The Surratt Trial.

[CONCLUSION OF YESTERDAY'S PROCEEDINGS.]

On resuming—Mr. Merrick said a good deal of evidence given in has not been in rebuttal, but has been such testimony as could have been offered informally. As to the telegraph communication, it was not in rebuttal, for the defence had offered nothing in regard to telegraphing. It was going to corroborate McMillan's statement that Surratt telegraphed from Canada to Booth. It was not in rebuttal of anything offered by the defence. The testimony as to the railroads is not responsive, but is cumulative and corroborative. Can the prosecution commence and close the presence of the prisoner at one end of the route, and then close their examination of the other end of the rebutting testimony connect him with the other end of the route. He doubted if this evidence would tend to rebut the proof of an alibi. It is not competent to prove he was unmarried, when an alibi is set up, that the prisoner was at some other place. When the crime is committed, and when it is shown that he was at some other place, the prosecution cannot show, in opposition to that alibi, that he was at a place distant from the place where the crime was committed. Such a fact would disprove their own case, and they cannot do that for it is shown by either side that the prisoner was in New York or Baltimore on the day of the assassination, then he could not have been here, and there must be a mistake in the identification.

Mr. Merrick quoted authority in Carrington and Paine's reports to show that it was not competent for the prosecution to show that the prisoner was at a place other than the place set up in the alibi, and not near the place the crime was committed. This testimony now offered was corroborative, and could not be given in reply. Even if it was responsive, it could not be received at this late stage of the case.

Mr. Pierrepont said he did not propose to make a speech. They had expected to prove that Surratt was in New York on the 14th. They were going to prove that by a woman who had not affirmed, but was expected to affirm that fact. Such a challenge had been thrown out by the defence to close the case. The prosecution accepted the challenge.

Mr. Bradley.—We agree, sir, and are now willing to submit the case without argument. The case is closed.

Mr. Bradley, Jr., said before the case was closed he desired to make a statement in relation to the testimony of Mr. B. B. Nagle. He thought the assault made upon Mr. Nagle had been unjustifiable and unprofessional. He (Mr. Bradley) had gone for the purpose of getting the evidence of Mr. Nagle, if he found it necessary to employ assistance there, and he found Mr. Nagle an important witness and a valuable assistant. He (Mr. Bradley) had simply funds for his witnesses, and he had done so, and had authorized a lawyer to employ Mr. Nagle's drafts on him. It was necessary that some arrangements should be made about the funds, as the witnesses would not come on unless they were paid in advance. He thought the attack was unnecessary, and he only made this statement in contradiction of the attack on his character.

Mr. Merrick—We will now agree to submit the case without argument.

Mr. Carrington said that in a case of so much importance he could not consent to that course.

Judge Fisher asked what because of the points about which there had been so much argument.

Mr. Merrick said that it would be left at the rest of the case.

Judge Fisher said it was a point of considerable importance, and intimated that he was not now prepared to decide it.

Mr. Merrick asked what rule prevailed as to the speeches, and whether a rule was established to two speeches.

Judge Fisher replied that such had been the practice.

Mr. Merrick then asked whether if the defence declined to argue the question to the jury, the speech of one of the gentlemen on the other side would not close the case.

Mr. Carrington said that as this was a case of great importance, and had occupied some time, the counsel had divided the duty.

After some further discussion Mr. Merrick said that the agreement would be withdrawn unless the case was considered entirely closed. The proposition had been to submit the case without argument.

Mr. Pierrepont said he had not so understood it. He understood the evidence only was closed.

It then appeared that counsel had misunderstood the agreement, and the case was reopened and the examination of witnesses was resumed.

Judge Fisher said he would decide upon the point urged this morning.

Wm. Roberts sworn, and examined by Mr. Pierrepont.—Was in Elmira in June, 1865, saw Mr. Joseph Carroll, a tailor, there; went with Mr. John Carroll to Mr. Carroll's store, at least to the store where Carroll was employed; recollects Mr. Carroll did not mention any dates upon which he saw Surratt; Carroll was talking to Mr. Knapp, and I did not hear anything about the time close their examination of the 10th and 11th; in rebutting testimony connect him with the other end of the route. He doubted if this evidence would tend to rebut the proof of an alibi. It is not competent to prove he was unmarried, when an alibi is set up, that the prisoner was at some other place. When the crime is committed, and when it is shown that he was at some other place, the prosecution cannot show, in opposition to that alibi, that he was at a place distant from the place where the crime was committed. Such a fact would disprove their own case, and they cannot do that for it is shown by either side that the prisoner was in New York or Baltimore on the day of the assassination, then he could not have been here, and there must be a mistake in the identification.

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