

THE DAVIS TRIAL.

Events Following the Fall of the Confederacy Recalled.

One of the most valuable and interesting papers ever read before the Virginia State Bar Association was that entitled "The Trials and Trial of Jefferson Davis," by Charles M. Blackford, of Lynchburg, Va., read before the association Wednesday evening last during its twelfth annual meeting, at Hotel Chamberlin, Old Point Comfort.

The subject is of great historical importance and it was handled in a masterly manner. After describing the pursuit, arrest and charges against the great President of the Southern Confederacy, Mr. Blackford spoke as follows: On the 28th day of November, the Rev. Charles Minnegerode asked permission to see Mr. Davis as his spiritual adviser, which request, after being pondered by the Secretary of War, the Attorney General and the Adjutant General, was granted, and an order to that effect was sent to the reverend gentleman, who, on the 9th of December, 1865, presented the same to General Miles, who, fearing some deadly plot, wired the Adjutant General to know if the order was genuine and whether the old doctor should be admitted. On the 10th his fears were put to rest, and the order was verified. (121 War of Rebellion, 810, 835). Dr. Minnegerode, however, had to give a species of ecclesiastical parole, confining his conversation strictly to ghostly topics. (Id. 874).

On the 2d of October, 1865, because of the representation of the medical officer attending Mr. Davis, he was removed to a much better room in "Carroll Hall," in the fortress, and was in every respect very much more comfortable.

On the 25th of April, 1866, Mrs. Davis, hearing her husband was failing rapidly, telegraphed the president for permission to visit him. The President referred it to the Secretary of War and he ordered General Miles to permit Mrs. Davis to visit her husband, under such restrictions as might be consistent with the safety of the prisoner, upon her giving a satisfactory parole. (Id. 900-1).

MR. DAVIS' CONDITION. During this long period the major general commanding had almost daily reported the physical and mental condition of his prisoner, often accompanying his report with that of the medical officer in charge. On the 25th of April, 1866, Dr. George F. Cooper, the surgeon, reported to General Miles as follows: "I would respectfully report that the general health of State prisoner Jefferson Davis is not as good as at my last report. His appetite is failing and his muscular strength is diminishing. He shows an incipient tottering in his gait, etc."

The major general commanding transmitted this report, but overruled the medical expert, saying: "In seeing him every day I have been unable to discover the change."

After this Mr. Davis was permitted to have an interview with his counsel, and was allowed some of the comforts given prisoners of a high rank, principally amongst which was the privilege of the ground in the day time. General Miles, in his daily reports, ceased to call him "Jeff Davis" as had been his wont, and in his official communications spoke of him as "State Prisoner Jefferson Davis."

SOLDIERS TOLD THE FACTS. It is a matter of some interest to know what brought about these changes for the better. Any one noting the records will soon ascertain the cause. Great care was taken and the most rigid rules prescribed to prevent the outside world in any way learning anything about the "secrets of the prison house" and for a long time the efforts were successful. But the hardy veterans of the fort felt indignant that they should be constantly ordered to perform the duties of a balliff in guarding a sick and feeble old man, whom a youth of fifteen could have overmastered. Their manly natures were shocked at what they saw, and no discipline could keep their tongues from wagging; hence, gradually the public press, both North and South, commenced to make most significant inquiries, and then to charge wrong, injustice and wanton cruelty.

THE PUBLIC INDIGNANT. About the 20th of May, 1866, one of Surgeon Cooper's reports as to Mr. Davis' health and the causes of its depression became public, and created an outburst of indignation, which found voice in the newspapers of both parties and all sections. From a long article in the New York World some extracts are worthy of note. The editor says, after referring to the surgeon's report: "It cannot be read by any honorable and right-minded American, no matter what his sectional feelings or his political opinions may be, without a sickening sensation of shame for his country and a burning flush of indignation against the persons who have prostituted their official position to indict upon the American name an ineffaceable brand of disgrace by the wanton and wicked torture of an invalid, lying a helpless prisoner in the strongest fortress of the union."

