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IMPEACHMENT OF *JUDGE CHASE.*

WEDNESDAY, FEBRUARY 20.

[*Mr. Early's speech, concluded.*]

But, Sir, the scene rises upon us. We have now to examine a part of the transaction for which, I had supposed, human invention might be tortured for a palliation in vain. I allude to the rejection of Mr. Taylor's testimony. The reason assigned for that rejection was, that the witness could not prove the truth of the whole of *any one charge.* Let us for a moment examine the consequences of this doctrine. According to the judge's own decisions then, as well as his doctrine now, each charge laid in the indictment must have constituted a separate offence. For it is explicitly declared both by Mr. Hay and Mr. Nicholas, that when an application was made to continue the case, because of the absence of some material witnesses, the application was rejected upon the ground, that it did not appear from the affidavit filed, that the witnesses so absent, could prove the truth of all the charges. That proof of the truth of a part only, would be of no avail, and that the whole must be proved to intitle the traverser to an acquittal. Each charge in the indictment then must have constituted a *separate offence*: for the charges cannot be made to help each other out. One charge, however, it seems might consist of different facts. This was the case with several in that indictment. It was particularly the case with the very charge, the truth of which Mr. Taylor was called to prove. "The President was a professed aristocrat. He had proved faithful and serviceable to the British interest." Here was a charge made up of two distinct facts; so distinct in their nature, that the knowledge of their truth might not only rest with different persons, but was extremely likely not to rest with any *one* witness. Put the case of a man charged with any offence, murder, theft, or any other crime you please: There may be a string of facts upon the proof of which the defence may depend; some within the knowledge of one man; some within that of another. Was it ever heard of before, that because one witness could not prove the existence of all those facts, that therefore such witness should not be examined as to what he did know? Or if some of the facts depended upon written testimony, was it ever heard of before that therefore a witness should not be examined as to those resting in oral testimony? To these questions no man will answer in the affirmative. Why then was an unheard of and palpably absurd doctrine brought to bear in Callender's case? Was the defence of justification, under the sedition law of the United States, such an anomaly in its nature, that none of the established rules of jurisprudence would apply to it? Was it a thing so entire in its nature, that it could not consist of different parts? I have always been taught, and the respondent's answer confirms the principle, that a defence must apply to the whole of a charge. If then a charge consist of different parts, surely so must the defence. But according to judge Chase, be the parts ever so many, they shall not be proven, unless the proof can all be made by one witness, or unless it appear that the defendant has proof in reserve to establish all. I ask this honorable court how it can appear that the defendant has proof in reserve applying to all the parts of a charge? Suppose a witness called to substantiate *one part*, how is it to be known to the court whether there is or is not other testimony behind in the power of the party, by which the residue of the charge may be established? We are told by the respondent, that none of the questions propounded to colonel Taylor had any application to the charge, except the first, and this only to a part of the charge; and that this question was repelled because no proof was offered as to the residue. I answer, Sir, that the judge had no right to know nor were the counsel bound to disclose whether there was such testimony in reserve or not. It is a new doctrine, Sir, that the legal admissibility of testimony is to depend upon what the party can afterwards prove by other testimony. It is the right of the party to establish his defence as far as he can, and if he fail in establishing it completely, the evil is to himself alone. And permit me here to add, Sir, that whether he succeed in establishing his defence or not, is a question for the jury to determine, and not the judge. The judge possesses no right to *determine* even after the testimony is finished, whether that testimony has or has not established the defence; still less then can he before it is heard, determine that it will not make good the defence.

We are told in the respondent's answer that his rejection of colonel Taylor's testimony can be no proof of a determination on his part to oppress, as such an intention might have been gratified by the conviction of the traverser upon the other articles. This is true, very true, upon the principle that the judge and not the jury was to determine the question of law in criminal cases. If the criminality of the charges in point of law, was to be settled by the judge, his conclusion is certainly correct. But if, as I apprehend, the criminality of the charges was to be exclusively determined by the jury, then it was not entirely certain, that the judge might have been sure of his object, notwithstanding the truth charge had been proved. For aught he knew, or ought to be presumed to have known, the jury might have been of the opinion that the other charges did not come within the sedition law, and might have therefore given a verdict of acquittal.

But, Mr. President, this apart, it is a novel proof of innocence to me at least, that a man should have the magnanimous boldness to disregard appearances. It is a novel proof of innocence that a man should possess a spirit daring enough to insult the common sense of mankind. Yes, Sir, I yield to the respondent the full share of glory, which he is desirous of accumulating from this source.

