

neither the address nor the petitions nor any matter therein contained is criminal and illegal, but nevertheless the Council issued its warrant for the arrest of *Nicholas Bayard* and *John Hutchins* under a recent statute which provided that "whatsoever person or persons, shall by any manner of way, or upon any pretense whatsoever, endeavor, by force of arms or otherwise, to disturb the peace, good and quiet of this, their majesty's government, as it is now established, shall be deemed and esteemed as rebels and traitors unto their majesties and incur the pains, penalties and forfeitures, as the laws of England have for such offense made and provided."

The prisoners were taken into custody and a special Court of Oyer and Terminer was appointed to try them and a Grand Jury summoned to meet on Feb. 19th.

February 19.

Before the grand jurors were sworn, the counsel for the prisoner, Messrs. *Emot*⁶ and *Nicholl*,⁷ objected against some of them for declaring before several witnesses then ready to be produced in court, "That if Bayard's neck was made of gold he should be hanged;" at the same time boasting that they were of the jury; and prayed that since that jury was summoned upon that special matter such might not be sworn. Which the Court overruled.

Arwood, C. J., gave a long charge to the jury, aggravating the facts supposed against the prisoner, and positively asserting that those facts were treason, not only within the words of this act of assembly, but also by the common law before the statute of the 25th of Edw. 3d.

The jurors having received the charge, the court adjourned till next day.

February 20.

The indictment against Colonel Bayard was delivered by the court to the grand jury; and *Mr. Weaver*⁸ (appointed solicitor general

⁶ EMOT, JAMES. Petition for land at Staten Island granted, 1694; attorney for Miles Forster, 1696; patent received for land in Dutchess County, 1697. See New York State Library. Ann. Report, 1902; Calendar of Council Minutes, 1668-1783; Warren, Harvard Law School, VI.

⁷ NICHOLL, WILLIAM. Mentioned as register, 1683; councilor under Governor Bellamont; put under bond for protecting pirates, 1689. See Documentary History of New York, E. B. O'Callaghan, editor, V. II; Warren, Harvard Law School, V. I.

⁸ WEAVER, THOMAS. Agent for the provinces, 1699; sworn in as collector and receiver general, 1701; member of Lord Cornbury's council, 1702; solicitor general, 1702; charges of treason were