it appears a strange thing to permit the multiplication of copies by the way of preventing the circulation of a mischievous work—which I do not presume to determine that this is—but that I cannot help, and the singularity of the case in this instance is more obvious because here is a defendant who has multiplied this work by piracy and does not think proper to appear. If the work be of that character which a court of common law would consider criminal, it is pretty clear why he does not appear, because he would come *confitens reus*, and for the same reason, the question may, perhaps, not be tried by an action at law, and if it turns out to be the case I shall be bound to give my own opinion. That opinion I express no further now than to say that after having read the work, I cannot grant the injunction until you show me that you can maintain an action for it. If you cannot maintain an action, there is no pretence for granting an injunction. If you should not be able to try the question at law with the defendant, I cannot be charged with impropriety if I then give my own opinion upon it. It is true that this mode of dealing with the work, if it be calculated to produce mischievous effects, opens a door for its dissemination; but the duty of stopping the work does not belong to a court of equity which has no criminal jurisdiction and cannot punish or check the offence. If the character of the work is such that the publication of it amounts to a temporal offence, there is another way of proceeding, and the publication of it should be proceeded against directly as an offence; but whether this or any other work should be so dealt with, it would be very improper for me to form and intimate an opinion." The injunction was accordingly refused.

APPENDIX E.(*a*)

A Special Commission was opened at Stafford on October 3, 1842, before TINDAL, C.J., PARKE, B., and ROLFE, B., for the trial of offenders concerned in the riots and disturbances which took place in the Potteries in the previous August. The following are extracts from *Tindal's* charge to the grand jury:—

Gentlemen, it is not our design, nor indeed have we sufficient information on the subject if we proposed to do so, to trace with any particularity the origin or exact progress of those violations of the law which have taken place within this county, and which will shortly be brought under your consideration. It is fully sufficient for our present purpose to give a general outline of those transactions drawn from the depositions taken before the magistrates, the only legitimate source of information to which we have had access. It appears that about the middle of the month of August last the workmen employed in many of the collieries and also in many of the various manufactories established in this county, had become dissatisfied as well with the amount of wages allowed by their employers, as in some instances with certain regulations under which they were placed in the course of their employment; and that for the purpose of compelling their masters to allow them greater wages and to alter the regulations by which they thought themselves aggrieved, they refused to continue to work at the various employments in which they had been engaged; that in a short time, not contented with simply refusing to work, they proceeded by threats, intimidation, and violence, to compel other workmen who were willing to continue to work, to join the number of those who were discontented. It appears further that whilst large bodies of the workmen, perpetually increasing in number, were thus collected together in a state of idleness, and, of consequence, destitution, certain strangers, persons altogether unconnected with them in interest, appeared amongst them, and by addresses made to them against the religion, the law, and the Government, excited them to a state of dissatisfaction with all the established institutions of the country, and laboured to persuade them to persist in their refusal to return to their employment as the sure and effectual and only means of redressing the evils by which they were oppressed, and of obtaining their just rights, called by the speakers the "People's Charter." It appears that after such addresses had been made, in some places tumult and disorder forthwith ensued amongst the assembled multitudes, to the great terror and alarm of the quiet and peaceable part of the community. In other places, large bodies of the workm
together proceeded to acts of open violen
breaches of the law, in some instances
the persons of the subjects of the Q
beating some, cutting and maiming and
others, and sometimes against their pro
acts of theft and plunder, by forcibly bre
into the dwelling-houses of individuals b
and by night, by the destruction of
houses, by actual demolition or by

[After pointing out that workmen

(*a*) See *The Queen against Cooper*, above, p. 1249.

to combine to raise their wages under 5 *Geo.* 4. c. 129, but not to force others to leave their work, the learned judge continued.]

But even without any evidence that combination is the object or purpose of the meeting, if a large body of the people assemble themselves together for the purpose of obtaining any particular end, and conduct themselves in a turbulent manner, either accompanied with acts of violence, or with threats and intimidation calculated to excite the terror and alarm of the Queen's subjects, this is in itself a riot, whether the end and object proposed be a just and legitimate one or not. If, therefore, bills should be brought before you charging individuals with riot, for the purpose of raising the rate of wages, and the evidence should show the conduct of the parties to have been of the description just adverted to, the offence of riot is complete in point of law.

