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(BY PERMISSION.)

[A copy-right has been obtained of Evans' notes of the "*Trial of Judge Chase.*" and the work is now publishing in this city, in one large volume 8vo. The publishers pledge themselves, that the edition shall be a complete and faithful record of all the proceedings in that important case,

We have obtained *permission* of the proprietors of said copy right, to publish in the American the whole of the examination of the evidence, both in behalf of the prosecution, and on the part of the Judge.]

HIGH COURT OF IMPEACHMENT.

TUESDAY, February 12.

Evidence on the part of the United States.

[CONTINUED.]

Philip Norborne Nicholas sworn.

Mr. Nicholson. Please to state your knowledge relative to the trial of Callender.

Mr. Nicholas. In the month of May, 1800, the circuit court sat in Richmond, and was composed of Judges Chase and Griffin. I believe that Judge Chase sat alone for some time. On the first day of the court, Judge Chase delivered a charge to the grand jury, in which he spoke of offences against the sedition law. The same day the grand jury returned with a presentment against James Thompson Callender, as the author of a book called the "*Prospect before us.*" The indictment was sent up to the grand jury the same day, and a true bill returned. Callender then lived in Petersburgh, and process was issued against him. My impression always has been till lately, that the process was a warrant for his apprehension. It was said for several days that Callender could not be found; at length, however, he was found, and brought by the Marshal to Richmond. He seemed very much alarmed, and wished to make some concessions to the court. For several days he was permitted to go at large. Mr. Hay and myself had a conversation with him, and told him we were ready to render him our professional assistance. He stated to us that it was impossible for him to go into a trial that term, and we prepared an affidavit, in which he stated the absence of a number of witnesses, which were material to his defence, and also some books which he had not in his possession, and that his counsel were not prepared for trial, even had the witnesses been present. A motion founded on this affidavit was made for a continuance, and argued, with considerable zeal, by the counsel who appeared for Callender. The principal ground taken was, that by the constitution the party accused had a right to compulsory process, to procure the attendance of his witnesses. The judge did not decide the motion on that day, but gave a strong opinion against it. He said he had no objection to postpone the trial until such of the witnesses as could be procured, during the term, might be brought to court. On the next day we renewed the motion for a continuance, and argued it with considerable zeal, being confident that we could not do justice to Callender if we proceeded to trial that term. Mr. Hay stated the law of Virginia, by which the jury had the right of assessing the fine. Judge Chase said that that was a wild notion, when applied to the courts of the United States, and told the attorney that he need not reply to our arguments, because the affidavit did not state that the witnesses could prove the truth of all the charges, and therefore, that the cause could not be continued. I believe, he concluded by ordering the marshal to call the jury. The jury were then called to the book, when they came, I observed that I should challenge the array, because one of the jury had made use of expressions hostile to Callender, and referred as authority to trials *per pais*. Judge Chase observed that it was not the best authority, and sent for Coke upon Littleton. It having been brought, he cast his eye over a part of it, and observed that the law was clear, and that the array could not be challenged for such a cause, but that we might cause each juror to be examined on oath, as to his expressions. In consequence of this we proceeded to examine the jury. To the following question put by the court, the first juror answered in the negative. It was—"Have you formed and delivered any opinion on the charges contained in the indictment?" Mr. Hay requested the permission of the court to ask the jurors, whether they had ever formed an opinion as to the "Prospect before Us," from which the charges in the indictment were extracted. Judge Chase replied, that his was the only proper question, and that an opinion must be delivered as well as formed. Mr. Hay then requested that the indictment might be read to the jury. Judge Chase refused it, and observed that he had indulged us as much as he could. The eighth juror which was called, wa John Basset. I believe he was asked the previous question, and his reply was that he had never seen the indictment, but stated that he wished to be excused from serving on the jury, because he had formed and delivered an opinion that the "Prospect before Us," came under the sedition law. Mr. Chase observed that he was a good juror, and he was accordingly sworn. The evidence on the part of the United States was then called, and a number of witnesses appeared, and among the rest William A. Rind, who had been engaged in printing the book. Mr. Hay observed, that some of the witnesses might criminate themselves, and that if any of them were engaged in the publication of the work, they were not bound to give evidence. Judge Chase observed, that the gentlemen was correct as to the law, but if the witnesses chose to give evidence, that they might rest satisfied that they would not be prosecuted. The witnesses were sworn and Mr. Rind proved that he printed a part of the work. The evidence on the part of the U. States being closed, the counsel for Callender wished to examine colonel John Taylor, and he was sworn in chief. Mr. Chase asked what we meant to prove by that witness. We replied, that we did not know exactly, but that we meant to ask him whether he had not heard Mr. Adams express aristocratical sentiments, and whether Mr. Adams did not while vice-president, vote in the senate against the law for sequestrating British debts, and the law to suspend the commercial intercourse between the United States and Great Britain. Judge Chase said that we must reduce our questions to writing. I observed that it was a practice unusual in the state courts, and in the present case would be extremely improper, because we did not know what colonel Taylor might prove. Mr. Chase replied, that his requisition must be complied with, and I accordingly reduced the questions to writing—they were as has been stated. Mr. Chase with considerable promptitude declared, that the witness could not be examined because he could not prove the truth of the whole of any one charge, upon which colonel Taylor left the court. The evidence being closed, the counsel for the United States commented very largely to the jury on the enormity of the offence. After he had finished, Mr. Wirt rose and addressed the court, and observed that the situation of the counsel for Callender was a very embarrassing one. Mr. Chase told him that he must not reflect on the court. Mr. Wirt then addressed the jury. He began by observing, that by an act of Congress, the laws of Virginia were in force in the courts of the United States sitting in Virginia. That by the common law of England, which had been adopted in Virginia, the jury had a right to decide on the law as well as the fact in criminal cases, and therefore they had a right to judge of the constitutionality of a law. Mr. Chase said, "sit down sir." Mr. Wirt observed that he was going on. Mr. Chase said, "no sir, I am going on." Judge Chase then read a paper, in which he declared, that observations of this kind must be made to the court. Mr. Wirt then addressed the court, and stated that he had not prepared himself upon the question, but he conceived the point to be settled that the jury had a right of deciding on the law on criminal cases. Mr. Chase said that the jury was to decide the law. Mr. Wirt then said, "if the jury have a right to decide the law, and the constitution is the supreme law, the conclusion is perfectly sylogistic; that the jury have a right to determine the constitutionality of a law." Mr. Chase replied, "a *non sequitur*, sir;" upon which Mr. Wirt immediately sat down. I followed him and was not interrupted by the judge. Mr. Hay followed me, and observed, that the jury had a right to decide the law. Mr. Chase asked him whether he meant in civil as well as criminal cases, because if he did, he was wrong. Mr. Hay replied that he conceived the proposition to be universally true; but that it was sufficient for his purpose if it applied to criminal cases. He then proceeded a little further, and was again interrupted by the judge. Mr. Hay then stoped, folded up his papers and left the court, and we left it at the same time. What happened afterwards I know not.

