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IMPEACHMENT OF *JUDGE CHASE.*

WEDNESDAY, February 20.

[*Continued.*]

Mr. CAMPBELL then rose and spoke as follows:

Mr. President and gentlemen of the Senate,

It is with peculiar diffidence I rise, in compliance with the duty assigned me, to address this honorable court on this important occasion. Sensible of my own incompetency to do that justice to the investigation of this cause, which its importance, and the influence that the whole transaction is calculated to have on the jurisprudence of our country, would seem to require, I should have felt disposed to decline the undertaking; but called upon by the representatives of the nation, to aid in supporting a prosecution which they have deemed it proper to institute for the public good, I conceive it my duty to yield up, in some degree, my own feeling, to obey the voice of my country, and perform the duties imposed upon me thereby. Under this impression I shall endeavor to execute the trust reposed in me on this occasion, in such manner as the very short time left me from other public avocations, and the limited means of information on subjects of this nature, which the present situation of this place affords, will enable me. I feel, however, Sir, considerable confidence in this undertaking, from the consideration, that there are other gentlemen associated with me on this occasion, who are fully competent to do complete justice to the subject. And a still higher degree of confidence arises from a perfect conviction, that the honorable members who compose this high tribunal, and who are to pronounce the final decision in this cause, are well qualified to investigate its merits; and that their talents and experience are such as to preclude even the possibility of a defeat of justice taking place, in consequence of any deficiency that may exist in the exertions of council on either side.

The scene, presented to the nation by this trial, is more than usually interesting and important. One of the highest officers of the government, called upon by the voice of the people, through their representatives, before the highest tribunal known to our constitution; that same tribunal that sanctioned his elevation; to answer for the abuse of the power with which he had been entrusted. It is a melancholy truth, that derogates much from the dignity of human nature, but it is a truth that has been for ages established by experience, that high and important powers have a tendency to corrupt those on whom they are conferred. Few minds are possessed of sufficient integrity and independence, when elevated above the ordinary level of the great mass of their fellow citizens, to resist the impulse their high station gives them, to grasp at still greater powers, and prostitute those which they already possess.

Hence it has been the great exertion of all governments, who regard the rights and liberties of the people, and still must continue to be so, to watch over the conduct of the high and confidential officers of state, and guard against their abusing the powers reposed in them. For this purpose the mode of trial by impeachment was resorted to in very early times in that country from which we have derived most of our laws and usages. Near five hundred years ago, the representatives of the people in that nation felt themselves clothed with sufficient authority to check the abuses of power, in the highest officers under the crown, by calling upon them by impeachment to answer before the house of lords for their conduct, and punishing them for such acts as were unauthorised, illegal, or oppressive.

It was a wise and politic measure to have charges of this nature tried by the highest tribunal in the nation, that would not be awed by the great powers and elevated standing of the accused, nor influenced by the popular voice of the accusers, further than a strict regard to impartial justice would require. As I conceive, therefore, that pure and unstained impartiality ought to be the characteristic feature in the trial by impeachment; I shall for myself, and I conceive I may in the name of the representatives of the people, utterly disclaim any design or wish, that party considerations, or difference in political sentiments, should, in the remotest degree, enter into the investigation or affect the decision of this question. Yet in order to ascertain the motives that actuated the respondent, it may become necessary to notice the difference of political sentiments, so far as regarded the accused, and those who are stated to have been injured by his conduct, at the time those transactions took place, that gave origin to this prosecution.

In the view which I propose taking of this subject, I shall in the first place notice the provisions in the constitution relative to impeachment, and endeavor to ascertain the precise object and extent of such provision so far as the same may relate to the present case.

The first provision in the constitution on this subject, (art. 1st, sec. 3.) declares, that the Senate shall have the sole power to try all impeachments.

