NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

Vol. V. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. NO. DCXCV.

FIVE DOLLARS PER ANNUM. FRIDAY, MARCH 22nd, 1805. PAID IN ADVANCE.

IMPEACHMENT OF *JUDGE CHASE.*

(Mr. Rawle's testimony, concluded.)

Mr. Randolph. Did you on the first day, the 22d of April, hear Mr. Lewis express in court any sentiments in regard to the paper which you say he viewed with such indignation?

Mr. Rawle. I have no recollection of hearing Mr. Lewis say one word on that day.

Mr. Randolph. You stated that on the next day, Mr. Lewis, when told by the court to proceed as he thought proper, answered that he never would address the court in a criminal case on a point of law, and urged the propriety of citing cases before the revolution, to shew that the English Judges since the revolution thought themselves bound by cases before the revolution, which ought not to be the law in this country, and that if he was not permitted to do this, he would be obliged to abandon the defence?

Mr. *Rawle.* Yes, Sir.

Mr. *Randolph.* Did you hear any opinion given by the court, which warranted Mr. Lewis in the opinion that he was precluded from citing such cases?

Mr. *Rawle.* On the 23d I did understand the court to say that such cases should not be cited, because they tended to mislead the jury. But at no time did I hear the court say that counsel were precluded from addressing the jury on the law, but it was said that as to the authorities cited, it must be determined by the court, whether they were admissible or not.

Mr. *Randolph.* You stated that both the Judges after the adjournment came to your house. Was your house their place of abode?

Mr. *Rawle.* No, Sir.

Mr. *Randolph.* At what hour did they call?

Mr. *Rawle.* About ten o'clock.

Mr. *Randolph.* And that Judge Peters expressed an apprehension that Messrs. Lewis and Dallas would not go on?

Mr. *Rawle.* Yes, Sir.

Mr. *Randolph.* On what grounds did he express this apprehension?

Mr. *Rawle.* I do not know.

Mr. *Randolph.* Have you any recollection of any grounds for such an apprehension, except that which arose from the general character of the bar.

Mr. *Rawle.* I have already stated that I understood there was a measure of that kind in contemplation. I have a faint recollection of having heard something of that kind fall from Mr. Dallas.

Mr. *Randolph.* Did you express to the Judges that your opinion was drawn from any other source than your general knowledge of the bar?

Mr. *Rawle.* I do not recollect that I did.

Mr. *Randolph.* Mr. Chase expressed his regret, and said he did not mean to preclude the counsel from proceeding in the trial in the usual manner. Was the course pursued in the case of Fries in the usual manner?

Mr. *Rawle.* I never saw a similar circumstance take place at our bar during the whole course of my life.

Mr. *Randolph.* Is it usual for the court to give a general opinion on the law before counsel are heard?

Mr. *Rawle.* Never, except in their general charge to the grand jury. They sometimes enquire of the gentlemen who prosecute, what are the offences likely to be presented, in order to inform the grand jury what it is their duty to do, and to make their charge more pointed.

Mr. *Randolph.* Did you ever hear of its being done in a particular case before the court?

Mr. *Rawle.* Not, that I recollect.

Mr. *Randolph.* Do you know whether much conversation took place at the bar on this novel opinion thrown down on the table?

Mr. *Rawle.* I stated before that I had a great burthen of criminal cases to manage; as I was situated it was not in my power to keep up the usual colloquial intercourse, and I cannot recollect any conversation until that which I have mentioned.

Mr. *Randolph.* Do you suppose that the act of delivering the opinion in writing was so public as to attract the notice of the jurymen that were attending?

Mr. *Rawle.* From the number of the jurymen, and from the construction of the court room, I think that a considerable proportion must have paid attention to the transaction.

Mr. *Randolph.* If you heard Mr. Lewis use no language on the opinion of the court, whence do you infer his indignation?

Mr. *Rawle.* From his countenance, and the manner of his throwing down the paper?

Mr. *Randolph.* Was it such as to attract the attention of those in court?

Mr. *Rawle.* If they saw him, they must have been struck with the manner in which he expressed his indignation. It was very strong.

Mr. *Randolph.* Did you hear Mr. Chase say that if the prisoner's counsel had any objection as to the law, as laid down by the court, they must address the court and not the jury?