Similar articles appeared in other papers, both North and South. These articles were keenly felt by General Miles and on the 28th of May, 1866, he wrote to Adjutant General Townsend enclosing him a number of extracts from the papers, of which he complained very bitterly. He averred he had done nothing but obey orders, and that the press was doing him a great injury. (Id. 914).

MILES CRITICIZES COOPER. Having written his complaint of and protest against the press, General Miles turned his attention to his

reporters and a number of distinguished visitors.

COUNSEL FOR DEFENSE.

A few minutes before 11 the counsel for the defense entered the court room. They were a very distinguished group: Mr. Charles O'Connor, the leader of the bar in the United States; William B. Read, of Philadelphia; John Randolph Tucker, already distinguished as a constitutional lawyer, and the late Attorney General of Virginia; Robert Ould, the most skillful debater and most logical speaker of his day, and Mr. James Lyons, who had long been prominent in the courts of this State. It is seldom that any case has brought together a more distinguished array. The government was represented by Mr. Everts, the Attorney General of the United States, and also a leader of the bar of New York, and a man of high culture and refinement; Mr. Chandler, a Northern resident of Virginia, who could take the ironclad oath, was district attorney. Besides the counsel engaged in the case there were a number of other men of mark, both civil and military. Among them may be mentioned Judge J. A. Meredith, the Rev. Dr. Minnegerode, James Neeson, John Mitchell, the Irish patriot; Gustavus A. Meyers, and Generals Schofield, Granger, Brown and Imboden, and Mr. John Minor Botts. A few moments before the clock struck 11 the large doors were thrown open and the crowd rushed in and filled every spot outside the bar.

At 11 Horace Greeley entered the room, and there was a buzz of interest. The object of his visit was known, and excited much good feeling toward him, which was exhibited by kindly comment from the crowd and many cordial shakes of the hand by men inside the bar. When Judge Underwood came in there was a hush of expectation, and all eyes were strained to catch the first glimpse of the distinguished prisoner. As said below, he was at the Spotswood Hotel, in front of which a vast crowd was gathered to see him come out. Carriages were arranged in front of the hotel as if to take him and his party, but to avoid the crowd, the proprietor of the hotel had caused a coach to be brought into the court yard in the rear, and while the crowd were standing expectant in front, Mr. Davis, General Burton, Dr. Cooper, of the United States army, and Mr. Burton Harrison got into the carriage and were driven rapidly, by a circuitous route, to the custom house. The crowd did not discover that they had been outwitted until he had reached his destination.

On the arrival of the party at the custom house they were taken to the conference room by a private way, and thence at once entered the court room, where he was escorted by General Burton to a comfortable chair with friend of the manner of a sympathizing friend than that of his keeper. Mr. Davis was much worn and showed the marks of extreme feebleness, but he looked cheerful and bright, and bowed to his many friends and shook hands with a few who were nearest.

UNDERWOOD'S LOOK OF DIGNITY. As soon as he had taken his seat, Judge Underwood, who was incapable of appreciating the dignity of his official position, said, turning to the United States army officers who were present: "The Court is honored on this occasion by the presence of so many of the nation's noblest and bravest defenders that the usual morning routine will be omitted." The sentiment, so far as it referred to the military spectators, is unobjectionable, but its utterance on such an occasion has no parallel in judicial conduct since Jeffries held his court at Taunton.

General Burton then presented Mr. Davis to the court in obedience to the writ of habeas corpus. In reply the Judge tendered him the thanks of the court "for his prompt and graceful obedience to its writ. He has thus added another to the many laurels he has gained upon the battlefields of the country." "Imagine Chief Justice Marshall, who once presided in the same court in a great trial for treason, effusively tendering his thanks to any one who obeyed the mandate of his writ. Inter arma silent leges had so long been the prevailing condition in the land that this debasement of the ermine attracted no attention.

