

deposed respecting the resolution taken to drive the soldiers out of town, "because they had no business here." You have also heard what has been testified of the proposals to attack the main guard—of the assembling of the people, especially in Dock square, of the huzzaing for the main guard and King street, and of the attacking the sentry. Now, if this was done in pursuance of a resolution taken "to drive the soldiers out of the town because they had no business here," I will not now determine whether it was treason or not; but it certainly was a riot that savored of rebellion; for the suppression whereof, private persons might not only arm themselves, but make use of their arms, if they could not otherwise suppress it. Much more might the captain of the main guard take a part of the guard, armed as usual, and go with them to protect the sentry. From the evidence, it seems the sentry not only called to the main guard for assistance, but two men went and told them they must send assistance directly or the sentry would be murdered. Whereupon the captain gave orders, that a party should go to the assistance of the sentry, and they were drawn out accordingly, led down to the custom-house by a corporal, and followed by the captain. Now, as this party did not assemble or go there of their own accord, but were sent by their captain to protect the sentry, it must be supposed that was their design in going, until the contrary appears. And although upon the evidence you should not be satisfied that the sentry was attacked in pursuance of a resolution taken to drive the soldiers out of town, because they had no business here, yet considering the notice given to the captain of the danger the sentry was in, and what the captain himself might then see and observe of the attack upon the sentry, he well might order out such a party, and go with them to protect the sentry; and it seems to be agreed, that if the prisoners were at the custom-house that night, all of them, except the sentry, were of that party. But if they were a lawful assembly when they got to the custom-house, yet if afterwards they all agreed to do an unlawful act to the disturbance of the peace, and in prosecution of that design Maverick and the rest were killed,