

TRIAL OF JUDGE PECK.

PRELIMINARY PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES.

ON the 8th day of December, 1826, the Hon. John Scott, Representative from the State of Missouri, presented in the House of Representatives of the United States the following Memorial from LUKE EDWARD LAWLESS, a citizen of that State.

To the Honorable the House of Representatives of the United States:

The petition of Luke Edward Lawless, a citizen of the State of Missouri, and of the United States,

RESPECTFULLY SHOWETH :

That, on the 30th day of March, in the present year, 1826, there appeared in the Republican, a newspaper printed in the city of St. Louis, State of Missouri, an article purporting to be the final decree or opinion of the Judge of the District Court of the United States for the District of Missouri, in the cause in which the widow and heirs of Antoine Soulard were plaintiffs, and the United States defendant.

That the said opinion was sent to the press and published at the request of James H. Peck, Judge of the aforesaid District Court, whose opinion it purported to be.

That, in fact, a final decree had been rendered by said Judge in the above cause, and an appeal taken therefrom by the plaintiffs, to the Supreme Court of the United States, previous to the publication of said opinion.

That, for the purposes of said appeal, all the necessary steps had been taken by the appellants, and said Judge Peck was no longer, at the date of said publication, invested with any judicial control or consideration of said cause.

That your petitioner having, after an attentive perusal of said published opinion, discovered, or believed that he discovered, in it, many and serious mistakes in fact and doctrine, did, on the 8th day of April, 1826, in an article signed "A Citizen," published in the Missouri Advocate and St. Louis Enquirer, a newspaper printed in the city of St. Louis, submit to the public a concise statement of some of the principal errors into which your petitioner conceived that the said Judge Peck had fallen.

That your petitioner, in making said exposition, not only availed himself of what he believed to be his right as a private citizen, but acted from a sense of duty to those numerous land claimants by whom we was employed as counsel.

That the object of your petitioner was, if possible, to counteract the effect that Judge Peck's opinion was calculated to produce on the value of the unconfirmed Spanish and French land titles, and to save the claimants from those speculators who would have availed themselves of the panic which the opinion created, to buy up those titles for an inadequate consideration.

That your petitioner believes that he has, to a considerable extent, attained this object; and therefore submits, that his conduct in publishing the article, was not only not criminal, but was meritorious.

That, in the exposition of the errors, whether in fact or in doctrine, of said opinion, your petitioner has attributed nothing to said Judge either untruly or maliciously, nor has he, in the tone and language used by him, violated any rule of courtesy or decorum.

That the opinion of Judge Peck, and the article signed "A Citizen," were, both of them, published after the court had adjourned, and out of term, the said Judge having adjourned on the 30th day of December, 1825, to sit again on the third Monday of April, being the 20th day of April, 1826.

Your petitioner further showeth, that, on the third Monday of April, 1826, being the first day of the term of the United States' District Court for the decision of land claims, immediately subsequent to the publication of the opinion of Judge Peck, a rule was made by said Judge, and served by the Deputy Marshal upon Mr. S. W. Foreman, the editor of the Missouri Advocate and St. Louis Enquirer, which rule is in the following terms:

"The court being satisfied, from the evidence of Luke E. Lawless, that Stephen W. Foreman, of this city, is the editor and publisher of the Missouri Advocate and St. Louis Enquirer, published in the said city, and that the paper of that name of the eighth of April instant, which contains a false statement of and concerning a certain judicial decision made in the case of Julia Soulard, widow, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs of Antoine Soulard, deceased, against the United States, issued from the press of the said Stephen W. Foreman, it is ordered, that the said Stephen W. Foreman show cause, on to-morrow morning, at eleven o'clock, why an attachment should not issue against him for a contempt of this court in publishing the said false statement, tending to bring odium on the court, and to impair the confidence of the public in the purity of its decisions."

In obedience to this rule, Mr. Foreman appeared, and by your petitioner, who acted as his counsel, showed against the rule, and urged that,

First. He, Judge Peck, had no jurisdiction of the matter as a contempt of court.

Secondly. That the article, in point of merits, was a correct statement of the positions and doctrines therein attributed to the Judge.

Thirdly. That the language and tone of the article signed "A Citizen," were perfectly decorous.

Your petitioner further showeth, that, in the argument and observations which he felt it his duty to submit, as counsel for the editor, he endeavored to demonstrate the truth of the article by a comparison of it with the text of the opinion, and disclaimed, in the most unequivocal manner, any contemptuous intention or feeling towards said Judge Peck, either in his judicial or his private character.

Your petitioner showeth, that the arguments and authorities submitted on behalf of the editor, produced no effect on the opinion of Judge Peck, as to the character of the article signed "A Citizen," which he persisted in considering as a contempt of court, and punishable as such.