Here we discover the great wisdom of the framers of the constitution. The highest and most enlightened tribunal in the nation is charged with the protection of the rights and liberties of the citizens against oppression from the officers of government under the sanction of law; unawed by the power which the officer may possess, or the dignified station he may fill, compleat justice may be expected at their hands. The accused is called upon before the same tribunal, and in many instances, before the same men, who sanctioned his official elevation, to answer for abusing the powers with which he had been entrusted. Men who are presumed to have had a favorable opinion of him once, are to be his judges; no inferior or co-ordinate tribunal is to decide on his case, which might from motives of jealousy or interest be prejudiced against him and wish his removal. No, Sir, his judges, without the shadow of temptation to influence their conduct, are placed beyond the reach of suspicion.

The next provision in the constitution declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Here the constitution seems to make an evident distinction between such misdemeanors as would authorise a removal from office, and disqualification to hold any office, and such as are criminal, in the ordinary sense of the word, in courts of common law, and punishable by indictment. So far as the offence committed is injurious to society, only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment, and punishable only by removal from office, and disqualification to hold any office; but so far as the offence is criminal, independent of the office, it is to be tried by indictment, and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As, if an officer take a bribe to do an act not connected with his office, for this he is indictable in a court of justice only. Impeachment, therefore, according to the meaning of the constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner in which he performs the duties thereof; and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation, than of a criminal prosecution. And though impeachable offences are termed in the constitution high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer; and even treason and bribery can only be inquired into by impeachment, so far as the same may be considered as a violation of the duties of the officer, and of the oath the officer takes to support the constitution and laws of the United States, and of his oath of office; and not as to the criminality of those offences independent of the office. This must be inquired into and punished by indictment.

This position is strongly supported by the mode of proceeding adopted by this honorable court in cases of impeachment. You issue a summons to give notice to the accused of the proceeding against him; you do not consider his personal appearance necessary; you issue no compulsory process to enforce his personal attendance; and you pass sentence, or render judgment on him in his absence. But in all criminal prosecutions, compulsory process must issue at some stage of it to enforce the defendant's appearance; unless outlawry in England be considered an exception, which, it is believed, is not resorted to in this country, and his personal appearance is considered absolutely necessary; and in almost every case he must be present when sentence is pronounced against him. This construction of the constitutional provision appears to be absolutely necessary, to avoid the absurd consequence that would arise from a different construction; that of punishing a man twice for the same offence, which could not have been intended by the framers of the constitution. The nature of the judgment which you are bound to render, and not to exceed, appears also conclusive on this head. You can only remove and disqualify an individual from holding any office of honor, trust or profit. This cannot be considered a criminal punishment; it is merely a deprivation of rights; a declaration that the person is not properly qualified to serve his country. Hence, I conceive, that in order to support these articles of impeachment, we are not bound to make out such a case as would be punishable by indictment in a court of law. It is sufficient to shew that the accused has transgressed the line of his official duty, in violation of the laws of his country; and that this conduct can only be accounted for on the ground of impure and corrupt motives. We need not hunt down the accused as a criminal, who had committed crimes of the deepest die; and this honorable court are not authorised to inflict a punishment adequate to such crimes, if they had been committed and could be established. With this view of the meaning of the constitutional provision relative to impeachments, I shall proceed to examine the articles now under consideration, and the evidence given to support them. In the course of this examination, we apprehend, it will clearly appear, that the whole conduct of the judge in the several transactions, for which charges are alledged against him, *had its origin* in a corrupt partiality and predetermination, unjustly to oppress, under the sanction of legal authority, those who became the objects of his resentment in consequence of differing from him in political sentiments; turning the judicial power, with which he was vested, into an engine of political oppression. So completely, it is conceived, has this motive pervaded the whole of his judicial transactions now in question, that there is not a single act charged in the articles of impeachment, that is not strongly marked with manifest oppression, springing from political intolerance, under the mask of administering justice. This is the corrupt origin from which have issued all the evils complained of; this has for ages been the scourge of society; and it is all important, that in our country, which is yet in its infancy, when this poisonous germ cannot have taken deep root, it should be crushed in its embryo, and not permitted to gather strength by the sanction of high and superior authority.

