

HIGH COURT OF IMPEACHMENT.

Evidence on the part of the Respondent continued.

David Robertson *cross-examined* by Mr. Randolph.

Q. Did you see any other consultation between the judges than you have mentioned?

A. I did not observe more.

Q. Have you not for a long time been an attorney and also a professor?

A. I have practiced law for more than fifteen years, and am professor in two districts, having criminal jurisdiction.

Q. What is the mode of proceeding in criminal cases, not capital?

A. Most of the misdemeanors which are committed in those districts are assaults and batteries. The first process is a summons, and upon the return of that, if the party does not appear, then a *capias* issues. I do not recollect but two cases when imprisonment was the punishment and the parties were in court. One of them was a conspiracy to poison and the other an attempt to burn a house, and both were punished with fine and imprisonment.

Q. When the summons is issued, when is it returnable?

A. To the next court.

Q. Have you ever known an instance when a party was ruled to trial at the first term?

A. I have known cases of felony tried immediately after the presentment was found.

Q. Have you known any case less than felony so tried?

A. I never have.

Q. Did you hear any offer, on the part of the court, to postpone the trial of Callender?

A. I came into court at the conclusion of the last motion for a continuance, I therefore did not hear it.

Q. Is it in the power of the court to issue what process they please?

A. I not only think it in the power, but I think it the duty of the court, to issue what process they conceive to be most proper.

Q. In those two cases which you have mentioned, was there any motion to continue the causes?

A. I do not recollect that there was.

Q. Did the parties appear by counsel?

A. They did.

Q. In what manner were they proceeded against?

A. The one was proceeded against by an information and the other by indictment.

The court then adjourned.

MONDAY, February 18, 1855.

The court being called as usual, Mr. Randolph said he wished to *cross-examine* William Marshall.

William Marshall.

Q. Have you ever known an instance of a court's adjourning for more than from day to day?

A. I have never known the circuit court to adjourn longer but once, and that was from a Tuesday to the Saturday following. The gentlemen of the bar were then engaged in the superior court in Richmond, and the adjournment took place to accommodate them. I have never known an instance of an adjournment taking place and another court being held in the intermediate time.

*Testimony* by Mr. Harper.

We have heard much of the political characters of a number of gentlemen; what was the political character of Mr. Nelson, the attorney, at the time Callender was tried?

A. He was opposed to the then administration.

Q. Have you known instances where the courts have decided, before judge Chase went to Richmond, that the State laws did not govern in the manner of assessing the fine?

A. There had been two instances of indictment before the trial of Callender, one before Judge Iredell and the other before Judge Wilson, and they both decided that the court would assess the fine.

Q. In what manner did they mention this?

A. The jury were about to be sworn, and the State law was mentioned, but Judge Wilson immediately declared that it was the province of the court to assess the fine. There was no verdict in this case, but there was, in the case in which Judge Iredell presided, a general verdict of guilty, but the judgment was afterwards arrested for some defect in the indictment.

Q. Did the counsel contend for the right of the jury to assess the fine?

A. The point was mentioned by the counsel, but was not argued.

Q. Are you not prosecutor of the court held in Richmond?

A. I am.

Q. Have you not known a *capias* to have issued in cases of misdemeanors, and the cause tried at the first term?

A. I recollect a *capias* once to have issued, but the cause was not tried at the first term. I have repeatedly tried cases of misdemeanors at the first term.

Q. Did you try any of them when a motion was made for a continuance?

A. Generally when a motion was made for a continuance I suffered it to take place; but I never considered it as a matter of right.

Q. Is the court you speak of created by an act of the legislature?

A. It is.

Q. Do you recollect an instance where a motion was made for a continuance, and yet the case tried at the first term?

A. I do, it was the case of a man who was presented for receiving a hoghead of tobacco out of a dray driven by a negro, a motion was made for a continuance, but it was refused, and the jury fined him one hundred dollars, and the court sentenced him to be imprisoned for six months.

James Winchester *examined* by Mr. Harper.

