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HIGH COURT OF IMPEACHMENT.

Answer of SAMUEL CHASE.

[*Continued.*]

This he is informed, and expects to prove, has been the construction of this law by the courts of Virginia, and their general practice. Indeed it would be most strange, if any other construction or practice had been adopted. There are many offences not capital, which are of a very dangerous tendency, and on which very severe punishment is inflicted by the laws of Virginia; and to enact by law that in all such cases, however notorious or profligate the offenders might be, the courts should be obliged, after a presentment by a grand jury to proceed against them by summons; would be to enact, that as soon as their guilt was rendered extremely probable, by the presentment of a grand jury, they should receive regular notice, to escape from punishment by flight or concealment.

It will also appear, as this respondent believes, by a reference to the laws and practice of Virginia, into which he has made all the enquiries which circumstances and the shortness of time allowed him for preparing his answer, would permit, that all the cases in which a summons is considered as the only proper process, are cases of petty offences, which on the presentment of a grand jury, are to be tried by the court in a summary way, without the intervention of a petit jury.—Therefore, these provisions had no application to the case of Callender, which could be no otherwise proceeded on than by indictment, and trial on the indictment by a petit jury.

It must be recollected that the act of Congress of September 24th, 1789, enacts, section 14, "that the courts of the United States, shall have power to issue writs of scire facias, habeas corpus, *and all other writs* not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of laws." Consequently, the circuit court, where the proceedings in question took place, had power to issue a capias against the traverser, on the presentment, unless the state law above mentioned governed the case, and contained something to restrain the issuing of that writ in such a case. This respondent contends, for the reasons above stated, that this state law neither applied to the case, nor contained any thing to prevent the issuing of a capias, if it had applied.

Thus it appears that this respondent, in ordering a capias to issue against Callender, decided correctly, as it certainly was his intention to do. But he claims no other merit than that of upright intention in this decision: for when he made the decision, he was utterly ignorant that such a law existed in Virginia; and declares that he never heard of it, till this article was reported by a committee of the House of Representatives, during the present session of Congress. This law was not mentioned on the trial either by the counsel or the traverser or by judge Griffin, who certainly had much better opportunities of knowing it than this respondent, and who, no doubt, would have cited it had they known it and considered it as applicable to the case. This respondent well knows that in a criminal view, ignorance of the law excuses no man in offending against it; but this maxim applies not to the decision of a judge; in whom ignorance of the law in general would certainly be a disqualification for this office, though not a crime; but ignorance of a particular act of assembly, of a state where he was an utter stranger, must be considered as a very pardonable error; especially as the counsel for the prisoner to whose case that law is supposed to have applied, forbore or omitted to cite it; and as a judge of the state, always resident in it, and long conversant with its local laws, either forgot this law, or considered it as inapplicable.

Such is the answer, which this respondent makes to the fifth article of impeachment. If he erred in this case, it was thro' ignorance of the law, and surely, ignorance under such circumstances, cannot be a crime, much less a high crime and misdemeanor, for which he ought to be removed from his office.—If a judge were impeachable for acting against law from ignorance only, it would follow, that he would be punished in the same manner for deciding against law wilfully, and for deciding against it thro' mistake. In other words, there would be no distinction between ignorance and design, between error and corruption.

And the said respondent, for plea to to the said fifth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fifth article is alledged against him; and this he prays, may be enquired of, by this honorable court, in such manner, as law and justice shall seem to them to require.

The sixth article of impeachment alledges, that this respondent, "with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender was presented and indicted, contrary to the law in that case made and provided."

This charge also, is founded, 1st, on the act of Congress of Sept. 24th, 1789, abovementioned, which enacts, section 34, 'that the laws of the several states, except where the constitution treaties, or statutes of the United States shall otherwise provide, shall be regarded as the rules of decision, in trials at *common law*, in the courts of the United States, in cases where they apply," and 2ndly, on a law of the state of Virginia, which is supposed to provide, "that in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next preceding that, during which such presentment shall have been made." This law, it is contended, is made the rule of decision by the abovementioned act of Congress, and was violated by the refusal to continue the case of Callender till the next term.

In answer to this charge this respondent declares, that he was at the time of making the abovementioned decision, wholly ignorant of any such law of Virginia as that in question, that no such law was adduced or mentioned by the counsel of Callender, in support of their motion for a continuance; neither when they first made it, before this respondent sitting alone; nor when they renewed it, after judge Griffin had taken his seat in court: that no such law was mentioned by judge Griffin; who concurred in overruling the motion for a continuance and ordering on the trial; which he could not have done had he known that such a law existed, or considered it as applicable to the case; and that this respondent never heard of any such law, until the articles of impeachment now under consideration were reported, in the course of the present session of Congress, by a committee of the House of Representatives.

