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IMPEACHMENT OF *JUDGE CHASE.*

SATURDAY, FEBRUARY 23.

MR. HARPER.

IT was greatly to be desired, Mr. President, and might have been confidently expected, that in a case every way so important, where it so greatly concerns the public happiness, that the decision should command the public confidence, nothing would be presented to the view of this honorable court in aid of the prosecution, except the law which ought to govern the decision, and the proofs relied on for supporting the allegations.

But it has not so seemed good to the honorable managers. They have thought proper to introduce into the discussion, the political opinions and party connections of the respondent; for the purpose of throwing a shade of doubt over his motives, and of establishing inferences unfavorable to his character. How far this conduct ought to be commended, is not for me to decide. My confidence in the justice and discernment of this honorable court forbids me to apprehend that it can be successful.

But since these opinions and connections have been introduced, permit me to use them for a different purpose.

The duty imposed on judges is at all times delicate: and in criminal cases, where life or liberty may be affected, where reputation dearer than both depends on the issue, this duty becomes peculiarly arduous and painful to an honorable and generous mind. But if there be a situation more delicate more embarrassing than every other to such a mind, it is that of a judge sitting on the trial of a person who, from political opposition, or any other cause, may have excited hostile or angry feelings in his mind. It is then that he most fears to trust himself. It is then that he most dreads the influence of his passions, in misleading his judgment. It is then that he feels the strongest alarms for his reputation; lest he should possibly afford ground for the suspicion, that he had gratified his resentments under the semblance of executing the law.

Hence he constantly leans towards the side of the accused, and requires the clearest conviction before he condemns, Hence he rejects all doubtful or contradictory testimony, lays out of the case all little indiscretions and slight shades of suspicion; and is rigid in requiring from the prosecutors the unequivocal proof of unequivocal offences. That his enemy is in his power is always a reason for the utmost forbearance. The fear that he may possibly be misled by his passions, is always a reason for acquittal, where doubt can exist.

Need I invoke these noble and generous sentiments in the breasts of this honorable court? No! my heart tells me I need not. I see on those benches distinguished soldiers and eminent statesmen, who have triumphed alike in the fields of politics and war, and who always disdained to tarnish their laurels by the blood or the humiliation of a vanquished foe.

If then the person now arraigned at your bar be connected with a political party in opposition to any of those who sit as his judges; if it were possible that, in promoting the views of that party, he may have excited feelings of anger or resentment in the mind of any member of this honorable tribunal; if it were possible, that any portion of the angry passions, engendered by the conflicts of party, could find a place within these hallowed walls, and could attach itself to him who stands upon his trial at this bar: the existence of such a possibility would furnish every member of this honorable court, with the strongest motives that can operate on a generous and noble mind, for leaning constantly to the side of the accused, and for pronouncing in favor of an acquittal, wherever their remains a doubt of guilt.

Attempts have also been made to enlist the sympathy of this honorable court on the side of the prosecution, and for this purpose a criminal twice convicted, who did not hesitate to risk civil bloodshed in support of political theories, and is now indebted for his life to the clemency of that government, against whose laws he armed his ignorant and misguided neighbors, is presented to view, decked out in all the ornaments which rhetoric can bestow. We, Mr. President, disclaim the aids and protest against the interference of rhetoric and sympathy. However proper in other situations, they ought to be excluded from courts of justice; whose decisions should be governed by truth and not by feeling.

But if sympathy could find a place in this tribunal, what object more fit to awake it, than that now presented at your bar!

An aged patriot and statesman, bearing on his head the frost of seventy winters, and broken by the infirmities brought upon him by the labors and exertions of half a century, is arraigned as an offender, and compelled to employ, in defending himself against a criminal prosecution, the few and short intervals of ease allowed to him by sickness. Placed at the bar of a court, after having sat with honor for sixteen years on the bench, he is doomed to hear the most opprobrious epithets applied to his name, by those whose predecessors were accustomed to look up to him with admiration and respect, and whose fathers would have been proud to have been numbered among his pupils. His footsteps are hunted from place to place to find indiscretions, which may be exaggerated into crimes. The jests which, flowing from the gaiety and openness of his temper, were uttered in the confidence of private conversation; the expressions of warmth produced by the natural impetuosity of his character, are detailed by companions converted into spies and informers, and are adduced as proofs of criminal intention.

