

THE ASSASSINATION.

THE TRIAL ON WEDNESDAY.

Judge Bingham on the Evidence.

A COMPREHENSIVE REVIEW.

End of the Public Sessions of the Court.

WASHINGTON, Thursday, June 23, 1865.

The trial of the alleged conspirators after occupying several weeks and causing the examination of several hundred witnesses, is now over; much to the relief of the counsel and the Court, to whom it has been in an extreme degree fatiguing. The Court have afforded every facility to the counsel for procuring witnesses. The Court will meet to-morrow morning, and of course will sit with closed doors, for the purpose of deliberation and to make their findings. It is not thought that this will occupy much time, as the members have weighed the testimony as the trial progressed.

WASHINGTON, Wednesday, June 23, 1865.

The Court met at 2 o'clock this afternoon, when special Judge-Advocate Bingham proceeded to sum up the evidence and present the views of the law arising upon the facts in the case on trial.

THE QUESTIONS OF FACT.

The questions of fact involved in the issue are: First—Did the accused, or any of them, in pursuance of such conspiracy and with the intent alleged, commit either or all of the several acts specified.

THE ACT OF ONE CONSPIRATOR BINDS ALL.

If the conspiracy be established, as laid, it results that whatever was said or done by either of the parties thereto in the furtherance or execution of the common design, is the declaration or act of all the other parties to the conspiracy; and this, whether the other parties, at the time such words were uttered, or such acts done by their confederates, were present or absent, here within the intrenched lines of your Capital, or crouching behind the intrenched lines of Richmond, or awaiting the results of their murderous plot against their country, its Constitution and laws, across the border under the shelter of the British flag. The declared and accepted rule of law in cases of conspiracy is that in prosecutions for conspiracy it is an established rule that when several persons are proved to have combined together for the same illegal purpose, any act done by one of the party in pursuance of the original concerted plan and in reference to the common object, is, in the contemplation of law, as well as in sound reason, the act of the whole party; and therefore the proof of the act will be evidence against any of the others who were engaged in the same general conspiracy, without regard to the question whether the prisoner is proved to have been concerned in the particular transaction. (Phillips on Evidence, 210). The same rule obtains in cases of treason. If several persons agree to levy war, some in one place and some in another, and one party do actually appear in arms, this is a levying of war by all, as well those who were not in arms as those who were, if it were done in pursuance of the original concert; for those who made the attempt were emboldened by the confidence inspired by the general concert, and therefore these particular acts are in justice indisputable to all the rest. (1st East. Pleas of the Crown, 97; Roscoe, 64).

HOW THE CONSPIRATORS ARE LINKED TOGETHER.

After quoting other authorities in this connection, Judge Bingham asked what is the evidence, direct and circumstantial, that the accused or either of them, to-

gether with John H. Surratt, John Wilkes Booth, Jefferson Davis, George N. Sanders, Beverley Tucker, Jacob Thompson, Wm. C. Cleary, C. C. Clay, George Harper and George Young, did combine, federate and conspire, in aid of the existing Rebellion, as charged, to kill and murder within the military department of Washington, and within the fortified and intrenched lines thereof, Abraham Lincoln, late, and at the time of the said combining, confederating and conspiring, President of the United States of America, and Commander-in-Chief of the army and navy thereof, Andrew Johnson, Vice-President of the United States; Wm. H. Seward, Secretary of State of the United States, and Ulysses S. Grant, Lieutenant-General of the armies thereof, and then in command under the direction of the President; that Davis, as the leader of the Rebellion, gave to his agents, then in Canada, commissions in blank, bearing the official signature of his war minister, James A. Seddon, to be by them filled up and delivered to such agents as they might employ to act in the interest of the Rebellion within the United States, and intended to be a cover and protection for any crimes they might therein commit in the service of the Rebellion; are also facts established here, and which no man can gainsay. Who doubts that Kennedy, whose confession made in view of immediate death, as proved here, was commissioned by these accredited agents of Davis to burn the City of New-York; that he was to have attempted it on the night of the Presidential election, and that he did, in combination with his confederates, set fire to four hotels in the City of New-York on the night of the 25th of November last? Who doubts that in like manner in the interest of the Rebellion, and by the authority of Davis's accredited agents, also commissioned Bennett H. Young to commit arson, robbery, and murder of unarmed citizens in St. Albans, Vermont? Who doubts, upon the testimony shown, that Davis, by his agents, deliberately adopted the system of starvation of our captive soldiers in his hands, or that, as shown by the testimony, he sanctioned the burning of hospitals and steamboats, the property of private persons, and paid therefor from his stolen treasure the sum of \$35,000 in gold.