That your petitioner, being desirous of protecting the editor from the conse-

quences of the actual issuing of an attachment against him, and being convinced, from the very virulent language and manner of the said Judge towards your petitioner, that his main object was to get hold of him as the author of the "Citizen," your petitioner consented that the editor should give up his name as author of that article.

That the editor having accordingly declared that your petitioner was the author, the conditional rule against him was discharged, and the following rule made by said Judge, and served on your petitioner :

"The court being satisfied, upon the oath of Stephen W. Foreman, made in open court, that Luke E. Lawless, an attorney and counsellor of this court, is the author of a certain publication over the signature of 'A Citizen,' in a public paper, printed in this city, by the name of the 'Missouri Advocate and St. Louis Enquirer,' issued on the 8th of April, of this instant, it is ordered, that the said Luke E. Lawless show cause forthwith, why an attachment should not be issued against him for the false and malicious statements in the said publication contained, in relation to a judicial decision of this court in the case of Julia Soulard, widow, James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs of Antoine Soulard, deceased, against the United States, lately pending and determined therein, with intent to impair the public confidence in the upright intentions of the said court, and to bring odium upon the court, and especially with intent to impress the public mind, and particularly many litigants in this court, that they are not to expect justice in the causes now pending therein, and with intent further to awaken hostile and angry feelings on the part of the said litigants against the said court ; and that he also show cause why he should not be suspended from practising in this court as an attorney and counsellor therein, for the said contempt and evil intent."

In obedience to this rule, your petitioner appeared, and, inasmuch as the Judge forbade any further discussion of the truth or merits of the article signed "A Citizen," instructed his counsel to oppose the rule on the following grounds, to wit :

1st. That, supposing the matter of the article to be false and malicious, the Judge had no jurisdiction or legal power to punish the author of it in a summary way as for a contempt.

2d. That, supposing the matter to be within the jurisdiction of the Judge as a contempt, suspension from practice as an attorney, and still less as counsellor in the United States' District Court, was not such a punishment as could be legally inflicted.

Your petitioner sheweth, that these two objections were disregarded by said Judge, and the rule for the attachment made absolute against your petitioner.

Your petitioner further sheweth, that said Judge Peck, upon making the above rule absolute, thought proper to pronounce a long speech in justification of his proceedings, in the course of which, he indulged in the most coarse and violent abuse of your petitioner, to whom, in all the various forms of language which he seemed capable of using, the said Judge imputed the crimes of falsehood, slander, calumny, and malice, and based said foul accusations exclusively upon the matter contained in the article signed "A Citizen,"—in this way making his speech a mere amplification of the abuse and scurrility contained in the rule above set forth.

That your petitioner, having listened for some time with astonishment and indignation to this malignant and most unjust attack upon his conduct and character, left the court, where he could no longer remain without giving way to feelings, which, however honorable and natural, it was matter of prudence to repress.

That, so fraught was the language and manner of the said Judge with personal insult, that your petitioner became convinced that the object in view was, to irritate your petitioner into some expression or act, in the presence of the court, which would have constituted a new and legitimate contempt, and, in that way,

to enable him, the Judge, to exercise his vengeance within the legal limits of his jurisdiction.

Your petitioner further showeth, that, whilst Judge Peck poured forth this torrent of abuse and invective, the court was crowded with people, among whom were several of the most respectable inhabitants of St. Louis.

That, by those persons, your petitioner has been informed, that, after your petitioner had retired from the court, the aforesaid Judge Peck continued for a considerable length of time to hold forth in the same insulting and acrimonious manner, and appeared to treat the subject before him, not so much with a view to discuss the real merits of it, as to vent his personal rage and malice on your petitioner, without alleging or insinuating that any other cause existed, or could be shown for such abuse, than the article in question.

That your petitioner, at the moment he was taken by the Deputy Marshal under the attachment, was occupied in the Circuit Court of the county of St. Louis, as counsel in a cause of very great importance to his client, and which your petitioner was compelled, at great risk to his client's interest, to abandon.

That your petitioner, when brought into the United States' District Court on the attachment, was asked by said Judge,

1st. Whether your petitioner wished that interrogatories should be filed ?

2d. Whether he would answer interrogatories if filed ?

3d. Whether he would purge himself of the contempt alleged against him in the rule.

That your petitioner, to these questions, replied as follows :

1st. That he did not require interrogatories to be filed.

2d. That, if interrogatories were filed, he would not answer them.

3d. That, as he had committed no contempt, he could purge himself of none.

