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IMPEACHMENT, OF JUDGE CHASE.

TUESDAY, FEBRUARY 12, 1805.

[Continued.]

JOHN THOMSON MASON *sworn*.

Mr. Randolph. It has been contended on the part of the respondent, that the *quo animo*, or the *animus quo* determines the guilt or innocence of an action; now, if the *quo animo* with which he went down to Richmond to execute the sedition law, can be shown, it will have an important bearing on his conduct. I wish therefore to ask the witness this question: Did you ever hear Judge Chase, previous to the trial of Callender, utter any expression, and if any, what was it, on the subject of Callender's prosecution, or respecting the book called the Prospect Before Us; did he say that the counsel at the Virginia bar were afraid to press the execution of any law, and particularly the sedition law; did he say he had a copy of that book, or what did he say? State the circumstances particularly?

Mr. Mason. The question refers to circumstances of which I have but an indistinct recollection, and which happened in a way, which renders it extremely unpleasant on my part to relate them. Judge Chase presided in the circuit court held at Annapolis in the spring of the year 1800; during the term a man by the name of Saunders, was tried for larceny and found guilty. After sentence was passed upon him, he was taken out of court to receive it. The press of the people being very great, the Judges and myself were detained within the room. Judge Winchester, Judge Chase and myself had a conversation, altogether of a jocular complexion, I think it was just after he delivered his valedictory, but how to connect the circumstances at this time, I do not know. I remember, however, that he asked me my opinion of the book called the Prospect Before Us; I told him I had not seen it, and from the character I had heard of it, I never wished to see it. He told me in reply, that Mr. Luther Martin had sent a copy to him, and had scored the parts that were libellous, and that he would carry it to Richmond with him as a proper subject for prosecution. There was a good deal of conversation besides, but I do not recollect it. There was one expression, however, that he used, which just occurs to my memory, and which I will repeat, that before he left Richmond, he would teach the people to distinguish between the liberty and licentiousness of the press. He said that he was as sincere a friend to the liberty, as he was an enemy to the licentiousness of the press. There was a sentiment, he expressed, which I cannot undertake to give in his precise words, that if the commonwealth or its inhabitants were not too depraved to furnish a jury of good and respectable men, he would certainly punish Callender. I do not precisely recollect the words—I never repeated this conversation before, and seldom or ever after it occurred, thought of it.

JOHN HEATH *sworn*.

During the trial of J. T. Callender, I attended at the court in Richmond as one of the bar. I had occasion to apply to the court for an injunction. The motion not having been decided upon, I went round to Crouch's, where Judge Chase lodged, and found him in his chamber alone, in which I thought myself very fortunate—We then talked over the application I had made the day before for an injunction; while talking on it, Mr. David M. Randolph, the then marshal, stepped in with a paper in his hand. The Judge accosted him, and asked what he had in his hand. He said that he had the pannel of the petit jury summoned for the trial of Callender. This was after the indictment was found by the grand jury. After Mr. Randolph had mentioned that it was the pannel of the petit jury that he had in his hand, Judge Chase immediately replied, have you any of those creatures called democrats on the pannel—Mr. Randolph hesitated for a moment, and then said that he had not made any discrimination in summoning the petit jury. Judge Chase said, look it over, Sir, and if there are any of that description, strike them off. This is all I know of this affair.

WEDNESDAY, February 13.

JAMES TRIPLETT SWORN.

Mr. *Randolph*. I wish to know whether you ever heard previous to, or during the trial of Callendar any expressions used by the respondent judge Chase, manifesting an hostility towards J. T. Callendar, and what were those expressions?

Mr. Triplett. I recollect to have had a conversation with judge Chase on our passage in the stage down to Richmond. A book was handed to me by him, and I was asked if I had read it. I was asked whether I had ever seen him (Callender) I told him, I never had seen him. There was a story recited about the arrest of Callender by a warrant of a magistrate under the vagrant act of Virginia—I recollect that the judge's reply was "it is a pity you have not hanged the rascal."

Mr. Randolph. Was there any other expressions of this nature used, after you got to Richmond?

Mr. Triplett. I did not hear any thing particularly; but I think the judge did say something about the government of the United States shewing too much lenity towards such renegadoes. I do not recollect any other conversation passing between us at that time, until after the court was sitting, when judge Chase was the first who informed me of the presentment being made by the grand jury against Callendar. At the same time he informed me that he expected I would have the pleasure of seeing Callender next day before sundown, that the marshall had that day started after him for Petersburg.

