

HIGH COURT OF IMPEACHMENT.

JUDGE CHASE'S PLEA.

(Continued from our last.)

After these observations, this respondent delivered one of the above mentioned copies to the aforesaid William Lewis, then attending as one of the prisoner's counsel; who read part of it, and then laid it down on the table before him. Some observations were then made on the subject, by him and the above mentioned Alexander James Dallas, who had then come into court; but this respondent doth not now recollect those observations, and cannot undertake to state them accurately.

And this respondent further saith, that the paper marked exhibit No. 2, and herewith exhibited, which he prays leave to make part of this his answer, is a true copy of the original opinion, drawn up by him and concurred in by the said Richard Peters, as above set forth, which original opinion is now in the possession of this honorable court. He may have erred in forming this opinion, and in the time and manner of making it known to the counsel for the prisoner. If he erred in forming it, he erred in common with his colleague and with two of his predecessors; and he presumes to hope that an error which has never been deemed criminal in them, will not be imputed as a crime to him, who was led into it by their example and their authority. If he erred in the time and manner of making known this opinion, he feels a just confidence, that when the reasons which he has alleged for his conduct, and by which it seemed to him to be fully justified, shall come to be carefully weighed, they will be sufficient to prove, if not that this conduct was perfectly regular and correct, yet that he might sincerely have considered it as right; and that in a case where so much doubt may exist, to have committed a mistake is not to have committed a crime.

And this respondent further answering insists, that the opinion thus delivered to the prisoners counsel; viz that "any insurrection or rising of any body of people within the United States, for the purpose of resisting or preventing by force or violence, under any pretence whatever, the execution of any statute of the United States, for levying or collecting taxes, or for any other object of a general or national concern, is levying war against the United States, within the contemplation and true meaning of the constitution of the United States," is a legal and correct opinion, supported not only by the two previous decisions above mentioned, but also by the plainest principles of law and reason, and by the uniform tenor of legal adjudications in England and Great Britain, from the revolution in 1688 to this time. It ever was, and now is his opinion, that the peace and safety of the national federal government, must be endangered, by any other construction of the terms "levying war against the United States," used by the federal constitution; and he is confident that no judge of the federal government, no judge of a superior state court, nor any gentleman of established reputation for legal knowledge, would or could deliberately give a contrary opinion.

If however, this opinion were erroneous, this respondent would be far less censurable than his predecessors, by whose example he was led astray, and by whose authority he considered himself bound. Was it an error to consider himself bound by the authority of their previous decisions? If it were, he was led into the error by the uniform course of judicial proceedings, in this country and England, and is supported in it, by one of the fundamental principles of our jurisprudence. Can such an error be a crime or misdemeanor?

If, on the other hand, the opinion be in itself correct, as he believes and insists that it is, could the expression of a correct opinion on the law, whenever and however made, mislead the jury, infringe their rights, or give an improper bias to their judgement? Could truth excite improper prejudice? Could the jury be less prepared to hear the law discussed, and to decide on it correctly, because it was correctly stated to them by the court? And is not that a new kind of offence, in this country at least, which consists in stating the truth, and giving a correct opinion on the law?

Second specific charge against the respondent of the first article of the act, which accuses this respondent of restricting the counsel for the prisoner, from recurring to such authorities as they believed appropriate, in citing certain statutes of the United States, which they deemed illustrative of the positions upon which they were to rest the defence of their client. The respondent admits that he did, in the above mentioned trial, express his opinion to the aforesaid counsel for the prisoner, "that the decisions in

England, in cases of indictments for treason at common law, against the person of the king, ought not to be read to the jury, on trials for treason under the constitution and statutes of the United States; because such decisions could not inform, but might mislead and deceive the jury: that any decisions on cases of treason, in the courts of England, before the revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit decisions in the courts of England or of Great Britain, since the said revolution, to be read to the court or jury for the purpose of shewing what acts have been considered by those courts; as a constructive levying of war against the king of that country, in his legal capacity, but not against his person; because levying war against his government, was of the same nature as levying war against the government of the United States; but that such decisions, nevertheless, were not to be considered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great respect as having been delivered after full consideration, by men of great legal learning and ability.