Mr. *Rawle.* I have no recollection of hearing such an expression fall from Judge Chase at any time.

Mr. *Nicholson.* You stated much of your testimony from your notes. I would ask, Sir, were those notes taken at the time, and in the order they stand arranged?

Mr. *Rawle.* Precisely so, Sir. I made my notes in court.

Mr. *Nicholson.* What was there in the conduct of Judge Chase that induced the counsel to infer that they would be precluded from citing the statutes of the United States which have been referred to?

Mr. *Rawle.* I cannot say from what circumstance, unless from a recollection of the strenuous opposition made on a former trial on the part of the prosecution to the course then adopted.

Mr. *Nicholson.* Judge Chase also declared: "No case can come before us on which I have not an opinion as to the law, otherwise I should not be fit to preside here." Was there any thing which took place prior to this on which Mr. Lewis founded the opinion that he would be compelled to address the court and not the jury?

Mr. *Rawle.* It appeared to me that it arose altogether from misapprehension. Nothing fell from the court in my hearing, either in public, or in private, which tended to control the counsel from speaking, or to withdraw the consideration of the law from the jury. There appeared to be much misapprehension; and I observed that the court did not set him right as explicitly as might have prevented part of this misapprehension.

Mr. *Randolph.* I think you said that you entertained at the time of your conference with the Judges an anxious hope that these gentlemen would be induced to proceed. If there is no impropriety in the question, I wish to know the cause of the great anxiety you felt on that subject, which induced you to become the agent of calling in the papers containing the opinion of the court?

Mr. *Rawle.* My reasons arose from an anticipation of those unpleasant sensations, which I would never wish my greatest enemy to feel, that of conducting a trial, in a capital case, and standing alone against a man without counsel. It is easy to conceive that my hopes may have been anxious that I might not be placed in such a painful situation.

Mr. *Nicholson.* I will ask you whether you took notes of what passed on the first day?

Mr. *Rawle.* I did not.

Mr. *Harper.* Inform the court whether judge Chase did at any time during the proceedings say that he would restrict the counsel of Fries from citing any statutes of the United States to the jury, and especially the sedition law.

Mr. *Rawle.* I do not recollect that he did.

Mr. *Harper.* Did he say that he disapproved of the conduct of the former circuit court in permitting the statutes of Congress to be read.

Mr. *Rawle.* He did not. I never heard any such expression from judge Chase in relation to the statutes.

Mr. *Harper.* Have you the paper in your possession which was thrown down on the table?

Mr. *Rawle.* I have it in my pocket.

Mr. *Harper.* Will you please to produce it?

Mr. *Rawle.* This is it, [handing it to Mr. Harper.]

Mr. *Harper.* Do you know in whose hand writing it is?

Mr. *Rawle.* In that of the assistant clerk of the court—Mr. Bond.

Mr. *Harper.* We will offer this paper in evidence.

Mr. *Harper* then read the said paper as follows, being Exhibit No. 2.

"The prisoner, John Fries, stands indicted for *levying war* against the United States.

"This *constitutional* definition of *treason* is a question of *law*. Every proposition in any statute (whether more or less distinct—whether easy or difficult to comprehend) is always a question of *law*.

"What is the true meaning and true import of the statute, and whether the case stated comes within the statute, is a question of *law* and not of *fact*. The question in an indictment for *levying war* against (or adhering to the enemies of) the United States, is "whether the *facts* stated, do or do not amount to *levying war*."

"It is the duty of the court in this, and in all *criminal* cases, to state to the jury, their opinion, of the law arising on the facts; but the jury are to decide on the present, and in all criminal cases, *both the law and the facts* on their consideration of the *whole* case.

"The court heard the indictment read on the arraignment of the prisoner, some days past, and just now on his trial, and they attended to the *overt acts* stated in the indictment.

"It is the opinion of the court that any insurrection or rising of any body of people, within the United States, to attain or effect, by *force* or *violence* any object of a great public nature, or of public and general (or national) concern, is a levying war against the United States, within the contemplation and construction of the constitution of the United States.