Mr. Randolph. We wish you, as well as your memory serves, to state not only the substance, but the exact expressions used by the judge.

Mr. *Triplett*. I will state them as well as my memory serves me. Some time after this conversation, I met the judge at the place where he boarded; he said that the marshal had returned without Callender, and used this expression, I am afraid we shall not be able to get the damned rascal at this court.

Mr. *Randolph*. You say a copy of this book was handed to you by judge Chase. Did you read it, Sir?

Mr. *Triplett*. I read several passages of it.

Mr. *Randolph*. Were they marked?

Mr. *Triplett*. I saw several passages marked; but by whom I do not know.

Mr. *Randolph*. Do you remember any particular passages that were marked?

Mr. *Triplett*. I do not. I have stated every thing I recollect; but if the gentlemen have any questions to ask I am ready to give them an answer.

Mr. *Martin*. I will ask how many days you resided at the same house with the judge?

Mr. *Triplett*. I think, six days.

Mr. *Martin*. Do you recollect whether my name was not marked on the book, which judge Chase handed to you?

Mr. *Triplett*. I do not.

Mr. *Harper*. Can you state the day of the month, or of the week, when the last conversation passed?

Mr. *Triplett*. I think it was Sunday, but I am not positive. I made no minutes, as I never expected to be called upon to answer enquiries of this kind.

Mr. *Harper*. How long was it after the first conversation with the judge, when he mentioned that the marshal had gone after Callender?

Mr. *Triplett*. I do not precisely recollect. It was not, I think, so much as three days—I do not think it was so much as two days; but I cannot be positive, after so great a length of time has elapsed.

Mr. *Harper*. Do you recollect who travelled with you in the stage from Dumfries to Richmond?

Mr. *Triplett*. I cannot recollect—The stage was much crowded from Dumfries to Fredericksburg; and there was a passenger taken in at Stafford court house.

Mr. *Harper*. Well, Sir, how was it from Fredericksburg to Richmond?

Mr. *Triplett*. I do not particularly recollect; but there were passengers repeatedly getting in all the way.

Mr. *Harper*. Did this conversation take place before you reached Stafford court house?

Mr. *Triplett*. It was after.

Mr. *Harper*. Was it between Fredericksburg and Richmond?

Mr. *Triplett*. Yes, Sir.

President. Had you any conversation with judge Chase previous to this interview?

Mr. *Triplett*. No, Sir.

President. Did you sit together in the stage?

Mr. *Triplett*. We did the second day, and it was then the conversation passed.

Mr. *Hopkinson*. When was it, that for the first time, you mentioned this conversation to any body?

Mr. *Triplett*. I do not recollect when I mentioned it the first time; but I remember to have communicated it to general Mason on my return to Dumfries.

Mr. *Nicholson*. Have you since mentioned it to others?

Mr. *Triplett*—Frequently.

On the suggestion of Mr. Randolph, that Mr. Triplet had fractured his wrist, from which he apprehended serious consequences, he was dismissed with the consent of the counsel for the respondent, from further attendance on the court.

At the instance of Mr. Lee, *John Heath*, examined yesterday, was again called in.

Mr. Lee. You mentioned yesterday that you made two applications for an injunction. Were they made at the Judge's Chambers, or in court?

Mr. Heath. I mentioned that I made the application to the court, and that it was not then granted—I then stated that I went to the Judge's Chambers the next day before the court met.

Mr. Lee. Who composed the court when the injunction was moved in the first instance?

Mr. Heath: I think, but I cannot be particular, that Judge Griffin was there. He was, however, there the next day.

Mr. Lee. At what time of the day was it that you went to the Judge's Chambers respecting your application for the injunction.?

Mr. *Heath*. It was immediately after breakfast. We generally breakfasted early. Immediately after I waited upon him. I think it was between 8 and 9 o'clock.

Mr. *Lee*. What space of time were you there?

Mr. *Heath*. I do not think I was there quite half an hour.

Mr. *Lee*. Was the bill read by yourself, or put into the hands of the Judge to read it, at the time you made the application at his Chamber?

Mr. *Heath*. I do not recollect to have presented the bill to the Judge. I am not positive that I had the bill with me. I called upon him for the purpose of learning the reasons why the Judge did not grant the application. [Here the witness related some remarks of Judge Chase on the application for an injunction, which were too indistinctly heard to be reported.]

