

HIGH COURT OF IMPEACHMENT.

MONDAY, February 11.

Evidence on the part of the United States.

[CONTINUED.]

William S. Biddle sworn and examined by Mr. Randolph.

Q Were you present at the trial of Fries, and when copies of a written opinion of the court were thrown down on the bar table?

A My recollection upon that subject is very imperfect; but I have some recollection that the copy which I took, was from a paper thrown down by Judge Chase. I copied the substance of the opinion upon treason, but not the whole. No application was made to me for the copy which I had, nor did I communicate to any person that I had it, until during the last session of congress, when, having some conversation with the gentleman of the bar in Philadelphia, concerning the opinion, Mr. Dallas observed that he had never seen it, and expressed a wish to read it. I then observed that I believed I had a copy of it, and went over to my office and brought it to him.

Q Would you know the paper you copied?

A I would.

Q Is that it? (producing a paper)

A It is.

Q Did you hear much conversation concerning the opinion?

A I do not recollect. I believe there was among the members of the bar; but I know not whether any of the jury heard it?

William S. Biddle cross examined.

Q In the paper which has been produced, and which you say is the copy which you took, there are a number of references: were they made by yourself, or were they in the opinion?

A I do not recollect precisely. The authorities mentioned on the last page are all made by me.

Q You say, that no application was made to you for the copy of the opinion which you took. Do you know that the court or the district attorney knew that you had taken a copy of the opinion?

A I do not know that either of them knew it.

William Rawle, affirmed.

Q Were you present at the trial of Fries?

A I was.

Q What took place on that occasion?

A The circuit court of the United States, for the district of Pennsylvania, met on the 11th of April, 1865. As the proceedings against John Fries were considered as not to be revived, without the interposition of an act of congress, it appeared best to me to move the court, on the first day of their session, to quash the indictment against him. This I accordingly did, and the court granted my motion. Upon the same day the court charged the grand jury, and I went up to them, among others, an indictment against John Fries, which was returned a true bill. On the 16th of April John Fries was brought to the bar, arraigned, and pleaded not guilty. I can't say whether Messrs. Lewis and Dallas were on that day assigned him by the court as counsel, or whether they continued to act, having been his counsel on the first trial. Copies of the indictment were furnished to Fries, and his counsel. The trial was then postponed on account of the absence of a material witness, and it was not assigned for the day, which Messrs. Lewis and Dallas have given testimony of, and which has been called the first day of the trial. Fries might have been in the box, through mistake, because that I had on a certain day directed the marshal to bring up a number of persons, charged with seditious practices, and Fries might have been brought with them. Shortly after the court met. Judge Chase observed that the court had made up their minds as to the law of treason, and to avoid being misunderstood, they had reduced their opinion to writing, and that they had directed three copies of the opinion to be made out; one for the district attorney, another for the counsel for the prisoner, and a third for the jury, to be delivered to them after the case had gone through, on the part of the prosecution. As these words were pronounced, several papers were thrown. I know not whether by the court or the clerk. I took up one of them and began to read, but casting my eyes up, I saw Mr. Lewis on the opposite side of the table, with one of the papers in his hand, which he looked at with apparent indignation, and then threw it on the table. I cannot call to my recollection any thing further that passed between the counsel and the court on that day. I perceived much agitation among the gentlemen of the bar; but having a great burden of criminal prosecutions on my hands, I could hear nothing until the court rose. In the course of that morn-

ing 21 persons were brought to the bar for seditious combinations, and submitted to the court. The court rose early in the day, and requested me not to examine the witnesses on those cases of treason. After the court rose, I understood that the counsel for Fries, meant to decline acting in his defence. I have an indistinct recollection of hearing this from Mr. Dallas. Soon after I got home on that day, Judge Chase and Judge Peters came to my house. We went into another room, from that in which I was sitting, when Judge Peters began by expressing an apprehension that the counsel for Fries would decline acting for him. Judge Chase observed that he could not suppose that that would be the case. I supported the opinion of Judge Peters, and stated that the gentlemen of the bar of Philadelphia, were very independent, and that in my opinion the counsel for Fries would not proceed, unless the papers were withdrawn, and they were permitted to go on in their usual way. Judge Chase observed that he was sorry that that opinion had been confided in, in the light it was, and that it was not intended to preclude the counsel from going on in the usual manner, provided they thought proper. Both the judges then requested me to obtain all the copies of the opinion which had been taken, which I readily promised to comply with. I recollected to have seen Messrs. Tiplinan and Bell taking copies of the opinion. I went to their houses and requested them, which they gave to me immediately, and I took them to Mr. Caldwell, the clerk of the court. I asked him whether he knew of any other persons taking a copy, and he answered that he believed that Mr. William Meredith had, upon which I requested him to go to Mr. Meredith and try to obtain it. I did not at that time know that Mr. Biddle, who was then a student of mine, had taken a copy; nor did I then recollect that I had one of them myself. I therefore did not hand it to the clerk, but have it now in my possession. The papers which were thrown down did not appear to me to be read by any person, but those who copied them, and I entertained an anxious hope on the next day, that the gentlemen who were concerned as counsel for Fries would proceed in his defence, and be satisfied.

