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IMPEACHMENT OF *JUDGE CHASE.*

SATURDAY, FEBRUARY 16, 1805.

[*Continued.*]

JOHN MARSHALL *Sworn.*

Mr. *Harper.* Pleaſe to inform this honorable court whether you did, or did not, on the part of Col. Harvie make an application for his diſcharge from the jury; and on what ground that application was made?

Mr. *Marshall.* I was at the bar, when Col. Harvie, with whom I was intimately acquainted, informed me that he was ſummoned on the jury. Some converſation paſſed, in which he expreſſed his unwillingneſs to ſerve, and ſtated that he was an unfit perſon; for that his mind was completely made up, that he thought the [ſedition] law unconſtitutional, and that whatever the evidence might be, he ſhould find the traverſer not guilty; and requeſted me on that ground to apply to the Marſhal for his diſcharge. I told the marſhal that Col. Harvie was extremely deſirous of being diſcharged, and on his diſcovering great repugnance to his diſcharge, I informed him that he was predetermined, and that no teſtimony could alter his opinion. The marſhal ſaid that Col. Harvie might make his excuſe to the court; he obſerved that he was watched, and to prevent any charge of improper conduct from being brought againſt him, he ſhould not interfere in diſcharging any of the jurors who had been ſummoned. I informed Col. Harvie of this converſation, and it was then agreed that I ſhould apply to the court for his diſcharge upon the ground of his being ſheriff of Henrico county, that his attendance was neceſſary as that court was then in ſeſſion; I moved the diſcharge of the juror on that ground, and he was diſcharged by court.

Mr. *Harper.* Did you communicate to judge Chaſe, or to the court the reaſons which firſt induced Col. Harvie to make this application.

Mr. *Marshall.* I only ſtated that he was ſheriff of Henrico county, and that it was unuſual to to require the attendance of ſheriffs on juries. I believe the marſhal was at that time obtaining jurymen, he had at that time a paper in his hand, and appeared to be ſetting down the names of perſons within his view.

Mr. *Randolph.* Were you in court during a part of the trial, or during the whole of the trial?

Mr. *Marshall.* I think I was there only during a part of the time.

Mr. *Randolph.* Did you obſerve any thing unuſual in the mode of conduct on the part of the counſel towards the court, or the court towards the counſel, and what?

Mr. *Marshall.* There were ſeveral circumſtances that took place on that trial, on the part both of the bar and the bench, which do not always occur in trials. I would probably be better able to anſwer the queſtion, if it were made more determinate.

Mr. *Randolph.* Then I will make the queſtion more particular by aſking whether the interruptions of counſel were much more frequent than uſual?

Mr. *Marshall.* The counſel appeared to me to wiſh to bring before the jury arguments to prove that the ſedition law was unconſtitutional, and Mr. Chaſe ſaid that that was not a proper queſtion to go to the jury; and whenever any attempt was made to bring that point before the jury, the counſel for the traverſer were ſtopped. After that there was an argument commenced (I think) by Mr. Hay, but I do not recollect poſitively, to prove to the Judge that the opinion which he had given was not correct in point of law, and that the conſtitutionality of the law ought to go before the jury; whatever the argument was which Mr. Hay advanced, there was ſomething in it which Judge Chaſe did not believe to be law, and he ſtopped him on that point. Mr. Hay ſtill went on, and made ſome political obſervations, Judge Chaſe ſtopped him again, and the colliſion ended, by Mr. Hay ſitting down, and folding up his papers as if he intended to retire.

Mr. *Randolph.* There were many preliminary queſtions, ſuch as, with reſpect to the continuance of the cauſe, the admiſſibility of teſtimony, &c. Did the interruptions take place on the part of the court only when the counſel preſſed the point of the unconſtitutionality of the ſedition law?

Mr. *Marshall.* I believe that it was only at thoſe times, but I do not recollect preciſely. I do not remember correctly what paſſed between the bench and bar; but it appeared to me that whenever Judge Chaſe thought the counſel incorrect in their points, he immediately told them ſo, and ſtopped them ſhort; but what were the particular expreſſions that he uſed, my recollection is too indiſtinct to enable me to ſtate preciſely; what I do ſtate is merely from a general impreſſion which remains on my mind.

Mr. *Randolph.* Was there any miſunderſtanding between the counſel and the court, and what was the cauſe of that miſunderſtanding, or what was your opinion as to the cauſe, or did you form one?