These are the opinions which he did on that occasion, deliver to the counsel for the prisoner, and which he then thought, and still thinks, it was his duty to deliver. The counsellors admitted the practice in any court of justice, are, in his opinion, and according to universal practice, to be considered as officers of such courts and ministers of justice therein, and as such, subject to the direction and control of the court, as to their conduct in its presence, and in conducting the defence and criminals on trial before it. As counsel, they owe to the person accused, diligence, fidelity and secrecy, and to the court and jury, due and correct information according to the best of their knowledge and ability, on every matter of law which they attempt to introduce in argument. The court on the other hand, hath power, and is bound to, to direct and direct what evidence, whether by record or by precedents of decisions in courts of justice, is proper to be admitted for the establishment of any matter of law or fact. Consequently, should counsel attempt to read to a jury, as a law still in force, a statute which had been repealed, or a decision which had been reversed, or the judgments of courts in countries whose laws have no connection with our, it would be the duty of the court to interpose, and prevent such an imposition from being practised on the jury. For these reasons, this respondent thinks that his conduct was correct in expressing to the counsel for the prisoner, the opinions stated above. He is bound to answer here for the correctness of those principles, though he thinks them incontestable; but merely for the correctness of his motives in delivering them. A contrary opinion would convert this honorable court, from a court of impeachment into a court of appeals; and would lead directly to the strange absurdity, that whenever the judgment of an inferior court should be reversed on appeal or writ of error, the judges of that court must be convicted of high crimes and misdemeanors, and turned out of office: that error in judgment is a punishable offence, and that crimes may be committed without any criminal intention. Against a doctrine so absurd and mischievous, so contrary to every notion of justice hitherto entertained, so utterly subversive of all that part of our system of jurisprudence, which has been wisely and humanely established for the protection of innocence, this respondent deems it his duty now, and on every fit occasion, to enter his protest and lift up his voice; and he trusts that in the discharge of this duty, infinitely more important to his country than to himself, he shall find approbation and support in the heart of every American, of every man throughout the world, who knows the blessing of civil liberty, or respects the principles of universal justice.

It is only then, for the correctness of his motives in delivering these opinions, that he can now be called to answer; and this correctness ought to be presumed, unless the contrary appear by some direct proof, or by some violent presumption arising from his general conduct on the trial, or from the glaring impropriety of the opinion itself. For he admits that cases may be supposed, of an opinion delivered by a judge so palpably erroneous, unjust and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake.

Do the opinions now under consideration bear any of these marks? This honorable court need not be informed that there has existed in England, no less than in this country at common law, since the year 1350, when the statute of the 25th Edward III, chap 2, declaring what alone should in future be judged treason, was passed. It is perfectly clear that decisions made before that statute, 450 years ago, when England, together with the rest of Europe, was still wrapped in the deepest gloom of ignorance and barbarism; when the system of English jurisprudence was still in its infancy; when law, justice and reason, were perpetually trampled under foot by feudal oppression and feudal anarchy; when under an able and vigorous monarch, every thing was adjudged to be treason which he thought fit to call so, and under a weak one, nothing was considered as treason which turbulent, powerful, and rebellious nobles thought fit to perpetrate: is it perfectly clear that decisions, made at such a time, and under

such circumstances, ought to be received by the courts of this country as authorities to govern their decisions, or lights to guide the understanding of juries? Is it perfectly clear, that decisions made in England, on the subject of treason, before the revolution of 1688, by which alone the balance of the English constitution was adjusted and the English liberties were fixed on a firm basis; decisions made either during the furious civil wars, in which two rival families contended for the crown; when in the vicissitudes of war, death and confiscation in the forms of law, continually walked in the train of the victors, and actions were treasonable or praise-worthy according to the preponderance of the party by whose adherents they were perpetuated; during the reigns of three able & arbitrary monarchs who succeeded this dreadful conflict, and relaxed or invigorated the law of treason, according to their anger, their policy, or their caprice; or during those terrible struggles between the principles of liberty, not yet well defined or understood, on one hand, and arbitrary power, insinuating itself under the forms of the constitution on the other; struggles which presented at some times the wildest anarchy, at others the extremes of ferocious despotism, and after having brought one king to the scaffold, ended in the expulsion of another from his throne? Is it clear that decisions on the law of treason, made in times like these, ought not only to be received as authorities in the courts of this country, but also to have great influence on their decisions? Is it clear that decisions made in England, as to what acts will amount to levying war against the king, personally, and not against his government, are applicable to the constitution and laws of this country? Is it clear that such English decisions on the subject of treason, as are applicable to our constitution and laws are to be received in our courts, not merely as the opinions of learned and able men, which may enlighten their judgment, but as authorities which ought to govern absolutely their decisions? Is all this so clear, that a judge could not honestly and sincerely have thought the contrary? That he could not have expressed an opinion to the contrary without corrupt or improper motives? If it be not thus clear, then must it be admitted that this respondent, sincerely and honestly, and in the best of his judgement, considered these decisions as wholly inadmissible, or admissible only for the purposes and to the extent which he pointed out.