I will now, with the permission of the court, refer to some original notes which I took upon the remaining part of the transaction.

On the 23d day of April, John Fries was brought to the bar. The court then addressing the clerk, directed him to call on the counsel for Fries, telling it was ready to proceed with the trial. To which I answered affirmatively. Mr. Lewis then observed, that if he had been employed by the prisoner he would think himself bound to proceed; but having been assigned as his counsel, (he was then interrupted by Judge Chase, who said you are not bound by the opinion of a deliberative body, but are at liberty to come to your own conclusions) Mr. Lewis said, that he had understood that the court had made up their minds as to the law, and that the prisoner's counsel had a right to address the jury, both on the law and the fact, it would place him in two degrading situations to argue the case after what had passed, and therefore he would not proceed with the defence. Judge Chase answered, with indignation, "You are at liberty to proceed as you think proper. Address the jury and lay down the law as you think proper." Mr. Lewis answered with considerable warmth, "I will never address myself to the court upon a question of law in a criminal case." He then went into a long argument upon the law of high treason in England, previous to their revolution, and contended that the courts since that period had considered themselves as bound by those decisions which were made prior to it. Judge Chase observed that the counsel must do as they please. Mr. Dallas then rose and went into a general view of the ground, which had been taken by Mr. Lewis, and concluded with his determination not to proceed as counsel for Fries. Judge Chase observed, "no opinion has been given as to the facts of the case. I would not suffer the witnesses, against those persons charged with seditious combinations to be examined before the trial of Fries came on, lest their evidence might have been heard by some of the jury. As to the law, I know that the trial before took a considerable time, and that calls at common law and decisions in England before the revolution on the law of treason, such as the case of the man whose flag the king killed, and who killed the horns of the flag in the king's belly, and the case of the man-keeper, who kept the sign of the crown, and who said he would make his son heir to the crown. These cases, I thought, would go to the jury. There is no case which can come before me on which I have not a decided opinion, as to the law, otherwise I should not be fit to preside here. I have always conducted myself with candor, gentlemen, and meant to have saved you trouble by what I did. It is not respectable for counsel to say that they have a right to offer what they please to the jury. What would you cite decisions in Rome in Turkey or in France? you will now proceed and stand acquitted or condemned in your own consciences as you conduct the defence, and go on in your own way. The case will be opened by the attorney—the manner will be regulated by the court." Judge Peters added that the papers were all withdrawn. Mr. Lewis said the pa-

per was withdrawn but the impressions remained with the jury; he therefore should not act. A pause then ensued for a few moments. when Judge Chase said: "you can't bring the court into difficulties, gentlemen you do not know me if you think so." He then called the avenue to the prisoner's bar to be cleared, and asked Fries whether he was ready for his trial, or whether he wished other counsel assigned him. Fries appeared very much alarmed and replied, that he did not know what to do. I then informed the court that as this was a remarkable case, I hoped the trial would be postponed until the next day, which was readily acquiesced in by the court, and Fries was remanded to prison. On the next day he was again brought to the bar, and asked whether he would have counsel assigned him, he replied with much fervor that he would look to the court to be his counsel. Judge Chase then answered; "then by the blessing of God the court will be your counsel, and will do you as much justice as if you were your own counsel."

The jury were demanded, and Judge Chase took pains to inform Fries of his right to challenge, and that he might challenge the jury five without showing any cause, and as many more as he could show cause against. After the jurors had been passed by Fries, Judge Chase, after asking them whether they were right in the prisoner's opinion as to whether they had a right to an opinion as to the guilt of Fries, or that he ought to be punished. The first juror answered in the negative, and was sworn out of the jury—the second juror, but in a conversation which he had had, he had decided that Fries ought to be punished—he was directed by the court to be set aside. The question was then directed to be put by the clerk to each juror in this manner: "Have you formed or delivered an opinion relative to the guilt of the prisoner?" This was done to three jurors; when, by the direction of the court, it was directed to put the question to the rest of the jury. Three persons were called in successively, and were sworn. The prisoner challenged the first juror, but at the end of the examination of every one of the part of the prosecution Judge Chase remanded him to prison, and put the question to the rest of the jury, to put any one who might challenge, set aside. After the evidence closed, I directed the jury to retire, as a man of law, I could not conscientiously do so. The court then directed the jury, and they retired to their room, and I returned to the court, and continued with a verdict of "GUILTY." These are the general facts which took place. If I am asked any question I will endeavor to answer it.

