

addressing a tribunal where these considerations have their full weight, and I expect with confidence that the court will vindicate the doctrines which I have had the honor to advance.

DUVALL, C. J. The Court would have been better satisfied if the whole case had been gone through in the usual way, but as the District Attorney has prayed an opinion on the law, I am willing to give him mine.

Hodges is accused of adhering to the enemy, and the overt act laid consists in the delivery of certain prisoners, and I am of opinion that he is guilty. When the act itself amounts to treason, it involves the intention, and such was the character of this act. No threat of destruction of property will excuse or justify such an act. Nothing but a threat of life, and that likely to be put into execution, will justify. The jury are not bound to conform to this opinion, because they have a right, in all criminal cases, to decide on the law and the facts.

HOUSTON, J., said he did not entirely agree with the Chief Justice in any, except the last remark.

MR. PINKNEY. Gentlemen of the jury: The opinion which the Chief Justice has just delivered is not, and I thank God for it, the law of this land. If you have the slightest doubt on the subject, I will undertake to remove it—to show you that the cases have been misconceived, and that the conclusions drawn from them are erroneous.

No man can feel for the learned judge who has just given you his instruction, a reverence and affection more sincere, than I do. But reverence and affection for him shall not stand in the way of the great duty which I owe to a fellow citizen who relies on me to shield his innocence from the charge of guilt, and his life from an attainder for treason. I had hoped that, since his motives were admitted, on all hands, to be entitled to praise, since the grand jury had associated with their indictment a certificate of the purity of his views, and a solemn recommendation that the prosecution should be abandoned, he would at least have been left by the district attorney, and the court, to obtain from you, as he could, a de-