This cup so full of bitterness for one who has been accustomed for forty years to fill the most honorable stations in his country, he drinks to the dregs without complaining. In this sad reverse, he supports himself with a calmness, a fortitude, and a resigned dignity, which melt the hearts of those who are not his enemies, and extort the respect of those who are.

If sympathy must be excited, here let it find a nobler object. If from generous breasts it cannot be excluded, let it be turned towards

> "A brave man strugg'ling with the storms of fate,"

and greatly supporting himself under a pressure of evils the most afflicting that an elevated mind can know.

Not content with endeavoring to blow up a flame of party spirit against the respondent, and to engage sympathy in the ungracious, and to her unnatural task of aiding a criminal prosecution, the honorable managers have resorted to a principle, as novel in our laws and jurisprudence, as it is subversive of the constitutional independence of the judicial department, and dangerous to the personal rights and safety of every man, holding an office under this government. They have contended, "that an impeachment is not a criminal prosecution, but an enquiry in the nature of an inquest of office, to ascertain whether a person holding an office be properly qualified for his situation; or whether it may not be expedient to remove him." But if this principle be correct; if an impeachment be not indeed a criminal prosecution, but a mere inquest of office; if a conviction and removal on impeachment be indeed not a punishment, but the mere withdrawal of a favor once granted, I ask why this formality of proceeding, this solemn apparatus of justice, this laborious investigation of facts? If the conviction of a judge on impeachment, is not to depend on his guilt or innocence of some crime alledged against him, but on some reason of state policy or expediency, which may be thought by the House of Representatives, and two thirds of the Senate, to require his removal; I ask why the solemn mockery of articles alledging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to the members, of the public examination of witnesses, and of a trial conducted in all the usual forms? Why not settle this question of expediency, as all other questions of expediency are settled, by a reference to general political considerations, and in the usual mode of political discussion? No! Mr. President! This principle of the honorable managers so novel and so alarming; this desperate expedient, resorted to as the last and only prop of a case, which the honorable gentlemen feel to be unsupported by law or evidence; this forlorn hope of the prosecution, pressed into its service, after it was found that no offence against any law of the land could be proved, will not, cannot avail. Every thing by which we are surrounded informs us that we are in a court of law. Every thing that we have been three weeks employed in doing, reminds us, that we are engaged not in a mere enquiry into the fitness of an officer for the place which he holds, but in the trial of a criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable court, in this case on questions of evidence; decisions by which this court has solemnly declared, that it holds itself bound by those principles of law, which govern our tribunals in ordinary cases. These decisions we accepted as a pledge, and now rely on as an assurance, that this cause will be determined on no newly discovered notions of political expediency, or state policy, but on the well settled and well known principles of law and the constitution.

The honorable managers, indeed, are as much at war with themselves on this point, as with the constitution and the laws. For when they have told us in one breath, that this is merely a question of policy and expediency, they resort in the next to legal authorities, both English and American, for the purpose of explaining the doctrine of impeachment, and of proving that the acts alledged against the respondent amount to impeachable offences: thus paying an involuntary homage to truth, and furnishing an instance of the irresistible power with which she forces herself on the mind, even when most obstinately determined to resist her. Let us also, Mr. President, be permitted to adduce the authority of an elementary writer, of very high authority, on the laws of England, in support of the principle for which we contend. Woodeson in his lectures, vol. 2. p. 611, treating on the law of impeachment, speaks thus: "As to the trial itself, it must of course vary in external ceremony, but differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail. For impeachments are not formed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of alledged crimes. The judgment therefore is to be such, as is warranted by legal principles or precedents. In capital cases the mere stated sentence is to be specifically pronounced." Thus far this learned professor and commentator of the laws of England; and he cites as authorities for this doctrine, Selden and the state trials; the latter of which, this honorable court need not be informed, is a collection of adjudged cases in the highest courts of England; and the former a writer of great learning and very high authority, peculiarly tenacious of every principle tending to the security of public liberty, and not likely to mistake on a point so essential, as the law of impeachment.

