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HIGH COURT OF IMPEACHMENT

JUDGE CHASE's PLEA.

(Conninued from our last.)

With respect to the statutes of the United States, which he is charged with having prevented the prisoner's counsel from citing on the aforesaid trial, he denies that he prevented any act of Congress from being cited, either to the court or jury, on the said trial; or declared at any time, that he would not permit the prisoner's counsel to read to the jury, or to the court, any act of Congress whatever. Nor does he remember or believe, that he expressed on the said trial any disapprobation of the conduct of the circuit court before whom the said case was first tried, in permitting the act of Congress relating to crimes less than treason, commonly called the *sedition act*, to be read to the jury. He admits indeed that he was the and still is of opinion, that the said act of congress wholly was irrelevant to the issue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them. This opinion may be erroneous, but he trusts that the following reasons on which it was founded, will be considered by this honorable court, as sufficiently strong to render it possible, and even probable, that such an opinion might be sincerely held and honestly expressed:—1st, That Congress did not intend by the sedition law to define the crime of treason by "levying war." Treason and sedition are crimes very distinct in their natures, and [illegible] very different punishment; the former by death, the latter by fine and imprisonment. 2dly, The last sedition law makes a combination or conspiracy, with intent to impede the operation of any law of the United States, or the advising or attempting to procure any insurrection or riot, a high misdemeanor, punishable by fine and imprisonment; but a combination or conspiracy with intent to prevent the execution of a law, or with intent to raise an insurrection for that purpose, or even with intent to commit treason, is not treason by "levying war" against the United States, unless it be followed by an attempt to carry such combination or conspiracy into effect, by actual force or violence. 3dly, The constitution of the United States is the fundamental and supreme law, and having defined the crime of treason, Congress could not give any legislative interpretation or exposition of that crime, or of the part of the constitution by which it is defined. 4thly, The judicial authority of the U. States is alone vested with power to expound their constitution and laws.

And this respondent further answering saith, that after the above mentioned proceedings had taken place in the said trial, it was postponed until the next day, Wednesday, April 23d, 1800; when at the meeting of the court, this respondent told both the above mentioned counsel for the prisoner, "that to prevent any misunderstanding of any thing that had passed the day before, he would inform them, that although the court retained the same opinion of the law, arising on the overt acts charged in the indictment against Fries, yet the counsel would be permitted to offer arguments to the court, for the purpose of shewing them that they were mistaken in the law; and that the court, if satisfied that they had erred in opinion, would correct it; and also that the counsel would be permitted to argue before the petit jury, that the court were mistaken in the law." And this respondent added, that the court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the court, "that they did not any longer consider themselves as the counsel for John Fries the prisoner." This respondent then asked the said John Fries, whether he wished the court to appoint other counsel for his defence? He refused to have other counsel assigned; in which he acted, as this respondent believes and avers, by the advice of the said William Lewis and Alexander James Dallas; whereupon the court ordered the said trial to be had on the next day, Thursday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were sworn, they were, by the direction of the court, severally asked on oath, whether they were in any way related to the prisoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be punished? Three of them answering in the affirmative, were withdrawn from the pannel. The said John Fries was then informed by the court, that he had a right to challenge thirty-five of the jury, without shewing any cause of challenge against them, and as many more as he could shew cause of challenge against. He did accordingly challenge peremptorily thirty-four of the jury, and the trial proceeded. In the evening, the court adjourned till the next day, Friday, the 25th of April; when after the district attorney had stated the principal facts proved by the witnesses, and had applied the law to those facts, this respondent, with the concurrence of his colleague, the said Richard Peters, delivered to the jury the charge contained and expressed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his answer.

Immediately after the petit jury had delivered their verdict, this respondent informed the said Fries, from the bench, that if he, or any person for him, could show any legal ground, or sufficient cause to arrest the judgment, ample time would be allowed him for that purpose. But no cause being shewn, sentence of death was passed on the said Fries, on the 2d day of May, 1800, the last day of the term; and he was afterwards pardoned by John Adams, then President of the United States.