THE YELLOW FEVER PLOT.

By the evidence of Joseph Godfrey Hyams it is proved that Thompson, the agent of Jefferson Davis, paid him money for the service he rendered in the infamous and Bendish project of importing pestilence into our camps and cities, to destroy the lives of citizens and soldiers, and into the house of the President for the purpose of destroying his life. It may be said, and, doubtless, will be said, by the pensioned advocates of this Rebellion, that Hyams, being infamous, is not to be believed. It is admitted that he is infamous, as it must be conceded that any man is infamous who either participates in such a crime, or who attempts in anywise to extenuate; but it will be observed that Hyams is supported by the testimony of Sanford Conover, who heard Blackburn and the other Rebel agents in Canada speak of this infernal project, and by the testimony of Mr. Wall, the well-known auctioneer of this city, whose character is unquestioned; that he received the importation of pestilence, of course without any knowledge of the purpose, and that Hyams consigned the goods to him in the name of J. W. Harris, a fact in itself an acknowledgement of guilt; and that he received afterward a letter from Harris, dated Toronto, C. W., Dec. 1, 1864, wherein Harris stated that he had not been able to come to the States since his return to Canada, and asked for an account of the sale. It was, Mr. Bingham said, a matter of notoriety, that a part of Hyams's statement is verified by the results at Newbern, N. C., to which point, he says, a portion of the infected clothing was shipped through a sutler; the result of which was that nearly 1,000 citizens and soldiers died there about that time with the yellow fever.

COMPLICITY OF DAVIS.

Mr. Bingham then proceeded to show that there was positive proof on the record to show that the Rebel chief Jeff Davis, sanctioned these crimes committed, and attempted, through the instrumentality of his accredited agents in Canada, Thomas, Clay, Tucker, Sanders, Cleary, &c., upon the houses and property of the people of the North, and that Davis, the procurer of arson, and of the indiscriminate murder of the innocent and unoffending necessarily resultant therefrom, was capable also of endeavoring to procure the murder, by direct assassination, of the President of the United States and others charged with the duty of maintaining the Government of the United States and of suppressing the Rebellion, in which this arch-traitor and conspirator was engaged. The official papers of Davis, captured under the guns of our victorious army in the Rebel capital, identified beyond question and shadow of doubt and placed upon your record, together with the declarations and acts of his conspirators and agents, proclaim to all the world that he was capable of attempting to accomplish his treasonable procurement of the murder of the late President and other chief officers of the United States by the hands of hired assassins. After quoting from the testimony—

THE ASSASSINATION PLANNED IN CANADA.

