The Surratt Trials.

[CONCLUSION OF YESTERDAY'S PROCEEDINGS.]

Judge Fisher continued his charge to the jury as follows:

The government of the United States was doubtless created by the adoption of the Constitution. But when it had once been established into being, it stood upon the same level with other nations, and was clothed with all the powers incident to an independent sovereignty under the laws of nations. As one nation among among them was the power, in time of war or of great public emergency, to invade and inflict upon spies and traitors the most summary punishment, wherever and wherever the strong hand of military justice can be laid upon them.

It is a power to life. . . . . Every duty of self-preservation, and ought to be exercised, just as the individual owes it to himself or to strike down the assassin who is feeling for his heart-string, without waiting to lose his own life in order that the courts of justice may at their leisure proceed to try the felon according to the formula of the law and the Constitution. The right of self-defence needs not to be inscribed upon parchments, either for individuals or for sovereign States. The Almighty imprinted right and duty upon the hearts and minds of men long before he wrote the decalogue upon the tablet of stone.

To say that this government has not the power in time of war to arrest in this great duty of self-preservation for want of warrant in the Constitution, is to condemn the whole code of government in acquiring from France and Spain, and Mexico and Russia, territory lying far beyond the limits of the original thirteen States, because such power of acquisition is not given by the Constitution. Both these powers are but the incidents of sovereignty, requiring no warrant in written governmental characters. They are derived from the common law of nations, and are co-existent with sovereignty. Here is also a military commission, gentlemen, you have no concern at this time whether it be legal or illegal. A legal tribunal is not the matter upon which you are now called to decide.

The oath that you have taken requires that you shall "well and truly try and true deliverance make between the United States of America and John H. Surratt, the prisoner at the bar, whom you have in charge, and a true verdict give according to the evidence." The prisoner stands before you indicted for the murder of Abraham Lincoln, on the 14th day of April, 1865, in this city, about the time, and place, and manner of the death of the late President. That the controversy has been made in the case. If there had been your recollection of a nation in mourning, and the whole civilized world in mourning, would have revived your memory of the sad and terrible fact. The only question, therefore, for you to determine is, whether the prisoner at the bar participated with John Wilkes Booth, and the others named in the indictment, or either, or any of them in his diabolical crime.

If, from all the evidence in the case, your minds shall have been convinced of the fact beyond a reasonable doubt growing out of that evidence, that the prisoner did co-operate with them in the deed, you have produced a moral conviction in your minds that the prisoner did participate in the conspiracy to murder, or in a plot to do some unlawful act which resulted in this foul murder, or in some malicious as to the legality or illegality of the tribunal which tried and condemned the conspirators, or of sympathy for other members of the family, no consideration of his youth, or inexperience in crime, should be permitted for one crime, should for a single moment tempt you to step aside from the plain path of duty. You will, however, upon full and careful consideration of the whole case, be relieved of every reasonable doubt arising from any proof been adduced to show it; and yet we find no judicial cognizance of the fact. So we may take judicial cognizance of the fact that the crime of which murder he was the President of the United States, because it is something known to every man, woman and child in the country, capable of knowing and reasoning, and no judicial cognizance of it, if it need neither be alleged in the indictment nor proved by witnesses.

It is true, as stated by the counsel for the defence, that it has been laid down by Sir Matthew Hale, in his work entitled "Pleas of the Crown," that although treason is so heinous in its character as to admit of no accessories before the fact, but that the heinous character makes all principals who in any way contributed to its commission, yet that murder and other felonies not being so heinous in their character, aiders and abettors are to be proceeded against only as accessories before the fact. When, however, he comes to treat of misdemeanors, a lower grade of crime than felonies, he tells us that they will not admit of accessories before the fact, because of their want of character sufficiently heinous. The precise reason for which accessories are not admitted in crimes amounting to felony, Lord Hale says he generally followed the law as laid down by Lord Hale, and many decisions have been founded upon that authority, the retired and judges seeming contented with his reasons, or indisposed to depart from the principles laid down by him; but I confess the reasons are not very satisfactory to my mind. It is difficult to discover any sound reason why he who originates the plan of murder, but employs another or others as his agent or agents to perpetrate the crime, is not equally guilty with the perpetrator of the deed.

If it, actuated by the malice of a depraved and wicked heart, conceive the purpose of murdering him whom I suppose to be my enemy, but lacking the opportunity or the courage to carry out my purpose into execution, hire another person who willfully executes my wicked deeds for me, common sense and the common conscience of mankind, which, after all, seldom fail to direct us to the true principles of the law, "which has been defined to be the perfection of reason or common sense," would seem to dictate that I ought to be guilty than the agent employed, upon the well-known principle of law that he who does an act by another does it himself. This is what is termed in the law an *ofdi*, or the Latin word for deed. Hale, in his work of the original thirteen States, because such power of acquisition is not given by the Constitution. Both these powers are but the incidents of sovereignty, requiring no warrant in written governmental characters. They are derived from the common law of nations, and are co-existent with sovereignty. Here is also a military commission, gentlemen, you have no concern at this time whether it be legal or illegal. A legal tribunal is not the matter upon which you are now called to decide.

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