Thus we find that even in England, where the power of impeachment is subject to no express constitutional restrictions; and where abuses of that power, for the purpose of party persecution and state policy, have sometimes been committed, and more frequently attempted; an impeachment has never been considered as a mere inquest of office, but always as a criminal prosecution, differing not in essentials from those which are carried on before the ordinary tribunals of justice; and subject to the same rules of evidence, and the same legal maxims concerning crimes and punishments: as a proceeding contrived not to alter the law, but to carry it into more effectual execution. These authorities, sanctioned by the practice of one hundred and fifty years, prove the principle for which we contend. Instances may no doubt be found in the history of that country, where these salutary principles have been disregarded, and impeachments have been converted into engines of oppression. But this abuse does not destroy or impair the principle. *That* remains as eternal as the laws of reason and justice, on which it is founded; while the abuse passes into oblivion, with the temporary interests and fleeting projects which it was made to subserve: or remains in our recollection as a sad monument of the excesses into which frail man is hurried by his passions.

And has not this great principle of English jurisprudence, which in that country has weathered so many storms of faction, revolution and civil war, received the sanction also of this honorable court? Has not testimony been rejected, because it was judged illegal, according to the ordinary rules of evidence? And how could those rules apply to this case, unless it were considered as a criminal prosecution?

The constitution of the United States will as little bear out the managers in their position, as the laws of England. That constitution gives the power of impeachment to the House of Representatives, and to the Senate the power of trying impeachments. Had the authors of that instrument, and those who adopted it, intended to leave this power at large, or to erect it into a general inquest, for enquiring into the qualifications of judges, and the expediency of removing them, nothing more would have been done than merely to give the power. But it will be found that various restrictions are imposed in the subsequent parts of the instrument, which prove that no person can be impeached except for an offence.

Thus, for instance, in speaking of the power of pardoning, the constitution provides (Art. 2. Sec. 2.) that "the President may grant reprieves and pardons for *offences* against the United States, except in cases of impeachment." Is not this the same thing as saying, that cases of impeachment are cases of offences? What, Mr. President, are offences, in the language of the constitution and the laws? For a definition of the term "offence," in a constitutional sense, we must consult our law books and not the caprice, or the varying opinions of popular leaders or popular assemblies. Those books tell us, that the word "offence" means some violation of law. Whence it evidently follows, that no officer of government can be impeached, unless he have committed some violation of the law, either statute or common. It is not necessary for me to contend, that this offence must be an indictable offence. I might safely admit the contrary, though I do not admit it: and there are reasons which appear to me unanswerable in favor of the opinion, that no offence is impeachable, unless it be also the proper subject of an indictment. But it is not necessary to go so far: and I can suppose cases where a judge ought to be impeached, for acts which I am not prepared to declare indictable. Suppose, for instance, that a judge should constantly omit to hold court; or should habitually attend so short a time each day as to render it impossible to dispatch the business. It might be doubted whether an indictment would lie for those acts of omission; although I am inclined to think that it would. But I have no hesitation in saying, that a judge in such a case ought to be impeached.—And this comes within the principle for which I contend; for these acts of culpable omission, are a plain and direct violation of the law, which commands him to hold courts a reasonable time for the dispatch of business; and of his oath, which binds him to discharge faithfully and diligently the duties of his office.

The honorable gentleman who opened the case on the part of the prosecution, cited the case of habitual drunkenness and profane swearing on the part of a judge, as an instance of an offence not indictable, and yet punishable by impeachment. But I deny his position. Habitual drunkenness in a judge, and profane swearing in any person, are indictable offences. And if they were not, still they are violations of the law. I do not mean to say that there is a statute against drunkenness and profane swearing. But they are offences against good morals, and as such are forbidden by the common law. They are offences in the sight of God and man, definite in their nature, capable of precise proof and of a clear defence.

The honorable managers have cited a case decided in this court, as an authority to prove that a man may be convicted on impeachment, without having committed an offence. I mean the case of judge Pickering. But that case does not support the position. The defendant there was charged with habitual drunkenness, and gross misbehavior in court, arising from this drunkenness. The defence set up was that the defendant was insane; and that the instances adduced of intoxication and improper behavior proceeded from his insanity. On this point there was a contrariety of evidence. It is not for me to enquire on which side the truth lay. But the court, by finding the defendant guilty, gave their sanction to the charge, that his insanity proceeded from habitual drunkenness. This case therefore proves nothing further, than that habitual drunkenness is an impeachable offence.