And this respondent further answering saith, that if the two instances of misconduct, first stated in support of the general charge contained in the first article of impeachment, were true as alledged, yet the inference drawn from them, viz. "that the said Fries was thereby deprived of the benefit of counsel for his defence," is not true. He insists that the said Fries was deprived of the benefit of counsel, not by any misconduct of this respondent, but by the conduct and advice of the above mentioned William Lewis and Alexander James Dallas, who having been, with their own consent, assigned by the court as counsel for the prisoner, withdrew from his defence, and advised him to refuse other counsel when offered to him by the court, under pretence that the law had been prejudged, and their liberty of conducting the defence, according to their own judgment, improperly restricted by this respondent; but in reality because they knew the law and the facts to be against them, and the case to be desperate, and supposed that their withdrawing themselves under this pretence might excite odium against the court; sooner had not been in opinion that the event of a conviction, which from their knowledge of the law and the facts, they knew to be almost certain, might aid the prisoner in an application to the President for a pardon. That such was the real motive of the said prisoner's counsel, for depriving their client of legal assistance on this trial, this respondent is fully persuaded, and expects to make appear, not only from the circumstances of the case, but from their own frequent and public declarations.

As little can this respondent be justly charged with having by any conduct of his, endeavored to "wrest from the jury their indisputable right to hear argument, and determine upon the question of law as well as the question of fact involved in the verdict which they were required to give." He denies that he did at any time declare that the aforesaid counsel should not at any time address the jury, or did in any manner, hinder them from addressing the jury on the law as well as on the facts arising in the case. It was expressly stated in the copy of his opinion delivered as above set fouth to William Lewis, that the jury had a right to determine the law as well as the fact: and the said William Lewis and Alexander James Dollars were expresly informed, before they declared their resolution to abandon the defence, that they were at liberty to argue the law to the jury. This respondent believes that the said William Lewis did not read the opinion delivered to him as aforesaid, except a very small part at the beginning of it, and of course, acted upon it without knowing its cotents: and that the said Alexander James Dallas read no part of the said opinion until about a year ago, when he saw a very imperfect copy, made in court by a certain W. S. Biddle.

And this respondent further answering saith, that according to the constitution of the United States, *civil officers* thereof, and no other persons, are subject to impeachment; and they only for treason, bribery, corruption, or other high crime or misdemeanor, consisting in some act done or committed, in violation of some law forbidding or commanding it; on conviction of which act, they *must* be removed from office; and may, after conviction, be indicted and punished therefor, according to law. Hence it clearly results, that no civil officer of the United States can be impeached, except for some offence for which he may be indicted at law; and that no evidence can be received on an impeachment, except such as on an indictment at law, for the same offecne, would be admissible. That a judge cannot be indicted or punished according to law, for any act whatever, done by him in his judicial capacity, and in a matter of which he has jurisdiction, through error of judgment merely, without corrupt motives, however manifest his error may be, is a principle resting on the plainest maxims of reason and justice, supported by the highest legal authority, and sanctioned by the universal sense of mankind. He hath already endeavored to shew, and he hopes with success, that all the opinions delivered by him in the course of the trials now under consideraion, were correct in themselves, and in the time and manner of expressing them; and that even admitting them to have been incorrect, there was such strong reason in their favor, as to remove from his conduct every suspicion of improper motives. If these opinions were incorrect, his mistake in adopting them, or the time or manner of expressing them, cannot be imputed to him as an offence of any kind, much less as a high crime or misdemeanor, for which he ought to be removed from office; unless it can be shewn by clear and legal evidence, that he acted from corrupt motives. Should it be considered that some impropriety is attached to his conduct, in the time and manner of expressing any of these opinions; he apprehends, that a very wide difference exists between such impropriety, the casual effect of human infirmity, and a high crime and misdemeanor for which he may be impeached, and must on conviction be removed from office.

