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IMPEACHMENT OF JUDGE CHASE.

(Continued.)

MONDAY, FEBRUARY 11, 1805.

Mr. J. Randolph observed that it was the wish of the managers that there should be no departure from the ordinary rules observed in examining witnesses, and that immediately after their examination on the part of the prosecution, they might be cross examined by the counsel for the accused.

Mr. Harper hoped that no absolute rule would be adopted to that effect, as circumstances might arise that would justify a departure from it. The counsel for the respondent would endeavor to conform to the mode suggested, without any particular rule. After a few further remarks from Mr. Martin and Mr. Nicholson, it was agreed to wave any specific motion.

Mr. Lewis was called in; when

Mr. Harper put to him the following question:

Did you at the first trial of Fries make a distinction between resistance to a particular law, and the general law of the United States, or some special laws of a peculiar nature, and state your intention to argue that point on the second trial.

Mr. Lewis. I was not able to answer the question the other day precisely. But having since looked at my notes, I find that that distinction was made and urged.

EDWARD TILGHMAN *sworn.*

I was present at the circuit court of the United States, for the district of Pennsylvania, held on the 22d day of April, 1800. A very short time after the opening of the court (whether the general pannel of jurors had been called over or not, I do not recollect) Judge Chase declared that the court had maturely considered the law arising on the overt acts charged in the indictment against John Fries; and that they had reduced their opinion to writing; he mentioned that he understood that a great deal of time had been consumed on a former trial, and that in order to save time, a copy of the opinion of the court would be given to the attorney of the district; another to the counsel for the prisoner, and that the jury should have a third to take out with them. I took no notes of what passed either on the first or second day. Fries was tried on the third day, and having been appointed with Mr. Levy, counsel for Heany and Getman indicted for treason, and who were actually tried on the 27th or 28th, I deemed it my duty to attend the trial of Fries, to take notes of the evidence, the arguments and the charge of the Judge. I do not recollect that Judge Chase said any more on the 1st day than what I have mentioned previous to his throwing a paper or papers on the table round which the bar usually sit. The moment the paper or papers were thrown on the table, Judge Chase expressed himself in these words: "Nevertheless, or notwithstanding this, (I cannot recollect which expression he used) "counsel will be heard." The throwing of the papers on the table and the address of the Judge caused some degree of agitation at the bar; in a short time after, the judge used the last expression, I looked round and saw Mr. Lewis walking from under the gallery, towards the bar, I stepped towards Mr. Lewis, and met him directly opposite the entrance, into the prisoner's bar. The prisoner, as well as I recollect, not being then in court, but being brought into court some time that morning, I entered into conversation with Mr. Lewis, and as well as I can recollect, during that conversation, Mr. Dallas came into court. Mr. Dallas and Mr. Lewis had some conversation in my hearing, after which they came forward to the bar; the paper as well as I can recollect, was then handed by Mr. Caldwell, the clerk of the court, to Mr. Lewis. Mr. Lewis cast his eye on the outside of the paper, and looked down, as if he was considering what to say. He threw the paper from him, as it appeared to me, without reading it, and the moment he threw the paper down, said, "my hand shall never be stained by receiving a paper containing a prejudged opinion, or an opinion made up without hearing counsel." I cannot recollect which was the expression, but this was the substance. I have not the least recollection that any thing passed on the first day, between the counsel for the prisoner and the court; for when Mr. Lewis used these expressions, his face was not turned to the court, and he spoke with a considerable degree of warmth; the court sat in the south part of the room, and Mr. Lewis (I think) turned his face full to the westward, when he used these expressions. The paper lay on the table a considerable time; after which some gentlemen of the bar took it up, and I for one copied it. Whether I took the whole of it, and all the authorities cited, I cannot say. The prisoner having been brought into court, his counsel had a good deal of conversation in my hearing, on the subject of supporting or abandoning his defence; that conversation appears to me to have been accurately stated by Mr. Lewis and Mr. Dallas. I do not recollect why the prisoner was not put on his trial that day, but the court adjourned between 12 and 1 o'clock. I went home, and after taking a walk, on returning, I saw the district attorney on my steps. He asked me, whether I would have any objection to delivering up the copy which I had taken of the opinion of the court. I said I had no objection, and gave it to him. That paper was not read on the first, or on any other day by the court, or any thing stated by the court, as the substance of it. On the next morning, to wit: the 23d, the prisoner was brought into court. The court asked the prisoner's counsel, if they were ready to proceed to the trial. Mr. Lewis rose and uttered a few words, in order to shew that they did not mean to proceed with it. Judge Chase here interrupted Mr. Lewis—the particular expressions of the Judge I do not recollect; the substance of them was, that the counsel were not to consider themselves bound by the opinion which the court had reduced to writing, the day before; that the counsel were at liberty on both sides to combat that opinion. Judge Chase as well as Judge Peters appeared to be very anxious that the counsel should undertake the defence of the prisoner. Judge Chase said, the cases at common law before the statute of Edward the Third, ought not to be read to the court: he mentioned the case of a man whose stag the king had killed, and who said he wished the stag's horns was in the king's belly; he also mentioned the man who kept a public house, with the sign of the crown, and said he would make his son heir to the crown. He said such cases as these must not, shall not be cited: and I think he made use of these expressions: "What! cases from Rome, Turkey and France!"—That the counsel should go into the law, but must not cite cases that were not law. He said that he had an opinion in point of law as to every case that could be brought before the court, or else he was not fit to sit there. He said something [but the precise words I do not pretend to recollect] as to the counsel proceeding according to their consciences; he said that the gentlemen would proceed at the hazard of their character, and when it appeared pretty plain, that the gentlemen would not proceed in defence of the prisoner, he said you may think to put the court to difficulties; but if you do, you miss your aim, or words in substance to that effect. Judge Peters addressed the counsel, and said if an error has been committed, why may it not be redressed? The paper has been withdrawn—and I think both the Judges concurred in expressing the sentiment that matters were to be considered as if the paper had never been thrown on the table. When Judge Peters mentioned that the paper had been withdrawn, Mr. Lewis answered, the paper, it is true, is withdrawn, but how can the court erase from their minds an opinion formed without hearing counsel. A good deal more passed which I do not recollect, having taken no notes. Mr. Dallas addressed the court, but I have no recollection of what he said. The counsel continued firm in their determination to abandon the prisoner: the court took great pains to induce them to act as counsel for the prisoner, and before Fries was remanded to jail, expressed their hope that the counsel would think better of it, and appear in his defence. I recollect nothing more of what happened on the second day. Should any questions be put to me, they may awaken a recollection of what does not now occur to me.