There is another description of offence which will probably be submitted to your consideration—namely, the exciting and encouraging large masses of the people by means of seditious and inflammatory speeches to commit acts of violence and to break the peace. If such charges are brought forward, it must be left to your own good sense to distinguish between an honest declaration of the speaker's opinion upon the political subjects on which he treats—a free discussion on matters that concern the public, as to which full allowance should be made for the zeal of the speaker, though he may somewhat exceed the just bounds of moderation; and on the other hand, a wicked design, by inflammatory statement and crafty and subtle arguments, to poison the minds of his hearers and render them the instruments of mischief. He that addresses himself to a crowded auditory of the poorer class without employment or occupation, and brooding at the time over their wrongs, whether real or imaginary, will not want hearers ready to believe, and apt followers of mischievous advice. You will consider, therefore, the language that is employed on such an occasion; if it consists of broad and bold assertion, unfounded in fact; if in discussing religious topics you find the speaker endeavouring to be sprightly and facetious on those subjects which make wise and good men serious; if, instead of argument, he deals only in sneers and sarcasm, it will be for you to say whether, under such circumstances, the party charged with the offence is an honest but mistaken man, or whether he is wickedly intending to bring the religion, laws, and government of the country into contempt, and to teach the hearers to despise all those institutions which it is their duty to hold in respect and veneration.

[About the charges for assaults, robbery, riotous [illegible]bly, &c., it is not necessary to speak.]

observation only shall be made which
to every species of offence committed by
ral acting in concert and company together,
ely, that if many are present at the time
n the breach of the law takes place, having
common design in view, and acting with
mon consent, although they do not all take
e in the performance of the very act which
e subject of the indictment, yet by affording
itenance, encouragement, and protection to
[illegible]ons who actually perpetrate the crime,

they are all equally guilty in the eye of the law.

But there is one case in the calendar to which, for the purpose of avoiding any interruption in the general view of the transactions which have taken place in this country, I have not yet adverted,—I mean the case of one *William Ellis*, who has been committed by the magistrates on a charge of high treason; and as we are not aware whether bills of indictment may not possibly be presented against that person, and perhaps others also who appear upon the depositions to stand in the same predicament for the offence of high treason, it becomes necessary that the principles of the law, so far as it relates to the species of treason upon which the charge, if preferred, will probably be founded, should be laid before you with sufficient precision, to enable you to determine whether the accusation is so far established that the parties accused ought to be put upon their trial for that offence. Gentlemen, the precise species of high treason upon which the charge, if made, must rest, is either that of levying war against Her Majesty in her realm, under the statute of *Edw.* 3, or that for which *Ellis* was committed, —namely, "the compassing and intending to levy war against the Queen within her realm, in order by force or constraint to compel her to change her measures or counsels," which latter offence was first made substantive treason by the more recent statute of 36th *Geo.* c. 7, made perpetual by a subsequent Act. You are well aware that, at least as nearly as the statute 25th *Edw.* 3, and thence down to the present time, the bare compassing or imagining the death of the Sovereign, when proved by any open or overt act, has amounted to high treason. For, where the life or personal safety of the Sovereign is concerned, so precious has it always been held in the eye of the law, that the bare intention or imagination of the heart, to put it in jeopardy, although no injurious consequences follow from such intention, when proved by an overt act, has, of itself, and alone, constituted the treason. By that statute also, the levying of war within the realm, when proved by an overt act is made a distinct and substantive species of treason. But the mere "compassing" or "intending to levy war," that is, the mere purpose or design of the mind or will to commit that crime, was never made a specific treason until the statute of 36 *Geo.* 3. c. 7, and then only "where such compassing or intention is expressed, uttered, or declared, by publishing any printing or writing, or by any overt act or deed." Now, the only or principal evidence of treason stated in the depositions is the uttering of violent and inflammatory speeches to the assembled multitude. But it is to be observed, that the mere speaking and uttering of words, considered by itself, and abstractedly, and without reference or connection with any act or design, however wicked and atrocious those words may be, is not an act of treason. The judges, on a reference made to them in the fourth year of *Charles* 1., upon the subject of words spoken by one *Pyne*, certified unanimously,—

"That though the words were as wicked as

might be, yet there was no treason, for unless it be by some particular statute no words will be treason."(*a*)