"On this general position, the court are of opinion, that any such insurrection or rising to resist or to prevent by force or violence, the execution of any statute of the United States, for levying or collecting taxes, duties, imposts or excises; or for calling forth the militia to execute the laws of the union, or for any other purpose (under any pretence, as that the statute was unequal, burthensome, oppressive, or unconstitutional) is a levying war against the United States, within the constitution.

"The reason for this opinion is, that an insurrection to resist or prevent by force the execution of any statute, has a direct tendency to dissolve all the bonds of society, to destroy all order, and all laws, and also all security for the lives, liberties and property of the citizens of the United States.

"The court are of opinion that military weapons (as guns, and swords, mentioned in the indictment) are not necessary to make such insurrection or rising amount to levying war, because numbers may supply the want of military weapons; and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

"The court are of opinion that the assembling bodies of men, armed and arrayed in a warlike manner, for purposes only of a private nature is not treason; although the judges, and peace officers should be insulted, or resisted; or even great outrage committed to the persons and property of our citizens.

"The true criterion to determine whether acts committed are a treason or a less offence [as a riot] is the *quo animo* the people did assemble. When the intention is universal or general, as to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots or other misdemeanors, cannot alter their nature, so as to make them amount to treason; and on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of houses, or the like) are done, will shew to what class of crimes the case belongs.

"The court are of opinion that if a body of people conspire and meditate an insurrection, to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor; but if they proceed to carry such intention into execution by force, that they are guilty of the treason of levying war, and the quantum of the force employed, neither lessens nor increases the crime; whether by one hundred or one thousand persons is wholly immaterial.

"The court are of opinion, that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war, but that it is altogether immaterial whether the force used is sufficient to effectuate the object; any force, connected with the intention, will constitute the crime of levying war."

Mr. *Harper.* I will ask you one question. Do you recollect whether, after the verdict of guilty was brought in against John Fries, the court gave him information of his right to make a motion for an arrest of judgment.

Mr. *Rawle.* When the verdict was brought in, the court briefly told him he might be heard then, or at future day. When he was afterwards brought up for sentence, they told him, if he, or any person for him could point out any error or irregularity in the course of the proceedings, they should be patiently heard; and in like manner Judge Chase addressed the other prisoners; the same question was put to all that were found guilty. They answered, that they had nothing to say.

Mr. HAY being called, and not immediately appearing—

Mr. Harper observed that this witness was called on an article subsequent to that on which the witnesses already examined had testified. He would submit a proposition to the honorable managers, to go through at one time the whole of the testimony on each article. It may not be the regular course, but if gentlemen assent to it, we shall prefer it; it will be convenient to the witnesses, many of whom may be discharged before the whole of the testimony is gone through.

Mr. *Randolph*—Though this mode may have its advantages, it is attended with its difficulties. A witness may be found to support more than one article. With regard to the first article, I have no objection to this course; but with regard to the subsequent articles I have.

President. If the gentlemen are agreed, I will take the sense of the Senate on the course to be pursued.

Mr. *Randolph.* It is the wish of the managers not to depart from the usual course.

Mr. *Harper.* We do not claim it as a right.

GEORGE HAY *sworn.*

The greater part of the evidence I am to deliver relates to what was said by me as counsel for J. T. Callender, who was indicted for a libel on the President of the United States, and what was said by *one* of the judges; for I do not recollect to have heard the voice of Judge Griffin at any time during the trial. In order to make this statement as accurate as possible, as my memory is not strong, it is necessary to resort to a statement made by myself and the counsel associated with me in the defence of J. T. Callender, which I now hold in my hand, and every part of which according to my best recollection is correct.

Mr. Harper here interrupted Mr. Hay, and said, the witness may refer to any thing done by himself at the time the occurrences happened, which he relates. But I submit it to the court how correct it is to refer to what was not done by himself, or done at the time.

The *President* asked Mr. Hay whether the notes were taken by him.

Mr. Hay. The statement was made by different persons. Some parts were made by myself, perhaps the greater part; the rest by Mr. Nicholas and Mr. Wirt. I believe I shall be able to state from it every material occurrence which took place at the time. With regard to those parts of the statement not made by me, a reference to them will call to my recollection the facts mentioned in such parts. If I state any thing, which I do not distinctly recollect, upon adverting to the statement, I will explain the actual situation of my mind on that point.