IN THE KEEPING OF THE LAW. After this display of gratitude, the Judge declared that the prisoner had now "passed under the protection of American Republican law," and was in the custody of the marshal. What species of law that was it is hard to explain, and when it is remembered that, though ever clamorous for his constitutional right to a speedy trial, it was over two years before it was awarded him, the difficulty in understanding the expression is increased.

The prisoner having thus passed from the control of martial law into that of "Republican law," Mr. O'Connor announced that the defense was ready and desired a trial. To this Mr. Everts replied that the case could not be heard at that term, to which, of course, the Judge assented. Motion for bail was then made, and by the practical consent of the prosecution it was granted and the penalty was fixed at \$100,000, but this was not effected until Judge Underwood had interpolated a stump speech, lauding the Government of the United States and the beneficence of its administration.

A WONDERFUL BOND. The bail bond, in the usual form of such bonds, was then given, Mr. Greeley signing first. The sureties were Horace Greeley, Augustus Schell, Horace F. Clark, Gerrit Smith and Cornelius Vanderbilt, of New York; Aristides Weich and David K. Jackson, of Philadelphia; R. Barton Hazell, Isaac Davenport, Abraham Warwick, Gustavus A. Meyers, W. W. Crump, James Lyons, James A. Meredith, W. H. Lyons, John Minor Botts, Thomas W. Doswell, James Thomas, Jr., and Thomas R. Price, of Virginia.

When the bond was duly executed the marshal was directed to discharge the prisoner, which was done amidst deafening applause. The streets around the custom-house were crowded with people awaiting the result. As soon as the decision was

announced some one ran to the Main street window of the custom-house and shouted: "The President is bailed!" A mighty roar of applause went up from the people below, which was taken up and echoed and re-echoed from street to street and house to house, though strange to say, a considerable period of time elapsed before the crowd on Bank street were informed of the result. Then they joined most heartily in the shouts. A company of United States infantry had been brought up to the door of the custom-house when Mr. Davis was carried in by Gen. Burton. No one has ever yet known what became of them. They vanished in the uproar, doubtless rejoicing that they were relieved of the ignoble functions which had been assigned them as jailors.

A CAPTIVE'S TRIUMPH. Some time elapsed before the bond was signed and the order of release was entered. Then Mr. Davis left the room, and with Mr. O'Connor on one side and Mr. Ould on the other, came out of the custom-house door on Bank Square. They were greeted with a sound which was not a cheer or a hurrah, but that fierce yell which was first heard at Manassas and had been the note of victors at Cold Harbor, at Chancellorsville, the Wilderness and wherever battle was fiercest. The trio got into an open carriage and drove to the Spotswood Hotel, at the corner of Main and Eighth streets. As they moved amidst the rejoicing crowd, the rebel yell was their only applause, their happiest greeting. It was the outburst from brave men who could thus best give expression to their indignation for what was past and their joy for the present.

"HATS OFF, VIRGINIANS!" As the carriage approached the hotel all sounds ceased, and a deep and solemn silence fell upon the vast crowd, less demonstrative than the yell, but more tender in its sympathy. As Mr. Davis stood up in the carriage preparatory to alighting, a stentorian voice shouted: "Hats off, Virginians!" and five thousand bare-headed men did homage to him who had suffered for them, and with moistened eye and bated breath stood silent and still until their representative entered the hotel.

The treatment which the Federal government had imposed upon Mr. Davis had made him a martyr. The applause was an attestation of that fact. Around the court-room were thousands of men who had met danger and suffered loss. Each man felt that Davis had suffered vicariously for him. If Davis was a traitor so was he. If Davis should suffer the penalty of the law, so should he. This it was which made the feeling so intense.

The Southern people had profound respect for Mr. Davis personally because of his pure character and intellectual abilities, but for him there was no such deep and abiding devotion as for Lee, and many of the other military chieftains. Mr. Davis impersonated their failure, the generals their brilliant success as long as success was possible. But when the victors charged him falsely with crimes abhorrent to his nature, put him under ward and manacled him as a felon, and then indicted him as a traitor, he became their martyred hero and history will so record him.