Questions by Mr. Randolph.

Q Did you hear Mr. Lewis when he threw down the paper, which was said to be the copy of the opinion?

A I have no recollection of hearing Mr. Lewis say anything at that time.

Q Mr. Lewis declared that he would not address the court on a question of law in a criminal case. Did you hear any objection by the court, which would prevent Mr. Lewis from addressing the jury on the law?

A The court said that they would not suffer such cases as I have mentioned to be made to the jury, to mislead them, but I did not hear the court say that the counsel should not address the jury on the law.

Q You have stated that both the judges came to your house, soon after you returned from court the first day. Was that their place of abode?

A It was not.

Q You have stated that Judge Peters declared his apprehensions that the counsel for Fries would not proceed in his defence, and that you concurred in opinion with him. Had you any reason for apprehending it but your knowledge of the independence of the bar of Philadelphia?

A I think I understood, from some of the gentlemen of the bar, that the counsel for Fries meant to decline acting, and I have an impression on my mind, that I had heard some of that kind fall from Mr. Dallas.

Q Did you express to the judges, this knowledge?

A I believe I did not.

Q Did you ever know an opinion to be given in a criminal case before counsel were heard?

A I never have, except so far as charges to grand juries may be termed opinions on the law.

Q Did much conversation take place on the subject of this opinion?

A Situated as I was, I can't undertake to say that I had any conversation on the subject, until the court rose.

Q Do you suppose that the conduct of the court and counsel attracted the notice of the jury?

A From the number of persons summoned, I conceive that a number of them knew not what was going on.

Q From what did you infer the indignation of Mr. Lewis, if you did not hear any expressions that he used?

A From his countenance.

Q Did that attract the attention of the court at the time?

A If they were looking at him, it must have attracted their attention.

Q Did you hear Judge Chase say, that the counsel must address themselves to the court on the questions of law?

A I have no recollection of hearing any thing of that kind fall from Judge Chase. In a criminal case, however, there are a number of motions which must be made, exclusively to the court; such as a motion to quash an indictment.

Questions by Mr. Nicholson.

Were your eyes, of the conversations which took place, made in the order of time in which they took place?

A Precisely so.

Q What was there in Judge Chase's conversation that induced Mr. Lewis to think that he should be precluded from reading the statutes of the U. States, to the jury?

A I know not why Mr. Lewis thought so, unless from the strenuous opposition which was made to them, on the first trial of Fries, on the part of the United States. Judge Chase said, that no case could come before him, on which he had not an opinion on the law.

Q Was there any thing in the conduct of the court, which induced Mr. Lewis to believe that he was to be precluded from arguing the law to the jury, and caused him so often to declare, that he would not address himself to the court in a criminal case?

A It appeared to me to be a misapprehension of Mr. Lewis. He supposed that it was intended to withdraw the question of law from the jury, and I thought the court did not mean him right, as expressly as they might have done.

Questions by Mr. Randolph.

You say, Mr. Rawle, that after the papers were called in, you entertained an anxious hope, that the counsel would be induced to proceed with the defence of the prisoner. I wish to know your reasons for having such an hope, and why you became the agent of the court?

A My reasons were, that I did not wish to be in the situation in which I was afterwards placed, and in which I never wish my greater enemy to experience the pain which I felt, that of being obliged to prosecute a man arraigned for a capital offence, and who was without the assistance of professional gentlemen. I therefore was anxious that the counsel for Fries should proceed in the defence, and save me from so painful a situation.

Q Did you take any notes of the transactions which took place on the first day of the trial?

A I did not.

William Rawle cross examined by Mr. Harper.

Q Did Judge Chase say any thing to restrict the counsel from citing any statutes of the United States?

A He did not in my hearing.

Q Did he say that he disapproved of the conduct of the court in the first trial of Fries?

A He did not.

Q Have you the paper now which Judge Chase threw down?

A I have.

(Harper produced the opinion and Mr. Harper read it to the court. Exhibit No. 1.)

Q Did not the court after the jury had returned a verdict of guilty against Fries inform him that it had any thing to say in an arrest of judgment that he would be heard?

A They did, and the answer of Fries was, that he had nothing to say.

[To be continued.]

