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IMPEACHMENT OF JUDGE CHASE.

WEDNESDAY, FEBRUARY 20.

[Mr. Campbell's speech continued.]

But it is inferred, on, by the judge in his defence, that the opinion was a correct one, as to the law of evidence, propered by former decisions, and therefore, there would be no harm in making it known, which he says he thought, he did; that it could not mislead the jury, but would guard them against the injury involved upon by the ingenuity of counsel. Though this reasoning may appear plausible at first view, it will be found, upon examination, to be fallacious, tending to establish a dangerous doctrine; that will, in principle, go the whole length of justifying a judge, for offering aloud, with the utmost ease, a jury altogether in trials for crimes. If a judge may give a felonious opinion against a defendant in a criminal trial, without permitting counsel to be heard in his behalf, when the party is entitled of right to the influence of counsel, and then justify his conduct by shewing that the opinion was correct, and that the jury have delivered by him in some form of the trial; why may he not pleads for, treason delivered upon a complaint, without the aid or intervention of a jury? And, when charged with this conduct, as unprofessional and illegal, justify himself by shewing that the treasons he pleads was a correct one, that the fact to the case were notorious and admitted on all hands; that the law was clear and had been established by repeated decisions that could not be broken; and that, therefore, the intervention of a jury could be of no force to the defendant, as they must find him guilty; and that as he would have to declare the same treason after his pronounce the verdict, which should have been rendered, it could do no harm to pronounce it now out finds verdict; as it could not do an injury to pass a correct sentence as any one. This reasoning would be of the same kind with that advanced by the judges in the case before you, to justify him in delivering a written opinion, before the cause was heard, or the affidavit presumed to make his defence by counsel; for if in the one case it would be a violation of the constitutional rights of a trial by jury, formal in the finding of in criminal prosecution; in the other case it would be equally a violation of the constitutional rights, formal in the defendants, of having the influence of counsel in their defence. The reasoning for the use of the judges, if it proved any thing, would prove too much, it would totally defeat the constitutional provisions in our constitution for the protection of the rights and interests of the citizens; and authorize a judge to order at pleasure to dispense with constitutional rights, when they thought it expedient to do so.

But in the present investigation, the correctness or incorrectness of the written opinion delivered by the judges, is not the question; this opinion is not charged to be an illegal, or erroneous opinion, in the offence charged in the manner and mode of delivering it; the attempt of the judge to justify himself in his conduct, by shewing that the opinion delivered was correct and authorized by former decisions, is a mere evasion of the real charge alleged in the impeachment, and a mere evasion to point that was not depend or not in question. It cannot, therefore, affect and the accused, or make him a bit better than if would be in fault opinion had been evidency correct, but it is not intended, in charged, but admit the correctness of the opinion delivered by the judge in writing, by reasoning into the delusion of it, in the affirmation of the opinion, it cannot have benefit in correctness of the opinion delivered in a form not quoting, and, therefore, unnecessary to be criticised.