In order to observe some arrangement in the investigation of this subject, I propose to consider, first, under one general view, the conduct of the judge on the trial of Fries for treason, as stated in the charges contained in the first article; and,

Secondly, I will consider also under one general view, the conduct of the judge in the trial of Callender for a libel, as stated in the several charges contained in the second, third, and fourth articles of the impeachment. The fifth and sixth articles I will leave to be supported by those gentlemen associated with me in the management of this prosecution, who have been more conversant than myself with the laws of, and practice of the courts, in Virginia, upon which the support of these articles materially depend; and the remaining articles, to wit: the seventh and eighth, will be chiefly relied upon by me, to shew the spirit of oppression, partiality and political intolerance, that marked the whole judicial career of the judge, during the course of these transactions, thereby establishing more clearly the motives that actuated his conduct in the several acts charged as misdemeanors in the articles already noticed and relied upon.

In examining the first article, I shall rely upon the following positions:

First, that under the eighth article amendatory of the constitution of the United States, (referred to in this article of the impeachment) which secures to the defendant in all criminal prosecutions the assistance of counsel, he is thereby entitled to the *right* of such counsel being heard in his defence by the court, before a decision be made and declared against him on the law arising in his case, and also, that such counsel should exercise their professional rights in making his defence, according to the known and established laws and usages of the nation, free from any arbitrary controul or restriction whatever.

Secondly, that in the trial of Fries for treason, the judge did, by delivering an opinion in writing on the law arising in the case, before counsel were permitted to be heard in his defence, effectually deprive the defendant of any benefit from the assistance of counsel.

Thirdly, that he imposed on the counsel engaged for the defendant, arbitrary restrictions and controul, in the exercise of their professional rights, unknown to, and unauthorised by the laws and usages of the nation, which compelled them to relinquish the defence of the prisoner.

Fourthly, I will then insist that this conduct was such a flagrant violation of his duty, as could only spring from corrupt motives, and a disposition to oppress those who became the objects of his resentment.

With regard to the first position, that counsel ought to be permitted to be heard for a defendant before a decision should be declared against him; and also that the counsel ought to be protected in the exercise of their professional rights, according to the usages and practice of courts, it appears to me substantially supported by the constitutional provision already noticed, securing to the defendant the assistance of counsel, and to be a necessary consequence of that provision; and essential, in order to give it effect. For in the first place, as to the law, of what use would the assistance of counsel be to the defendant, if a decision of the law arising in his case should be deliberately made up by the court, committed to writing to give it more solemnity and effect, and delivered, or made known, before such counsel were permitted to be heard in his defence? What hopes could the counsel entertain of being able to convince a court, that an opinion, thus deliberately formed, and solemnly made known, was incorrect and ought not to have been given? Surely if the right to the assistance of counsel, secured to a defendant, means any thing, it must mean that he should have an opportunity through his counsel, to make his case known to the court, to explain the law arising thereon, and shew, as far as it could be done, that according to the true construction of the law applying to his case, or under which he is charged, he is not subject to its penalties; before their opinion be declared on the subject, while the mind of the court is unbiassed, open to conviction, and capable of duly weighing the arguments that may be advanced on either side. But when an opinion is deliberately declared, or made known, against a defendant before he is permitted to be heard by counsel, his case is prejudged, the character of the court is committed in a very great degree to support such opinion, the arguments of counsel cannot be expected to be heard by such a court, with impartiality and fairness, that go to prove such opinion to be erroneous; and under such circumstances, the aid of counsel is a mere name without a benefit; a form without substance. But again, if such counsel were subject to the arbitrary controul and restriction of a court, of every capricious and irritable judge; if they were not protected in the performance of their professional duties, so long as they acted within the laws of their country and the known usages and practice of courts, of what use would their assistance be to the accused, or what substantial aid could they afford him in making his defence? The counsel would have no rule to direct them in shaping their client's defence. When they had prepared to examine his cause in the manner heretofore usual in courts, and upon grounds, which they conceived most likely to establish his innocence and procure his acquittal, they might be stopped at the very threshhold of the defence, surprised with a new and unheard of mode of proceeding: presented with a digested and formal opinion upon the very points they intended to contest; and informed that in the remarks they might be permitted to make to the court, to shew that such opinion was not correct, they must confine themselves in their endeavors to establish the doctrine they might advance, to the producing of authorities of a certain description; and, must not extend their researches after decisions, on similar cases, beyond certain prescribed limits, as to time and the kind of decisions. Under such circumstances no counsel could render any substantial service to the accused; none would be found to submit to the tyranny of such a practice.