Mr. Bingham said the Court must be satisfied that the several parties named in the record, did combine and conspire together in Canada to kill and murder Abraham Lincoln, Andrew Johnson, Wm. H. Seward and Ulysses S. Grant, and that this agreement was substantially entered into by Booth and the agents of Davis in Canada as early as October, there could not be any doubt. Whatever may be the conviction of others, my own conviction is that Jefferson Davis is as clearly proven guilty of this conspiracy as is John Wilkes Booth, by whose hand Jefferson Davis inflicted the mortal wound upon Abraham Lincoln. His words of intense hate and rage and disappointment are not to be overlooked; that the assassins had not done their work well; that they had not succeeded in robbing the people altogether of their constitutional Executive and advisers, and hence Davis exclaims: "If they had killed Andy Johnson, the beast, and Secretary Stanton, the job would be complete." The job, says this procurer of assassination, was not well done. It had been better if it had been well done. It appeared by the testimony that the proposition made to Davis was to kill and murder the deadliest enemies of the Confederacy, not to kidnap them as is now pretended here; that by the declaration of Sanders, Tucker, Thompson, Clay, Cleary, Harper and Young, the conspirators in Canada, the agreement and combination among them, was to kill and murder Abraham Lincoln, William H. Seward, Andrew Johnson, Ulysses S. Grant, Edwin M. Stanton and others of his advisers, and not kidnap them. It appears from every utterance of John Wilkes Booth, as well as from the Charles Selby letter, that as early as November the proposition with him was to kill and murder, not to kidnap.

COOPERATION ESTABLISHED.

The learned gentleman entered into an elaborate review of the evidence; saying that there was cooperation between the several accused in the execution of this conspiracy, is as clearly established by the testimony as is the fact that Abraham Lincoln was killed and murdered by John Wilkes Booth. The evidence shows that all of the accused, save Mudd and Arnold, were in Washington on the 14th of April, the day of the assassination, together with John Wilkes Booth and John H. Surratt; that on that day Booth had a secret interview with the prisoner Mary E. Surratt; that immediately thereafter he went to Surrattsville to perform her part of the preparation necessary to the successful execution of the conspiracy, and did make that preparation; that John H. Surratt had arrived here from Canada, notifying the parties that the price to be paid for the great crime had been provided for, at least in part, by the deposit receipts of April 6, for \$180,000, procured by Thompson of the Ontario Bank, Montreal, Canada; that he was also prepared to keep watch or strike a blow, and ready for the contemplated flight; that Atzerodt, on the afternoon of that day, was seeking to obtain a horse the better to secure his own safety by flight, after he should have performed the task which he had voluntarily undertaken, by contract in the conspiracy, the murder of Andrew Johnson, then Vice-President of the United States; that he did procure a horse for that purpose at Naylor's, and was seen at 9 o'clock in the evening to ride to the Kirkwood House, where the Vice-President then was, dismount and enter. At a previous hour Booth was at the Kirkwood House and left his card, now in evidence, doubtless to be sent to the room of the Vice-President, and which was in these words: "Don't wish to disturb you; are you at home?—J. Wilkes Booth." Atzerodt, when he made application at Brooks's in the afternoon for the horse, said to Weichman, who was there, he was going to ride in the country, and he was going to get a horse and send for Payne. He did get a horse for Payne, as well as for himself, for it is proven that on the 13th he was seen in Washington riding the horse which had been procured by Booth, in company with Mudd last November, from Gardiner. A similar horse was tied before the door of Mr. Seward on the night of the murder, and was captured after the flight of Payne, who was seen to ride away, and which horse is now identified as the Gardiner horse; Booth also procured a horse on the same day, took it to his stable, in the rear of the theater, where he had an interview with Spangler, and where he concealed it; Harrod, too, obtained a horse in the afternoon, and was seen between 9 and 10 o'clock riding with Atzerodt down the avenue from the Treasury, then up Fourteenth and down F-st., passing close to Ford's Theater; O'Laughlin had come to Washington the day before, had sought out his victim, Gen. Grant, at the house of the Secretary of War, that he might be able with certainty to identify him, and at the very hour when these preparations were going on, was lying in wait at Rullman's on the avenue, keeping watch, and declaring as he did at 10 p. m., when told that the fatal blow had been struck by Booth: "I don't believe Booth did it." During the day and night before he had been visiting Booth, and

doubtless encouraging him, and at that very hour was in position at a convenient distance to aid and protect him in his flight, as well as to execute his own part of the conspiracy by inflicting death upon Gen. Grant, who, happily, was not at the theater, nor in the city, having left the city that day. Who doubts that Booth having ascertained in the course of the day that Gen. Grant would not be present at the theater, O'Laughlin, who was to murder Gen. Grant, instead of entering the box with Booth was detailed to lie in wait and watch and support him? Judge Bingham minutely detailed the circumstances in connection with all of the accused to show that they were clearly co-conspirators, and concluded his elaborate summing up as follows:

CONCLUSION.