At the November term, 1867, Mr. Everts, the Attorney General, was present representing the prosecution before Judge Underwood. Mr. Davis, through his counsel, was ready, earnestly demanding a trial. The government asked that the trial be put off until the succeeding March to suit the convenience of their chief justice. The defense was anxious for Judge Chase to preside, so it consented to the delay.

A NEW INDICTMENT. On the 26th of March, 1868, a new indictment was found against the prisoner, charging him in many counts with many acts of treason, conspicuous amongst which was conspiring with Robert E. Lee, J. P. Benjamin, John C. Breckenridge, William Mahone, M. A. Wise, John Letcher, William Smith, Jubal A. Early, Jas. Longstreet, William H. Payne, D. H. Hill, A. P. Hill, G. T. Beauregard, W. H. C. Whiting, Ed. Sparrow, Samuel Cooper, Joseph E. Johnston, J. B. Gordon, C. F. Jackson, F. O. Moore and with other persons, "whose names are to the grand jury unknown," to make "the war against the United States; fighting the battle of Manassas, appointing one Girardi, then acting as captain, to command a brigade, and one Mahone to be Major General; fighting a battle near Petersburg in company with R. E. Lee and others, and another at Five Oaks, all of which things were done traitorously, unlawfully, maliciously and wickedly."

The various historic acts styled crimes in this lengthy document were proved before the grand jury by the following witnesses, summoned for the purpose: R. E. Lee, James A. Seddon, C. B. Duffield, John Letcher, G. Wythe Munford, John B. Baldwin, Charles E. Worthing and Thomas S. Hayward.

On the finding of this indictment the trial was continued until the 2nd day of May, 1868, then to the 3d day of June, and then again until the fourth Monday in November, when it was arranged that the chief justice should be present. This date was again changed to the 3rd of December in the same year.

During this delay the Fourteenth amendment to the Constitution was adopted and became a part of the organic law of the land. The third section of that article reads as follows: "No person shall be senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or any State, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but congress may, by a vote of two-thirds of each house, remove such disability."

THE MOTION TO QUASH. As soon as the amendment was

adopted the counsel of Mr. Davis determined to move to quash the indictment against him upon the ground that, as he had in the year 1845, taken the oath to support the Constitution of the United States as a member of congress and had afterwards engaged in insurrection and rebellion, as charged in the indictment, such crime, if crime it was, had been already punished by the penalties and difficulties denounced against and inflicted upon him therefor by the third section of the fourteenth amendment of the Constitution. Gen. Bradley T. Johnson has written that he had it from Messrs. O'Connor and Ould that the point was suggested by the chief justice.

Preparatory to the motion to quash, on the ground set forth above, Mr. Ould filed in open court his own affidavit that on the 8th day of December, 1845, Mr. Davis on taking his seat in the house of representatives as a member from Mississippi had taken an oath to support the Constitution of the United States. He then moved for a rule on the attorney of the United States to show cause why the indictment should not be quashed.

On Thursday, the 3d day of December, 1868, the questions arising under the rule were taken up in the Circuit Court of the United States, sitting at Richmond, with Judges Chase and Underwood on the bench and the real and final trial of Mr. Davis begun.

There was not so much pomp and ceremony, nor as much dramatic effect as at the trial of Warren Hastings; nor has any such master of the art of word painting as Macaulay ever described it. In some respects, however, the scenes were alike, despite the differences in the character of the prisoners and the style of the crimes with which they were charged. In each case the prisoner at the bar was a man of high intelligence and strong will. Each had ruled an empire.

Hastings had governed a vast territory and many millions of people, and had added a continent to the crown of England. Davis had been the chosen leader of a heroic people of eleven commonwealths combined under him for constitutional government, which had sent great armies and great captains to the field, and for four years, against desperate odds, dependent solely upon its own resources, had accomplished mighty deeds, won brilliant victories and challenged the admiration of the civilized world by its sturdy fortitude and by the heroic defense of what was regarded as right.