On the other hand, however, where words are uttered and spoken with reference to any treasonable plan or design already laid, and in the contemplation of the speaker, if they are words of exhortation or encouragement to carry into effect such plan or design, such speaking and uttering of words is strictly and properly an overt act of treason, being the means made use of to effect the treasonable purpose; although, even in that case, the more precise and accurate mode of expression would seem to be, that the plan or design is the treason and the words of encouragement and incitement are evidence of the existence of it. It will be for you, therefore, to say, supposing no further evidence is given than that of words uttered, supposing there is no proof laid before you of any existing plan to subvert the authority of the Queen, the established order of government, or the laws of the land, whether, from the mere speaking and uttering of the words by the party charged with treason, you can feel yourselves authorised to infer that, at the time the words were uttered, there did exist a deliberate design in the mind of the speaker to affect any of those wicked purposes, and that the speech was made by him to induce the hearers to take up arms, or to use force and violence for the purpose of carrying such design into effect; you must determine for yourselves whether such is the safe conclusion at which you can arrive upon such evidence alone, or whether the words are not rather to be considered as the production of a heated and distempered mind, thrown out at the moment rashly and hastily—words, indeed, "as wicked as might be," as was said in *Pyne's* case, but words spoken without reference to any formed design or settled purpose in the heart of the speaker. In the latter mode of viewing them they would not constitute an act of treason, but be punishable as a high misdemeanor only.(*b*)

(*a*) 3 St. Tr. 368.

(*b*) The following is a summary of the trials at the Commission:—Of the whole number of prisoners tried, fifty-four were sentenced to be transported. Out of these, eleven were to be transported for life, thirteen for twenty-one years (among them William Ellis), nine for fifteen years, eighteen for ten years, and three for seven years. Of the remaining prisoners one hundred and forty-six were sentenced to imprisonment and hard labour. Nine of them were sentenced to imprisonment and hard labour for the term of two years, one for twenty calendar months, nine for eighteen calendar months, six for fifteen calendar months, thirty-three for one year, three for nine calendar months, seven for eight calendar months, thirty-three for six calendar months, eight for four calendar months, fourteen for three calendar months, fifteen for two calendar months, one for one calendar month, six for fourteen days, and one for ten days. Eight were sentenced to various terms of imprisonment without hard labour; among these Linney and Capper were sentenced to tv
months', and to two years' imprisonm
tively. Fifty-five prisoners were acqui
were discharged on entering into rec
six were discharged by proclamation,
traversed, O'Neill, Cooper, and Ric
the next assizes. The whole number of
for trial was two hundred and seventy

Special Commissions were also opened before Lord ABINGER, C.B., ALDERSON, B., and CRESSWELL, J., at Chester on October 3, and at Liverpool on October 9, for the trial of offenders concerned in the outbreaks in Cheshire and Lancashire.(*a*)

At Liverpool Lord ABINGER charged the grand jury as follows:—Gentlemen of the grand jury, it is with unaffected pain that I address you on the present occasion. You are aware of the disastrous state to which this great country was reduced for several weeks of the present summer. You are aware that lawless and riotous multitudes of persons assembled in various manufacturing towns of the country have proceeded to create disturbances and excite terror and alarm in the minds of Her Majesty's peaceful subjects, and have by violence prevented workmen from following their daily occupations. It is impossible that such a course of lawless violence could long endure; indeed, it would itself perish by its own infirmity, and along with it, if not speedily checked, must perish the industry and prosperity of the working classes. It becomes, therefore, the duty of the Government to put down such unlawful and tumultuous assemblies, to preserve the peace and property of the subjects of the realm, and to punish by the rigour of the law all persons engaged in these unlawful offences.

You are aware, gentlemen, that occasionally reverses in the tide of prosperity in a manufacturing and commercial nation must occur, and that when they occur they must produce, to a greater or less degree, much distress and privation among the labouring classes. I presume that the state of the country for some months, if not for some years back, may be traced to some of these checks in the tide of commercial and manufacturing prosperity.

Much has been said of the privations to which the working classes have been reduced, and I make no doubt that they are considerable, for it cannot be denied that many of the usual channels of trade have been interrupted, and that there was existing a general feeling of depression among commercial men as to the advantage of engaging in commercial enterprises, the result of which was attended with great uncertainty; but I am bound to say from the experience I have acquired as to the history of this insurrection in a neighbouring county that the distress has been greatly exaggerated. It does not appear from any evidence which I have hitherto seen or read that the parties engaged in these excesses either complained of the high price of provisions or of the wages of labour.

(*a*) See *The Queen against Fe
nor and others*, above, p. 935.