The last of the three articles now under examination goes on to charge the defendant with various acts of injustice, partiality and intemperance, highly derogatory to his character as a judge, and equally injurious to the reputation of the American bench. Without fatiguing the patience of the honorable court with an inquiry into the proofs and an investigation of the criminality of all the particulars here enumerated, I beg leave to call their attention to one part of the judge's conduct, which appears to me to stand preeminent for its open defiance of all justice, and its flagrant violation of the constitution of this country. I allude to the refusal to continue the cause. The reasons assigned for that refusal, were, we learn, that it did not appear by the affidavit exhibited, and upon which the motion for a continuance was founded, that the witnesses, whose testimony was wanted, could prove the truth of all the charges laid in the indictment. This conduct, Mr. President, strikes me as being of the same family with the rejection of Mr. Taylor's testimony. The charges in the indictment are in number many. They embrace a numerous collection of facts, some of them assimilated, others extremely variant in their nature; many of them involving legal difficulties as to their criminality. Under the plea of not guilty, to the indictment, it was competent to the traverser not only to prove the truth of the charges in point of fact, but also to prove that any of the charges were not criminal in point of law. It was competent for the defendant to prove the truth of a part of the charges, and to contend that the rest were not seditious. Both these grounds of defence were proper for the jury, and the jury possessed the right to pass without control upon both. With what propriety then could the judge pronounce from the bench that to entitle the accused to a continuance, it must appear that he could prove the truth of all the charges? What, sir, was the question of law as to their criminality, a point which the judge here again arrogated to himself the exclusive right to determine, and that too before the traverser was heard? Indeed it would appear that in this case also, as in the case of Fries, the law was to be wrested from its proper organ, the jury, and to be exclusively passed upon by the judge himself. What other construction can be given to his determination that the truth of all the charges must be proven? There surely could be no necessity for this, unless they were all seditious within the act of Congress. By determining then, that all must be proved true, the judge did determine that all were seditious. This, sir, it was the exclusive right of the jury to determine.

The constitution of this country has most wisely provided, that "the accused shall have compulsory process for obtaining witnesses in his favor." Of what avail is this provision if time be not given for their attendance? Of what avail to grant the process, and, before the witnesses can by any physical possibility reach the place, force the accused to trial? This conduct, sir, is worse than mockery. It is an insult to the common sense of mankind. It is high treason against the majesty of the constitution of a free country. The constitution of the United States gives to the accused the right of process to compel the attendance of his witnesses. But judge Chase so administers, that the accused is indicted, arrested, tried, convicted and punished, all in the same term, whilst his witnesses are distant hundreds of miles.

After all this, Mr. President, surely we shall not be asked for proofs of corrupt intent. They are too thick upon every feature of the transactions which have been examined. The defendant is on all hands acknowledged to possess an acquaintance with the laws and constitution of his country, which yields not to that of any other man in this nation.—He is on all hands acknowleged to possess talents which might do honor to any tribunal. With such knowledge and such talents, permit me to ask if it was within the compass of possibility that he should mistake in points so familiar as those in which he is charged with criminal conduct? Although all things are possible, yet there are things the extreme improbability of which defies belief. Among those I rank the supposition of mistake on the part of judge Chase in the trial of James T. Callender. We might just as well be asked for proof of malice in a case where a man wilfully and without provocation kills another. In such a case as in the one now under consideration, the answer is that the criminal intent is apparent upon the face of the act. And there is a question, sir, which strikes me as applying itself with almost irresistible force to the present discussion; can it be that such outrages should be committed upon the most ordinary principles of law and justice, and yet the conduct of the judge not be influenced by corrupt motives? Can it be that every thing should be done to favor the prosecution and stifle the defence, and yet justice be administered "faithfully and impartially and without respect to persons?" But if all this be insufficient I pray this honorable court to recollect the declarations of the judge in relation to the case, as attested by several witnesses.

The fifth and sixth articles rest upon grounds so extremely simple, and so easily comprehended, that it appears totally unnecessary to fatigue the patience of the honorable court, by dwelling upon them.

The seventh article is as follows:

"That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood, "that a highly seditious temper had manifested itself in the state of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added—"that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to enquire diligently into this matter," or words to that effect; and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the district attorney of the United States, the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and, by a strict examination of them, to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper: thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare."

The respondent stands here charged with a conduct, than which, in my opinion, nothing could be more at war with his official duty—nothing more tarnish his official character. The constitution and laws of this country certainly intended in erecting high judicial tribunals, that those who might be appointed to minister therein, should be impartial dispensers of justice between such as might resort thither for an adjustment of their differences. In public prosecutions, more especially was it intended that such dispensation should be made without respect to persons. In these, above all other cases, ought a judge to stand aloof from influence, free from predilection towards one, or prejudice against the other. Most peculiarly here is it his duty to stand firm at his post, resisting the overbearing influence of a powerful public, and protecting the rights of the accused in so unequal a contest. But judge Chase, disregarding these principles, always held sacred in a land of laws, converts himself into a hunter after accusations. He who, in the humane language of the laws, should be counsel for the accused, becomes himself an accuser. He whose duty it is impartially to decide between the prosecutor and prosecuted, becomes himself the procurer of prosecutions.

