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HIGH COURT OF IMPEACHMENT.

JUDGE CHASE's PLEA.

(Concluded from our last.)

Nor can the incorrectneſs of the political opinions thus expreſſed, have any influence in deciding on the guilt or innocence of a judge's conduct in expreſſing them. For if he ſhould be conſidered as guilty or innocent, according to the ſuppoſed correctneſs or incorrectneſs of the opinion, thus expreſſed by him, it would follow, that error in political opinion however honeſtly entertained, might be a crime; and that a party in power might, under this pretext, deſtroy any judge, who might happen in a charge to a grand jury, to ſay ſomething capable of being conſtrued by them, into a political opinion adverſe to their own ſyſtem.

There might be ſome pretence for ſaying, that for a judge to utter ſeditious ſentiments, with intent to excite ſedition, would be an impeachable offence: although ſuch a doctrine would be liable to the moſt dangerous abuſes; and is hoſtile to the fundamental principles of our conſtitution, and to the beſt eſtabliſhed maxims of our criminal juriſprudence. But admitting this doctrine to be correct, it cannot be denied that the ſeditious intention muſt be proved clearly, either by the moſt neceſſary implication from the words themſelves, or by ſome overt acts of a ſeditious nature connected with them. In the preſent caſe no ſuch acts are alledged, but the proof of a ſeditious intent muſt reſt on the words themſelves. By this rule this reſpondent is willing to be judged. Let the opinions which he delivered be examined; and if the members of this honourable court can lay their hands on their hearts, in the preſence of God, and ſay, that theſe opinions are not only erroneous but ſeditious alſo; and carry with them internal evidence of an intention in this reſpondent to excite ſedition, either againſt the ſtate or general government, he is content to be found guilty.

In making this examination, let it be borne in mind that to oppoſe a depending meaſure by endeavoring to convince the public that it is improper, and ought not to be adopted; or to promote the repeal of a law already paſt, by endeavoring to convince the public, that it ought to be repealed and that ſuch men ought to be elected to the legiſlature as will repeal it, to attempt in fine, the correction of public meaſures, by arguments tending to ſhew their improper nature, or deſtructive tendency, never has been or can be conſidered as ſedition in any country, where the principles of law and liberty are reſpected; but it is the proper and uſual exerciſe of that right of opinion and ſpeech, which conſtitutes the diſtinguiſhing feature of free government. The abuſe of this privilege by writing and publiſhing as facts, malicious falſhoods, with intent to defame, is puniſhable as libellous, in the courts having juriſdiction of ſuch offences; where the truth or falſhood of the facts alledged, and the malice or correctneſs of the intention, form the criterion of guilt and innocence. But the character of libellous, much leſs of ſeditious, has never been applied to the expreſſion of opinions concerning the tendency of public meaſures, or to arguments urged for the purpoſe of oppoſing them, or of effecting their repeal. To apply the doctrine of ſedition or of libels to ſuch caſes, would inſtantly deſtroy all liberty of ſpeech, ſubvert the main pillars of free government, and convert the tribunals of juſtice into engines of party vengeance. To condemn a public meaſure, therefore, as pernicious in its tendency, to uſe arguments for proving it to be ſo; and to endeavor, by theſe means to prevent its adoption, if ſtill depending, or to procure its repeal in a regular and conſtitutional way, if it be already adopted, can never be conſidered as ſedition or in any way illegal.

The firſt opinion expreſſed to the grand jury on the occaſion in queſtion, by this reſpondent, was, that "the late alteration ſhould be ratified by the next general aſſembly." This opinion, however incorrect it may be, ſeems to have been adopted by the people of Maryland, to whom this argument againſt the bill in queſtion was addreſſed; for at the next ſeſſion of the legiſlature this bill which went to change entirely the conſtitutional tenure of judicial office in the ſtate, and to render the ſubſiſtence of the judges dependent on the legiſlature, and their continuance in office on the executive, was abandoned by common conſent.

All the other opinions expreſſed by this reſpondent, as above mentioned, bear the ſame character with thoſe already conſidered. They are arguments addreſſed to the people of Maryland, for the purpoſe of diſſuading them from the adoption of a meaſure then depending; and of inducing them, if poſſible, to reſtore to its original ſtate, that part of their conſtitution relating to the right of ſuffrage, by a repeal of the law, which had been made for its alteration.