Mr. *Nicholson.* If I understand the witness, it is not his intention to give the paper in his hand as evidence; but merely to refer to it for the purpose of refreshing his memory.

Mr. *Harper.* I do not understand the way in which it is meant to use the paper. I apprehend that it is a rule of evidence that nothing but notes made at the time of the transactions related can be received as evidence. I therefore am of opinion that a reference to this statement is inadmissible, because a part of it is made by others, and none of it made at the time.

Mr. *Rodney.* When we advert to what has been stated by the witness, who says he does not mean to state in evidence any thing in the paper, of which he has not independently of it, a distinct recollection, I think it is within the law to admit him to avail himself of it. I apprehend that if I had attended the trial of Callender; and had taken minutes, and others had attended and not taken notes, if by recurring to my notes there should be recalled to their recollection facts so distinctly, that they could swear to them before a court, it would be competent to admit their reference to such notes.

Mr. *Campbell* enquired whether the objection were not confined to that part of the statement not made by the witness.

Mr. *Harper* said the objection related to the whole of it.

Mr. *Campbell* believed that a witness might use any memorandum to refresh his memory; and that it was not necessary that it should be made at the point of time when the events happened. It is sufficient if made at a time when his remembrance of the facts was correct. With regard to that part not taken by himself, if he perused it at a time so shortly after the events related as to be able to determine it to be accurate, and now recognises the memorandum to be the same, it is sufficient.

Mr. *Martin* said, he had been many years in the practice of the law. The rules of evidence were probably different in different states. But he had always supposed that a witness could not be permitted to use any memorandum not made by himself, or at the time of the events related, or near it. He may before he comes into court consult any memorandum for the purpose of refreshing his memory, but not in court.

The *President.* The witness proposes to make use of a memorandum under the circumstances, which he has stated. The question is, shall the witness be permitted to make use of it?

Mr. *Adams.* I am not prepared to answer that question at present, not knowing the nature of the minutes the witness proposes to use. I therefore move that the Senate retire before the question is taken.

The question on retiring was taken, and, on a division, lost.

Mr. *Adams* said he wished to see the paper before he voted.

The *President* asked Mr. Hay whether it was in his own hand writing?

Mr. *Hay* replied that it was not; but that it was written by a clerk from a printed statement.

President. Have you the part [illegible] by yourself separate?

Mr. *Hay* said he had not.

The *President* then put the question, whether the witness should be permitted to use the paper?—and the question being taken by Yeas and Nays, passed in the negative—Yeas 16—Nays 18.

Mr. *Randolph* asked the witness, to state to the court the circumstances which took place during the trial of J. T. Callender, and particularly what respected the excuse and testimony of John Basset.

Mr. *Hay.* I will state as well as I can, what fell from the judge, and which appeared to me to be material. After some previous observations, the counsel for the traverser claimed for their client his constitutional right to be tried by an impartial jury. I cannot pretend to relate precisely either the course of proceeding, or the exact words which were used, since I am deprived of the aid of those notes which I know to be correct. I shall not, therefore, recite the precise words, but I shall give the substance of them, and the words themselves as nearly as possible. According to my best recollection Judge Chase's declaration on that point was, that he would see justice done to the prisoner in that respect. In order to attain the object which the counsel for Callender had in view, we pursued this course. Believing that a majority of the petit jury, if not all of them, were men decidedly opposed to J. T. Callender, in political sentiments, and thinking it probable from the state of parties at that time, that they had made up their minds, we wished to ask every juror before he was sworn, whether he had ever formed an opinion with respect to the book called the Prospect Before Us. According to my best recollection, Judge Chase interfered, and told us it was not the proper question, he said he would tell us what the proper question was. He then went on to state that the proper question was this: "Have you ever formed and delivered an opinion concerning the charges in this indictment." Though I have but little dependence on my memory in general, yet in this I am certain, that I not only give the substance, but the identical words used. To this question an answer was necessarily given in the negative.

Mr. *Key.* Who answered?

Mr. *Hay.* A juror.

Mr. *Key.* The whole, or what jurors. Was it the answer of John Basset, no other juror is mentioned in the second article. The moment any attempt is made to extend the enquiry beyond the precise object of the second article I will object to it.

Mr. *Randolph.* We have no objection to that course being pursued; as we