

MONDAY, February 11.

Evidence on the part of the United States.

[CONTINUED.]

TUESDAY, FEBRUARY 12.

The court being called; Mr. Randolph observed that they would proceed with the examination of George Hay.

Mr. Hay. A very short statement will close my recollection of this case. It was the intention of the counsel for Callender to defend him on the ground of the unconstitutionality of the sedition law. The gentlemen who were associated with me, preceded me in the argument, but were not permitted to address the jury on the point I mentioned. The treatment experienced by Mr. Wirt, I have in some degree related. He was interrupted two or three times by the judge, for the purpose of telling him, that the doctrine for which he was contending, that the jury had the right of determining the law as well as the fact, was true.

Mr. Wirt then stated, that the constitution was the supreme law of the land. Judge Chase told him there was no necessity of proving that. Mr. Wirt then went on to argue, that if the constitution was the supreme law, and if the jury had a right to determine both law and fact of the case, the conclusion was perfectly syllogistic, that the jury had a right to determine upon the constitutionality of the law. It was at this time that the judge addressed him in the words which I have mentioned, that it was "a non sequitur."

At the same time he bowed with an air of decision. Whether Mr. Wirt said anything after this, I do not recollect. After Mr. Wirt sat down, I arose and addressed myself to the court, and stated, that I addressed my arguments to them, and them alone, and that I did not wish to be heard by the jury. This observation was intended as a sort of reply to the observation of the judge, that our arguments were intended for the populace. I did not attempt to address the jury on the unconstitutionality of the law; but I addressed myself to the court, in order to convince them that I had a right to do it.

After a very short time I was interrupted by the judge, and asked a question, which I conceived a very unnecessary one. I stated to the court, in terms as distinct as I could, the specific purpose for which I meant to contend. I think it was, that the jury had a right to determine every question which was to determine the guilt or innocence of the traverser. The judge asked me whether I laid down this doctrine in civil as well as criminal cases; because, said he, "If you do, you are wrong."

I replied, that I considered it universally true, but that it was sufficient for my purpose if it applied to criminal cases only. I went on as well as I was able with the argument, when I was again interrupted by the judge. What the circumstances were or the words used, I do not recollect. I believe that I was interrupted more than twice. My impressions then being that I should be obliged to undergo more humiliation than I conceived necessary, I retired from the bar. When Judge Chase found I was about retiring, he told me to go on. I told him that I would not. He said that there was no necessity for my being captious. I replied that I was not captious, and that I would not proceed, and immediately retired from the bar, and I believe from the room in which the court was held.

Questions by Mr. Randolph. Did any circumstances occur concerning a witness, and what were the observations made by the court?

A I recollect a circumstance which occurred, when a witness was brought forward to deliver his evidence. I stated that I understood that one of the witnesses brought forward to prove the publication of the "Prospect before us," was the man who was employed by Callender to print it. Understanding that this man was, in point of law, equally criminal, I observed, that if any of the witnesses were implicated in the charge, that they were not bound to give evidence. Judge Chase said that these observations were correct, but the witnesses might rest satisfied that they should not be prosecuted if they choose to give evidence. I do not recollect that the attorney said anything on the subject. In consequence of this assurance of the judge, the gentleman, whose name I think was Kind, gave in his evidence. It appeared by his evidence that he had been employed by Callender, and did print a part of the Prospect.

Q Was there any reference made to the act of Virginia concerning the issuing of process?

A There was a general reference made to the act, but not a special one: on the motion for a continuance, I observed that the procedure was not in conformity with the laws of Virginia. That the process used ought to have been a summons, returnable to the next court, and that during the interval the accused had it in his power to collect his evidence and prepare for trial. I think it probable, that some other observations might have been made; but for the observations of the judge, on the argument which I used, that the jury had a right to assess the fine, the judge said it was a wild notion, when applied to the courts of the United States. If it had seemed to be the opinion of the court that the laws of Virginia were the rule of conduct for them, we should not have been at the trouble of filing an affidavit for a continuance of the case.

Q Did you ever know a case similar to that of Callender's, where a capias issued as the first process?

A This relates to a branch of jurisprudence, with which I am but little acquainted. I believe however, that the invariable practice is, for a summons to issue returnable to the next court. It is not usual to try the cause at the second term, when the defendant appears and pleads not guilty.

Q Did you rely on nothing else for a continuance but the affidavit?

A The argument was founded in part on the affidavit of the traverser, and upon our not being prepared to discuss the constitutionality of the sedition law, and the question whether the jury had a right to determine it. I also stated that the doctrine of libels was unusual to me, and that I wished for time to examine into it.

George Hay cross examined by Mr. Harper.

Q You have said that you did appear to defend the cause and not the man, explain your meaning?

A It is unpleasant for me to answer that question, but I will do it.