Q. Is it not the practice in Maryland to adjourn courts?

A. It has been a constant practice ever since I have been acquainted with the courts for them to adjourn to any time they thought proper. I was a short time clerk to the circuit court of Maryland; I was afterwards a member of the bar, and, since the year 1798, have been district judge, and I have never heard their right to adjourn disputed. The state courts of Maryland are in the constant practice of adjourning.

Q. Do they try causes at the adjourned courts?

A. Certainly they do; but I have no recollection of seeing a criminal tried at one of them.

Q. Do you not know that judge Chase once adjourned the court in Maryland and went to hold a court in Delaware?

A. I think I recollect that he once did.

Question by Mr. Key.

Was there not an adjournment of the court from May to December?

A. There was.

Question by Mr. Randolph.

Have you ever known any other of the judges of the circuit court to do this, except judge Chase?

A. I do not recollect.

William Rawle *examined* by Mr. Harper.

Q. Is it not the practice for the circuit courts to adjourn?

A. The first time I recollect the subject to have been discussed was when Mr. Jay, then chief justice, presided. Some occasion produced a wish for an adjournment. The judges called me up to the bench and requested me to examine whether they had the power to do it. I accordingly examined the act of congress and told the court that in my opinion they had a right to adjourn, as the length of their session was not limited by law, and both the judges were of the same opinion. The next instance that I remember, was in the year 1795, when the trials of some of the insurgents lasted until 3 or 4 o'clock in the morning and the court did not meet the next day. In the year 1804, on my motion, judge Washington adjourned the court from May until some day in July.

Question by Mr. Hopkinson.

Was it not contemplated to adjourn the court last summer until January?

A. It was contemplated, provided the fever should be in Philadelphia.

Mr. Harper. Previous to our examining witnesses to prove the practice of issuing *capias* in Virginia, I must do justice to Mr. Nicholas. I stated that we should be able to prove that he ordered a *capias* in a case not capital. The record which I have received does not warrant that position. We will now call Mr. Edmund I. Lee to show what has been the practice in that part of Virginia, where he practices.

Edmund I. Lee *examined* by Mr. Harper.

Q. What is the practice in Virginia with respect to the issuing of process?

A. I have practiced law in Virginia for nine years. My practice has been confined to the upper counties in that State. I have never been public prosecutor; but whenever I have been engaged in a criminal case, it was on the side of the defendant. In those courts, the process in cases not capital, and where the party is not proceeded against by way of indictment, is to issue a summons. There are some offences which are tried solely by the court, without the intervention of a jury, such as profane swearing and Sabbath breaking. When the grand jury presents an offence, in which the fine does not exceed five dollars, a summons issues. There are some offences which may be prosecuted in the district courts, where the penalty does not exceed 20 dollars, there a summons issues. There are some proceeded against by way of information, and there a summons issues; but in the courts in which I practice, I have never known a summons to issue for the party to appear and answer to an indictment for any offence. The practice is, when a person is presented for an indictable offence, for the attorney to send up an indictment, and upon its being returned a true bill, a *capias* is ordered to issue upon the indictment. I have had occasion to make the point, but the courts have universally determined that under the words of the law, "other proper process," they had the power to award a *capias*.

In the district courts I have known a *capias* to issue in the first instance on an indictment, for an assault and battery.

Q. Has not the circuit of the district of Columbia, sitting in Alexandria, when the laws of Virginia are in force,

determined that a *capias* was the proper process?

A. The court did so to determine and Mr. Mason, the prosecutor, has uniformly issued a *capias* on all indictable offences.

Q. Is not a *capias* the only mode of arrest in Virginia?

A. I have never known any other.

Q. Where did Mr. Nelson, the late attorney, of the district of Virginia, reside?

A. He resided in York county.

Edmund I. Lee *cross-examined* by Mr. Randolph.