Question by Mr. Randolph.

Q. When you stated your objections to being compelled to reduce your questions to writing, and observed that the prosecutor had not been compelled to do it, what was the reply of Mr. Chase?

A. He said that the counsel for the United States had stated when he opened the case, what he expected to prove by his witnesses.

Q. Did you hear any offer on the part of the judge to postpone the trial for one month?

A. I did not.

Q. Was the district judge consulted when the opinions of the court were given?

A. I do not recollect to have heard his voice except when the evidence of colonel Taylor was rejected.

Q. Did Mr. Chase use rude expressions towards the counsel?

A. It is very difficult for me to answer that question. I will relate the facts as well as I recollect them. I remember that when the court overruled the testimony of colonel Taylor, judge Chase made use of this expression: "The counsel for the traverser know the evidence to be inadmissible, and wish to mislead and deceive the populace; and they keep pressing their mistakes upon the court." He several times appeared to wish to throw the counsel into ridicule. Mr. Hay attempted to prove that the words ought to have been set forth in the indictment literally Mr. Chase said, "what the gentleman has said is not law, he contends that the extract ought to have been set forth in the indictment *verbatim et literatim*. I wonder he had not contended that it ought to be *et punctuatim* also." Mr. Hay was contending, that in all the precedents which he had seen concerning indictments for libels, that the title of the book was mentioned. Mr. Chase said that he remembered the case of "*The Nun in her Smock*" where the title was mentioned, but that it was not necessary.