Such were the objects of this reſpondent in delivering thoſe opinions, and he contends that they were fair, proper and legal objects, and that he had a right to purſue them in this way: a right ſanctioned by the univerſal practice of this country, and by the acquieſcence of its various legiſlative authorities. Such he contends is the true and obvious meaning of the opinions which he delivered, and which he believes to be correct. It is not now neceſſary to enquire into their correctneſs; but, if incorrect, he denies that they contain any thing ſeditious, or any evidence of thoſe improper intentions which are imputed to him by this article of impeachment. He denies that in delivering them to the grand jury, he committed any offence, infringed any law, or did any thing unuſual, or heretofore conſidered in this country as improper or unbecoming in a judge. If this article of impeachment can be ſuſtained on theſe grounds, the liberty of ſpeech on national concerns, and the tenure of the judicial office under the government of the U. States, muſt hereafter depend on the arbitrary will of the Houſe of Repreſentatives and the Senate, to be declared on impeachment, after the acts are done, which it may at any time be thought neceſſary to treat as high crimes and miſdemeanors.

And the ſaid Samuel Chaſe, for plea to the ſaid eighth article of impeachment, ſaith that he is not guilty of any high crime and miſdemeanor as in and by the ſaid eighth article is alledged againſt him of the federal judiciary, by the abolition of the office of the ſixteen circuit judges; and the recent change in our ſtate conſtitution, by eſtabliſhing univerſal ſuffrage; and the further alteration that was then contemplated in our ſtate judiciary if adopted;" would, in the judgment of this reſpondent, "take away all ſecurity for property and perſonal liberty." That is, "theſe three meaſures, if the laſt of them, which is ſtill depending, ſhould be adopted, will in my opinion, form a ſyſtem whoſe pernicious tendency muſt be, to take away the ſecurity for our property and our perſonal liberty," which we have hitherto derived from the ſalutary reſtrictions, laid by the authors of our conſtitution on the right of ſuffrage, and from the preſent conſtitution of our courts of juſtice.' What is this but an argument to perſuade the people of Maryland to reject the alterations in their ſtate judiciary which were then propoſed; which this reſpondent as a citizen of that ſtate, had a right to oppoſe; and the adoption of which depended on a legiſlature then to be choſen? If this be ſedition then will it be impoſſible to expreſs an opinion oppoſite to the views of the ruling party of the moment, or to oppoſe any of their meaſures by argument, without becoming ſubject to ſuch puniſhment as they may think proper to inflict.

The next opinion is, that "the independence of the national judiciary was already ſhaken to its foundation, and that the virtue of the people alone could reſtore it." In other words, "The act of congreſs for repealing the late circuit court law, and vacating thereby the offices of the judges has ſhaken to its foundation the independence of the national judiciary, and nothing but a change in the repreſentation of congreſs, which the return of the people to correct ſentiments can effect, will be ſufficient to produce a repeal of this act, and thereby reſtore to its former vigor, the part of the federal conſtitution, which has been thus impaired."

This is the obvious meaning of the expreſſion: and it amounts to nothing more than an argument in favor of that change which this reſpondent then thought and ſtill thinks to be very deſirable; an argument, the force of which as a patriot he might feel, and which as a free man he had a right to advance.

The next opinion is, that "the independence of the judges of the ſtate of Maryland, wound be entirely deſtroyed if the bill for aboliſhing the two ſupreme courts and this he prays may be inquired of by this honorable court, in ſuch manner as law and juſtice ſhall ſeem to them to require.

This reſpondent has now laid before this Honorable Court, as well as the time allowed him would permit, all the circumſtances of this caſe. With an humble truſt in Providence and a conſciouſneſs that he hath diſcharged all his official duties with juſtice and impartiality, to the beſt of his knowledge and abilities; and that intentionally he hath committed no crime or miſdemeanor, or any violation of the conſtitution or laws of his country—Confiding in the impartiality, independence and integrity of his judges, and that they will patiently hear and conſcientiouſly determine this caſe, without being influenced by the ſpirit of party, by popular prejudice or political motives, he cheerfully ſubmits himſelf to their deciſion.

If it ſhall appear to this honorable court from the evidence produced, that he hath acted in his *judicial* character with wilful injuſtice or partiality, he doth not wiſh any favor, but expects that the whole extent of the puniſhment permitted in the conſtitution will be inflicted upon him.

If any part of his *official* conduct ſhall appear to this honorable court, *ſtricti juris*, to have been illegal, or to have proceeded from *ignorance* or *error* in judgment; or if any part of his conduct ſhall appear, although illegal, to have been irregular or improper, but not to have flowed from a depravity of heart, or any unworthy motives, he feels confident that this court will make allowance for the imperfections and frailties incident to man. He is ſatisfied that every member of this tribunal will obſerve the principles of humanity and juſtice, will preſume him innocent until his guilt ſhall be eſtabliſhed by legal and credible witneſſes; and will be governed in his deciſion, by the moral and chriſtian rule, of rendering that juſtice to this reſpondent which he would wiſh to receive.