Mr. *Lee*. Who were present at the Judge's Chambers at the time you state the conversation took place between Judge Chase and Mr. David M. Randolph respecting the pannel of the jury?

Mr. *Heath*. No other person was present but myself. When I came in I found the Judge alone, and I thought myself fortunate in so finding him. We had been in conversation by ourselves for 8 or 10 minutes before Mr. Randolph came in.

Mr. *Lee*. Was any person present at the door, or was the door open at the time?

Mr. *Heath*. I do not recollect that there was; but it appeared to me that as I was going into the house, somebody was coming out; and I found the Judge alone, I am positive when I entered; and we continued alone until Mr. Randolph stepped in. It struck me there might have been somebody that came in at the main door of the house between the time I was there and Mr. Randolph's coming in; but I am not certain.

Mr. *Lee*. You say somebody was coming out, when you went into the room. Was it Mr. Randolph?

Mr. *Heath*. No, Sir. I said there might be somebody coming out, but whether out of his Chamber, or out of another room, I am not certain; but when I entered his chamber I found him alone, and I thought myself fortunate in so finding him.

Mr. *Lee*. On what day of the week was this?

Mr. *Heath*. I do not recollect.

Mr. *Lee*. How many days was it after your motion to the court before you went to the Judge's chambers?

Mr. *Heath*. I do not recollect—but I think it was a few days after the bill against Callender had been found, and he had been arrested; but as to days, hours and minutes, I do not pretend to recollect them.

Mr. *Lee*. Am I to understand that it was after Callender appeared in court?

Mr. *Heath*. I do not say so. It was after Callender was brought forward by the marshal, and a true bill found. I think it was immediately after; but I do not recollect whether a day or two after.

Mr. *Lee*. Did you go to Judge Chase's chambers on any business more than that one time?

Mr. *Heath*. No—I never did more than that one time.

Mr. *Chase*. It was with the motion?

Mr. *Heath*. Yes, Sir, it was with the motion.

Mr. *Randolph*. Did you at any, and at what time, mention this circumstance, and to whom did you mention it?

Mr. *Heath*. As soon as it happened, I considered the conversation improper, and I thought I had a right to relate it, as I did not visit him as a friend, but as a Judge in his judicial character to perform the duties of his office, and on business which might have been done in open court as well as at his chambers. I mentioned it to Mr. Hugh Holmes, also to Mr. Meriwether Jones.

Mr. *Randolph*. Do you mean Mr. Holmes, the present Speaker of the House of Delegates of Virginia?

Mr. *Heath*. Yes Sir.

Mr. *Randolph*—You state that you mentioned it to Mr. Holmes and Mr. Jones—Did you mention it to any body else?

Mr. *Heath*—I was so much impressed with it, that I mentioned it to several others.

Mr. *Nicholson*—Did you say you made this communication to those gentlemen immediately after the conversation occurred?

Mr. *Heath*—On the very day, and within an hour afterwards; and I have since mentioned it frequently to others—I never kept it a secret.

Mr. *Hopkinson*—Was this conversation on the day of the trial of Callender, or how many days before?

Mr. *Heath*—I do not recollect whether Callender was tried that day, I mentioned yesterday that I did not attend the trial.

Question—Did you make your motion at the same term that Callender was tried?

Mr. *Heath*—Yes, Sir—There were intervals in which motions were made by counsel—During one of these intervals I made my motion for an injunction—Callender had not then been tried; I do not know that when I made the motion the marshal had returned with Callender, but I made it the day before I went to the Judge's chambers.

Mr. *Nicholson*—Was the conversation before the empannelling of the jury in the case of Callender?

Mr. *Heath*—Yes, Sir—The marshal came in during the time I was in conversation with the Judge, it appeared to me, to shew the Judge what kind of a pannel he had.

At the request of Mr. Harper, and with the consent of the Managers, JOHN BASSET, a witness on the part of Judge Chase, was sworn and examined, in consequence of the peculiar situation of his family requiring his immediate return home.

Mr. *Harper*. Relate the circumstances that took place relative to your being sworn on the jury, on the trial of Callender, and what the application to the court was on your behalf?