A judge is certainly bound to use all proper and reasonable means of obtaining a knowledge of the laws which he is appointed to administer; but after the use of such means, to overlook, misunderstand, or remain ignorant of some particular law, is at all times a very pardonable error. It is much more so in the case of a judge of the supreme court of the United States, holding a circuit court in a particular state, with which he is a stranger, and with the local laws of which he can have enjoyed but very imperfect opportunities of becoming acquainted. It was foreseen by Congress, in establishing the circuit courts of the United States, that difficulties and inconveniences must frequently arise from this source, and to obviate such difficulties it was provided, that the district judge of each state, who having been a resident of the state and a practitioner in its courts, had all the necessary means of becoming acquainted with its local laws, should form a part of the circuit court in his own state. The judge of the supreme court is expected, with reason, to be well versed in the general laws; but the local laws of the state form the peculiar province of the district judge, who may be justly considered as particularly responsible for their due observance. It in the case in question, this respondent overlooked or misconstrued any local law of the state of Virginia, which ought to have governed the case, it was equally overlooked and misunderstood, not only by the prisoner's counsel who made the motion, and whose peculiar duty it was to know the law and bring it into the view of the court, but also by the district judge, who had the best opportunities of knowing and understanding it, and in whom, nevertheless, this oversight or mistake is considered as a venal error, while in this respondent it is made the ground of a criminal charge.

This respondent further states, that after the most diligent and the most extensive enquiry which the time allowed for preparing this answer would permit, he can find no law of Virginia which expressly enacts, that "in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next succeeding that during which such presentment shall have been made." This principle he supposes to be an inference drawn by the authors of the articles of impeachment, from the law of Virginia mentioned in the answer to the preceding article, the law of November 15th, 1792, which provides "that upon presentment made by the grand jury of an offence not capital, the court shall order the clerk to issue a summons, or other proper process, against the person or persons so presented, to appear and answer such presentment at the NEXT court." This law he conceives does not warrant the inference so drawn from it, because it speaks of *presentments* and not of *indictments*, which are very different things; and is, as he is informed, confined by practice and construction in the state of Virginia, to cases of small offences, which are to be tried by the court itself upon the presentment, without an indictment or the intervention of a petit jury. But for cases, like that of Callender, where an indictment must follow the presentment, this law made no provision. Further, the state laws are directed by the abovementioned act of Congress, to be the rule of decision in the courts of the United States, only "in cases where they apply." Whether they apply or not to a particular case, is a question of law, to be decided by the court where such case is pending, and an error in making the decision is not a crime, nor even an offence, unless it can be shewn to have proceeded from improper motives. This respondent is of opinion, that the law in question did not apply to the case of Callender, for the reasons stated above; and therefore that it would have been his duty to disregard it, even had it been made known to him by the counsel for the traverser.

And in the last place he contends that the law of Virginia in question, is not adopted by the above mentioned act of Congress as the rule of decision, in such cases as that now under consideration. That act does indeed provide, "that the laws of the several states, except where the constitution treaties or statutes of the U. States shall otherwise provide, shall be regarded as rules of decision in trials at common law, in the courts of the U. States, in cases where they apply" But this provision in his opinion, can relate only to rights acquired under the state laws, which come into question on the trial; and not to forms of process or modes of proceedings, anterior or preparatory to the trial. Nor can it, as this respondent apprehends, have any application to indictments for offences against the statutes of the U. States, which cannot with any propriety be called "trials at common law." It relates merely, in his opinion, to civil rights acquired under the state laws; which by virtue of this provision are, when they come in question in the courts of the U. States, to be governed by the laws under which they accrued.

If in these opinions this respondant be incorrect, it is an honest error: and he contends that neither such an error in the construction of a law, nor his ignorance of a local state law which he had no opportunity of knowing, and of which the counsel for the party whose case it is supposed to have affected were equally ignorant, can be considered as an offence liable to impeachment, or to any sort of punishment or blame.

And for plea to the said sixth article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor as in and by the said article is alledged against him; and this he prays may be enquired of by this honorable court in such manner as law and justice shall seem to them to require.

The seventh article of impeachment relates to some conduct of this respondent in his judicial capacity, at a circuit court of the U. States held at New Castle in the state of Delaware, in June 1800. The statement of this conduct made in the article is altogether erroneous; but if it were true, this respondent denies, that it contains any matter for which he is liable to impeachment. It alledges that "disregarding the duties of his office, he did descend from the dignity of a judge, and stoop to the level of an informer." This high offence consisted, according to the article, 1st, in refusing to discharge the grand jury although intreated by several of the said jury to do so." 2dly, in "observing to the said grand jury, after the said grand jury had regularly declared thro' their foreman, that they had found no bills of indictment, and had no presentments to make, that he the said Samuel Chase understood 'that a highly seditious temper had manifested itself in the state of Delaware, among a certain class of people, particularly in New Castle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer was ———" 3dly, 'id then checking himself as if sensible of the indecorum which he was committing.' 4thly, in adding 'that it might be assuming too much, to mention the name of this person; but it becomes your duty, gentlemen, to enquire diligently into this matter,' or words to that effect,' And 5thly, 'in authoritatively enjoining on the district attorney of the U. States, with intention to procure the prosecution of the printer in question, the necessity of procuring a file of the papers to which he alluded, and by a strict examination of them to find some passage, which might furnish the ground work of a prosecution against the printer.'