On the third day when the prisoner was brought to the bar, he was asked whether he had any counsel [I think on the second day, the court had mentioned to him that he might have other counsel] he said no, he would depend on the court to be his counsel. Judge Chase said, the court will be your counsel, and by the blessing of God, will serve you as effectually as your counsel could have done. The trial proceeded, and after the testimony was given and a short statement of the case made by the district attorney, the Judge charged the jury; he told them they were judges of the law as well as the fact. He stated to them that cases determined in England, before their revolution, should not be received by the court. I have my notes of the charge; he stated the law very much in the manner as it was stated by Judge Paterson in the trial of Mitchell, for whom I was counsel. I cannot undertake to recollect any thing further than I have already stated.

Mr. Randolph. I understood you to have stated that the written paper thrown or handed down by Judge Chase on the table produced a considerable degree of agitation at the bar. From what do you conceive that agitation arose?

Mr. Harper said he would take the opinion of the court, at some stage of the business, as to what was proper testimony. On Saturday there had been opinion and argument interwoven in the testimony given. He paid great deference to the opinion of the witness, but he submitted it to the decision of the court whether it was proper to require it.

The *President.* The gentleman may vary the question, so as to attain his object, by enquiring as to the facts that took place.

Mr. Randolph then said, I ask, with the permission of the court, whether in the course of your practice, which I understand to have been long and extensive, you have ever witnessed a similar proceeding.

Mr. Key. I shall object to that question. I pray the opinion of the court, whether, in order to abridge time——

The *President* desired that the question might be in the first instance reduced to writing.

It was accordingly reduced to writing as follows:

Question 1st. You say that when the written opinion of the court was thrown on the table, it produced considerable agitation among the gentlemen of the bar. What did you conceive to be the cause of that agitation?—which being read by the secretary,

Mr. Bayard moved that the Senate should withdraw—the motion was lost on a division.

The question was then taken on receiving the proposed question, and passed in the negative by an unanimous vote.

