

(BY PERMISSION.)

HIGH COURT OF IMPEACHMENT.

TUESDAY, February 12.

Evidence on the part of the United States.

[CONCLUDED.]

George Read sworn.

Mr. Randolph. You are called to state what took place at a circuit court held at New Castle in the state of Delaware, in June 1800, at which Mr. Chase presided.

Mr. Read. Several years have elapsed since the transaction took place, and I may not state the language used on that occasion; I shall however state the substance. The transaction of which I am called to give evidence took place at a session of the circuit court held at New Castle in the state of Delaware, in the month of June 1800. At that court Samuel Chase, one of the associate justices of the supreme court of the United States, presided, and Gunning Bedford, district judge of the district of Delaware, was associated with him. Mr. Chase, as was the usual practice, delivered a charge to the grand jury on the first day of the term, and they retired to their room. After remaining there some time, they returned into court, and upon the questions being asked them by the clerk, whether they had found any presentments or bills of indictment, they answered in the negative. Upon receiving this answer, judge Chase observed as nearly as I can recollect, that he had been informed that a highly seditious temper had manifested itself among a certain description of people in Delaware, particularly in New Castle 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 here the judge paused and said, "but perhaps it may be afflicting too much to mention his name, but it becomes your duty, gentlemen, to enquire into it." Several of the grand jury then made a request to the court to be discharged, and assigned for a reason that some of them were farmers, and that it was the time of harvest. The judge observed, that the business to which he had called their attention was of a most urgent and pressing nature, and that he could not discharge them until the next day, when further information would be given them on the subject to which he had referred them. The judge then addressing himself to me as the attorney of the district, asked whether I had any criminal charge to prefer. I replied that none had come to my knowledge, and that I believed none would accrue; but certainly said the judge to me, "you might make some discoveries, by making proper researches, have you not some persons in this state who have been libelling the government, or the administration of the government of the United States." I am told Sir, (continued the judge) that there is a printer in the town of Wilmington, who publishes a most scurrilous paper; have you not two printers in that town? I told him that I believed there was. The judge replied, "one of them is the seditious one; I think it a part of my duty and he shall be taken notice of—and it is your duty Mr. attorney to examine into affairs of this nature. The times require that this seditious temper of the press should be discouraged and suppressed. Can you not procure a file of this printer's papers, and between this and to-morrow morning ascertain whether he has not been guilty of libelling the government. This must be done. I think it is your duty." I was rather displeased at this, and mentioned to the court that I believed I was acquainted with the duties of my office, and was willing to discharge them. I mentioned, that I was not in the practice of hunting up offences, that I had not a file of the printer's papers, but that if a file was procured me, I had no objection to examine them, and communicate with the grand jury on the subject. The judge said, he was satisfied with that, and observed, that he could not discharge the grand jury, but they must attend the next day, at the usual hour. The judge then directed that a file of the papers should be procured for me, and these I under-

stood to be the papers filed, "The Mirror of the Times, and General Advertiser." By whom those papers were procured I do not recollect. I examined them in a cursory manner, because I was frequently interrupted during the day, and I did not discover any libellous matter coming within the provisions of the sedition act. On the next morning when the court met, I sent the file of papers to the grand jury, believing it to be the wish of the judge. At the request of the grand jury I waited on them in their room—on my entering I was addressed by their foreman, and my attention directed to a publication in the "Mirror," reflecting on the character and conduct of judge Chase. He observed there had been a difference of opinion among the jury, whether it was an indictable offence or not. I informed the jury that the publication did not come under the sedition law, and was only a libel punishable at common law; and that judge Chase himself had determined in the case of the United States against Worrall, for an attempt to bribe Mr. Coxe, the commissioner of the revenue—that the circuit courts of the United States had no cognizance of offences committed at common law; and that therefore, they could not present the printer for that publication. Nothing further passed in the room. The bundle of papers were brought into court and laid on the table. Judge Chase then asked me what had been done. I then submitted to judge Chase the conversation which I had with the jury, and the observations that I had made to them, in which he acquiesced, and the affair was passed over in an affable and polite manner on the part of judge Chase.

