WILMINGTON GAZETTE.

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HIGH COURT OF IMPEACHMENT.

JUDGE CHASE'S ANSWER.

(Concluded from our last.)

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 delivering; that he did endeavor to excite the odium of any person whatever against the government of the United States, or did deliver any opinions which were in any respect indecent, or which had any tendency to prostitute his judicial character, to any low or improper purpose. He denies that he did any thing that was unusual, improper or unbecoming in a judge, or expressed any opinions, but such as a friend to his country, and a firm supporter of the governments both of the state of Maryland and of the United States, might entertain.—For the truth of what he here says, he appeals confidently to the charge itself; which was read from a written paper now in his possession ready to be produced.—A true copy of all such parts of this paper as relate to the subject matter of this article of impeachment, is contained in the exhibit marked No. 8, which he prays leave to make part of this his answer. That part of it which relates to the article now under consideration is in these words.—"You know, gentlemen, that our state and national institutions were framed to secure to every member of the society *equal* liberty and *equal* rights; but the late alteration of the federal judiciary, by the abolition of the office of the sixteen circuit judges, and the *recent* change in our state constitution by the establishing *universal* suffrage, *and* the further alteration that is contemplated in our state judiciary, (if adopted) will in my judgment take away *all security for property and personal liberty*. The independence of the national judiciary is already shaken to its foundation; and the virtue of the people alone can restore it. The independence of the judges of this state will be entirely destroyed, if the bill for the abolishing the two supreme courts, should be ratified by the next general assembly. The change of the state constitution by allowing universal suffrage, will in my opinion certainly and rapidly destroy all protection to property, and all security to personal liberty; and our republican constitution will sink into a *mobocracy*, the worst of all possible governments.

"I can only lament that the *main pillar* of our state constitution has been thrown down, by the establishment of *universal suffrage*. By this shock alone, the whole building totters to its base, and will crumble into ruins before many years elapse, unless it be restored to its original state. If the independency of your state judges, which your bill of rights wisely declares "to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people," shall be taken away, by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole state constitution, and there will be nothing left in it, worthy the care or support of freemen."

Admitting these opinions to have been incorrect and unfounded, this respondent denies that there was any law which forbid him to express them, in a charge to a grand jury; and he contends that there can be no offence, without the breach of some law. The very offence of despotism consists, in punishing acts which, at the time when they were done, were forbidden by no law. Admitting the expression of political opinions by a judge, in his charge to a jury, to be improper and dangerous; there are many improper and very dangerous acts, which not being forbidden by law cannot be punished. Hence the necessity of new penal laws, which are from time to time enacted for the prevention of acts not before forbidden, but found by experience to be of dangerous tendency. It has been the practice in this country, ever since the begining of the revolution, which seperated us from Great-Britain, for the judges to express from the bench, by way of charge to the grand jury, and to enforce to the utmost of their ability, such political opinions as they thought correct and useful. There have been instances in which the legislative bodies of this country, have recommended this practice to the judges; and it was adopted by the judges of the supreme court of the United States, as soon as the present judicial system was established. If the legislature of the United States considered this practice as mischievous, dangerous or liable to abuse, they might have forbidden it by law; to the penalties of which, such judges as might afterwards transgress it, would be justly subjected. By not forbidding it, the legislature have given to it an implied sanction; and for that legislature to punish it now by way of impeachment, would be to convert into a crime, by an *ex post facto* proceeding, an act which when it was done and at all times before, they had themselves virtually declared to be innocent.—Such conduct would be utterly subversive of the fundamental principles on which free governments rest; and would form a precedent for the most sanguinary and arbitrary persecutions under the forms of law.

Nor can the incorrectness of the political opinions thus expressed, have any influence in deciding on the guilt or innocence of a judge's conduct in expressing them. For if he should be considered as guilty or innocent, according to the supposed correctness or incorrectness of the opinion thus expressed by him, it would follow, that error in political opinion however honestly entertained, might be a crime; and that a party in power might, under this pretext, destroy any judge, who might happen in a charge to a grand jury, to say something capable of being construed, by them, into a political opinion adverse to their own system.