As little aid can the honorable gentlemen derive from the case of Judge Addison, on which also they have relied. The articles of impeachment will shew, that judge Addison was not impeached, as the honorable gentlemen suppose, for rude and ungentleman like behavior in court to one of his colleagues; but for a supposed usurpation of power, in preventing his colleague by an exertion of authority, from exercising the right which he was supposed to possess, to charge a grand jury; and in exerting his official influence and power, to prevent the jury from paying attention to the legal opinions expressed by his colleague, in a civil case. The report of that trial, now in my hand, will attest the correctness of this statement; and will shew also that Judge Addison was so far from being charged with rude and ungentleman like behavior to his colleague, that the honorable gentleman himself towards whom that behavior is supposed to have been used, and who gave evidence on the trial, bore testimony to the mildness and politeness of Judge Addison's manner, on the occasions which furnished the grounds of impeachment. Whether the acts done by that learned and distinguished Judge, did amount to an usurpation of unconstitutional power; or whether his colleague did possess those rights, in the exercise of which he was supposed to have been improperly restricted; are questions foreign from the present enquiry. But I am free to declare, that if Judge Addison's colleague did possess those rights, and if he did arbitrarily prevent and impede the exercise of them, by an unconstitutional exertion of the powers of his office, he was guilty of an offence for which he might properly be impeached; because he must in that case, have acted in express violation of the constitution and laws.

The great principle for which we contend, and which is so strongly supported by the clause of the constitution already cited, that an impeachment is a criminal prosecution, and cannot be maintained without the proof of some offence against the laws, pervades all the other provisions of the constitution, on the subject of impeachment. The fourth section of the second article declares, "that the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and *conviction* of treason, bribery, or other high crimes and misdemeanors." This provision, I know, has been considered by some, as a mere direction of what shall be done, in those specified cases; and not as a prohibition, confining impeachments to those cases. But it must be recollected, Mr. President, that the constitution is a limited grant of power; and that it is of the essence of such a grant to be construed strictly, and to leave in the grantors all the powers, not expressly, or by necessary implication granted away. In this manner has the constitution always been construed and understood: and although an amendment was made, for the purpose of expressly declaring and asserting this principle, yet that amendment was always understood by those who adopted it, and was represented by the eminent character who brought it forward, as a mere declaration of a principle inherent in the constitution, which it was proper to make, for the purpose of removing doubts and quieting apprehensions. When, therefore, the constitution declares for what acts an officer shall be impeached, it gives power to impeach him for those acts, and all power to impeach him for any other cause is withheld. The enumeration in the affirmative grant implies clearly a negative restriction, as to all cases not enumerated. This provision of the constitution therefore, must be considered, upon every sound principle of construction, as a declaration that no impeachment shall lie, except for a crime or misdemeanor; in other words, for a criminal violation of some law.

The same idea is found in the second section of the third article, third clause; where it is declared that "the trial of all *crimes*, except in cases of impeachment, shall be by jury:" plainly implying that cases of impeachment, are cases of "trials for crimes."

It is material also, Mr. President, to advert to the peculiar force of the term "conviction," which is employed in several parts of the constitution, in application to cases of impeachment. The third section of the first article, sixth clause, speaking of the trial of impeachments, says, "and no person shall be *convicted* without the concurrence of two thirds of the members present." The seventh clause of the same section, treating on the extent and operation of a judgment in impeachment, says, "but the party *convicted* shall nevertheless be liable and subject, &c." And the fourth section of the second article declares, that certain officers "shall be removed from office on impeachment for, and *conviction* of, treason, bribery, &c." This term 'conviction' has in our law a fixed and appropriate meaning. There is indeed no word in our legal vocabulary, of more technical force. It always imports the decision of a competent tribunal, pronouncing a person guilty of some specific offence, for which he has been legally brought to trial. In an instrument so remarkable as the constitution of the United States, for technical accuracy in the use of terms, the frequent and indeed constant use of this word is decisive to prove, that in the intention of the framers of that instrument, no man could be impeached, except for some offence against law, of which he might in legal language be said to be "convicted."

In fixing the construction of this instrument no safer guide can be followed, than contemporaneous expositions, furnished by those who made or ratified it; and among those expositions, the most authoritative are to be found in the constitutions of the several states, formed about the same time, and drawn up in many instances by the same persons. Whenever it appears clearly from the context of these constitutions, that they affix a certain meaning to particular terms, we may safely infer that those or similar terms, in the constitution of the United States, were intended to have the same meaning. And we shall find, by inspecting the constitutions of the several states, that impeachment has been considered by all of them as a criminal prosecution, for the punishment of defined offences against the laws.

Let us begin with that of Pennsylvania. In treating of impeachments, article the fourth, it speaks of *conviction* on impeachment; and declares that all civil officers shall be liable to impeachment