I will now proceed to consider the third position stated, to wit, that the judge did impose on the counsel engaged on behalf of the defendant, in the trial of Callender, in the exercise of their profession, rights, as known to, and sanctioned by the laws and usages of that nation. In support of this part of the charge, there is the evidence of Mr. Lee, who states that when the judge delivered the written opinion in the manner already noticed, he inferred that on the former trials, there had been a great waste of time, by counsel making long speeches to the jury on the law as well as on the fact, and stated his disapprobation of these having been practised in such certain statutes of the United States, relating to crimes less than treason, which he or the court declared they would be fully to be decided upon, in that case at common law, or under the laws of England, prevalent in the English revolution, had nothing to do with the question, and that they would be of a fuller force to be cited; that they had made up their mind on the law. This is in substance the evidence of Mr. Lee, to shew his judge's mind, in fixing supposed by that of Mr. Dallas, who, though he was not present when the document was made, he gave judge, yet corroborates the testimony of by the state of the mind of the judge, and the same day, as made to him by Mr. Lewis, and by the circumstances that he had put on the paper, that Mr. Dallas also states that the judge said, he to shew on the next day, then in urging upon him the counsel must appear in the court alone and not the jury. The evidence of Mr. Hewle and Tilghman, imports small of this fallacious, except as to the judge's failing to permit the counsel of the United States to be cited, and differ only as to the time at which the judge was not so indulgent; these facts, therefore, are supported by evidence that is clear, and the testimony, we have seen given by Mr. Lewis and Mr. Dallas, different from that given by Mr. Hewle and Tilghman, is much more weight and credit ought to be given to the evidence of the former gentlemen than that of the latter, it will may be more of equal integrity and veracity, there is a material difference between the credit due to witnesses as men of integrity and veracity, and to the weight of evidence, which ought to be given to their evidence as containing a correct and full statement of facts: two witnesses may be of equal credit and veracity, and equally conscious of imparting the truth, yet the evidence of one may, as to a particular transaction, may deserve much more weight and credit than that of the other, in consequence of the conflicting better means of information, and being to circumstances as to feel and intend to impress more strongly the facts that may have taken place; for in the question before me, Mr. Lewis and Mr. Dallas, if the judge still retrieve in the transaction that he stated, they might as to could have revoked, and the impressions they received were strong, and not easily effaced. Mr. Lewis, from his situation, means and information; his attention was attached by the paper containing the written opinion, and he received from the statements of the judge containing the opinion, strong impressions, immediately delivered, to which he intended to be conclusive; they therefore, perfectly to be conceived, that he would not be disposed to be exhaustively a transaction, could not be erated from the impression. This was not the effect Mr. Hewle, Hewle and Tilghman; for the Mr. Hewle was concerned for the prosecution, and Mr. Tilghman was engaged with other business; the opinion delivered was not in the power of the first application, and of course the affair was not likely to excite to much the interest in the minds of the latter, as to make impression on their minds. The evidence, therefore, of Mr. Lewis and Mr. Dallas, is entitled to a more full and statement of this transaction. Their evidence, therefore, imposed upon the counsel, in stating facts and opinions, as were already presented to be, and, in consequence, in point of fact, and unauthorized by the laws of our country, and contrary to the usages and practice of our courts of justice; and in the case in question, amounted to a prohibition to argue the conduct in any publick way to the conduct of the law, as to the defendants. That their conclusions were formed by the practice in our courts, is established by the evidence of every witness that has been examined to the point, in which they had been retributions had ever been impeded on counsel concerned in criminal cases, in the manner which they had been acquainted, and particularly by the testimony of the clerk of the United States, in the fourth data, in the case of the same case before, and in other and arbitrary transaction on the known and established modes of proceeding in courts of justice in criminal cases, and in unwarrantable attack on the privileges secured to defendants by the constitution and laws of the country. That judges are not authorized to substitute their own arbitrary will in place of the laws, and that they are not to form, with the established rules of proceeding in the tribunals of justice is proved by every principle of reason and of law. To shew that this case is distinguished from ordinary cases, and that the judge's conduct was not in the ordinary way, I refer the court to 2 21 Dallas (see edition) page 97, where it is stated that *judges are to determine according to the known law and ancient custom of the realm* and to 4 Cranch, 415, where it is stated that *judges ought to act conformably to law and not according to discretion.* These authorities, when we consider the country from which they come, and the times in which they were delivered, will mark the limits that ought to circumscribe the conduct of the judge. And that the judges in our country, of much greater learning in their proceedings than those of England, and desirous of pleasing their minds, will be found all on of the country? I find present, that the judge fixes in his answer, that decisions at common law, and before the revolution in England, could not be cited in our courts of justice here, but might be cited the jury, and therefore ought not, to be admitted to be read, and, that, if they be were into the dark ages of the influence of the English, and of the corrupt and under the influence of the crown. Their reasoning of the judge in support of his opinion, is very to the question. The object of the counsel for Free, in asking to cite these authorities, was to shew the state of the law at the time of Edward the third, was to shew the state of the law at the time of the revolution of our constitution with regard to treason ought to be, and, in fact, is, the same; and, if any colouring be to which those decisions had gone, in determining what sides a treason to be treasonable, it was to prove that force the English revolutions in England and Ireland, and shewed them felon bound by earlier decisions of the revolution, and that as the decisions made since the revolution, in the revolution, were bottomed upon those earlier decisions, they ought not to be cited. They give the reasons for giving a construction to the words of our constitution, in order to determine what treason is treasonable, and, in fact, are evidently the object of the counsel, in that proceed to have been to have been, by the evidence of Mr. Lewis, Mr. Dallas, and Mr. Hewle. There, therefore, we see that the judge intended the judge makes for ruling their authorities to be introduced.

It is admitted by counsel that the jury have the right to decide upon the law as well as upon the fact, and if it were denied, a determined affirmative and unbounded authorities, of ancient and modern, and of the constitution, therefore, and under what plausible pretext, could the judge refuse to permit the law to be argued? Upon what ground? How could they decide upon it properly, without hearing it discussed? And, upon what ground, could the judge say that the jury have the right to decide the law, and yet that they have not the right to decide upon the law? Could they decide upon it properly, without hearing it discussed? And, upon what ground, could the judge say that the jury have the right to decide upon