Q I will put it in more general terms. Was it the cause of Callender or some other cause?

A The cause which I alluded to was the cause of the constitution, which I most religiously believed to have been violated by the passage of the sedition law, and I intended to defend Callender so far as he was connected with the constitution.

Q Was this your sole object?

A It was my chief object. I had determined that if any person should be prosecuted for a violation of the sedition law, to step forward and defend him.

Q You have said that you referred generally to the law of Virginia, but not particularly. Explain your meaning.

A My meaning was that I did not say "By an act entitled an act, and passed on a particular day it was enacted," but I said that by the laws of Virginia, a defendant was not ruled to trial during the term in which the presentment was made against him.

Q On the subject of colonel Taylor's testimony, did not Judge Chase request Mr. Nelson, the district attorney, to let the evidence go to the jury?

A I think I have some recollection of it, but I cannot state it accurately.

Q Did not Judge Chase offer to postpone the trial of Callender for a month?

A I have heard it said since the trial, but I have not the slightest recollection of any thing of the kind. It would have been the wish of the counsel for Callender to have had the cause postponed. If I had heard the offer, I should gladly have acceded to it.

Q Did the counsel ask for any other postponement but the one until the next term?

A I do not recollect that they did. Judge Chase did offer to postpone it for a day on account of Mr. Giles's absence.

Q Did the witnesses who were brought forward, express a reluctance to give their testimony?

A They came forward voluntarily.

John Taylor sworn.

Mr. Randolph. We wish you to state what fell under your observation at the trial of Callender, and especially with regard to the rejection of your testimony.

Mr. Taylor. With relation to my testimony being rejected, I was summoned and sworn as a witness in behalf of Callender. When I was sworn Judge Chase asked the counsel for Callender what they expected to prove by the witnesses. I do not recollect the answer, but the judge directed the questions to be reduced to writing, and submitted to the inspection of the court,—this having been done, Judge Chase declared that I should not be examined. I did not give any intimation

of what I should be able to prove, either to Callender or his counsel. After Judge Chase declared that I should not be examined, he turned to Judge Griffin and spoke to him, who replied in so low a tone of voice that I was not able to hear what he said.

Q Upon what ground was your testimony rejected?

A The judge said that the testimony was inadmissible, because it would not prove the truth of any charge.

Q Did you observe any thing unusual in the manner of the court?

A The business was commenced with a motion for a continuance. The interruptions of the counsel were frequent, but I do not recollect the expressions used by the judge. The effect of them was a considerable degree of laughter among the audience. I thought the interruptions were in a high degree imperious, satirical and witty.

Q Was there any thing unusual in the manner of the counsel?

A I did not observe: nor did I see any thing of anger on the part of the court.

Q You have said that the manner of the judge was imperative; do you mean that it was imperious? (here the witness hesitated.)

Q Or rude?

A It appeared to be well calculated to abash and disconcert the counsel, and it had that effect; for the audience enjoyed considerable mirth at the expense of the counsel, but I did not see the latter laugh.

Q Do you recollect any thing relative to the overuling the objection of Basset to serve on the jury?

A I do not recollect the expressions of Mr. Basset, but I think he stated that he was opposed to Callender. The judge asked him whether he had any prepossession against the indictment. Basset replied that he had never seen the indictment, and the judge ordered him to be sworn on the jury. In this decision the opinion of Judge Griffin did not appear to have been asked.

Q You have been a long time in the practice of the law?

A A few years only; I believe about seven.

Q Have you ever known a capias to issue in an offence, not capital, and the party to be ruled to trial the same term at which the presentment is made by the grand jury.

A I answer the question in the negative; but I have never directed my attention to criminal cases.

Q Has it been the practice for counsel to be compelled to reduce their questions to writing?

A I never saw it practised as it was in the case of Callender. I have seen it done when questions arose on the question itself.

Q Do you recollect any request of the judge to the attorney, to allow testimony to go to the jury.

A After as much discussion had taken place as I have mentioned, Mr. Chase did express some such idea; but the attorney expressed his dissent to it. The request was made in a very feeble manner by the judge.

John Taylor cross examined by Mr. Harper.

Q You have said that you considered the conduct of the court as tending to abash the counsel. Did it appear to have been so intended by the court?

A I thought it was, and that it had that effect.

Q Did you consider the opinion against the motion for a continuance as made with the concurrence of Judge Griffin?

A The general appeared to be, to give the opinion without consulting Judge Griffin, but to this rule there were exceptions. I know not whether this was one or not.

[To be continued.]

P. R. IS, Dec. 18. MESSAGE TO THE SENATE.

Senators.