And if he did to consider them, was it not his duty to prevent them from being read to the jury, except under those restrictions, and for those purposes? Would his duty permit him to sit silently, and see the jury imposed on and misled? To sit silently and hear a book read to them as containing the law, which he knew did not contain the law? Such silence would have rendered him a party to the deception, and would have justly subjected him to all the contumely, which a conscientious and courageous discharge of his duty, has to unmeritedly brought on his name.

(To be continued)

From the AURORA.

Armed merchantmen.—Since the commencement of the present session of congress, the subject of arming merchantmen to force a trade to particular ports and places has claimed no inconsiderable portion of the public regard and attention; nor is this a matter of surprise when it is considered that it involves questions under the law of nations, and is closely connected with the considerations of national honor, peace and prosperity. It has been our lot to be among the few who have advocated a restriction upon our merchantmen and to receive in consequence a full share of the rancour of a particular party and of interested individuals; but disregarding as we have always done, every kind of opposition, when convinced of the correctness of the ground assumed, we have to witness the defeat of our opponents at that particular point deemed by them of the first consequence.

At the opening of the present session, the subject was first introduced to the attention of congress, by the president in the following manner:

"While noticing the irregularities committed on the ocean by others, those on our own part should not be omitted, nor left unprovided for. Complaints have been received that persons residing within the United States, have taken on themselves to arm merchant vessels, and to take a commerce into certain ports and countries, in defiance of the laws of those countries. That individuals should undertake to wage private war, independently of the authority of their country, cannot be permitted in a well ordered society. Its tendency to produce aggression on the laws and rights of other nations, and to endanger the peace of our own, is so obvious, that I do not see how we will adopt measures for restraining it effectually in future."

On perusing this paragraph, we considered that its obvious intent was to induce congress to restrain a commerce incompatible with our relation as a neutral power and with the laws of nations; we were perfectly well acquainted with the facts that a contraband trade had been carrying on by our merchantmen, and that the owners had armed their vessels to prevent the cruisers of belligerent powers from exercising the right of search; that vessels laden with military stores, were particularly intended for the St. Domingo trade, but we had suspicion that some of them might have been des-

tined for Martinique, and that they intended to get into port in defiance of blockade. It is well known that some American vessels had been met with by French cruisers and the right of search having been refused, that hostile means had been employed to acquire a compliance, which unfrequently terminated in the loss of lives on both sides.

From this knowledge we had judged that France in particular had combined to our administration and we repeatedly suggested that every civilized nation was interested in a stop being put to the illegal conduct of our vessels. The position was taken that the forced trade, of arming for that purpose, must be prevented or war with France would instantly ensue, and subsequently with every nation which might be interested in preventing our outraging the established rules and organization of civilized powers.

Our opponents, immediately upon the publication of the president's message, denounced the administration as desirous, to make the recommendation in the extract we have quoted, by the French government—as having been completed, to this crouching policy on the arrival of the minister Turreau—as a further compliance to this step by means of commerce and mechanics. The president was represented as being so completely under French influence as to disregard American rights.

To satisfy the public that the motives of the administration were grossly misrepresented, did not call for much of our time or attention—it was almost enough to say that the source of accusation was federal.

In consequence of the recommendation of the president in November last, the subject of a forced trade was taken up in congress; its illegality has not been denied in the particular cases known to every one; nor could it be questioned that justice and policy required the prompt and effectual interposition of the legislature; yet sorry are we to say the session is nearly at its close, and nothing has been done. It is not to our purpose to examine the different bills brought forward in both houses, but if one or other has been passed even with all its imperfections on its head, it would have been more satisfactory, than that it should be known to other nations that we could take such a devious course to come at an object before our eyes of the first moment to be attained. Had it been deemed to oblige the light of the public opinion, and of other nations with a show of disposition, and to foster the laborer correcting the evil to pass unemployed, the object could not have been better attempted, and if the good inclinations of the people of this nation was not fully established and known, we should expect a belief to go forth that nothing had been intended to be done, or that something were not done in order to favor those whose interests make them oppose a restriction to arming.

Having taken the liberty thus to express our regret at the delay in applying a remedy to a serious evil, we shall endeavor to shew the reader that all the aspersions which have been cast upon the administration, in relation to the motives for its recommendation were groundless and unprincipled, and from documents, not to be objected to or their weight lessened by federal declamation.

It appears, from the following documents, which were a few days since submitted to the senate, that so long ago as May last, the French government complained of the unlawful conduct of our merchantmen, and that in August last the British government complained on the same subject. Here then is a complete quietus for the federal prints; France alone did not complain, but England, the favorite government of our contemporaries, which can do no wrong and which is the best informed on maritime affairs and the most respectful of the laws of nations, surely after this, we shall hear no more of our commercial prosperity being protracted at the feet of Bonaparte, for if it will prostrate our dignity to do common justice to others and credit to ourselves, the federalists will have the consolation that George III. will also witness our humiliation.