Mr. *Marshall.* It is impoſſible for me to aſſign the particular cauſe. It began early in the proceeding and increaſed as the trial progreſſed. On the part of the Judge it ſeemed to be a diſguſt with regard to the mode adopted by the traverſer's counſel, at leaſt I ſpeak as to the part which Mr. Hay took on the trial, and it ſeemed to increaſe alſo with him as he went on.

Mr. *Randolph.* When the court decided the point that the jury had not a right to decide upon the conſtitutionality of a law, did the counſel for the traverſer begin an argument to convince Judge Chaſe that the opinion which he had delivered on that point was not well founded. Is it the practiſe in courts when counſel object to the legality of an opinion given by the court to hear the arguments of counſel againſt ſuch opinion?

Mr. *Marshall.* If the counſel have not been already heard, it is uſual to hear them, in order that they may change or confirm the opinion of the court, when there is any doubt entertained. There is however no poſitive rule on this ſubject, and the courſe purſued by the court will depend upon circumſtances; where a Judge believes that the point is perfectly clear and ſettled, he will ſcarcely permit the queſtion to be agitated. However it is conſidered as decorous on the part of the Judge to liſten while the counſel abſtain from urging unimportant arguments.

Mr. *Randolph.* In the circuit courts of the United States, after a circuit is opened for any diſtrict, is it the practiſe of ſuch courts to adjourn over from time to time, in order to hold a court in another diſtrict in the intermediate time, and then to return back; or is not the uniform practiſe to poſtpone cauſes when they cannot be conveniently tried, to the next term?

Mr. *Marshall.* I can only ſpeak of courts where I have attended, in which the practiſe is, that the buſineſs of one term ſhall be gone through as far as poſſible, before any other court is held.

Mr. *Randolph.* Was it ever the practiſe of any court, in which you have practiſed or preſided, to compel counſel to reduce to writing the queſtions which they meant to propound to their witneſſes?

Mr. *Marshall.* It has not been uſual; but in caſes of the kind, the conduct of the court will depend upon circumſtances. If a queſtion relates to a point of law, and is underſtood to be an important queſtion, it might be proper to require that it be reduced to writing. Unleſs there is ſome ſpecial reaſon which appears to the court, or on the requeſt of the adverſe counſel, queſtions are not commonly reduced to writing, but when there is a ſpecial reaſon in the mind of the court, or it is required by the oppoſite counſel, queſtions may be directed to be committed to writing.

Mr. *Randolph.* When theſe queſtions are reduced to writing, it is for a ſpecial reaſon, it is after the court have heard the queſtion, and not before the queſtion has been propounded?

Mr. *Marshall.* I never knew it requeſted that a queſtion ſhould be reduced to writing in the firſt inſtance in the whole courſe of my practice.

Mr. *Randolph.* I am aware of the delicacy of the queſtion I am about to put, and nothing but duty would induce me to propound it. Did it appear to you, Sir, that during the courſe of the trial, the conduct of Judge Chaſe was mild and conciliatory?

Mr. *Marshall.* Perhaps the queſtion you propound to me would be more correct, if I were aſked what his conduct was during the courſe of the trial; for I feel ſome difficulty in ſtating in a manner ſatisfactory to my own mind, any opinion which I might have formed; but the fact was, that in the progreſs of the trial, there appeared ſome——

Mr. *Cocke,* (a Senator) here interrupted Mr. Marſhall, by obſerving that he thought the queſtion an improper one.

Mr. *Randolph* ſaid he would not preſs it, if there were any objection to it.

Mr. *Harper.* We, ſir, have no objection; we are willing to abide in this trial by the opinion of the chief juſtice.

Mr. *Randolph.* Did you ever, ſir, in a criminal proſecution, know a witneſs deemed inadmiſſible, becauſe he could not go a particular length in his teſtimony, becauſe he could not narrate all the circumſtances of the crime charged in an indictment, or in the caſe of a libel; and could only prove a part of a particular charge, and not the whole of it?

Mr. *Marſhall.* I never did hear that objection made by the court except in this particular caſe.

[Some enquiry was here made relative to the above queſtion put by Mr. Randolph, and objected to by Mr. Cocke, which Mr. R. anſwered, by obſerving that he withdrew it.]

Mr. *Harper.* Pleaſe to inform this honorable court, ſir, whether you recollect that judge Chaſe during any part of the proceedings made an offer to poſtpone the trial of Callender, and if you do, to what time?