Mr. *Basset*. The circuit court of the United States at which James T. Callender was presented and indicted for a libel, was held on Monday the 2d or 3d of June. I left home in the morning and arrived in Richmond as early as might be expected. On my arrival I saw David M. Randolph, who was standing at a corner of a street; perceiving me, he came towards me; before I alighted from my horse, he informed me that I had been summoned as a grand juror, and that for not appearing, I had been crossed, that it was my duty to go to the court and justify myself for my absence; that he summoned me on the petit jury for the trial of Callender, and that my serving in that capacity would be an apology for my previous absence. I presented myself to the court, but the trial did not come on that day. The second day I attended also. I knew very well that the law under which the traverser was to be tried, was odious to my fellow citizens; I knew it was conceived to be a great oppression to the liberty of the subject, and I believed that great umbrage would be given to the mass of the people by those who should undertake to execute that law. I was weak or wicked enough to be among that class of people called federalists, and I did believe that the law [sedition law] was constitutional. I felt myself bound when called on to be a jury man, to make a declaration of my political sentiments. I made this declaration to relieve the impression on my own mind, and not in order that it should be considered that I declined, in consequence of my political opinions, to serve on Callender's trial, or in any other case. I thought it possible that I might be excused; but if I was found by the court to stand in a proper relation between my country and the traverser, I would cheerfully serve. My object was to justify my own conduct to myself, and to the whole world. I made use of these expressions, and I believe I rep at the very words, but I am well assured that I shall express the force and efficacy of what I said. I declared to the Judge that my politics were federal; that I had never seen the book called the Prospect Before Us, but I had seen in a newspaper some extracts from it; that if the extracts were correctly taken from the book, and if the traverser was the author or publisher of that work, it appeared to me that it was a seditious act, that I had formed and expressed an unequivocal opinion, that the book was a seditious act, that I had never formed an opinion in respect to the indictment, for I had neither seen it nor heard it read. The court considered me a good juror, and I was sworn accordingly. After the trial had been gone through, the jury retired to their room. I informed the jury that I thought we should have the book read through.

The *President* here stopped the witness, and informed him that it was an useless waste of time to relate what took place in the room of the jury.

The witness, however, continuing the statement he had previously begun, the *President* desired him to go on, if it were necessary for the purpose of connecting the testimony he had to give; but to pass over what occurred among the jury as briefly as possible.

Mr. *Basset*. I told the jury that I thought the book should be read. The jury did not at first agree, but the greater part of it was afterwards read. In respect to the general progress, I will state one point that makes a great impression on my mind; I do not pretend, however, to a superior recollection, especially after a lapse of five years, during which I never dreamt it would be the subject of discussion, but I will give my impressions. The judge, addressing the counsel for the traverser said, when my country invested me with my sacred office, it placed me under an obligation to administer justice according to law; this I am determined to do, and I have done it. I have decided what the law is, but this decision is not conclusive against the traverser: If any exceptions are made by his counsel to my decision, they may be reduced to writing, and if I have committed errors, a superior tribunal shall correct them.

Mr. *Randolph*. You stated that you had read extracts from the Prospect Before Us in newspapers, before you were impannelled on the jury, which impressed you with the opinion that it was a seditious publication. After reading over the book, did it appear to you to answer that description?

Mr. *Basset*. I thought it was more libellous than the extracts I had seen.

Mr. *Randolph*. The extracts and the book did not then correspondent.

Mr. *Basset*. I cannot say. I could not say the extracts were the same with what I read in the book, I only recollect that my impression was that they were the same. I could not then, nor can I now say that they were conformable to the book, but my impression is, that they were the same in substance.

Mr. *Harper*. Did you mean to say that the contents of the book were more libellous than the extract.

Mr. *Basset*. I meant to say, that after I had read the book, my impressions were that it was more libellous than I conceived it to be when I read the extracts.

Mr. *Nicholson*. Do you recollect at what time you arrived in town?

Mr. *Basset*. I cannot recollect, but I believe soon after the court met—that morning I rose early and rode 22 miles, about four hour's ride.

Mr. *Nicholson*. Was the book given by the court to the jury?

Mr. *Basset*. I understood that it was delivered by the court to the jury for their inspection, and to compare the extracts from the book, and see whether, they were correctly taken, but I do not recollect that the judge particularly called our attention to the book and directed us what was to be done with it, but my recollection is that the book was delivered to us.

Mr. *Rodney*. Was the indictment read after all the jury were sworn?

Mr. *Basset*. I do not recollect that the indictment was read till after the jury was sworn.

Mr. *Rodney*. Had the book given to the jury any passages scored?

Mr. *Basset*. I think it had.

Mr. *Rodney*. Do you know whether