Finally, this respondent, having thus laid before this honorable court a true state of his case, so far as respects the first article of impachment, declares, upon the strictest review of his conduct during the whole trial of John Fries for treason, that he was not on that occasion unmindful of the solemn duties of his office as judge;—that he faithfully and impartially, and according to the best of his ability and understanding, discharged those duties towards the said John Fries; and that he did not in any manner, during the said trial, conduct himself arbitrarily, unjustly, or oppressively, as he is accused by the honorable the House of Representatives.

And the said Samuel Chase, for plea to the said first article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said first article is alledged; and this he prays may be enquired of by this honorable court, in such manner as law and justice shall seem to them to require.

The second article of impeachment charges, that this respondent, at the trial of James Thompson Callender for a libel, in May 1800, did, "with intent to oppress and procure the conviction of the said Callender, overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial, because he had made up his mind as to the publication from which the words, charged to be libellous in the indictment, were extracted."

admits that he did, as one of the associate justices of the supreme court of the United States, hold the circuit court of the United States, for the district of Virginia, at Richmond, on Thursday the 22d day of May, in the year 1800, and from that day, till the 30th of the same month—when Cyrus Griffin, then district judge of the United States for the district of Virginia, took his seat in the said court; and that during the residue of that session of the said court, which continued till the day of June, in the same year, this respondent and the said Cyrus Griffin, held the said court together. But how far any of the other matters charged in this article, are founded in truth or law, will appear from the following statement;—which he submits to this honorable court, by way of answer to this part of the accusation.

By an act of Congress passed on the 4th day of May, A. D. 1798, it is among other things enacted, "That if any person shall write, print, utter or publish, or shall knowingly and wittingly assist and aid in writing, printing, uttering or publishing, any false, scandalous, and malicious writing or writings, against the President of the United States, with intent to defame, or to bring him into contempt or disrepute, such person, being thereof convicted, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment, not exceeding two years:" and "that if any person shall be prosecuted under this act, it shall be lawful for him to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel; and the jury shall have a right to determine the law and the fact, under the direction of the court, as in other cases," as in and by the said act, commonly called the *sedition law*, to which this respondent, begs leave to refer this honorable court, will more fully appear.

At the meeting of the last above mentioned circuit court, this respondent, as required by the duties of his office, delivered a charge to the grand jury; in which, according to his constant practice, and to his duty as a judge, he gave in charge to them, several acts of Congress for the punishment of offences, and among them, the above mentioned act, called the sedition law; and directed the said jury to make particular enquiry, concerning any breaches of these statutes or any of them, within the district of Virginia. On the 24th day of May, 1800, the said jury found an indictment against one James Thompson Callender, for printing and publishing, against the form of the said act of Congress, a false, scandalous, and malicious libel, called, "The Prospect before Us," against John Adams, then President of the United States, in his official character as President; as appears by an official copy of the said indictment, marked exhibit No. 4, which this respondent begs leave to make part of this his answer.

On Wednesday, the 28th day of the same month, May 1800, Philip Norbonne Nicholas, esq. now attorney general of the state of Virginia, and George Hay, esq. now district attorney of the United States, for the district of Virginia, appeared in the said circuit court as counsel for the said Callender; and on Tuesday the 3d of June following, his trial commenced, before this respondent, and the said Cyrus Griffin, who then sat as assistant judge.—The petit jurors being called over, eight of them appeared, namely, Robert Gamble, Bernard Mackham, John Barrell, William Austin, William Richardson, Thomas Tinsley, Matthew Harvey and John Basset; who as they came to the book to be sworn, were severally asked on oath, by direction of the court, "whether they had ever formed and delivered any opinion respecting the subject matter then to be tried, or concerning the charges contained in the indictment?" They all answered in the negative, and were sworn in chief to try the issue. The counsel for the said Callender declaring, that it was unnecessary to put this question to the other four jurymen, William Mayo, James Hayes, Henry S. Shore and John Prior, they also were immediately sworn in chief. No challenge was made by the said Callender or his counsel, to any of these jurors; but the said counsel declared, that they would rely on the answer that should be given by the said jurors to the question thus put by order of the court.