Mr. *Marshall.* I recollect at the time a motion was made for the continuance till the next term; that judge Chaſe declared, as his opinion, that it ought to be tried at the preſent term. A good deal of converſation took place on the ſubject. The counſel for the traverſer ſtated ſeveral circumſtances in favor of their client, particularly relative to the abſence of his witneſſes; but the whole terminated at that time by a poſtponement for a few days; ſo many days, as I thought at the time, were ſufficient for obtaining the witneſſes reſiding in Virginia. I do not now recollect what the time was, nor do I ſay it was ſufficient. I ſimply recollect that I thought it was. When the cauſe came on again, there was no propoſition that I recollect on the part of the traverſer's counſel for a continuance, but a deſire was expreſſed of a poſtponement for a few hours in order to give their witneſſes time to arrive at Richmond, as it was poſſible they had been impeded by the badneſs of the roads; a conſiderable quantity of rain having fallen the preceding day. There was a declaration on the part of the court that they might take until the next day, and they went on to ſay that they might have a longer time, if they thought it was neceſſary, but but the preciſe length of time offered I do not recollect; but I do remember that they ſaid the trial muſt come on before the preſent term cloſed.

Mr. *Harper.* Is it the practice of the circuit courts to hold an adjourned court, and is it not in the power of the circuit court to adjourn the jury, and direct them to meet again at ſome ſubſequent time?

Mr. *Marshall.* That is a queſtion of law I have never turned my mind to.

Mr. *Harper.* Do you know an inſtance in which it has been done?

Mr. *Marshall.* I do not know any inſtance in which it has ever been done.

The President. Do you recollect whether the conduct of the judge on this trial was tyrannical, overbearing, and oppreſſive?

Mr. *Marshall.* I will ſtate the facts. The counſel for the traverſer perſiſted in arguing the queſtion of the conſtitutionality of the ſedition law, in which they were conſtantly repreſſed by Judge Chaſe. Judge C. checked Mr. Hay whenever he came to that point, and after having reſiſted repeated checks, Mr. Hay appeared to be determined to abandon the cauſe, when he was deſired by the judge to proceed with his argument, and informed that he ſhould not be interrupted thereafter. If this is not conſidered tyrannical, oppreſſive, and overbearing, I know nothing elſe that was ſo.

Mr. *Randolph.* Was the check given to the traverſer's counſel more than once.

Mr. *Marshall.* There were ſeveral interruptions, as I have ſtated, for whenever the counſel attempted to ſhew the unconſtitutionality of the ſedition law, Judge Chaſe obſerved that it was a point which ſhould not go before the jury, and he would not permit a diſcuſſion upon it.

Mr. *Randolph.* Then it was theſe checks that induced the counſel to abandon the cauſe of the traverſer. I underſtood that the counſel were endeavoring to ſhew, without any regard to the jury, that the opinion of the court was incorrect.

Mr. *Marſhall.* That was my impreſſion.

Mr. *Randolph.* Is it not uſual when the opinion of the court is not ſolemnly pronounced, to hear counſel?

Mr. *Marſhall.* Yes, ſir.

Preſident. Is it uſual for a trial to take place on the ſame term that the preſentment is made?

Mr. Marſhall. My practice while I was at the bar, was very limited in criminal caſes, but I believe it is by no means uſual in Virginia to try a man for an offence at the ſame term at which he is preſented.

Mr. *Randolph.* Did you hear judge Chaſe apply any unuſual epithets; ſuch as young men, or young gentlemen, to the counſel?

Mr. Marſhall. I have heard it ſo frequently ſpoken of ſince the trial, that I cannot poſſibly tell whether my recollection of the terms is derived from the expreſſions uſed in court or from the frequent mention ſince made of them; but I am rather inclined to think that I did hear them from the judge.

Mr. Randolph. Are you acquainted with Mr. Wirt; was he a young man at that time; was he ſingle, married or a widower?

Mr. Marſhall. I am pretty well acquainted with him; he is about 30 years of age, and a widower.

Mr. *Randolph.* Do you know Mr. Norborne Nicholas and Mr. Hay;—they practiced with you at the bar; did you obſerve any thing in their conduct that required the interpoſition of the court to check or prevent its conſequences?

Mr. *Lee,* objecting to this queſtion——

Mr. *Randolph* ſaid he would decline putting it.