These charges amount in substance to this; that the respondent refused to discharge a grand jury on their request, which is every day's practice, and which he was bound to do, if he believed that the due administration of justice required their longer attendance: that he directed the attention of the grand jury to an offence against a statute of the U. States, which he had been informed was committed in the district; and that he desired the district attorney to aid the grand jury, in their enquiries concerning the existence and nature of this offence. By these three acts, each of which it was his duty to perform, he is alledged 'to have degraded his high judicial functions, and tended to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.'

That this honorable court may be able to form correctly its judgment, concerning the transaction mentioned in this article, this respondent submits the following statement of it, which he avers to be true, and expects to prove.

On the 27th day of June, 1800, this respondent, as one of the associate justices of the supreme court of the United States, presided in the circuit court of the United States, then held at New Castle in and for the district of Delaware, and was assisted by Gunning Bedford esq. then district judge of the U. States for that district. At the opening of the court on that day, this respondent according to his duty and his uniform practice, delivered a charge to the grand jury in which he gave in charge to them several statutes of the U. States, and among others, an act of Congress passed July 14th, 1798, entitled 'An act in addition to the act for the punishment of certain crimes against the U. States," and commonly called the 'sedition law.' He directed them to enquire concerning any breaches of those statutes, and especially of that commonly called the sedition law, within the district of Delaware.

On the same day before the usual hour of adjournment, the grand jury came into court, and informed the court that they had found no indictment or presentment, and had no business before them, for which reason they wished to be discharged. This respondent replied, that it was earlier than the usual hour of discharging a grand jury; and that business might occur during the sitting of the court. He also asked them if they had no information of publications within the district, that came under the sedition law, and added, that he had been informed, that there was a paper called the 'Mirror,' published at Wilmington, which contained libellous charges against the government and President of the United States: that he had not seen that paper, but it was their duty to enquire into the subject; and if they had not turned their attention to it, the attorney for the district would be pleased to examine a file of that paper, and if he found any thing that came within the sedition law, would lay it before them.'—This is the substance of what the respondent said to the grand jury on that occasion, and he believes nearly his words, on the morning of the next day, they came into court and declared that they had no presentments or indictments to make, on which they were immediately discharged. The whole time therefore, for which they were detained, was twenty four hours, far less than is generally required of grand juries.

In these proceedings, this respondent acted according to his sense of what the duties of his office required. It certainly was his duty to give in charge to the grand jury, all such statutes of the United States as provided for the punishment of offences, and among others, that called the sedition act; into all offences against which act, while it continued in force, the grand jury were bound by their oaths to enquire. In giving it in charge, together with the other acts of Congress for the punishment of offences, he followed moreover the example of the other judges of the supreme court, in holding their respective circuit courts. He also contends, and did then believe, that it was his duty, when informed of an offence, which the grand jury had overlooked, to direct their attention towards it, and to request for them, and even to require if necessary, the aid of the district attorney in making their enquiries. In thus discharging what he conceives to be his duty, even if he committed an error in so considering it, he denies that he committed or could commit any offence whatever.

With respect to the remarks which he is charged by this article with having made to the grand jury, relative to "a highly seditious temper, which he had understood, to have manifested itself in the state of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington," and relative to "a most seditious printer, residing in Wilmington, unrestrained by any principle of virtue, and regardless of social order;" this respondent does not recollect or believe, that he made any such observations. But if he did make them, it could not be improper in him to tell the jury that he had received such information, if in fact he had received it; which was probably the case, though he cannot recollect it with certainty at this distance of time. That this information, if he did receive it, was correct, so far, as it regarded the printer in question, will fully appear from a file of the paper called the "Mirror of the Times," &c. published at Wilmington, Delaware, from February 5th, to March 19th, 1800, inclusive, which he has lately obtained, and is ready to produce to this honorable court when necessary, and some extracts from which are contained in the exhibits severally marked No. 7, which he prays leave to make part of this his answer.

'And for plea to the said seventh article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said seventh article is alledged against him, and this he prays may be enquired of by this honorable court, in such manner as law and justice shall seem to them to require.

The eighth article of impeachment charges that this respondent, "disregarding the duties and dignity of his official character did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their state government and constitution," and also that this respondent, "under pretence of exercising his judicial right to address the grand jury as aforesaid, did endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the government of the United States, by delivering opinions which were, at that time and as delivered by him, highly indecent, extra judicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partizan."

In answer to this charge this respondent admits, that he did, as one of the associate justices of the supreme court of the United States, preside in a circuit court held at Baltimore in and for the district of Maryland, in May 1803, and did then deliver a charge to the grand jury, and express in the conclusion of it some opinions as to certain public measures, both of the government of Maryland and of that of the United States. But he denies that in thus acting, he disregarded the duties and dignity of his judicial character, perverted his official right and duty to address the grand jury, or had any intention to excite the fears or resentment of any person whatever, against the government and constitution of the United States or of Maryland. He denies that the sentiments which he thus expressed, were "intemperate and inflammatory," either in themselves or in the manner of de-