After the abovementioned John Basset, whom this respondent supposes and admits to be the person mentioned in the article of impeachment now under consideration, had thus answered in the negative, to the question put to him by order of the court, as above mentioned, which this respondent states to be the legal and proper question, to be put to jurors on such occasions, he expressed to the court, his wish to be excused from serving on the said trial, because he had made up his mind, or had formed his opinion, "that the publication, called "The Prospect before Us," from which the words charged in the indictment as libellous, were said to be extracted, but which he had never seen, was, according to the representation of it, which he had received, within the sedition law." But the court did not consider this declaration by the said John Basset, as a sufficient reason for withdrawing him from the jury, and accordingly directed him to be sworn in chief.

In this opinion and decision, as in all the others delivered during the trial in question, this respondent concurred with his colleague, the aforementioned Cyrus Griffin, in which none of these opinions have been considered as crimiual. He contends that the opinion itself was legal and correct; and he denies that he concurred in it, under the influence of any "spirit of persecution and injustice," or with any "intent to oppress and procure the conviction of the prisoner;" as is most untruly alledged by the second article of impeachment. His reasons were correct and legal. He will submit them with confidenoe to this honorable court; which, although it cannot condemn him for an incorrect opinion, proceeding from an honest error in judgment, and ought not to take on itself the power of enquiring into the correctness of his decisions, but merely that of examining the purity of his motives; will, nevertheless weigh his reasons, for the purpose of judging how far they are of sufficient force, to justify a belief that they might have appeared satisfactory to him. If they might have so appeared, if the opinion which he founded on them be not so palpably and glaringly wrong, as to carry with it internal evidence of corrupt motives, he cannot in delivering it have committed an offence.

This honorable court need not be informed, that it is the duty of courts before which criminal trials take place, to prevent jurors from being excused for light and insufficient causes. If this rule were not observed, it would follow, that as serving on such trials as a juror, is apt to to be a very disagreeable business, especially to those best qualified for it, there would be a great difficulty, and often an impossibility, in finding proper juries. The law has therefore established a fixed and general rule on this subject, calculated not to gratify the wishes or the unreasonable scruples of jurors, but to secure to the party accused, as far as in the imperfection of human nature it can be secured, a fair and impartial trial. The criterion established by this rule is, "that the juror stands indifferent between the government and the person accused, as to the matter *in issue*, on the indictment." This indifference is always, according to a well known maxim of law, to be presumed, unless the contrary appear; and the contrary may be alledged by way of excuse by the juror himself, or by the prisoner by way of challenge. Even if not alledged, it may be enquired into by the court of its own mere motion, or on the suggestion of the prisoner, and it may be established by the confession of the juror himself, on oath, or by other testimony.

But in order to shew that a juror does not "stand indifferent between the accuser and the accused, *as to the matter in issue*," it is not sufficient to prove that he has expressed a general opinion, "that such an offence as that charged by the indictment ought to be punished;" or "that the party accused, if guilty of the offence charged against him, ought to be punished;" or "that a book, for printing and publishing which the party is indicted, comes within the law on which the indictment is founded." All these are general expressions of opinion, as to the criminality of an act of which the party is accused, and of which he *may* be guilty; not declarations of an opinion that he actually is guilty of the offence with which he stands charged. It is impossible for any man in society to avoid having, and extremely difficult for him to avoid expressing, an opinion, as to the criminality or innocence of those acts, which for the most part, are the subjects of indictments for offences of a public nature; such as treason, sedition, and libels against the government. Such acts always engage public attention, and become the subject of public conversation; and if to have formed or expressed an opinion, as to the general nature of those acts, were a sufficient ground of challenge to a juror, when alledged against him, or of excuse from serving when alledged by himself, it would be in the power of almost every offender, to prevent a jury from being impannelled to try him, and of almost every man, to exempt himself from the unpleasant task of serving on such juries. The magnitude and henious nature of an offence, would give it a greater tendency to attract public attention, and to draw forth public expressions of indignation; and would thus encrease its chance of impunity.