Q. Did you ever know a *capias* to issue upon a presentment?

A. I never did.

Q. At what time is a *capias* returnable?

A. The next court.

Q. Is bail demanded?

A. It is.

Q. Have you been much engaged in criminal prosecutions?

A. Only in the county courts.

Q. Did you ever hear of a bench warrant in Virginia?

A. I never have.

Q. Have you ever known a man to be taken up on a magistrate's warrant and held to bail?

A. I have in cases of assault and battery.

Gunning Bedford *sworn and examined* by Mr. Harper.

Q. Judge Bedford, was you on the bench with judge Chase, at a circuit court held at New Castle, in the State of Delaware, in June 1800?

A. I was present and sat as one of the judges on the 27th and 28th of June, 1800, at the circuit court held at New Castle, at which court judge Chase presided.

Q. What were the circumstances which took place at the court?

A. On the morning of the first day of the court, I believe, I arrived at New Castle, about half an hour before judge Chase. The court met, and the grand jury being charged by judge Chase, retired to their room. After being there about half an hour, they returned into court, and being asked by the clerk whether they had any presentments or bills of indictment, they answered in the negative. The court then called upon the attorney to know whether he had any business to lay before the grand jury, and the reply was that he had none. The grand jury then asked to be discharged. Judge Chase observed that it was not usual to discharge the jury so soon, and turning round immediately to me, he said, "Mr. Bedford, what is your usual practice here, with regard to discharging grand juries?" I replied that it depended on the business which they had to do. Judge Chase then addressed himself to the grand jury and said, "but, gentlemen, I have been informed that you have in this State a seditious printer who is in the constant habit of abusing the government. His name is—but perhaps I may do injury to the man by mentioning his name. Have you ever attended to this subject?" The grand jury answered that they had not.

Judge Chase observed that it was their duty to enquire, as he had given them the seditious law in charge, and if there was any truth in what had been told him it was their duty to enquire into it. Judge Chase further observed, that it was high time that these seditious printers should be corrected, that the happiness, honor and prosperity of the country depended on it. He then asked the attorney whether he could procure a file of the printer's papers. Some person at the bar observed that he could. The judge then asked Mr. Read whether he would look over the file and see, by the next morning at ten o'clock, whether there was any thing in them. Mr. Read replied that he would.

Judge Chase then told the grand jury that they must attend next morning at ten o'clock. They complained at not being discharged and said that it was a busy season, but the judge said that the business about which he had spoken was important and he could not discharge them. Other business was then done and the court adjourned. On our way to our lodgings, I observed to judge Chase, "why my friend, I believe you do not know where you are, the people in this place are not well pleased with the seditious law." Judge Chase replied, "my dear Bedford, no matter where we are or among whom we are, we must do our duty." We went into court the next day and the grand jury after being called over retired to their room. In about an hour they returned and observed that they had made no presentment. Judge Chase then asked the attorney whether he had found any thing in the file of papers, who replied that he had found nothing except a piece against the judge himself. Judge Chase replied, "my shoulders are broad enough and I can bear any thing against myself, but where there is a violation of the laws, then will I interfere and have the offender punished." The grand jury were then immediately discharged.

Q. Did judge Chase say any thing about a seditious temper being manifested in Delaware, among a certain description of people?

A. I have no recollection of any thing of that kind. I have turned my attention to the subject ever since I saw the deposition of Mr. Read, which was taken last

winter for the use of the house of representatives, but I cannot recollect any thing of it. The conversation which took place on the day of the transaction between judge Chase and myself, makes me believe that I could never have heard those expressions, because if I had I should not have told him that I believed he did not know where he was, because those expressions would have shown that he did. I saw a publication in the "Mirror of the Times," (the paper which had been examined by the attorney) on the fourth of July 1800, which contained a statement of the transaction. I thought the facts were much exaggerated, but there was not one word in the publication concerning the "seditious temper," which has been mentioned by Mr. Read.

Q. Was there any commanding in the manner of judge Chase to the attorney?

A. There was more the usual manner of a court to the prosecutor.

[To be continued.]

FARMER BONAPARTE.

FROM A LONDON PAPER.