There might be some pretence for saying, that for a judge to utter seditious sentiments, with intent to excite sedition, would be an impeachable offence: although such a doctrine would be liable to the most dangerous abuses; and is hostile to the fundamental principles of our constitution, and to the best established maxims of our criminal jurisprudence. But admitting this doctrine to be correct, it cannot be denied that the seditious intention must be proved clearly, either by the most necessary implication from the words themselves, or by some overt acts of a seditious nature connected with them. In the present case no such acts are alledged, but the proof of a seditious intent must rest on the words themselves. By this rule this respondent is willing to be judged. Let the opinions which he delivered be examined; and if the members of this honorable court can lay their hands on their hearts, in the presence of God, and say, that these opinions are not only erroneous but seditious also; and carry with them internal evidence of an intention in this respondent to excite sedition, either against the state or general government, he is content to be found guilty.

In making this examination, let it be borne in mind, that to oppose a depending measure, by endeavouring to convince the public that it is improper, and ought not to be adopted; or to promote the repeal of a law already past, by endeavoring to convince the public, that it ought to be repealed, and that such men ought to be elected to the legislature as will repeal it, to attempt in fine, the correction of public measures, by arguments tending to shew their improper nature, or destructive tendency; never has been or can be considered as sedition, in any country, where the principles of law and liberty are respected; but is the proper and usual exercise of that right of opinion and speech, which constitutes the distinguishing feature of the free government. The abuse of this privilege, by writing and publishing as facts, malicious falsehoods, with intent to defame, is punishable as libellous, in the courts having jurisdiction of such offences; where the truth or falsehood of the facts alledged, and the malice or correctness of the intention, form the opinions of guilt and innocence.—But the character of libellous, much less of seditious, has never been applied to the expressions of opinions concerning the tendency of public measures, or to arguments urged for the purpose of opposing them, or of effecting their repeal. To apply the doctrine of sedition or of libels to such cases, would instantly destroy all liberty of speech, subvert the main pillars of free government, and convert the tribunals of justice into engines of party vengeance. To condemn a public measure, therefore, as pernicious in its tendency; to use arguments for proving it to be so; and to endeavor by these means to prevent its adoption, if still depending, or to procure its repeal in a regular and constitutional way, if it be already adopted; can never be considered as sedition, or in any way illegal.

The first opinion expressed to the grand jury on the occasion in question, by this respondent, was that "the late alteration of the federal judiciary, by the abolition of the office of the sixteen circuit judges; and the recent change in our state constitution, by establishing universal suffrage; and the further alteration that was then contemplated in our state judiciary, if adopted;" would in the judgment of this respondent "take away all security for property and personal liberty." That is "these three measures, if the last of them, which is still depending, should be adopted, will, in my opinion form a system whose pernicious tendency must be, to take away the security for our property and our personal liberty," which we have hitherto derived from the salutary restrictions, laid by the authors of our constitutions on the right of suffrage, and from the present constitution of our courts of justice." What is this but an argument to persuade the people of Maryland to reject the alterations in the state judiciary which were then proposed; which this respondent as a citizen of that state had a right to oppose; and the adoption of which depended on a legislature then to be chosen? If this be sedition, then will it be impossible to express an opinion opposite to the view of the ruling party of the moment, or to oppose any of their measures by argument, without becoming subject to such punishments as they may think proper to inflict.

The next opinion is, that "the independence of the national judiciary was already shaken to its foundation, and that the virtue of the people alone could restore it.' In other words, "the act of Congress for repealing the late circuit court law, and vacating thereby the offices of the judges, has shaken to its foundation the independence of the national judiciary, and nothing but a change in the representation of Congress which the return of the people to correct sentiments alone can effect, will be sufficient to produce a repeal of this act, and thereby restore to its former vigor, the part of the federal constitution, which has been thus impaired."

This is the obvious meaning of the expression; and it amounts to nothing more than an argument in favor of the change, which this respondent then thought and still thinks to be very desirable; an argument, the force of which as a patriot he might feel, and which as a free man he had a right to advance.

The next opinion is, that "the independence of the judges of the state of Maryland, would be entirely destroyed if the bill for abolishing the two supreme courts should be ratified by the next general assembly." This opinion, however incorrect it may be, seems to have been adopted by the people of Maryland, to whom this argument against the bill in question was addressed: for at the next session of the legislature this bill, which went to change entirely the constitutional tenure of judicial office in the state, and to render the subsistence of the judges dependent on the legislature and their continuance in office on the executive, was abandoned by common consent.