Q. Do you recollect to whom judge Chase addressed himself when he requested that a file of the papers might be procured?

A. I do not recollect.

James Lea, affirmed.

Mr. Rodney. Will you please to relate whether you were summoned by the marshal of Delaware, and served as a grand juror at May term 1800, and what took place at that time.

Mr. Lea. I was summoned by the marshal and did serve as a grand juror at that term. After receiving the charge from judge Chase we retired to our room, and there being no business before us, we returned into court. The usual question was then put to us by the court, and answered in the negative. After some time, judge Chase informed us, that he had been informed, that a seditious temper had manifested itself among a certain description of people in New-Castle county, and particularly in Wilmington, at which place lived a seditious printer who edited a paper called, the "Mirror of the Times and General Advertiser," and was continually in the habit of abusing the president, and it was our duty to enquire into it. He said, that he could not discharge us on that day, and that we must make diligent enquiry into the subject which he had mentioned. Several of the jury informed him, that they had business of an urgent nature, and wished to be discharged. The judge replied, that the business which he had mentioned was of an important nature, and that he could not discharge us until the next day. Some conversation then passed between him and Mr. Read, which I do not recollect, and we were discharged until the next day. We returned to court the next day, and having been called over by the clerk we retired to our room. A file of the papers was produced and examined, we found nothing seditious in it, except something written against judge Chase, which the attorney when being sent for, informed us, did not come under the sedition law. We returned into court and some conversation ensued between the judge and the attorney, and we were then discharged.

Q. Are you certain that judge Chase mentioned the title of the paper?

A. I recollect it perfectly.

James Lea, cross-examined by Mr. Martin.

Q. How long was the jury up in their room on the first day?

A. About an hour, on the second day we were longer.

Q. At what time does your harvest commence in Delaware?

A. It was our hay-harvest, which commences in the month of June.

Question by Mr. Nicholson.

Q. Is your hay-harvest considered an important one?

A. It certainly is.

John Crew, sworn—examined by Mr. Rodney.

Q. Was you present at the circuit court held at New-Castle, in June 1800?

A. I was not in court on the first day. On the second day I was in court. While I was there, the judge asked the attorney whether or not the grand jury had found any thing in a file of papers which was laying on the table, worthy of presentment. The attorney answered, that they had found nothing but a piece against the judge himself. The judge replied, that that could not be taken notice of, and shortly after he discharged the grand jury.

John Montgomery sworn.

Mr. Randolph. You are called to give evidence concerning a charge delivered by Mr. Chase to a grand jury at Baltimore, in May 1803.