To the present case this reasoning applies with peculiar force. The "Prospect before Us" is a libel so profligate and atrocious, that it excited disgust and indignation in every breast not wholly depraved. Even those whose interest it was intended to promote, were, as this respondent has understood and believes, either so much ashamed of it, or so apprehensive of its effects, that great pains were taken by them to withdraw it from public and general circulation. Of such a publication, it must have been extremely difficult to find a man of sufficient character and information to serve on a jury, who had not formed an opinion, either from his own knowledge, or from report. The juror in the present case had expressed no opinion. He had formed no opinion as to the facts. He had never seen the "Prospect before Us," and therefore could have formed no fixed or certain opinion about its nature or contents. They had been reported to him, and he had formed an opinion that if they were such as reported, the book was within the scope and operation of a law for the punishment of "false, scandalous and malicious libels, against the President in his official capacity, written or published with intent to defame him." And who is there, that having either seen the book or heard of it, had not necessarily formed the same opinion.

But this juror had formed no opinion about the guilt or innocence of the party accused; which depended on four facts wholly distinct from the opinion which he had formed. First, whether the contents of the book were really such as had been represented to him? Secondly, whether they should, on the trial, be proved to be true? Thirdly, whether the party accused was really the author or publisher of this book? And fourthly, whether he wrote or published it "with intent to defame the President, or to bring him into contempt or disrepute, or to excite against him the hatred of the good people of the United States?" On all these questions, the mind of the juror was perfectly at large, notwithstanding the opinion which he had formed. He might, consistently with that opinion, determine them all in the negative; and it was on them that the issue between the United States and James Thompson Callender depended. Consequently, this juror, notwithstanding the opinion which he had thus formed, did stand indifferent as to the matter in issue, in the legal and proper sense, and in the only sense in which such indifference can ever exist; and therefore his having formed that opinion, was not such an excuse as could have justified the court in discharging him from the jury.

That this juror did not himself consider this opinion as an opinion respecting the "matter in issue," appears clearly from this circumstance, that when called upon to answer on oath, "whether he had expressed any opinion as to the matter in issue?" he answered that he had not. Which clearly proves that he did not regard the circumstance of his having formed this opinion, as a legal excuse, which ought to exempt him of right from serving on the jury; but merely suggested it as a motive of delicacy, which induced him to wish to be excused. To such motives of delicacy, however commendable in the persons who feel them, it is impossible for courts of justice to yield, without putting it in the power of every man, under pretence of such scruples, to exempt himself from those duties which all the citizens are bound to perform. Courts of justice must regulate themselves by legal principles, which are fixed and universal, not by delicate scruples, which admit of endless variety, according to the varying opinions and feelings of men.

Such were the reasons of this respondent, and he presumes of his colleague the said Cyrus Griffin, for refusing to excuse the said John Basset, from serving on the jury above mentioned. These reasons, and the decision founded on them, he insists were legal and valid. But if the reasons should be considered as invalid, and the decision as erroneous, can they be considered as so clearly and flagrantly incorrect, as to justify a conclusion that they were adopted by this respondent, through improper motives? are not these reasons sufficiently strong, or sufficiently plausible, to justify a candid and liberal mind in believing, that a judge might honestly have regarded them as solid? Has it not been conceded, by the omission to prosecute judge Griffin for his decision, that his error, if he committed one, was an honest error? Whence this distinction between this respondent and his colleague? And why is that opinion imputed to one as a