This reſpondent now ſtands not merely before an earthly tribunal, but alſo before that awful Being, whoſe preſence fills all ſpace, and whoſe all ſeeing eye more eſpecially ſurveys the temples of juſtice and religion. In a little time, his accuſers, his judges, and himſelf muſt appear at the Bar of Omnipotence, where the ſecrets of all hearts ſhall be diſcloſed and every human being ſhall anſwer for his deeds done in the body, and ſhall be compelled to give evidence againſt himſelf in the preſence of aſſembled univerſe. To his omniſcient judge, at that awful hour, he now appeals for the rectitude and purity of his conduct as to all the matters of which he is this day accuſed.

He hath now only to adjure each member of this honorable court, by the living GOD, and in his holy name, to render impartial juſtice to him, according to the conſtitution and laws of the United States. He makes his ſolemn demand of each member, by all his hopes of happineſs in the world to come, which he will have voluntarily renounced by the oath he has taken; if he ſhall wilfully do this reſpondent injuſtice, or diſregard the conſtitution or laws of the United States, which he has ſolemnly ſworn to make the rule and ſtandard of his judgment and deciſion.

SAMUEL CHASE.

A true copy,
Attest,
SAMUEL A. OTIS, *Sec.*

SATURDAY February 9.

The Court being called, the Managers attended.

Judge Chaſe with his counſel, Meſſrs. Martin, Harper, Hopkinſon and Key, appeared and took their ſeats.

The Preſident then informed the Managers that the court were ready to hear them on the part of the proſecution—Mr. RANDOLPH roſe and ſpoke as follows:—

MR. PRESIDENT,

It becomes my duty to open the caſe on the part of the proſecution. From this duty, however inadequate I might be at any time to diſcharge it, and eſpecially at the preſent both on account of the ſhortneſs of time which we have had to anſwer the lengthy reply of the reſpondent, and of perſonal indiſpoſition, I ſhall not ſhrink. When I ſpeak of the ſhortneſs of the time allowed us to reply to the anſwer of the reſpondent, I hope I ſhall not be underſtood as caſting any imputation upon this honorable court, for expreſſing a wiſh that the trial may be poſtponed. Senſible I am, that this court would allow us longer time, but a deſire for the furtherance of juſtice, added to the impregnable ground on which the managers ſtand, induce them to be ready on the part of the proſecution.

The managers are in this inſtance to eſtabliſh the guilt of one of the judges of the ſupreme court—Of a man capable of being one of the ornaments of his country—and who if he had made a proper uſe of his talents would have done as much good for his country, as he has inflicted wounds upon it by his miſconduct. The arraignment of a man of ſuch talents before this tribunal, is one of the ſaddeſt ſpectacles ever preſented to the view of any people.—Base indeed muſt be his heart who could triumph over ſuch a ſcene.

The firſt charge with which the reſpondent is impeached, is relative to his conduct upon the trial of John Fries for treaſon.

[Here Mr Randolph read the firſt article of impeachment.]

The anſwer of the reſpondent to this charge is by evaſive inſinuations and miſrepreſentations of facts. He attempts to ſhew that the opinion which he delivered in the caſe of Fries, upon the law, was the law laid down by his predeceſſors, in the ſame court, and once upon the ſame caſe. This is an attempt to wreſt the charge from the true point on which it ſtands, and to place it upon another. It is not on account of the illegality of the opinion which the reſpondent gave that he is impeached, but for the time when he delivered it, and the motives by which he was governed. The charge againſt him is, that he delivered an opinion in writing, tending to prejudice the minds of the jury againſt John Fries the priſoner, before the caſe had been argued by the counſel. If the managers were to be governed by their own ſenſe of propriety, and not by their duty to thoſe by whom they are employed, they might with ſafety, in my opinion, reſt the caſe upon the confeſſions of the reſpondent himſelf. The reſpondent acknowledges in his anſwer, that he did deliver an opinion on the law, tending to prejudice the minds of the jury againſt John Fries the priſoner, before the counſel had been heard in his defence. This may be ſeen by a reference to the anſwer of the reſpondent, a part of which I muſt beg the favor of one of thoſe aſſociated with me to read.