If this treasonable conspiracy has not been wholly executed, if the several executive officers of the United States and the commander of its armies to kill and murder when the said several accused thus confederated and conspired, have not each and all fallen by the hands of these conspirators, thereby leaving the people of the United States without a President and Vice-President, without a Secretary of State, who alone is clothed with authority by the law to call an election to fill a vacancy, should any arise, in the offices of President and Vice-President, and without a lawful commander of the armies of the Republic, it is only because the conspirators were deterred by the vigilance and fidelity of the executive officers whose lives were mercifully protected on that night of murder by the care of the Infinite Being who has thus far saved the Republic and crowned its arms with victory. If this conspiracy was entered into by the accused; if John Wilkes Booth did kill and murder Abraham Lincoln in pursuance thereof; if Lewis Payne did, in pursuance of said conspiracy, assault with intent to kill and murder William H. Seward as stated; and if the several parties accused did commit the several acts alleged against them in the prosecution of said conspiracy; then it is the law that all the parties to that conspiracy, whether present at the time of its execution or not, whether on trial before this court or not, are alike guilty of the several acts done by each in the execution of the common design. What these conspirators did in the execution of this conspiracy by the hand of one of their conspirators, they did themselves. His act, done in the prosecution of the common design, was the act of all the parties to the treasonable combination, because done in execution and furtherance of their guilty and treasonable agreement. As we have seen this is the rule, whether all the conspirators are indicted or not; whether they are all on trial or not. It is not material what the nature of the indictment is, provided the offense involve a conspiracy. Upon indictment for instance if it appears that others together with the prisoner, conspired to perpetrate the crime; the act of one done in pursuance of that intention, should be evidence against the rest. [1st Wharton 796]. To the same effect are the words of Chief Justice Marshall, before cited, that whoever leagued in a general conspiracy, performed any part however minute, or however remote from the scene of action, are guilty as principals. In this treasonable conspiracy to aid the existing armed Rebellion by murdering the Executive officers of the United States, and the Commander of its armies, all the parties to it must be held as principals, and the act of one in the prosecution of the common design the act of all. I leave the decision of this dread issue to the court to which it alone belongs. It is for you to say upon your oaths whether the accused are guilty. I am not conscious that in this argument I have made any erroneous statement of the evidence, or drawn any erroneous conclusions. Yet I pray the court out of tender regard and jealous care for the rights of the accused to see that no error of mine, if any there be, shall work them harm. The past services of the members of this honorable court give assurance that without fear, favor or affection they will discharge with fidelity the duty enjoined upon them by their oaths. Whatever else may befall, I trust in God, that in this as in every other American court, the rights of the whole people will be respected, and that the Republic, in this its supreme hour of trial, will be true to itself and just to all; ready to protect the rights of the humblest, to redress every wrong, to avenge every crime, to vindicate the majesty of law, and to maintain inviolate that justice to establish which the Constitution was ordained, whether assailed by hosts armed with gold, or armed with steel.

A PAPER OFFERED.

Mr. Ewing as counsel for Mudd, Spangler and Arnold, asked leave to read to the Court a paper setting forth that in his opinion that officer had unintentionally misstated the evidence in a number of matters of great importance, in the consideration of the cases of the accused, and asking the Court to rest the accuracy of the statements of facts alluded to, by reference to the record; whereupon the Court was cleared to consider whether the paper offered should be read.

ADJOURNMENT.

The Court adjourned till 11 o'clock to-morrow morning, in order to deliberate in secret session.