Q. You say that when the evidence of colonel Taylor was rejected, that judge Griffin concurred. Was his opinion asked before or after the evidence was declared to be inadmissible?

A. It was after.

Q. Did any of the counsel object to any of those opinions being the opinion of the court?

A. Not at that time. I recollect that the morning, that Callender was sentenced, a gentleman rose and asked whether that was the opinion of the court; and judge Griffin replied yes.

Q. Were you at the time of the trial of Callender, attorney general of the state of Virginia?

A. I was.

Q. Did judge Chase when speaking of you make use of the term, "young man" or "young gentleman."

A. I believe he did apply the term "young gentleman" to me. I had forgot upon what occasion, but upon conversing with Mr. Robertson, who took the stenographical account of the trial, I believe it was when colonel Taylor's evidence was rejected. I think he applied to the district attorney, and said, that he had been so importuned by the young gentleman, that he wished Mr. Nelson would suffer the evidence to go to the jury?

Q. Is it usual in the courts of Virginia, in cases less than capital, to issue a capias and take the party into custody?

A. The practice is to issue a summons, and I do not recollect an instance where a capias has issued, in the first instance. The usual practice is for the sheriff to keep the summons, and not to serve it until just before the sitting of the court, but the party is never ruled to trial the first term.

Q. Did the counsel for the traverser, refer to the law of Virginia?

A. I believe not particularly. Mr. Hay referred to it generally.

Q. Why did not the counsel refer to it?

A. I do not recollect. I had just began to practice in the federal court; but I do suppose that the reason was because the judge had expressed an opinion that the act of Virginia did not apply.

Philip Norborne Nicholas, cross-examined by Mr. Harper.

Q. Did judge Chase use the term "we," as connecting himself with the prosecutor?

A. I so considered it.

Q. Did the witnesses who were brought forward, and who were concerned in the publication of the book, express any unwillingness to give evidence?

A. I believe they did not.

Q. Is it not an usual thing for the court to promise a witness that he shall not be prosecuted?

A. I never knew an instance of the kind.

Q. What caused the second interruption of Mr. Hay?

A. I do not recollect.

Question by Mr. Randolph.

Q. Was not Mr. Hay interrupted more than twice?

A. He was interrupted a number of times.

John Thompson Mason, sworn.

Mr. *Randolph.* It has been conceded by the respondent and must be acknowledged by every person, that the *quo animo* in which these transactions were done, has an important bearing on the construction to be given to his conduct. I therefore wish to ask this question of the witness:—Did you ever hear Mr. Chase utter any expressions relative to Callender and the counsel at the Virginia bar?

A. I beg leave to observe, that I expected to be examined relative to a charge delivered by judge Chase to the grand jury at Baltimore, and this question did not occur to me. I have a very indistinct recollection of a conversation with judge Chase, and it was had in a manner which makes it extremely painful to me to relate it; but as I am under the solemn obligation of an oath, I will relate it as well as I recollect. Judge Chase presided at a circuit court held at Annapolis in May, 1800. During the term, a man by the name of Saunders, was tried and convicted for robbing the post-office. When sentence was passed on him, and he was taken out of court to receive it, the crowd at the door was so great, that we who were in the court house could not get out. Judge Chase had at that term delivered a farewell address to the grand jury. A conversation took place in the court house which was altogether jocular, and I have mentioned it to no human being before. Judge Chase asked me if I had seen the "*Prospect before Us,*" I replied that I had not, nor did I ever wish to see it. He observed that Mr. Martin the attorney general of Maryland had sent it to him, and that Mr. Martin had scored the passages that were libellous, and that he should carry it to Richmond with him; and that if the commonwealth of Virginia was not utterly depraved, or that if a jury of honest men could be found there, he would punish Callender. He said he would teach the lawyers in Virginia the difference between the liberty and the licentiousness of the press.—Judge Chase further observed, that he was as great a friend to the liberty of the press as any man, but as great an enemy to its licentiousness.

John Heath, sworn.

Mr *Randolph.* Please to state any thing which you may know relative to the trial of James Thompson Callender.