St. Patrick's Ball, To be held at James Byden's, on Monday Evening, March 13th. The citizens are respectfully informed that a subscription list is now open for the above Ball. March 6

Public sale. Agreeably to the last Will and Testament of Mrs. Matilda Heath Nicholson, of Baltimore county, deceased, with the exception of public sale, the Personal Property of the said deceased, consisting of a number of very valuable negroes, men, women and children; also horses, harned cattle, sheep and hogs; fencing fences, household and kitchen furniture; ice in stack and rye, straw, Indian corn, &c. The sale will commence on the premises, on Tuesday, the 14th inst. where the terms will be made known by

Notice. HAVING taken my brother Charles Focke into partnership, the business will in future be conducted under the firm of F. & C. Focke. FREDERICK FOCKE.

F. and C. Focke, Opposite the Custom House, offer for Sale, 300 pieces plaitillas, 625 do brigoes, 250 do brown holland, 75 do greenish morlaix, 25 do dewlas, 25 do larales, 25 do vinas borlon, 100 do es epillas, 200 do qua-repels alessia, 25 do rouans, and 25 bales of bressian, flaxen and hempen linen. All of which will be sold at the usual credit, or in paper for West India produce. February 26

Married on Friday last, by the Rev. Dr. Rattone, Mr. RICHARD FITZGERALD, to Miss ELINOR LOURY, both of this city.

Died lately in London, Miss Catherine Tibbit, aged 96. suddenly, of a broken heart, occasioned by not receiving a prompt return of affection from a young clerk, on whom she doted. This youthful and tender lady, to whose tender mercies her passion met with, left all her estate, 25,000l. to the cold hearted youth. [London pap.]

On Tuesday last, a gun boat was launched at the navy yard, city of Washington, in the presence of a numerous concourse of persons, among whom were the president and vice president of the U. S.

Captain Hildes, of the Bordeaux Packet, was boarded on Monday last 8 miles to the southward of Egg Harbour, by the British brig Holly, from Bermuda, who, after strictly examining his crew, dismissed him. Captain H. was informed by one of the boat's crew that the brig had 20 impressed American seamen on board. [Phil. pap.]

INTERMENTS in the burying grounds of the city and precincts of Baltimore during the week ending yesterday morning at sunrise.

Table with 2 columns: Disease, and number of deaths. Includes categories like Consumption, Apoplexy, Wounds, Cholera, Still born, Debility, Fits, Disease unknown, Adults, Children, and a TOTAL row.

War between Spain and England.—We have never read such an impudent and insulting manifesto as that published by the British monarch, on this subject. At the commencement of the French revolution, Burke, the hero of civility, singing the funeral dirge to the departing monarchy of France, little thought how quick sighted were the eyes of his own sovereignty; how little necessity there was for lamenting the extinction of the maxims and genius of the old French cabinet—Geo. III. to be kept up and saw its spirit depart; a wretched proposition of its base intrigue and Machavelian policy cleaves to the nose of Haover; the falling mantle of Louis Capet was caught in the arms of Britain to be shrouded the carcass of G. O. George, the principles of the Capet, and of the old French cabinet, poured down at St. James's; we mean its principles only, for by giving us wars with its policies, Pitt is no more for the M. zarines, and the Sully of that country; witness the success of the last war, which established the greatness of France, and by clumsy attempts during the present war, to assassinate Bonaparte by his Drakes and Saiths

The manifesto against Spain is a piece of most consummate impudence—after having taken, sunk, and burnt Spanish mercantile armaments, for months and after having consumed every species of hostility, such as could not be exceeded by any belligerent, the British king comes forward and tells his subjects, that Spain had declared war—matchless effrontery and hypocrisy, only to be equalled by his conduct to the United States from the commencement of his reign. Americans, in the treatment of the Spaniards you may see your own fate, when Pitt all consider it safe to seize you—like Ulysses, in the cave of Polyphemus, you may be intended to be devoured the last—after Spanish plunder is squandered, you may become the next victims. After all the British piracies upon our merchant men, the impressment of our seamen, and the insults upon our rights and government; after their meditating to shut us entirely out of the West Indian trade, after their mediating every hostility and ruin, Americans are to be told (and will they submit to be told?) by the British king that if they arm a single private they are declaring war. Such would be the situation of this country equally with Spain if the British ministry dare make the attempt, but thank God, they dare not; our citizens may rely upon it the British bill restricting our trade to the W. Indies, will not be asked upon, Britain is not in a situation for it, and Mr. Pitt knows very well that, were he to seize every American vessel upon the ocean, we know where to find on shore, sufficient indemnification—he is perfectly well persuaded that the policy of Mr. Pitt is not like that of his predecessor, that the British treaty is at present so much detested as to render its existence no obstacle to the assertion of our rights, and it is not to be supposed, that with such knowledge, he will venture to drive us to extremities. [Aurora.]