What gave rise to the immediate occurrence which was the commencement of these transactions has not at present been ascertained; whether it was owing to the imprudence or indiscretion of any master manufacturers, whether it originated in the schemes of any persons who considered that a general turn out would tend to the advancement of their own political objects, or whether, when the disturbances commenced, they were not checked so early as they might have been done by greater activity on the part of the magistrates; all these are circumstances at present left in obscurity, and which can be developed by time alone. But it is certain from the information to which I have referred that the insurrection of the labouring classes does not seem to have originated in any spontaneous feeling (if I may so express myself) respecting their privations or the high price of provisions. They all seem to be sensible that the rate of wages in the country must depend on the price of provisions, and I think it is evident that they thought that those who promised them an increase of wages by a diminution of the price of corn were not the persons to be trusted. It appears certain, however, that when once these riots began, the people were formed into bodies to turn out by force industrious men pursuing their occupation in other places; and that there did arise a disposition among many persons and those possessing considerable power and some talent, to make use of this insurrection to foment, perpetuate, and direct it to political objects.

It seems that a society of persons who are recognised by the title of Chartists, mixed themselves up with the unhappy class of the community who were deluded into this sort of insurrection, and having more intelligence than they, but deeper designs—instead of employing that intelligence to point out to their unhappy victims the delusions under which they were acting, to show them that all attempts of workmen to rise against their masters and to dictate the rate of wages have terminated, and must and ever will terminate, in distress of the workmen themselves, instead of telling the persons engaged in these disturbances that their conduct would probably make their condition worse—endeavoured to persuade them that the true remedy for all their grievances was the adoption of what they call the Charter, which appears to be principally aimed at a larger reform of Parliament than has already been adopted; and, in defiance of the promises, and no doubt of the sincere hopes, of those eminent persons who introduced and carried the late reform of Parliament, that it was to be a final, efficacious, and satisfactory measure of reform, these infatuated
ons, for they must be infatuated, have
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They mixed up in their orations many affected recommendations to peace and order; but, gentlemen, you will find these recommendations always accompanied by false and exaggerated statements of the general feeling of the country. People were told that all England was in arms, that Scotland was pouring forth hundreds of thousands of men, that Ireland was coming to the battle, and that the men of Birmingham to the number of one hundred thousand, armed with steel and fearless of the force of the military, were ready to join them and carry the day. These are circumstances which plainly show that these parties endeavoured to delude the multitudes they addressed with the notion that their force was becoming irresistible, and that they might affect their objects by alarming the Legislature, or by imposing restraint even on the sovereign. I must say, gentlemen, if these conspiracies having such purposes in view had been made the subject of prosecution for high treason, the consequences might have been serious indeed to the parties concerned. I am at a loss to know what distinction there is between a conspiracy to subvert the Government and impose force and restraint on all the branches of Legislature, on purpose to have a particular measure passed into law, and the crime of high treason. By the ancient law of this country the crime of high treason is technically limited to imagining or compassing the death of the sovereign, but the judges have from the earliest times considered a conspiracy to levy war and to employ force to restrain the will of the sovereign an overt act of high treason, and if satisfactorily proved, sufficient to justify a jury, when combined with the intention of really imposing restraint on the sovereign, in finding it to be high treason. I do not understand that the Government intend to push the indictments to that extent, and these people owe it to the lenity of the Government that they are not placed in a position hazardous to their lives.

Gentlemen, you will have laid before you indictments for conspiracies to excite the people to insurrection; to endeavour to prevail on those who were not at work to continue the state of suspended labour, to compel those at work to quit their avocations, and to persevere in a lawless course of violence, until their favourite Charter should be carried. If the bills of this kind should be laid before you, gentlemen, and you feel satisfied by the evidence adduced that, though the great mass of the people might not actually have been disposed to take part in conspiracies to effect that object, yet there were persons among them who were active instruments in persuading them so to act, you will be justified in finding the charge of conspiracy against these parties. But independently of this charge, you may find other cases of conspiracy to prevent the working classes performing their labour; in other words, to turn out workmen from the different mills, and by force of terror and intimidation to compel not only the workmen in mills but every class of labourers, navigators, workmen in canals, hatters, &c. to quit their employment in order that they might assist in the grand scheme of obtaining the Charter.

A conspiracy for the purpose of turning out workmen, and the agreeing together to effect that purpose, are in themselves criminal; and if such cases be brought before you, and the parties indicted are satisfactorily proved to have participated in the acts I have described, they are by the law of the land guilty of the crime of conspiracy, and you will be justified in putting them on their trial.

