this State, or the United States of America. With respect to this third species of treason, the Legislature has further explained the meaning of the words, aiding and assisting, to be, 'by joining the armies of the enemy, or by enlisting, or procuring, or persuading others to enlist for that purpose; or by furnishing such enemies with arms or ammunition, provision, or any other article, or articles, for their aid or comfort, or by carrying on a traiterous correspondence with them.' All these several species of treason are laid in this indictment.

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It is here particularly stated, that the Defendant took a commission, under the king of Great-Britain, to watch and guard the gates of the city of Philadelphia; and the offence is certain enough in this description, though, without some overt act, it would not be sufficient for a conviction. In order to prove an overt act, however, evidence has been offered to show, that the prisoner had a power of granting passes into, and out of the city, which was at that time in the possession of the enemy. In Fost. 10. a witness deposed, that one Berwick was confined in the room assigned for the rebel officers taken at Carlisle by the duke of Cumberland; and this was deemed a sufficient proof of his holding a commission. The Court, on the present occasion, however, are of opinion, that the evidence which is offered, ought to be received, but not as conclusive proof of the Defendant's having taken a commission. Nor will the evidence of seizing the salt, or any act of disarming the inhabitants whom the Defendant called Rebels, apply to this species of treason; however they may support the allegation, of his having joined the armies of the king of Great-Britain.

We think it is sufficient, also, to lay in the indictment, that the Defendant sent intelligence to the enemy, without setting forth the particular letter, or its contents: And, though the charge of levying war is not, of itself, sufficient; yet assembling, joining and arraying himself with the forces of the enemy, is a sufficient overt act, of levying war.

BY THE COURT: Let the witness be sworn.

The Attorney General and Reed, for the Commonwealth-Ross and Wilson for the Defendant.

The Defendant being convicted by the verdict of the Jury, his counsel filed the following reasons in arrest of judgment:

1st. For that the indictment is vague and uncertain, there being no overt-act expressly or particularly ascertained, as the prisoner is advised it ought to be.

2ndly. For that the formal part of the indictment is not drawn with sufficient precision.

3rdly. For that the several facts are so uncertainly charged, that the prisoner could not be apprized of the particulars urged against him. And

4thly. That the whole wants form and substance.

These reasons were elaborately discussed on the 5th of October, 1778, by the same counsel on both sides: But, upon mature consideration, they were finally over-ruled BY THE COURT, who gave judgment for the Commonwealth; and the Defendant, a short time afterwards, was accordingly executed. Footnotes

[[Footnote *](#)] An act of Assembly passed the 3rd December, 1782, has increased the number of treasons, by declaring, that 'erecting, or endeavouring to erect a new and independant government within this Commonwealth' and also 'setting up any notice, written or printed, calling the people together for that purpose,' are acts of high treason. See 3 St. Law, 122.

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