The very indictment against Jefferson Davis was the catalogue of the great acts of a sovereign—a sovereign who conspired with Lee and Jackson and the Johnstons, with Stuart and Forrest and Kirby Smith and Taylor, and many another, to fight such battles as the two at Fredericksburg, and the bloody fields of Gettysburg, and the Wilderness, Chancellorsville, and Spotsylvania.

Great publicists like Chase, O'Connor and Everts knew that the law and the customs of nations did not look upon such deeds as those of a traitor, and that the world stood aghast at the effort to thus debate the principles of international justice; but President Johnson and Judge Underwood, at a safe distance, would have read the riot act to the rebel army and then held forfeited to the gallows the life of every gallant man who did not at once lay down his arms.

ANSWERED FOR A PEOPLE. Mr. Davis sat behind his counsel on the day of his final trial much improved since his last appearance in the same room. He was not an unworthy hero for such a scene. His eye flashed with intellectual fire, his nervous energy was still alert, though his physical strength was much wasted. As he sat in the midst of the distinguished group he was easily primus inter pares. His calm dignity and his dauntless courage inspired the zeal of his defenders and won the respect of those whose official duty it was to prosecute. He sat at that bar arraigned for the crimes of a great people, a sovereign called upon to answer for the misdeemeanors of an empire. His mien and bearing show him worthy the dignity of the position.

The chief justice of the United States presided, and it is with pleasure that it can be recorded that he well maintained the functions of his high office. He occupied the same position which was held by Chief Justice Marshall in that other trial when Aaron Burr stood indicted for treason at the same bar, and to his credit, he said, he was equally just and impartial.

The somewhat notorious Underwood sat by his side, but the arguments of counsel were, it is said by eye witnesses, addressed only to the chief justice. Mr. O'Connor especially ignored his very existence and the chief justice seemed to forget as he was beside him on the bench, except when, with the frontony of ignorance, he exercised his right to dissent. The late Robert Whitehead, of Nelson, who was present, informed me that some time during the session of the court, something was said about the difficulty of securing an impartial jury to try Mr. Davis of Richmond. Judge Underwood with a wave of his hand toward the gallery, packed with negroes, said he could easily secure a jury. The suggestion was treated by Chief Justice Chase with the contempt it deserved.

Of the many counsel for Mr. Davis only four were selected to appear for him that day, Messrs. Charles O'Connor, Robert Ould, William R. Read and James Lyons, and of these Messrs. O'Connor and Ould were especially selected to make the argument on the motion to quash.

For the government there appeared the newly appointed District Attorney S. Ferguson Weston; Richard H. Chas. Jr., of Boston, and H. H. Wells, who had been the military appointee as Governor of Virginia. The attorney general, Mr. Everts, was not present, it being stated that official duties rendered it impossible for him to be present.

A demand was made for a written specification to the point upon which the motion to quash was made. This was soon written out by Mr. O'Connor and the argument was opened by Mr. Ould in a speech of great clearness and logic.

At the close of Mr. Ould's speech

the chief justice said that he was not surprised, as intimated by Mr. Dana, at the ground taken by the defendant. The course of the argument, he said, was anticipated, as the point urged was the common principle of constructive repeal.

Mr. Beach then opened for the government, and Mr. Wells and Mr. Dana followed on the same side. Mr. O'Connor closed for the defense. On the close of Mr. Wells' speech the court adjourned until the next day, which was occupied by Mr. Dana and Mr. O'Connor.