Another class of offence, which though not equal in magnitude to those I have just referred to, is yet very dangerous, and must be punished when satisfactorily proved, is that of simple riot. An unlawful assembly is an assembly collected together for some illegal object; and, in case it exhibits by its acts and conduct some improper design, or excites alarm among the well-disposed subjects of the Queen, it is a riotous assembly; and all persons forming part of such assemblies, and countenancing by their presence their objects, must be taken, unless they can show that they were present innocently and honestly, as participators in a misdemeanor.

A great deal has been said at different times as to what should be considered an unlawful assembly, and I am sorry to say that what has taken place in this county has given rise to a discussion on the point, both in courts of law and in Parliament. But one thing is clear, that an assembly consisting of such multitudes as to make all discussion and debate ridiculous and a farce, can never be assembled for the purpose of deliberate and calm discussion. Will any person in his senses say that, when a man assembles together three or four thousand individuals, he does so to form a deliberate assembly to discuss speculative points either of law or government? Such a profession would carry its own refutation. If, therefore, an assembly consists of such multitudes as to render all notion of serious debate impossible, or if you find that at such an assembly all attempts at debate are put down, and that the only object of the parties is to hear one side, the meeting ceases to be an assembly for deliberation, and cannot protect itself under that pretension.

Again, assemblies of such (*a*) magnitude without a president, or anyone empowered and able to restrain and dissolve them, must lead, as everyone will see, to alarm and terror, and to the disturbance of the peace. Such assemblies are in themselves unlawful; and, if their conduct occasions a breach of peace, they are riotous. If you, gentlemen, find individuals among those assemblies who by their conduct manifest intentions of violence and mischief, and proceed to the extent of committing outrages on property and preventing the free employment of labour, those men are rioters in the worst sense of the word. It will be your duty to find bills against all persons proved to be concerned in such proceedings.

I believe, gentlemen, you will have laid before you some cases of violent and inflammatory speeches. Of course you will exercise your own judgment as to whether the speeches made the subject of the charge were uttered with a view of inflaming the people, and of a nature to produce disturbance. It is for you to say whether the speeches had a tendency to excite sedition, disaffection, and insurrection; and, if you think so, I have no doubt you will feel it to be your duty to put the parties on trial.

There is another case, I understand, likely to come before you, namely, the charge of publishing a seditious libel. Whether or not it will come before you I am not certain, but I am informed that it will, and if so you will have an opportunity of seeing what the libel is. It purports to be an exhortation from the Council of Chartists to all the labouring classes to continue in the state of suspended labour till the Charter is carried.(*a*) It professes peace and order, but it reminds the people they are governed by laws to which they were not parties, and endeavours to persuade those who read it that they can obtain no real security for their rights, or protection for their labour, except by means of an organic change in the Constitution of the country. You will form your own judgment on this paper. I have had an opportunity of seeing it, and I must say that the impression made on my mind is that the paper is full of danger, and that, at the particular season when it was published, it might have tended to consequences very different from what such a document would produce if published at an ordinary time; for, when a paper of this kind is addressed to multitudes already assembled in a lawless manner, with their passions excited, and with an opinion that their force is sufficient to carry their object, you can easily conclude that such an exhortation made at such a time would be far more dangerous, and therefore more criminal, than if published under ordinary circumstances. It would seem that the statement made in this paper, and made use of by many who address the assembled multitude, is that, if they wished to procure "a fair day's wages for a fair day's labour," nothing will ensure this result except giving to the labouring population an equal, if not preponderating, voice in the Legislature of the country. For this purpose they propose those changes which I have before referred to, the adoption of the principles of the Charter; that is to say, they desire that the labouring classes who have no property should make laws for those who have property; that the labouring classes, who have shown by their recent conduct that they will exercise a tyranny over their fellow labourers, should make laws for the protection of labour. These persons never take into consideration that the very object of law and civilised society is the protection of property from the outrages of one or more individuals, and the protection of persons from the violence of those who attack it. They show by the example of their own conduct, by [illegible] of the law by which they live, calculated they are to compose a L[illegible] like that which they aim at as the re[illegible] Charter. The consequence of succes[illegible] endeavours would be, not a reform of I[illegible] but a subversion of the Governmen[illegible]

(*a*) "Great magnitude" in the *Times* report.

(*a*) See the placard of the I[illegible] mittee of the National Charter [illegible] above, p. 948.