Mr. *Heath.* I was one of the counsel at the bar of the circuit court, but was not concerned for Callender. I had occasion to apply to the court for an injunction in the case of a Mr. John Gordon, at the suit of a merchant in Baltimore. The motion which I made was not decided on that day, and I thought I would apply to judge Chase the next morning at his chambers. I accordingly went there the next morning for the purpose of remonstrating with him on the propriety of granting the injunction, and found the judge alone. While I was there, Mr. Randolph, the then marshal of Virginia, came in; he held a paper in his hand, and judge Chase asked him what it was. Mr. Randolph replied, that it was a pannel of the jury to try Callender. Judge Chase then asked him if he had any of those creatures or people called democrats on it. Mr. Randolph paused for a moment, and but for a moment, and then replied, that he made no discrimination. Judge Chase told him to look over the pannel if there were any of that description, strike them off. This was after the indictment was found against Callender.

The court then adjourned.

WEDNESDAY, February 13.

James Triplett, sworn.—Examined by Mr. Randolph.

Q. Do you know any thing relative to the trial of Callender?

A. I know of no facts which took place during the trial.

Q. Did you hear any expressions used by Mr. Chase, hostile to Callender either previous to, or during his trial?

A. I travelled in the stage from Dumfries to Richmond in company with the judge, when he was going to hold the court at which Callender was tried. The subject of the "*Prospect before Us*" was introduced, and the book was produced by the judge, and handed to me. I informed the judge that Callender had been apprehended once in Virginia under the vagrant law. Judge Chase replied that it was a pity they had not hanged the rascal.

Q. Were there any other expressions after you got to Richmond?

A. After we had got to Richmond the judge first informed me of the presentments being made against Callender, and that he expected I would have an opportunity of seeing him next day, as the marshal had gone for him to Petersburg. A day or two after this, I met the judge coming down stairs, and he observed, "the marshal has returned without him, I am afraid that we shall not be able to get the damned rascal this court."

Q. Did you read the book when Mr. Chase handed it to you in the stage?

A. I read but a small part of it.

Q. Were any passages marked?

A. There were some passages marked, but I do not remember what they were.

James Triplett, cross-examined by Mr. Harper.

Q. On what day did this last conversation take place between you and the judge?

A. I think it was on a Sunday.

Q. Do you recollect who was in the stage with you?

A. I recollect one person's getting in at Stafford Court-house whom I knew. There were a number of persons repeatedly getting in and out.

Q. Where did the conversation take place?

A. Between Fredericksburg and Richmond.

Question by Mr. Nicholson.

Q. When was the first time that you related these conversations, and to whom did you relate them?

A. I recollect to have related them to the late general Mason, soon after my return from Richmond.

Question by the President.

Q. Were you acquainted with judge Chase at that time?

A. I was not.

John Heath, cross-examined by Mr. Lee.

Q. Were both of your applications for an injunction made at judge Chase's chambers?

A. The first was made in court.

Q. Who then composed the court?

A. I do not recollect whether judge Griffin was on the bench or not.

Q. At what time of the day was it that you went to the judges chambers?

A. It was immediately after breakfast, I think it was between 8 and 9 o'clock.

Q. What space of time was you there?

A. I do suppose it was more than half an hour.

Q. Was the bill of complaint read to judge Chase at his chambers?

A. I do not recollect whether I had the bill with me or not. I went to his chambers for the purpose of remonstrating with him on the propriety of granting the injunction. The judge observed that it was very extraordinary that Gordon should find equity then in his case, when an application had been before made to him in Baltimore and no equity then existed.

Q. Who was present at the judges chambers when the conversation took place between him and the late marshal?

A. I do not believe that there was any person in the room while I was there except judge Chase, Mr. Randolph and myself.

Q. Were you there more than once?

A. I was not.

Q. To whom and when did you mention this conversation?

A. I mentioned it immediately I went up to the Swan Tavern to major Hugh Holmes and Mr. Meriwether Jones. I thought myself justified in mentioning it, not considering it a private conversation.

Mr. *Harper.*—Mr. President, I wish to make a proposition which I hope will be acceded to by the managers. It is that John Basset be suffered to be now examined on the part of the respondent. He has informed me that since his arrival here, he has received advice from his family which renders his presence indispensible, and wishes to be examined and discharged.

Mr. *Randolph.*—The managers have no objection to the examination and discharge of Mr. Basset.

[*To be continued.*]