Mr. Randolph then submitted in writing.

Question 2d. In the course of your practice, which is understood to have been long and extensive, did you ever witness a similar proceeding on the part of the court?

To the putting of this question, Mr. *Martin* withdrew the objection which had previously been made.

Mr. Tilghman answered. I have been in the practice of the law for thirty-one years, and have no recollection of a similar proceeding.

Mr. Randolph. When Mr. Chase, after throwing or handing down the papers, went on to say that counsel would be heard, did he go on to say, or not, that counsel, when heard, must addres themselves to the court and not to the jury.

Mr. Tilghman. I am confident that at that time he said nothing of the sort, nor do I recollect that he said any such thing at any other time. If he did it escaped my recollection, which is very strong, as to what was said by the Judge when he threw down the paper or papers.

Mr. Harper. You have said that you are perfectly clear, that when the paper was delivered or thrown down, the court did not say the counsel must address themselves to the court and not to the jury, and I understand you also to say that you have no recollection that they said any such thing at any other time.

Mr. Tilghman. I have no recollection that they did.

Mr. Harper. Have you any recollection that the court at that time prevented the counsel from proceeding?

Mr. Tilghman. I have not.

Mr. Harper. Did the court forbid them during the proceedings, or on the trial, to cite cases?

Mr. Tilghman. There were no counsel at the trial.

Mr. Harper. Did Judge Chase at any time say that they would prohibit their reading the acts of Congress to the jury?

Mr. Tilghman. I do not recollect that he did.

Mr. Harper. Was any thing said about the sedition law, and the act——

Mr. Tilghman. I do not recollect that there was.

Mr. Harper. Did Judge Chase express any disapprobation of the conduct of the circuit court on a former trial in suffering those acts to be read?

Mr. Tilghman. I do not recollect that he did.

Mr. Hopkinson. I think you have stated that you attended the trial of John Fries throughout?

Mr. Tilghman. I did.

Mr. Hopkinson. Did you see any disposition, or act, or conduct of the court calculated to oppress the prisoner?

Mr. Nicholson objected to this question being put, and Mr. Hopkinson said, that to avoid all difficulty, he would wave it.

Mr. *Martin.* Has it been the usual practice in the courts of Pennsylvania for the judges to declare to the jury what is the law in criminal cases?

Mr. *Tilghman.* They always in their charge to the jury state the law and the evidence, and apply the law to the evidence.

To an interrogatory offered by Mr. Martin.

Mr. *Tilghman* answered. The court generally hear the counsel at large on the law, and they are permitted to address the jury on the law and the fact; after which the counsel for the state concludes; the court then states the evidence to the jury, and their opinion of the law, but leaves the decision of both law and fact to the jury.

To another interrogatory of Mr. *Martin* as to the practise of the courts, Mr. *Tilghman* replied. That counsel generally take that course which they consider best calculated to benefit their clients. In capital cases, he did not recollect the court stopping gentlemen of character in any course they thought fit to adopt.

Mr. *Nicholson.* In your practice in Pennsylvania, or Delaware, where I understand you have practiced, did you ever hear the court undertake to inform the jury of their opinion of the law before the prisoner's counsel had been heard.

Mr. *Tilghman.* I do not recollect I ever did.

In answer to a question,

Mr. *Tilghman* said, in the charge to the jury, the contents of the paper containing the opinion of the court, and which had been withdrawn, were never alluded to; nor in the least alluded to when it was thrown down or delivered.

Mr. *Nicholson.* You have stated that the opinion was not read to the jury. I ask whether when this paper was laid on the table the jury was sworn?

Mr. *Tilghman.* No. They were not sworn till the next day but one.

Mr. *Nicholson.* Were the general pannel then in court?

Mr. *Tilghman.* According to my recollection the general pannel attended with great punctuality. I this morning looked over my notes and I took down those that were challenged by Fries, and those that tried him, in order to assist me in making my challenge in the case of Heany and Getman. But I do not know that I then saw the face of any of them. It is proper to state that the common jury as soon as the court is opened generally walk forward into the jury box, which holds only eleven, a chair being placed for the twelfth—The other jurors take their seats behind those in another box, or remain in the hall of the court.

Mr. *Nicholson.* The judge declared that the counsel for the prisoner might proceed at the hazard of their characters?

Mr. *Tilghman.* I think those were the words he used.

