

rupt motives. Yet the counsel were allowed to argue that the letters were transmitted with a good intent, in order to avert the danger of so great a calamity as an invasion. And the Court said the jury were to judge from all the circumstances, whether the intelligence had been sent with that view.

My client is charged, as Stone was charged, with being an adherent; and like him is entitled to be sheltered by his motives from the imputation of treason. The District Attorney confounds the indictment which you are now trying with an indictment for levying war. I admit that it has been decided, that if a man becomes an integral part of the enemy's force, and acts with it, he necessarily levies war, and is guilty of treason, unless it appears that he did so *pro terrore mortis*. The law will suffer no other exculpation of such conduct; it will excuse it upon no other motive. But will the gentlemen refer us to some authority which declares, that if a man, without joining the enemy so as to levy war, does, upon virtuous or even pardonable inducements (having no reference to the promotion of the enemy's views) that which happens, or is calculated to be advantageous to the enemy, he is therefore a traitor? What is an adherent? Can he be anything less than a willing partisan, a corrupt auxiliary of the enemy? Such, at least, is the natural and ordinary import of the word; and you cannot strain it beyond that import by the refinements of construction, to the prejudice of the accused, without reviving the ferocious and appalling doctrine of constructive treason, which once made England bleed at every pore, and stained the palace and the cottage with judicial murder. The protecting spirit of the constitution, and of the statute which acts upon it, as well as humanity and justice, would be outraged by such a course.

Unlike the conduct of Stone, the conduct of Hodges presents nothing ambiguous to the most zealous scrutiny. His honorable feelings and intentions are acknowledged by all. He was urged by the solicitation of those whom he respected. He was led by a generous sympathy for the situation of one who is deservedly dear to all who know him. He was actuated by