Since Mr. Pitt has turned Farmer, the Chief Consul has also given his attention to agricultural pursuits; but he has not so fairly obtained his farm or followed his business. Mr. Pitt rents his premises, & we make no doubt he will pay the rent like an honest man; but Bonaparte entered upon his by force, pretending he was the rightful heir. At a time when the children of the family to which the estate belongs were quarrelling about the conducting of it, it having been grossly mismanaged, and in danger of falling into the hands of foreigners, Bonaparte stepped forward, assisted by some soldiers, boasted of his fortune, terrified the owners with dread of his witchcraft, and pretending they had granted him possession, drew up for himself a lease for ten years, during which time he engaged to put the farm in the best possible state of repair.

He immediately set about hedging and ditching, but in banking he was not very successful. He planted the hedges with *Legislative* and *Tribunate* shrubs; and apparently gave them a good root in the earth; but he has since killed their growth. He cut a *Senate* ditch, while it was to drain the lands of waters that might do mischief, was also to form a reservoir of that most necessary of all articles, occasionally to refresh and revivify the plants that might be in a course of vegetation. In this farm-yard he was equally industrious. He did not turn off all the old servants, but keep such of them as he thought would be useful. He resolved to become a considerable breeder. His *Sheep* he fattened with *hope*, which greatly improved them for *fleece*; but his most favorite scheme was to procure a cross breed in his pigs, between the *Royalist Pigs* and the *Jacobin Pigs*. From this he expected admirable *pork*, for the support of his own table; but although both have fed with eagerness on the food he has thrown to them, the breed has not succeeded. He has lately shown very considerable skill in keeping quiet his own live stock by laying a trap for a Fox, once the dread of all such farmers as Bonaparte, but which now goes perfectly tame.

The first thing he did in his field practice was to enclose the common land, telling the poor tenantry that by surrendering their rights to him, they should be better provided for; arrowed all over their little gardens, rooted out every little privilege, and moved down ever blade of *free grass* to which any one could lay personal claim. The parson of the parish called Liberty of the Press, preaching against this cruel conduct, was chained and sent away, and another parson appointed, who preaches only in favour of the Chief Consul.

Farmer Bonaparte began to manure his farm with the *dung of despotism*, from which sprung up a plentiful crop of *fears*. These produced large sums of money at market. He sowed many *fair promises* from which he reaped very considerable *hopes*; but they die so soon, that he finds it necessary to have half a dozen crops a year, in order to be provided with a stock. His *hopes*, though of so perishable a nature, are, however, the most marketable, and they are greedily purchased by all sorts of people; but it is thought they will not long be in such high request. He is very anxious to produce *morals*; but the soil is found unfavourable for their growth. With his utmost efforts he cannot cure the smut in wheat, it prevails throughout the farm. His corn is large in the ear, but it goes to chaff when brought for use. The large crop of *peace*, which he has lately reaped and exported over Europe, is full of insects, and of an injurious taint, inasmuch as to prove very detrimental to the health of those who feed on it. It has thrown Germany into a low fever, England into a raging fever, and the Swiss, Italians, Dutch, Spaniards, &c. it has thrown into a consumption. Their lungs are in such a state they cannot speak. This is said to be very much the consequence of the use of the *drill plough*, and of the enormous growth of those weeds called *poppies* by soldiers. At this present moment he is engaged in tearing flowers; and above all he is anxious to succeed in the cultivation of the *Corona Imperialis*, or Imperial Crown.

Having arranged his farm tolerably well he turned *carcase butcher*, and made a contract with Mr. Metax, in the plains of Marengo, of such vast profit, that he immediately took it into his head he

could purchase all the neighbouring farms. He bought Belgium, a piece of Germany, Savoy, &c. that his own farm might lay within a *vine fence*; but having purchased the Cisalpine farms, he claimed Piedmont, as his of right, and about this there had nearly been warm disputes—Bonaparte is a better lawyer than a farmer (except that he understands the science of *threshing*) and having gained most of the causes he has tried before Chief Justice Mays, very few will enter a suit with him. He is now taking possession of the farm of Switzerland, under pretence of shewing the owners how to cultivate their land. In draining the farm of Holland, as a friendly act to a neighbour, it is thought he will cut down all the *banks*, and carry away the whole stock. He lately carried a bill through the Parliament of Ratisbon, for dividing, allotting and inclosing certain commonable and waste lands lying in the parish of Germany, for the express purpose of helping himself to a slice in the first instance, & giving pieces to all his friends and dependants.