Mr. Clark here read a paſſage of the anſwer

Our object is to prove that the opinion was delivered with an intention to prejudice the minds of the jury againſt the priſoner—and that the reſpondent did reſtrict the counſel in their attempt to cite Engliſh authorities which they conſidered apoſite, and alſo the ſtatutes of the United States, and did debar them of their conſtitutional privilege to addreſs the jury upon the law as well as the fact. Theſe are facts which we are able to prove by the moſt reſpectable evidence. But the reſpondent aſſigns as a reaſon for his delivering his opinion on the law at the time he did, that the law had been ſettled by his predeceſſors. What does this prove? That the reſpondent endeavored to wreſt from the counſel privileges which none of his predeceſſors conceived themſelves authoriſed to do, to wit, that of addreſſing the jury on the law as well as the fact. If as the reſpondent ſtates, the law was ſettled twice, after ſolemn argument, it is an evidence that his predeceſſors never attempted to debar the counſel from arguing before the jury as to the law. The learned judges who decide the law in thoſe caſes, and to whom the reſpondent has appealed as authority, delivered their opinions poſterior to the argument by the counſel and not anterior like the reſpondent. I repeat again, that it is not for the giving the opinion, that the reſpondent is charged, but for the manner of giving it. It is for having a copy of a written opinion made out for the jury, previous to their hearing argument, and thereby prejudicing their minds againſt the priſoner. The reſpondent has alſo admitted that the counſel for Fries had reſted their caſe altogether upon the law, conſcious that the facts could be proven. For this reaſon they ought not to have been controlled in their defence. If they believed that the law was in favor of the priſoner, they had a right to addreſs the jury upon that as well as upon the facts, and in debarring them from it, the reſpondent wreſted from the priſoner a conſtitutional right, that of being heard by counſel. I muſt be allowed to take what I conceive to be a ſtrong diſtinction—that there is a material difference between a judges' giving a naked definition of the crime of high treaſon, and an opinion upon certain overt acts charged in an indictment and applied to the particular caſe before him. The managers do not deny—the counſel for Fries did not deny the right of the reſpondent to deliver his opinion to the jury upon the law reſpecting high treaſon, but the difference which I have taken appears evident, and the reſpondent had no right to deliver a written opinion to the jury concerning the particular caſe, and before ſolemn argument by counſel.—To illuſtrate this point permit me to ſtate a ſimilar caſe. It will not be pretended that the crime of high treaſon is better defined, than the crime of murder. The latter is defined to be a killing with malice prepenſe. But although the definition is ſo well known was there ever a judge before the reſpondent daring enough to tell the jury that the overt acts charged in the indictment, if proved amounted to murder and that they muſt find the priſoner guilty; I believe no. There is a very wide diſtinction between the conduct of a judge who delivers an opinion to the jury upon the law, after ſolemn argument, and that of the reſpondent who prejudged the caſe. I believe there never has been an inſtance where counſel have been ſtopped by the court, when they attempted to prove to the jury that the facts which a priſoner had committed did not amount to murder. The conduct of the reſpondent in preventing the counſel from addreſſing the jury upon the law, and of delivering a written opinion, before argument, was entirely novel to the uſages of our country. The reſpondent aware that the managers were prepared to prove what is charged againſt him, has in his anſwer admitted a part of the charge, but a part of it he has denied. This we are prepared to prove by the moſt reſpectable teſtimony. We are prepared to prove that the reſpondent debarred the priſoner of his conſtitutional right of addreſſing the jury by his counſel upon the law. This the reſpondent has in a manner admitted in his anſwer, for he ſays that he informed the counſel for Fries that if they conceived that the court were wrong in their opinion as to the law they might addreſs themſelves to the court. What would be ſaid if a judge in a caſe where a perſon was tried for murder, if he were to inform the counſel for the priſoner that they ſhould not addreſs the jury upon the law; that they ſhould not attempt to prove to the jury that the facts committed, did not amount to murder; but that on that ſubject, they muſt addreſs themſelves to the court? He would be deſervedly cenſured by every man, and would be conſidered as unworthy of ſitting on the bench of juſtice—and yet the conduct of the reſpondent was not diſſimilar to this. The jury has a right in all criminal caſes to find a general verdict, and to judge of the law, and of courſe had a right to hear argument on it. The acts of Congreſs which the counſel for Fries, intended to have read to the jury, went in their opinion, to ſhew that the crime which Fries had committed, was leſs than treaſon, and made puniſhable by fine and impriſonment—and yet the ſame judge which delivered a prejudicated opinion, prevented theſe ſtatutes, which were the law of the land, from being read. Not only were the counſel debarred from citing common authorities, and the deciſions of courts of juſtice in another country, but even from the laws of the land; although they conſidered that they were material to the defence of the priſoner.