Further, it is conceived an universal rule of construction, that when a right is secured to any person, by a law, the means of acquiring the benefit of that right are thereby also secured to him. The constitution secures to the defendant in all criminal cases the assistance of counsel in his defence; the only means by which the benefits of that right can be obtained by such defendant, it is conceived, must be, by permitting counsel to be heard in his behalf, before his case is decided against him, and by protecting such counsel in the due performance of their professional duties. These rights are secured to counsel for the benefit of those for whom they are concerned, and whose interests they advocate; and not for their own advantage. And here it may be proper to observe, that though counsel may be considered in some respects as officers of the court, and in a certain degree subject to their control and direction; yet, it is certain, while they act within the line of their duty, and the known sphere of their action as counsel, their rights are as sacred as those of the court; and they are, in performing their professional duty in a certain sense, as independent of the court, as the court are of them.

The *second* position proposed to be established and relied upon, to wit, that the judge did, in the trial of Fries for treason, by delivering an opinion in writing on the law arising in the case, before counsel was permitted to be heard in his defence, effectually deprive the defendant of any benefit from the assistance of counsel, is in part a deduction from the preceding position and supported by it. The fact of the judge's delivering an opinion in writing, in this case, against the defendant, previous to permitting counsel to be heard in his defence, is admitted by the judge in his answer, and is also established beyond a doubt by the evidence of Messrs. Lewis, Dallas, Tilghman, and indeed of all the witnesses on the subject. No difference exists in the evidence of the different witnesses with regard to the written opinion being delivered before the cause was heard. The statement briefly is, that after the court met, the jury were called and many of them answered and appeared; the prisoner was (Mr. Lewis believes) in court; the counsel assigned the prisoner, had not all got to the bar; when the judge handed down, or threw on the clerk's table, several papers, each containing the opinion of the court on the law that was to decide the defendant's fate: one of these copies the judge said, was to be given to the counsel for the defendant; one to the attorney for the United States, and one to be delivered to the jury before they retired on the case. Some of the gentlemen about the bar began to copy these papers; Mr. Lewis, one of the counsel for the defendant, refused to receive or read it, declaring his hand should never be tainted by reading a prejudged opinion in any case, but especially in a capital one. The papers were subject to public inspection; the jurymen then might, and probably did, read the opinion. Thus the formal opinion of the court on the law, being made known to the jury before the case was heard, would bias their minds against the defendant, and render an impartial enquiry into his case next to impossible. The counsel had no hopes of changing an opinion thus deliberately and formally made up, and stamped with the solemnity of a written sentence; the judge by deciding the law seemed to have decided the facts also, as he must have assumed them as proved, in order to found his opinion upon them; and indeed the answer states that no doubts existed with regard to the facts, or evidence in the case on either side; the jury would, therefore, consider such opinion as a decision of the whole case, and would be prepared, so far as they could be influenced by the judge, to pronounce the defendant guilty, before they heard the cause examined, or even a syllable of the evidence. In a case thus situated, how could the defendant be said to enjoy the benefit of the assistance of counsel; when the whole case was decided before counsel was permitted to be heard; and no ground left for them to occupy. This mode of proceeding, adopted by the judge, was, therefore, a direct violation of the constitutional right secured to the defendant, of having the assistance of counsel in all criminal prosecutions; for it cannot be pretended that to hear counsel after the cause was substantially decided, would be complying with the true intent and meaning of the constitution; for this would render the provision totally futile and useless, and would be calculated only to deceive unfortunate defendants, who might place reliance upon it. The judge, in delivering this opinion, introduced a mode of proceeding