I have always been taught that the character of an informer, in any station of life, was deservedly considered as the reverse of reputable. What then shall we say of him, who descends from the judgment seat of the nation, to inform against, and direct the prosecution of one, against whom he avows the strongest antipathy, and over whose trial he himself has to preside? Surely, sir, his thirst for punishment was great. Surely it was extreme indeed, when he could not wait for the tardy motion of the public prosecutors. If our judges are thus to turn informers; if they are thus to seek after objects for themselves to try, and themselves to punish; then indeed must this country, heretofore considered an asylum from oppression, become itself the nursery of oppression in its most odious form. And this government, heretofore the pride of humanity, will be held up as an object of scorn and derision to the nations of the earth.

The eighth article is in these words:

"And whereas mutual respect and confidence, between the government of the United States and those of the individual states, and between the people and those governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness; yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland against their state government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the supreme court of the United States: and moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland against the government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion, and in a proper manner, were at that time, and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partizan."

It is not my intention, Mr. President, to trouble the court with many observations upon this article; not because of any opinion that it is unimportant. I believe it equally important with any in the catalogue. I believe it possesses a peculiar importance, in affording, from the testimony by which it is supported, proofs of the spirit by which judge Chase was usually governed in his official conduct.

There are features too in that part of the Judge's official conduct charged in this article, which place him in a point of view awfully grand. We have heretofore been viewing him as bringing his talents to bear upon individuals. Here we see his genius rising in the majesty of its strength, to far higher objects. Here we see him consigning over whole governments to the scourge of his own avenging wrath. Whithersoever he turned his eyes, whether to the state constitution and laws, or to the laws and constitution of the whole union, they were equally exposed to the whip and the rack.

Mr. President, there is no truth more forcible than that expressed in the language of this article, that "mutual respect and confidence between the government of the United States and those of the individual states, and between the people and those governments respectively, are highly conducive to that public harmony, without which there can be no public happiness." Indeed, sir, it may with truth be said, that this respect and confidence are essential to that harmony without which we can enjoy no public happiness. What words then can describe in its proper colours, the conduct of an officer of the highest judicial tribunal of the general government, who abuses the duty and perverts the privilege of his station to destroy the confidence and excite the odium of the people against not only their state government, but that of the United States? He who was seated on the judgment seat of the nation to execute the laws of the nation, converts that very judgment seat into a forum from whence to pronounce a philippic not only against the state government with which he there had no right to meddle, but against that very government under whose authority he was there sitting, and whose laws he was sworn there to execute. Not content with endeavoring to excite discontent and odium against the government of the state of Maryland, the Congress of the United States must be held up as sacrilegious destroyers of the national constitution.

Mr. President, I have taken those views of this subject, which presented themselves most forcibly to my mind. I have finished all I intended to say upon the argument. There has, in my opinion, been established against the respondent a volume of guilt, every page of which calls for punishment at the hands of this nation. I leave the case and the respondent in your hands. I leave them where the constitution of this country has placed them. I leave them where I hope, and I believe, there will be found a different measure of justice from that which judge Chase has been accustomed to administer. I leave them where justice will be administered "faithfully and impartially, and without respect to persons."

FOR THE NATIONAL INTELLIGENCER.

Thoughts on the true path to national glory. By an old whig to his friend.

(*Continued.*)

LET then the great principles contained in the declaration of independence be lisped by our children before their tender minds are fledged into a state of independence; and as this period approaches, let the best and the fullest knowledge be imparted to them. Thus may we hope that the ambition of being the wisest and most virtuous of their fellow men will become their ruling passion; and thus may we expect that luxury will be deprived of more than half its deleterious qualities.

The great increase of the powers of the general government, and particularly of the Executive, are looked upon with a jealous eye by many of our best citizens. I am myself one of those, who do believe, that more is to be apprehended from this source, and from a spirit of conquest, when the power of the republic shall have attained its height, a topic which remains to be considered, than from all the other sources of peril which has been or can be assigned.

It is well understood that our system contains two leading features, on the equipoise and harmonious association of which its duration must depend; these are the federal, and the representative principles. In coincidence with the former the general government is the representative of the states, while in correspondence with the latter it represents the people directly. The former appears to have been devised to protect the sovereignty of the states against any encroachment of the nation; the latter to protect the people from the encroachments of the states. It is pretty generally acknowledged that the maintenance of our liberties depend upon the vigorous preservation of these two features. As present they are balanced with sufficient [illegible], and the result is a full harmony of all the parts of the system. But it is