I muſt be again permitted to repeat, that it is not for the incorrectneſs of the opinion delivered by the reſpondent in the caſe of Fries, that he ſtands charged, but for the time when he delivered it, and his motives for doing it. The Managers will not undertake to examine the ſoundneſs of the opinion,—they have nothing to do with that—but the manner of delivering it, was a departure from all precedents, and what I believe, is novel in all our courts of juſtice.

I will now proceed to the ſecond article of impeachment. It is, that the reſpondent overruled the objection of John Baſſet, who wiſhed to be excuſed from ſerving as a juror on the trial of Callender, upon the ground that the opinion of the juror muſt have been delivered as well as formed and that upon the words charged in the indictment. In the ninth page of the anſwer of the reſpondent, it will be ſeen, that a new trial was granted to Fries, upon the ground that one of the jurors after he had been ſummoned, but before he was ſworn, had uſed expreſſions hoſtile to the priſoner. By recurring to the anſwer of the reſpondent, it will be found that the opinion which he gave in the trial of Fries, was diſſimilar to the one held to be correct in the caſe of Callender. In the caſe of Fries the jury before they were ſworn, were aſked whether they had formed or delivered any opinion, hoſtile to the priſoner, or that he ought to be puniſhed. The queſtion was in the diſjunctive, not whether he had formed and delivered an opinion, but whether he had formed or delivered an opinion. But in the caſe of Callender a different conduct was purſued, and a juror was not to be excuſed from ſerving unleſs he had delivered as well as formed an opinion; Baſſet could never have ſeen the indictment, and therefore according to the opinion given by the reſpondent, could not be ſet aſide; even although he had a perſonal and avowed enemity to the defendant. It was perfectly immaterial what Baſſet's opinion, as to the guilt of the defendant, was, becauſe the only queſtion which was ſuffered to be put to him, was one, that he was obliged to anſwer in the negative, to wit, whether he had formed and delivered an opinion upon an indictment which he could not have ſeen. The reſpondent, has attempted to juſtify his conduct in this caſe, well knowing that the facts can all be proved, and contends that a juror's opinion muſt be formed and delivered upon the indictment, and not on the ſubject matter to be tried, to diſqualify him from ſerving. In the caſe of Callender the ſubject matter to be tried, was, whether "The Proſpect Before Us," was a libel. If the juror had formed an opinion upon the book which was the matter in iſſue, that it was libellous, and alſo opinions hoſtile to the author, he was not a proper perſon to paſs judgment between the defendant and his country. If Mr. Baſſet had formed an opinion that the "Proſpect Before Us" was a falſe, ſcandalous, and malicious libel, and came under the proviſions of the act called the ſedition act, he was not a perſon to ſerve upon the jury. Upon the ground taken by the reſpondent a perſonal enemy of any defendant might be taken upon a jury, and the defendant could not object to him, becauſe he could not have formed and delivered an opinion upon an indictment which he had never ſeen. The third article of impeachment, is for rejecting the teſtimony of John Taylor, whom Callender believed to be a material witneſs, upon the ground, that, he could not prove all the charges in the indictment. Had this been the caſe, and John Taylor could only have proved a part of the charges, yet the conduct of the reſpondent muſt appear novel and unprecedented to every perſon. But at the time when the evidence of John Taylor was rejected, the reſpondent as well as the counſel for the traverſer, were ignorant of what he could prove. But it was rejected upon the ground that he was unable to prove all the charges in the indictment to be true. The charge extracted from "The Proſpect Before Us," a book, which with all its celebrity. I never ſaw until yeſterday, was in theſe words (ſpeaking of Mr. Adams) "He is a profeſſed ariſtocrat; and has proved faithful and ſerviceable to the Britiſh intereſt." The charge was contained in two diſtinct ſentences. The reſpondent, ſays, that taken ſeparately, they meant nothing; taken together, they meant a great deal. Yet the evidence of John Taylor was refuſed, although he was expected to prove the whole charge, according to the meaning of the defendant when he wrote it. He was expected to prove that Mr. Adams had been uſeful to the Britiſh intereſt in the manner meant by the author of the "Proſpect Before Us." I will aſk this honorable court, whether it is proper for evidence to be rejected, becauſe incapable of proving all the facts in the caſe? May not a witneſs be material, although he can only eſtabliſh a particular point? As if a fact were proven by one witneſs, would it be proper to admit teſtimony to ſtrengthen that evidence although the perſon knew nothing of the facts: as for inſtance, to prove that he ſaw the parties together on that day. Suppoſe two witneſſes were adduced to prove facts, and neither could prove all, according to the deciſion of the reſpondent neither could be admitted to give evidence. The reſpondent in his anſwer, ſays, that the court