Mr. *Marshall* then withdrew.

Mr. *Randolph.* The managers think themſelves entitled to put to any witneſs, however reſpectable his ſtanding in life, any queſtions which they deem neceſſary to bring out the whole facts.

The *President.* If it is not objected to by the counſel for the reſpondent, nor decided by the court to be irrelevant or improper, the managers will be gratified by having their queſtions anſwered.

At the inſtance of Mr. *Randolph* Chief Juſtice *Marshall* was again called.

Mr. *Randolph.* Is it the practiſe of the courts in Virginia to proceed againſt a perſon when indicted for an offence leſs than felony, ſay for a miſdemeanor, by iſſuing a capias in the firſt inſtance?

Mr. *Marshall.* My practice, I before ſtated, had not taken this courſe I therefore cannot well ſay what the uſual practiſe is.

Mr. *Harper.* I will aſk you a queſtion, Sir. When Mr. Hay was interrupted by the court at the commencement of his argument to ſhew to the jury that they were the judges of the conſtitutionality of the law; was the interruption that took place, one which went to the argument, or barely reminding them of ſome erroneous opinion delivered?

Mr. *Marshall.* I believe it was the latter; though I am not certain.

Mr. *Randolph.* Do you recollect, Sir, whether it was as to the matter, or whether the impreſſion has not been made on your mind by ſome converſations which you have heard ſince?

Mr. *Marshall.* My impreſſions are, Sir, that Mr. Hay preſſed the matter of the conſtitutionality of the law in the manner I have heretofore ſtated.

EDMUND LEE *sworn.*

Mr. Harper. Were you at the circuit court in the ſpring of 1800, held at Richmond, at which Judge Chaſe preſided.

Mr. Lee. I was not in court when Callender was preſented by the grand jury; but I was when application was made for a continuance, and I remember that Judge Chaſe, on an application made for a continuance, on account of the abſence of ſome of the witneſſes, informed the counſel, that he could not continue the cauſe, but if they would fix upon any determinate time, within which they could obtain their witneſſes, without its going over to the next term, the court would poſtpone the trial. Judge Chaſe alſo added that he had no objection to poſtpone it for a fortnight or a month; I am not certain whether he did not ſay he would poſtpone it for a longer time, I do not know but he ſaid for ſix weeks, but he ſaid poſitively he would not poſtpone it to the next term. He added, if the counſel conceived they could obtain the evidence within the time they mentioned, they might have it.

Mr. Nicholson. At what ſtage of the buſineſs was this propoſition made.

Mr. Lee. I think it was made after the affidavit was read.

Mr. Nicholson. On what day was it made?

Mr. Lee. I believe it was the firſt day. I do not recollect when the application for a continuance was firſt made, it poſſibly had been before, but I was not in court.

Mr. Nicholson. There was no ſubſequent nomination.

Mr. Lee. None, Sir.

Mr. Nicholson. How long was it before the jury were ſworn?

Mr. Lee. I do not recollect the day of the week on which the jury were ſworn, but I remember the offer was made at the time the application for a continuance was made.

Mr. Randolph. Do you recollect whether the court offered to poſtpone the trial until all the witneſſes could be procured, or whether the offer related alone to thoſe who reſided in the ſtate of Virginia?

Mr. Lee. I do not recollect whether the court ſaid any thing on that point; but I recollect perfectly that they made the offer to poſtpone the trial for ſome length of time, ſuch as I have juſt mentioned, a fortnight, month or more.

Mr. Randolph. How far did you underſtand that *more* to extend?

Mr. Lee. Not beyond ſix weeks.

Mr. *Campbell.* Were the counſel for the traverſer preſent, and did Judge Chaſe addreſs himſelf to them?

Mr. *Lee.* The counſel were preſent, and I think the judge did addreſs himſelf to them.

Mr. *Campbell.* What then was their reply?

Mr. *Lee.* I do not recollect, if they did ſay any thing, what they ſaid.

JOHN A. CHEVALIER *sworn.*

Mr. *Harper.* Were you preſent at the circuit court held at Richmond in Virginia, in the ſpring of 1800 on the trial of James Thompſon Callender?

Mr. *Chevalier.* I was at Richmond at the time.

Mr. *Harper.* Do you recollect what took place on the trial of Mr. Callender?

Mr. *Chevalier.* I was in the court room ſome few minutes during the trial, but I do not recollect any thing that occurred.