THE constitution of the empire having appointed that the acts which declare his marriages and deaths of the members of the imperial family should be transmitted by an order of the emperor to the senate, we have charged our cousin arch-chancellor of the empire to present to you the act which declares the birth of Napoleon Charles, born the 10th of October 1802, and of Napoleon Louis, born the 11th of October 1803, sons of the Prince, our brother—and we invite the senate to order, conformably to the constitution, their transcription into its registers, and to deposit them in its arch-ives.

These princes will inherit the attachment of their father for our person, his love for his duties, and that chief sentiment which ought to actuate every prince called to so high a destiny, that of constantly considering the interests of the country, and the happiness of France, as the sole object of his life.

Given at the Palace of the Thuilleries the 12th of December, 1804.

(Signed) NAPOLEON. By the Emperor.

The secretary of state, (Signed) H. B. MARET.

From the American Daily Advertiser. The ANTI-LOUNGER... No. VI.

"W' it is it but a Man of busy life, 'Its fluctuations, and its vast concerns!"

It is not the lot of every man to be addicted to reading, and there are thousands who would pass their lives without feeling any privation, if all books were to undergo the fate of those in the Alexandrian Library, and the works of the Orators, Historians and Poets, formed one general conflagration. I do not mean to say that the Diurnal sheet, called in popular language a Newspaper, is wished for with eagerness by every diversy of condition with the returning morning; and a party may meet together without a Newspaper would drink the tea of Lethe, and eat the toast of taciturnity.

No publication surely was ever contrived so fertile in sources of amusement and reflection. We here become acquainted with the intrigues of Courts, the negotiations of statesmen, and the devastation of armies—We here find the knottiest mysteries explained, and all distanced to the cause. A Newspaper is the great source that furnishes almost every man with materials for conversation; and I likewise suspect that the political tenets of this Edition of Four Pages; that some observation has struck the young sense, some exposure of tergiversation flamed the ebullient, some set of patriots enlightened up to a kind of amazement; and has have been determined by a Newspaper to embrace of many a distant political—Copper, the pious, learned and sublime, has discriminated, with its usual felicity, a Newspaper in the two lines which I have prefixed to this essay; an essay I have made sacredly at I may not neglect my correspondents.

A young Lady who subscribes herself Florida S. writes (I guess she is one of a crowd of Ladies who were with silver) offers to become my Correspondent on certain stipulations:

"1. Whether her Epistles be good, bad, or indifferent, I must be obliged to every elegant hyperbole in use."

Your panegyrics here please! You cannot err on Flattery's side!

"2. I must change the title of my Work, and lay down my wisdom, satire and experience, in the front of the Lines of the Army of Loungers."

Mille Diabes! Mille Diabes!

"3. I must cultivate, Scotch, Irish, and English Awe, and do more whistle for want of 'hough', either Hill Columbia, or the President's Mch."

"4. I must never say a word on the subject of the unhappy exit of L. w. Listless, who banished himself for want of something to do; because she, the said Florida S. has pen in first column to the above L. w. Listless; and the only blot in his execution, independent of the manner of his exit, was, that he was too lazy to black his boots, or tell Larry Linger his boy, to black them."

Camilla, a maiden Lady of forty (I suspect she has not told me the whole of the Summers she has seen) entreats Mr. Fitz-Turly will inform her whether or not, she may read modern Novels without danger to her passions. I answer in the affirmative. For

A Novel now a days, is nothing more, Than an old castle, and a creaking door; A distant hotel, Clanking of chains, a gallery, a light, Oh, armor, and a Phantom all in white! And, there's a Novel.

I have the pleasure to acquaint my readers that Tabitha is just arrived in the Stage Coach from the country. I never saw her look in better health or spirits. Her eye still sparkles with life, her cheek still glows with health, and a smile still enlivening her about the fine contour of her mouth.

She is dressed quite a la mode de Philadelphia. Sober, sensible, and obligingly genteel. I doubt whether Florida herself, the pink and aristocrat of fashion, ever developed her head with more yards of yard wide muslin, or adjusted her tresses with more of the simplicitas munditia. She has brought with her a lap dog, a piano, and two elegant volumes in octavo; purposing to divide her hours between humanity, harmony and study. The books I presented to her the day they were published. They are Nature Displayed in her mode of teaching Languages, and I beg leave to recommend the work not only to my Sisters, but to every one desirous of attaining the French Language, as a performance solid, ingenious, and profound.

Neither Oberon nor the Cat recognized Tabitha at first, so miraculously is she metamorphosed from a plain country hoyden into a woman of the most superlative magnificence.

She is quite in love with Philadelphia. We lodge in a populous part of the city, and she is perpetually at the front window, gazing like a young giddy thing at the fellows, and listening with rapture to the bellying play Yankee Doodle as the 'sleigh' horses snare their noddles. This, I am frank enough to acknowledge, delects my severe strictures; but I fear her tongue. I was going to say, I fear the grim Pluto.