Mr. *Nicholson.* Were the general pannel, at this time, in a situation to hear what was said?

Mr. *Tilghman.* Certainly, Sir, this was on the second day.

Mr. *Randolph.* Before the written opinion was handed down, did not Mr. Chase, or the court declare that the question of law had been settled in the case of Vigol and Mitchell?

Mr. *Tilghman.* On the trial of Fries they did cite this case and rely upon it. If the court will indulge me I can turn to my notes. Judge Chase stated the opinion of the court in his charge to the jury to be the same as in the case of Vigol and Mitchell.

Mr. *Randolph.* Did he say that the opinion in the case of Vigol and Mitchell was the opinion contained in that paper?

Mr. *Tilghman.* I do not remember. Many things might have happened, of which I have no recollection as I did not take notes at the time.

Mr. *Campbell.* How many of those papers were thrown down or given to the clerk?

Mr. *Tilghman.* I cannot say with perfect certainty. But I stated before that one was handed to the attorney of the district, another to the counsel for the prisoner, and the third to the jury to take out with them.

Mr. Campbell. Was there sufficient time before the papers were withdrawn, for the jurors or other persons to have read them?

Mr. *Tilghman.* I stated before that the court rose between twelve and one o'clock. The jury were not in a situation to have access to the bar table. After the paper lay for some time, several of the bar employed themselves in copying it—I have no recollection that any one of the papers were handed into the jury box.

President. At what hour were they withdrawn?

Mr. *Tilghman.* I think on the same day, it was between one and two o'clock, that the district attorney called on me. I am pretty certain that the papers thrown down were not taken away, but remained in the hands of the court.

Mr. Campbell. Can you say how many copies were taken?

Mr. *Tilghman.* Not precisely. I took one, and Mr. Thomas Ross another. I believe we copied them at the same time. But I do not know of my own knowledge that any other person transcribed them. Now I recollect, I think I saw one or two others also taking copies.

Mr. *Campbell.* Do you know whether all those taken were withdrawn?

Mr. *Tilghman.* I do not. I only know that mine was withdrawn.

Mr. Nicholson. Did you hear the subject spoken of generally that day?

Mr. Tilghman. Those who copied the paper spoke on the subject to each other.

Mr. *Nicholson.* I ask whether it was a subject of general conversation?

Mr. *Tilghman.* Very much so among the gentlemen of the bar.

Mr. *Nicholson.* You have said that it is a usual thing in the courts of Pennsylvania for the judge to charge the jury after the counsel on both sides have spoken. Do you recollect to have seen a court reduce their charge to writing, and give it to the jury?

Mr. *Tilghman.* Never.

WM. S. BIDDLE, sworn.

Mr. *Randolph.* Were you present at the trial of John Fries?

Answer. I was.

Mr. Randolph. Were you present when the written opinion of the court was handed down?

A. From the length of time which has passed I have not a very distinct recollection of the circumstances that occurred.

Mr. Randolph. Did you take a copy of that opinion, and was that copy the whole or a part of it?

A. I did take a copy in part; I took the substance in regard to the point of treason, but I believe I did not copy the whole.

Mr. Randolph. Were there other copies taken?

A. I know of one taken by Mr. Rawle.

Mr. Randolph. Was any application ever made to you to deliver up the copy in order to destroy it?

A. Never.

Mr. Randolph. Did you communicate to any persons the substance of the copy?

A. Never, until during the last session of Congress, in conversation with Mr. Dallas, I mentioned my being possessed of it, and he expressing a desire to see it, I stepped over to my office and brought it.

Mr. *Randolph.* Although you did not take a copy of it verbatim, did you take the substance of it?

A. I did.

Mr. Randolph. Would you know that copy?

A. I subscribed my name to it.

Mr. Randolph. Is that the paper? (shewing him a paper.)

A. Yes, it is.

Mr. Randolph. Did you hear much conversation about the paper at that time?

A. I have no distinct recollection; I attended the trial of Fries and others for treason, but I do not recollect any conversation about it.

Mr. Randolph. Can you tell whether the contents became known to any of the jurors?

A. I cannot.

Mr. Harper. I observe the paper contains notes and references to authorities; were they taken from the paper handed down by the court, or were they made by yourself?

A. I cannot say as to those at the bottom; those at the end were all my own.