All the other opinions expressed by this respondent, as abovementioned, bear the same character with those already considered. They are arguments addressed to the people of Maryland, for the purpose of dissuading them from the adoption of a measure then depending; and of inducing them, if possible, to restore to its original state, that part of their constitution relating to the right of suffrage, by a repeal of the law which had been made for its alteration.

Such were the objects of this respondent in delivering those opinions, and he contends that they were fair, proper, and legal objects, and that he had a right to pursue them in this way: a right sanctioned by the universal practice of this country, and by the acquiescence of its various legislative authorities. Such he contends, is the true and obvious meaning of the opinions which he delivered, and which he believes to be correct. It is not now necessary to enquire into their correctness; but, if incorrect, he denies that they contain any thing seditious, or any evidence of those improper intentions which are imputed to him by this article of impeachment. He denies that in delivering them to the grand jury, he committed any offence, infringed any law, or did any thing unusual, heretofore considered in this country as improper or unbecoming in a judge. If this article of impeachment can be sustained on these grounds, the liberty of speech on national concerns, and the tenure of the judicial office under the government of the United States, must hereafter depend on the arbitrary will of the House of Representatives and the Senate, to be declared on impeachment, after the acts are done, which it might at any time be thought necessary to treat as high crimes and misdemeanors.

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

This respondent has now laid before this honorable court, as well as the time allowed him would permit, all the circumstances of his case, with an humble trust in Providence, and a consciousness that he has discharged all his official duties with justice and impartiality, to the best of his knowledge and abilities; and, that intentionally he hath committed no crime or misdemeanor, or any violence of the constitution or laws of his country. Confiding in the impartiality, independence and integrity of his judges, and that they will patiently hear, and conscientiously determine this case, without being influenced by the spirit of party, by popular prejudice, or political motives, he cheerfully submits himself to their decision.

If it shall appear to this honorable court, from the evidence produced, that he hath acted in his judicial character with wilful injustice or partiality, he doth not wish any favor; but expects that the whole extent of the punishment permitted in the constitution will be inflicted upon him.

If any part of his official conduct shall appear to this honorable court, *strictí juris*, to have been illegal, or to have proceeded from ignorance or error in judgment; or if any part of his conduct shall appear, although not illegal, to have been irregular or improper, but not to have flown from a depravity of heart, or any unworthy motive, he feels confident that this court will make allowance for the imperfections and frailties incidental to man.

He is satisfied, that every member of this tribunal will observe the principles of humanity and justice, and will presume him innocent, until his guilt shall be established by legal and credible witnesses and will be governed in his decision, by the moral and christian rule of rendering that justice to this respondent, which he would wish to receive.

This respondent now stands not merely before an earthly tribunal, but also before that awful being whose presence fills all space and whose all seeing eye more especially surveys the temples of justice and religion. In a little time, his accusers, his judges, and himself, must appear at the bar of Omnipotence, where the secrets of all hearts shall be disclosed, and every human being shall answer for his deeds done in the body, and shall be compelled to give evidence against himself, in the presence of an assembled universe. To his Omniscient Judge, at that awful hour, he now appeals for the rectitude and purity of his conduct, as to all the matters of which he is this day accused.

He hath now only to adjure each member of this honorable court, by the living GOD, and in his holy name, to render impartial justice to him, according to the constitution and laws of the United States. He makes this solemn demand of each member, by all his hopes of happiness in the world to come, which he will have voluntarily renounced by the oath he has taken; if he shall wilfully do this respondent injustice, or disregard the constitution or laws of the United States, which he has solemnly sworn to make the rule and standard of his judgment and decision.

SAMUEL CHASE.

A true copy,
Attest,
SAMUEL A. OTIS, Sec'ry

BERMUDA, March 9.

Wednesday came in from a cruise his Majesty's ship Leander, captain Talbot, with the French frigate La Ville de Milan, commanded by Monsieur de Raynaud, captaine de Vaisseau andmember of the legion of honor, and monsieur Ciret captaine de fregate, under jurymasts, which ship had been taken by the Leander; and also with his majesty's ship Cleopatra, captain sir Robert Laurie, baronet, also under jury masts, retaken by the Leander. A very desperate engagement had taken place between the Cleopatra and La Ville de Milan, which ended in the capture of the former, and of which the following are some of the particulars, stated as accurately as we have been able to procure them:

About ten o'clock, A. M. of the 16th of February, La Ville de Milan hove in sight, and the Cleopatra gave chase, hoisting American colors to induce the other to bring to. La Ville de Milan, however, continued