Mr. Montgomery. It will not be expected that I shall detail the charge mentioned by the manager just set down, in the language in which it was delivered by judge Chase. It was delivered at May term, 1803. I was not a member of the bar, but being present, I took a chair near the judge, by the side of judge Dorsey. The judge addressed the grand jury, and it appeared to be from a written paper which he had before him; he proceeded on in the usual manner, to give in charge to the jury the various duties to be performed by them. After he had finished this part, he mentioned, that he would give some few observations to them before they retired; that they flowed from a wish for the welfare of the community. He stated, that it was important that the people should be truly informed at that crisis, that falsehood was more easily disseminated than truth, and that the latter was attended to with reluctance against popular prejudice. I cannot pretend to state the sentiments of the judge in the order in which they were delivered, but I can state the substance. The judge said, that the present administration was weak, relaxed, and not adequate to the discharge of their functions, and that their acts flowed not from a wish for the happiness of the people, but for a continuance in unfairly acquired power; those last words made a strong impression on my mind. When the judge called the attention of the jury, I was prepared to something extraordinary from him, for I had heard his farewell address to the grand jury at Annapolis. The judge stated, that a violation of the constitution had taken place, by the passage of the act of congress which repealed the judiciary system, and removed the sixteen judges from office, and that congress had made a violent attack upon the independence of the judiciary. The judge also found fault with the law which had been passed by the legislature of Maryland in the year 1801, which went to remove the district judges of Maryland; he said, these acts were a severe blow against the independency of the judiciary. He said, that since the year 1776 he had been an advocate for a republican form of government, that it was his wish that freemen should be represented by persons elected by men who had an interest with a property in, and an attachment to the community. I believe he quoted the language of the bill of rights, he found fault with the law which had passed the legislature of Maryland, which is styled, the universal suffrage law; and said, that this also affected the independency of the judiciary, and I think, he explained it in this manner—that every free white male citizen, under the law, possessing the qualifications of age and residence, although he should not have an interest, or property, or an attachment to the community, being suffered to choose their legislators, and the judiciary being dependent on the legislature for their salary and continuance in office, few men of character and abilities would accept the appointment of judges on such tenures. He stated, that these measures were destructive of the happiness and welfare of the community, that they would have a tendency to sink the government into a mobocracy, the worst of all possible governments; he stated, that the framers of the constitution of Maryland were men of patriotism and ability, and that the names of some of them were on the journals of congress, and on the journals of the convention of Maryland, that ratified the constitution of the United States. And that the sons of some of those men were the chief supporters of these destructive measures. He stated, that where there were equal laws and equal rights there was freedom, but where the administration of laws was partial and not certain, the people were not free and that we were approaching to that state of things. He mentioned, that there was but one act remaining to be done, which was the law which had passed the legislature of Maryland to change the constitution, and which was to be approved, or rejected by the succeeding legisla-

ture, which went to abolish the two superior courts of Maryland, and then there would be nothing in the constitution worthy of care or preservation. At the conclusion of his charge, the judge called on the grand jury to pause, and when they returned home, to use their utmost endeavors to prevent these impending evils and save their country; that the people had been misled by misrepresentation, falsehood, art and cunning. That by correcting these errors, the threatened evils might be averted. I have read the answer of judge Chase, and will take this opportunity of stating a fact contradictory of a part of it. It is where the judge says, that at the succeeding legislature of Maryland, the law for abolishing the two superior courts of Maryland was abandoned by common consent. It is true, that the law was abandoned by common consent, but not for the reasons assigned by the judge in his answer. The reasons of the legislature were

Mr. Harper. I presume the witness cannot be permitted to state the reasons of the legislature. He may state his own reasons, but I cannot suppose that he is acquainted with the reasons of the legislature.

The President. The reasons of the legislature of Maryland have no connexion with the question before the court, and is not proper evidence to be given to them.

Questions by Mr. Nicholson.

Q. When judge Chase inveighed against the law of Maryland, which had abolished the offices of the district judges of Maryland, had the law gone into operation?

A. It had.

Q. Had the universal suffrage law become a part of the constitution?

A. It had.

Q. Was the whole of the charge written or only the latter part of it?

A. The judge appeared to deliver the whole from a written paper. I however had not my eyes continually on him. I was a member of the legislature of Maryland in the year 1801, when the law passed, which removed the district judges and draughted the bill. I was also a member of the legislature, and draughted the details of the universal suffrage law; and I was one of the committee that draughted the bill which contemplated the abolition of the two superior courts of Maryland. I therefore considered myself pointed at, and whenever I looked round, I could see the eyes of the audience fixed upon me. While I was looking round, the judge might not have read from the paper. I did not commit the charge immediately to writing. I had some conversation with Samuel Harrison Smith, the editor of the National Intelligencer, who informed me, that he had taken no notes of the charge. I said that when I returned home, I should commit to writing what I recollected of it. Accordingly when I returned home in about ten or twelve days, I made a statement of it and sent it to the editor of the Baltimore American, and it was published in his paper.

John Thompson Mason.

Mr. Randolph. We wish you to relate such circumstances as came under your observation, in relation to the charge delivered by Mr. Chase at Baltimore, in the month of May, 1803.