It is, perhaps, well that the full career of our federal prints had been run. Before the following documents were submitted to the public inspection, and as "our best friends" have remonstrated, no doubt the same federal prints will soon find they were mistaken and will advocate the general ground which we have taken. The interposition of England, however, we are glad to notice, as it strengthens the arguments we have constantly advanced on this business, that we should make enemies of every European nation, holding colonies, if we permitted our merchantmen to carry warlike implements to those persons in such colonies who might be successful in insurrection and massacre, and if we allowed them to oppose by force of arms the rights which any cruisers of a belligerent power has to search and even send into port for examination, on suspicion.

We cannot but anticipate with some solicitude the position our federal prints will now take, since they are opposed even by the majesty of England.

The documents were published in *Mon-day's American*.

The British frigate *Revolutionaire*, captain Hotham, after receiving on board a quantity of specie, which was sent down to her in the *Ulyssus* pilot-boat, sailed on Saturday from Sandy-Hook for England.

It is with regret we have to mention the loss of the ship *SHEPHERDESS*, capt. Goodfellow. The *Shepherdess* was from Nantz for this port, but put into Fayal in distress, where the lady of general TERREAU and suite, who had taken passage in her for New York, were left. On Thursday night last, the ship having come to anchor in the fog, about two miles to the southward of the light house, near the beach, she parted her best bower anchor, drifted ashore, and soon went to pieces; most of her cargo drifted out of her, and went ashore a mile along the beach, which consisted of wine, silks, jewellery, fruits, &c. The cook and one seaman perished after the ship went ashore, and capt. Goodfellow was considerably hurt by a fall. The *Shepherdess* was owned by Daniel Sullivan, and is insured in this city.

[The following particulars we have received from captain Goodfellow, master of the above ship.]

On the 25th of September last, the ship *Shepherdess* sailed from the port of Nantz, with the following passengers—

- Mad. Turreau, wife of the French minister, and her two children,
- Mr. Petry, secretary of the French legation.
- Mr. De Cabre, second do.
- Mr. Le Quesne, private secretary to do.

Mr. Colbert formerly of Aux-Caves, Mr. & Mrs. Mauny, of Martinique, Messrs. West, Appleton, Proctor, & Morefield.

The ship had a fair wind out of the Bay of Biscay, when it became contrary with great violence, from the West and S. W. which obliged the captain to lay her to and lighten her. She beat up to the lat. of 47° long. 13, with great perseverance, but the continuance of bad weather wore out her sails and rigging, and the passengers becoming turbulent, the capt. made for the island of Fayal, and anchored there on the 6th of Oct. The passengers met with every attention from the inhabitants, and Mr. John Street, the consul of the United States, who afforded every aid in the refitting of the vessel. But the island affording but scanty means, it was not till the 20th of December that she left it. The only passenger that re-embarked being Mr. West. The others, fearful of the wattery element in the winter season, came to a resolution, after much irresolution, to remain in the island. The ship steered into the warm latitudes, where she often becalmed, and reaching the longitude of 12, the captain put her about to the northward, and came on soundings the 21st of January. Since which the passenger and crew have suffered considerable hardships from the cold and scanty provisions.—N. W. and N. E. winds blowing violently. About 12 days since she spoke the brig sent out by the underwriters of New-York to the relief of vessels blown off, but expecting to get into port, did not accept her proffered relief, which was afterwards much regretted. On the 5th instant the wind at E. she made the entrance of New York harbor, and on the 7th came up with it, and steering through the channel with a favorable prospect, about midway the wind suddenly ceased, and a heavy sea setting on shore, the captain let go his best anchor, but in spite of that she drifted, and no exertions could keep her off the shore on Sandy-Hook, on which she struck at 3 o'clock at night. Here ensued a lamentable scene, the night being very foggy, no light could be seen—the sea beat over her with irresistible violence, washing completely the crew and passenger, who could scarcely keep their hold. In this manner the night was spent, and the majority were so numbed with cold, as hardly to have the use of their faculties. About 5 in the morning, (Friday,) she beat nearly close up on the beach, and it being low water, all attempted to make the shore. The cook of the ship died with the severity of the cold, and one sailor slipped over board, and was lost—the remainder of the crew succeeded in reaching the shore, with some difficulty. Mr. West also attempted it, but was knocked down in the surf, and was drawn ashore without any appearance of life. All received the most friendly and humane attentions from Mr. and Mrs. Skenk, who keep the light-house, and succeeded in restoring Mr. West to life. All acknowledge their kindness with grateful sentiments; and avail themselves of this occasion to express their publicly.

P. S. The members of the French legation mean to winter on the island,