New York Daily Tribune
Saturday, June 24, 1865
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THE ASSASSINATION.

THE TRIAL ON FRIDAY.

THE REBELS IN CANADA.

Beverly Tucker Burns His Letters.

A PLEA FOR ARNOLD.

Adjournment to Tuesday.

WASHINGTON, Friday, June 23, 1865.

George B. Hutchinson, a witness called by the Government, testified that he now lives in Canada; that he was an enlisted man during the recent war for a year and a half. He saw Clement C. Clay, jr., on or about the 12th or 13th of February last, at the Queen's Hotel, Toronto. He did not think he was mistaken in seeing Clay then. He also saw Sanders, Beverly Tucker, and others, at Montreal on the 16th or 17th of the same month. The witness was present at a conversation at St. Lawrence Hall, Montreal, on the 2d or 3d of June, when the present trial was the subject discussed by Dr. Merritt, Beverly Tucker, Gen. Carroll of Tennessee and ex-Gov. Wescott of Florida. Beverly Tucker said he had burned all the letters, for fear the "Yankee sons-of-b——s" would steal them out of his room. The witness had knowledge that Dr. Merritt enjoyed the confidence of Tucker and the others.

THE ARGUMENT FOR ARNOLD.

Mr. Ewing then proceeded to read the argument on the prisoner Arnold's case. He remarked that the evidence was not voluminous, and it was all in harmony as to the main facts. Mr. Horner, the detective, said that Arnold, after his arrest, gave an account of a meeting held at the Lichau House in Washington, the object of which was to capture the President and take him South for the purpose of compelling the Government to an exchange of prisoners. After announcing his intention of having nothing to do with it, if not performed within the week, Arnold withdrew from it, when Booth said, for this he ought to be shot. Booth had previously furnished the conspirators with arms, and so perfectly satisfied did he become that Arnold had withdrawn from the plot, that he told Arnold to dispose of the arms placed in the prisoner's hands just as he pleased. This statement of Arnold's was truthful and ingenuous, and all the evidence corroborated and conformed to it. In Booth's trunk was found a letter from Arnold, dated from Hookstown, March 27, in reply to one from Booth, who had endeavored to reclaim and again enlist him in his scheme. This letter showed that the rupture between them was complete and never to be healed. During Arnold's stay at Mrs. Van Tyne's in this city, it was not denied that he was engaged in the plot for the capture of President Lincoln. Arnold remained in Maryland from the 21st to the 31st of March, when he proceeded to Fortress Monroe for the purpose of entering upon a situation as clerk with Mr. Wharton. About the 20th of March occurred the meeting, which resulted in the quarrel of the accused with Booth, when Arnold gave up his room at Mrs. Van Tyne's and never saw Booth afterward. The evidence established only that at one time Arnold was a party to a plot to capture or abduct the President. If on the 14th of April the President had been abducted instead of assassinated, Arnold could not be punished because he had withdrawn from the conspiracy. As the prisoner countermanded the intention to abduct, and altogether withdrew from it, then there was no crime, and as a consequence no punishment should follow. Mr. Ewing quoted from various legal authorities to show that after Arnold had terminated his association with the conspirators, he was not responsible for what was done afterward. No one act of the conspirators could affect him. There was not the remotest testimony to connect Arnold with the commission of the murderous deed. He repeated that the original plot, in which Arnold bore a part, was abandoned, and an entirely new one, with which Arnold was in no way connected, was substituted. Although he had conspired with the same parties for a different purpose, he certainly was not responsible with the wicked men who did the wicked deed of murder. The prisoner, the counsel argued, could not be an accessory before the fact of a crime he did not know was to be committed. At the time of the assassination Arnold was not in Washington. He was not nearer the scene than Fortress Monroe, nor did he give any guilty aid and protection to the murderer after the crime.

Mr. Ewing, after the recess, addressed the Court on the subject of jurisdiction, arguing that neither the Constitution of the United States, nor the laws passed under it, gives them power to try the prisoners of the crime with which they are charged, as there were no constitutional or legal provisions for trial in such a court. It must have been authorized by some mandate from the Executive, which the Constitution prohibits. If his client were to be tried for treason and murder, it must be proved that they aided in, or abetted the acts; for either of them on conviction was punishable with death.

The Judge-Advocate would not say on what law and authority he rested the conviction of these parties, and for what crime. The civil courts were open without impediment for impartial trial, and hence, in the absence of other considerations, there was no necessity for this trial before a military court. If such a precedent be set, we may have fastened upon us a military despotism. It might be that this arraignment before a military court was more convenient and conviction more certain than before a civil tribunal. The Judge-Advocate had said that the parties were tried under the common military law. This was a quiddity, and might make a fictitious crime and attach an arbitrary punishment, and who may gainsay it? Our rules and articles of war are familiar to us all. We never heard of the common laws of war having jurisdiction not conferred by express enactment or constitutional grant. If the laws governed, he (Mr. Ewing) felt satisfied that his clients were safe. One of them, Dr. Mudd, had committed no crime known to the law. He could not be charged with treason, nor as aiding and abetting the murder of the President; for at the time of the tragedy Dr. Mudd was at his residence 30 miles from the place of the crime. He certainly could not be charged with the commission of the overt act; there were not two witnesses to show it, but abundant witnesses to show that he did not commit the overt act. Dr. Mudd never by himself nor with others levied war against the United States nor gave aid and comfort to the enemy. Mr. Ewing then proceeded to comment on the evidence, claiming that there was nothing which in the remotest degree connected Dr. Mudd with the conspiracy. He ventured to say that, rarely in the annals of civil trials had the life of the accused been assailed by so much false testimony as had been exhibited in this case; and rarely had it been the good fortune of an innocent man to so confute and overwhelm his false accusers by the preponderance of undisputed truth. There was no reliable evidence to show that Dr. Mudd met Booth more than twice, and that was last November, in Charles County, on a mere matter of trade. He had never met Booth in this city. The counsel then reviewed the evidence relative to Dr. Mudd having set Booth's leg, and other events in that connection, arguing that from all this there was nothing to lead to a conclusion unfavorable to the accused. Dr. Mudd voluntarily, not on compulsion, gave information concerning the route by which Booth, with Harrold, had escaped; and, instead of thanking him for this as a good and loyal citizen, an effort was made to punish him. Truly, the ways of military justice, like those of Providence, are inscrutible and past finding out. In the course of his defense, Mr. Ewing said that in all the writings which had been seized, there was not the scratch of a pen implicating Dr. Mudd; nor was there anything to show that he had the least intimation or knowledge either of the assassination or abduction. He concluded that his client could not be punished either as a principal or as an accessory before the fact; for the evidence fails to show either knowledge, or intimation, or suspicion to commit the crime. If the prisoner was to be held responsible at all, it was as an accessory after the fact; and beyond all controversy there was no proof on this point.

THE ARGUMENTS FOR THE DEFENSE CONCLUDED.

All the arguments for the accused having been read, Associate Judge-Advocate Bingham said that on Tuesday next he would be ready with so much of his summoning up as touched the question of the jurisdiction of the Court and he hoped by the next day to deliver the conclusion of his argument.

ADJOURNMENT TO TUESDAY.

The Court then adjourned until Tuesday morning at 10 o'clock.