Mr. Mason. I was present when a charge was delivered at that time by judge Chase. I came into the court late, but was present during the delivery of it. I have an imperfect recollection of the charge. I had not been in Baltimore for two years before. The court-house was very full, and a number of my acquaintances pressed thro' the crowd to exchange civilities with me. I only attended to those parts of the charge, when my attention was not taken up with my friends. I do not think that I can charge my recollection with but three great points in the charge. The first was a pretty strong and censorious animadversion upon the repeal of the judiciary system by congress, and it was spoke of as a measure calculated to destroy the independency of the judiciary. The second was the alteration of the constitution of Maryland, with respect to universal suffrage. Judge Chase spoke of this measure, as calculated to sap the foundation of the government. The third was this. An attempt had been made to change the judiciary system of Maryland, and a law had passed one legislature and it required the sanction of another to make it a part of the constitution, which abolished the two superior courts of that state. He spoke of this amendment as dangerous in its nature, and that if carried into effect would so injure and deface the constitution, as to leave little or

nothing in it worthy of preservation. He concluded his remarks in an earnest recommendation to those to whom he addressed himself, to prevent the repassage of the latter act, so as to give it validity. There were in court, at least two gentlemen, whose fathers had been members of the Maryland convention who framed their constitution. Judge Chase observed, that it was a subject of peculiar concern to him, to see some gentlemen engaged in demolishing that fair fabric which their fathers in conjunction with him, had so much earnestness in erecting. There is one point of fact in which I differ from the witnesses who last gave testimony. Judge Chase did deliver a written charge, yet I have it on my mind, that he made several extempore remarks, which I considered as an enlargement on the written charge.

Question by Mr. Bayard, a member of the court.

Q. Did the witness hear any expressions of the judge, about the character of the present administration?

A. I do not recollect to have heard any thing of the kind.

Samuel Harrison Smith, sworn.

Mr. Nicholson. Please to state what you know relative to the charge delivered to the grand jury at Baltimore.

Mr. Smith. After a definition of the offences cognizable by the grand jury, judge Chase said he hoped he should be pardoned for making a few additional observations. He had, he remarked, been uniformly attached to a free republican government, and had actively participated in our revolutionary struggle to maintain it. He still remained attached warmly to the principles of the government, then established. Since that period however, certain opinions had sprung up which threatened with ruin the fair fabric then raised. It had been contended that all men had equal rights, derived from nature, of which society could not rightfully deprive them.— This he denied. He could conceive of no rights in a state of nature, which was in fact a creature of the imagination, as there was no condition of man in which he was not, under some modification, subject to a particular leader, or particular species of government. True liberty did not in his opinion consist in the possession of equal rights, but in the protection by the law of the person and property of every member of society, however various the grade in society which he filled. Nor did it consist in the form of government in any country. A monarchy might be free, and a republic a tyranny. Wherever the laws protected the person and property of every man, there liberty existed, whatever the government was. Such said he is our present situation. But much I fear that soon, very soon, will our situation be changed. The great bulwark of an independent judiciary has been broken down by the legislature of the United States, and a wound inflicted upon the liberties of the people which nothing but their good sense can cure.—(Judge Chase here went into an assertion of the right of the judiciary to decide on the constitutionality of laws.) He then adverted to the proceedings of the legislature of Maryland. He commented on the wisdom and patriotism of those who had framed the constitution of that state. That wisdom and patriotism had never conceived liberty to consist in every man possessing equal political rights. To secure property the right of suffrage had been limited. The convention had not imagined, according to the new doctrine, that property would be best protected by those who had themselves no property. The great rampart established in the limitation of suffrage was now demolished by the principles of universal suffrage engrafted in the constitution. In addition to this, a proposition was now submitted, whose ratification depended upon the next legislature, and which if ratified, would destroy the independence and respectability of the judiciary, and make the administration of justice dependent upon legislative discretion. If this shall, in addition to that which establishes universal suffrage, become a part of the constitution, nothing will remain that will be worth protecting. Instead of being ruled by a regular and respectable government, we shall be governed by an ignorant mobocracy. When he reflected on the ruinous effects of these measures, he could not but blush at the degeneracy of the sons, who destroyed the fair fabric raised by the patriotism of their fathers.

Question by Mr. Bayard.

Q. Did you hear any thing relative