That said Judge thereupon declared, that the refusal to answer any interrogatories that might be filed, was a great aggravation of the contempt already committed by your petitioner, and deserved a severer punishment than that which he would, possibly, have otherwise inflicted ; and, accordingly, that he, the said Judge Peck, having found your petitioner guilty of the original contempt in publishing the article signed "A Citizen," and of the aggravation of that contempt by declining to require interrogatories to be filed, and by declaring, that, if filed, he would not answer them, sentenced your petitioner to be imprisoned for twenty-four hours, and suspended from practice as attorney and counsellor at law in the District Court of the United States, for eighteen calendar months ; which decision and sentence is entered on the records of said court in the following terms, to wit :

United States,)
vs.)

Luke E. Lawless.)

Friday, April 21, 1826.

The defendant in this case having been brought into court by attachment, and the court having demanded of him whether he would answer interrogatories, or would purge himself of the contempt charged upon him, and the said defendant having refused to answer interrogatories, and having persisted in the contempt, the court doth find that the said defendant is guilty of the contempt to this court as charged in the said rule.

United States,)
vs.)

Luke E. Lawless.)

The defendant in this case having refused to answer interrogatories, and having persisted in the contempt, it is ordered, adjudged, and considered, that the said defendant be committed to prison for twenty-four hours, and that he be suspended from practising as an attorney or counsellor at law in this court, for eighteen calendar months from this day.

Your petitioner further showeth, that, under said sentence, your petitioner was forthwith lodged in the common jail of the county of St. Louis, and remain-

ed locked up there from four in the afternoon of the 21st April, 1826, until about nine o'clock at night, when he was brought before Judge Stuart, one of the Circuit Judges of the State of Missouri, on a writ of habeas corpus, and by said Judge discharged from imprisonment, on the ground that the order of commitment was a nullity, having no judicial seal or signature by which it could be authenticated.

Your petitioner showeth that, inasmuch as your petitioner was discharged from imprisonment in consequence of a mere formal defect in the order of commitment, he is still liable to be re-committed by said Judge Peck, whenever it shall please him so to do, by a warrant in proper form.

Your petitioner further showeth, that said Judge Peck, by that part of his sentence which suspends your petitioner from practice as attorney and counsellor, has not only injured your petitioner, but has violated the rights and endangered the interests of those persons (and they are numerous) who have entrusted their claims and causes in said court to your petitioner.

That your petitioner is prepared to prove, by the fullest evidence, as well written as oral, all that he has above alleged, and, for this purpose, begs leave to refer (amongst other matter) to,

1st. The opinion of Judge Peck in the cause of the widow and heirs of Soulard *vs.* United States, as published by said Judge in the Republican newspaper of the 30th March, 1826. (Marked No. 1.)

2d. The certificate on oath of the printer of the Republican. (Marked No 2.)

3d. The Missouri Advocate and St. Louis Enquirer of the 8th of April, 1826, containing the article signed "A Citizen." (Marked No. 3.)

4th. The said article signed "A Citizen," and so much of the text of the published opinion, placed in juxtaposition thereto, as will demonstrate the truth of the article, and the total absence of malice in the writer of it. (Marked No. 4.)

5th. A certified copy of the record of the District Court of the United States for Missouri, of the proceedings in this petition mentioned against the editor of the Missouri Advocate, and against your petitioner. (Marked No. 5.)

6th. A certified copy of the record of the proceedings of the Circuit Court of the county of St. Louis, State of Missouri, on the return to the writ of habeas corpus, in this petition mentioned. (Marked No. 6.)

7th. The certificate of eight respectable citizens of the State of Missouri, who were present in court when said Judge Peck reviled and insulted your petitioner, as herein before set forth. (Marked No. 7.)

8th. The testimony of other respectable citizens, who, if summoned, can prove, on their oaths, the manner and language made use of, as above alleged, by said Judge Peck, towards your petitioner.

Having thus submitted to your honorable body the facts of his case, and the evidence in support thereof, your petitioner begs leave to observe, that it appears from those facts—

1st. That the said James H. Peck has, in his capacity of Judge of a District Court of the United States, been guilty of usurping a power which the laws of the land did not give him.

2d. That said James H. Peck has exercised his power, be the same usurped or legitimate, in the case of your petitioner, in a manner cruel, vindictive, and unjust.

Wherefore, and inasmuch as the said James H. Peck has not only outraged and oppressed your petitioner as an individual citizen, but, in your petitioner's person, has violated the most sacred and undoubted rights of the inhabitants of these United States, namely, the liberty of speech and of the press, and the right of trial by jury, your petitioner prays that the conduct and proceedings in this behalf, of said Judge Peck, may be inquired into by your honorable body, and such decision made thereon as to your wisdom and justice shall seem proper.

And your petitioner, as in duty bound, will pray.

LUKE EDWARD LAWLESS.

St. Louis, Missouri, 22d September, 1826.