ARGUMENT OF GIANTS. The arguments are set out very fully and carefully in General Johnson's report of the case and were each revised by the speaker. The report was not published until eight years after the trial, but infinite pains were taken to secure absolute accuracy. Each gentleman, both of bench and bar, had the opportunity to revise what was reported as being said by him. Mr. O'Connor took especial pains with the report of his speech and regarded it as one of the foundation stones upon which his fame as a lawyer would rest. So anxious was he that it should present his views accurately that he wrote to General Johnson, when he sent the revised report back to him, begging that if the report had gone to press it should be destroyed and reprinted and re-stereotyped with his revision and at his cost.

It would be an agreeable task to analyze these arguments, but this paper is already too long. Interesting and instructive, as they are, we must forego the pleasure. The close of the trial was neither as dramatic nor as exciting an episode as the time bar was allowed, and Mr. Davis released from the grasp of the military. There had come over the public mind of both sections a belief that Mr. Davis would never be convicted, indeed, would never be tried, and hence there was none of that intense strain which had therefore been felt.

UNDERWOOD'S EFFORTS. The argument having closed on the 4th of December the court adjourned until the next day, when it announced what was well understood at the outset would be the case, that the court could not agree. Although not stated in the order, it is known that the chief justice held the point taken by the defense to be good, and that the indictment should be quashed, while Underwood would have overruled the motion and proceeded to trial. The difference was that existing between a learned and upright lawyer, who could rise above political prejudice in an assertion of a great principle, and an ignorant partisan, who permitted his personal bitterness to guide his judicial finding.

The result of this disagreement of the judges was that the motion to quash failed, and thereupon the case was continued until the May term, 1869. The fact of the disagreement was certified by the Supreme Court that it might be there decided.

This was the end of this celebrated case. Later in December, 1868, President Johnson published his general amnesty proclamation, which, by common consent, was held to cover Mr. Davis' case, and upon the 15th of February, 1869, the following order was entered in the Circuit Court at Richmond: "Monday, February 15, 1869. 'United States

vs. (Upon indictment for treason) 'Thos. P. Turner, Wm. Smith, Wade Hampton, Benj. Huger, Henry A. Wise, Samuel Cooper, G. W. C. Lee, W. H. F. Lee, Charles Mallory, Wm. Mahone, O. F. Baxter, Robert E. Lee, James Longstreet, Wm. E. Taylor, Fitzhugh Lee, Geo. W. Alexander, Robt. H. Booker, Jno. DeBree, M. D. Corse, Eppa Hunton, Roger A. Pryor, Cory Boyles, Wm. H. Payne, R. S. Ewell, Wm. S. Winder, Geo. Booker, R. S. Andrews, C. F. Faulkner, and H. H. Dulany, W. N. McVeigh, H. B. Taylor, Jas. A. Seddon, W. B. Richards, Jr., J. C. Breckenridge and Jefferson Davis.

(two cases). "The district attorney by leave of the court saith that he will not prosecute further on behalf of the United States against the above-named parties upon separate indictments for treason. It is therefore ordered by the court that the prosecution aforesaid be dismissed."

Strange to say an order was entered upon the first of February reciting that inasmuch as the indictments had been dismissed he and his bondsmen were forever released. The motion on appeal in the Supreme Court, of course, was never called, and is now filed amongst its archives.

CLOSING WORDS. This recitation of the "Trials and Trial of Jefferson Davis" has not been prepared with the purpose of stirring up sectional animosities. Its aim has been solely to vindicate the truth of history, that its teachings may be taken to heart. Between those who fought, bitterness vanished with the smoke of the hostile guns. The lapse of years has made us one people again, and it is not patriotic or wise to do anything which may mar the harmony which time has wrought. If the reputation of individuals shall suffer by turning a search light upon the official acts of their past, it is their misfortune, not the fault of the historian who handles the reflector.

The historians on either side of our civil war are naturally warped in their judgment, and even after so many years cannot take an unprejudiced view of the same facts, however undisputed. The history of that epoch in our national life must be written on the other side of the Atlantic, but though that is the case we are not relieved of the obligation to seek for the truth and to preserve our researches for the use of those writers whose environment will enable them to be impartial. To that end this paper has been written.

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