But of all objects that the nearest his heart is to obtain possession of the farm of Britain: If he had but this, he would be lord of the manor of Europe. Unfortunately for him, Farmer George is not inclined to part with his farm at any price, and there is an ugly ditch separating Bonaparte's premises from Britain, that deprives him of all hope of entering by any quirk or law suit. The owners of Bonaparte's farm and of the farm of Britain have tried their claims over and over again before Mr. Chief Justice Neptune, and it has always been decided that this ditch is, and for ever shall, be the boundary between the two farms. Farmer George and his ancestors have ever retained on their side Counsellors Heart Oak, Jolly Tar and Cannon, who have never failed to gain the cause in the most decisive manner. Bonaparte wishes for this farm exceedingly; as it produces money, ships, colonies, credit, commerce, of all of which he is in want. But as it is obvious that he has ten times more land and more live stock than he can manage to advantage, we trust his avarice will never be further gratified. He had better cultivate the land he has, than covet that of every thriving farmer in his neighborhood.

NEW YORK, April 1.

Through the politeness of a commercial friend, we are put in possession of Boston papers of the 27th ult. in anticipation of the mail. They furnish a very considerable addition to our marine list. By the John Adams, Wood, in 41 days from Liverpool, London dates were received at Boston, but they extend only a day later than those we have already published.

[Morn. Chron.]

The grand secret expedition is mentioned as being deferred for the present, but several regiments were to embark for colonial service. 1000 cavalry were under orders to embark at Portsmouth for the West Indies.

Two squadrons under Admirals Sir Thomas Graves, and Sir Charles Cotton, each of six sail of the line, had been dispatched in pursuit of the French fleet that had sailed from Rochefort. One of these squadrons had proceeded for the Mediterranean, the other for the West Indies. Rear Admiral Graves' Squadron is composed of the Foudroyant, of 80 guns, Captain Rod; Windfor Castle, 98, Captain Gould, Hero, 74, Gardner; Mars, 74, Ducl; Colusus, 74; Morris, & Bellerophon, 74, Loring. The particular destination of this squadron is not discriminated. The Rochefort French fleet is stated to consist of the Imperial, (or Coronation) of 120 guns, two 84's, three 74's as already mentioned—full of soldiers, and furnished with two hundred pieces of ordnance.

By the army estimates moved in Parliament, it appeared that the British force in regulars, militia, and fencibles is upwards of 300,000 men, with a volunteer army of: equal amount. If to these be added the naval force it will be found (says the London editor,) that Great Britain has a greater number of men in arms than any country in Europe, France not excepted.

The stocks continued stationary at about 59, and the loan for 1855, it was supposed would exceed twenty millions, sterling. Vast quantities of Spanish dollars continued to arrive in Spanish prizes, which were immediately conveyed to the bank or mint. It is stated to be a prevailing idea in London, that the proposition of peace made by Bonaparte, and mentioned in the King's Speech, was a striking manoeuvre of Talleyrand.

The West India fleet of 130 sail had sailed from Cork, having the 15th, 90th, and 96th, regiments on board. The fleet is conveyed by the *Proteus*, *Euryalus*, and *Dryad* frigates, and the *Elk*.

The menace of besieging Gibraltar was continued in Spain and France; and the rock had received a considerable reinforcement of troops. Lieutenant general Fox—brother of Charles J. Fox—now commands that fortress, which the British have held since the year 1704.

French squadron in the West Indies.

A gentleman who came passenger in the *Moxley*, captain Smith, which arrived here on Sunday, from St. Thomas—informing that on the 2d March a New York brig, from Trinidad, touched at St. Thomas, and brought information of the ac-