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Chapter LXXIII.

IMPEACHMENT AND TRIAL OF JAMES H. PECK.

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2364. The impeachment and trial of James H. Peck, United States judge for the district of Missouri.

The impeachment proceedings in the case of Judge Peck were set in motion by a memorial.

The investigation into the conduct of Judge Peck was revived by referring to a committee a memorial presented in a former Congress.

Form of memorial praying for an investigation into the conduct of Judge Peck.

The House decided formally to investigate the conduct of Judge Peck only after the Judiciary Committee had examined the memorial.

On December 8, 1826,[1] Mr. John Scott, of Missouri, presented a memorial of Luke Edward Lawless, for an inquiry into the official conduct of James H. Peck, district judge of the United States for the district of Missouri, in relation to certain proceedings on an attachment for contempt had by said judge against said Lawless. This memorial was referred to the Committee on the Judiciary. On February 15, 1827,[2] the House ordered the committee discharged from the consideration of the memorial, and gave leave to the memorialist to withdraw the same.

On December 29, 1828,[3] on motion of Mr. George McDuffie, of South Carolina, it was

[1] Second session Nineteenth Congress, House Journal, p. 32.
[2] Journal, p. 300.
[3] Second session Twentieth Congress, House Journal, p. 101.

Having laid the article impeaching Judge Peck on the Senate table, the managers returned and reported verbally to the House.

The article of impeachment against Judge Peck having been presented, the Senate ordered a writ of summons to issue, and informed the House thereof.

After which the managers rose, and Mr. Buchanan, their chairman, read the following article, which appears in full in the journal of the impeachment:

Article exhibited by the House of Representatives of the United States, in the name of themselves, and of all the people of the United States, against James H. Peck, judge of the district court of the United States for the district of Missouri, in maintenance and support of their impeachment against him for high misdemeanors in office.

ARTICLE.

That the said James H. Peck, judge of the district court of the United States for the district of Missouri, at a term of the said court, holden at St. Louis, in the State of Missouri, on the 4th Monday in December, 1825, did, under and by virtue of the power and authority vested in the said court, by the act of the Congress of the United States, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved on the 26th day of May, 1824, render a final decree of the said court in favor of the United States, and against the validity of the claim of the petitioners, in a certain matter or cause depending in the said court, under the said act, and before that time prosecuted in the said court, before the said judge, by Julie Soulard, widow of Antoine Soulard, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs at law of the said Antoine Soulard, petitioners against the United States, praying for the confirmation of their claim, under the said act, to certain lands situated in the said State of Missouri; and the said court did, thereafter, on the 30th day of December, in the said year, adjourn to sit again on the third Monday in April, 1826.

And the said petitioners did, and at the December term of the said court, holden by and before the said James H. Peck, judge as aforesaid, in due form of law, under the said act, appeal against the United States from the judgment and decree so made and entered in the said matter, to the Supreme Court of the United States; of which appeal, so made and taken in the said district court, the said James H. Peck, judge of the said court, had then and there full notice. And the said James H. Peck, after the said matter or cause had so been duly appealed to the Supreme Court of the United States, and on or about the 30th day of March, 1826, did cause to be published, in a certain public newspaper, printed at the city of St. Louis, called "The Missouri Republican," a certain communication, prepared by the said James H. Peck, purporting to be the opinion of the said James H. Peck, as judge of the said court, in the matter or cause aforesaid, and purporting to set forth the reasons of the said James H. Peck, as such judge, for the said decree, and that Luke Edward Lawless, a citizen of the United States, and an attorney and counsellor at law in the said district court, and who had been of counsel for the petitioners in the said court, in the matter aforesaid, did, thereafter, and on or about the 8th day of April, 1826, cause to be published in a certain other newspaper, printed at the city of St. Louis, called "The Missouri Advocate and St. Louis Enquirer," a certain article signed "A Citizen," and purporting to contain exposition of certain errors of doctrine and fact alleged to be contained in the opinion of the said James H. Peck, as before that time so published, which publication by the said Luke Edward Lawless was to the effect following, viz:

"To the Editor:

"SIR: I have read, with the attention which the subject deserves, the opinion of Judge Peck on the claim of the widow and heirs of Antoine Soulard, published in the Republican of the 30th ultimo. I observe that, although the judge has thought proper to decide against the claim, he leaves the grounds of his decree open for further discussion.

"Availing myself, therefore, of this permission, and considering the opinion so published to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by, its operation, I beg leave to point the attention of the public to some of the principal errors which I

think I have discovered in it. In doing so, I shall confine myself to little more than an enumeration of those errors, without entering into any demonstration or developed reasoning on the subject. This would require more space than a newspaper allows, and, besides, is not, as regards most of the points, absolutely necessary.

"Judge Peck, in this opinion, seems to me to have erred in the following assumptions, as well of fact as of doctrine:

"1. That, by the ordinance of 1754, a subdelegate was prohibited from making a grant in consideration of services rendered or to be rendered.

"2. That a subdelegate in Louisiana was not a subdelegate, as contemplated by the said ordinance.

"3. That O'Reily's regulations, made in February, 1770, can be considered as demonstrative of the extent of the granting power of either the governor-general or the subdelegates, under the royal order of August, 1790.

"4. That the royal order of August, 1770 (as recited or referred to in the preamble to the regulations of Morales, of July, 1799), related exclusively to the governor-general.

"5. That the word 'mercedes,' in the ordinance of 1754, which, in the Spanish language, means 'gifts,' can be narrowed, by anything in that ordinance, or in any other law, to the idea of a grant to an Indian, or a reward to an informer, and much less to a mere sale for money.

"6. That O'Reily's regulations were in their terms applicable, or ever were in fact applied to, or published in, upper Louisiana.

"7. That the regulations of O'Reily have any bearing on the grant to Antoine Soulard, or that such a grant was contemplated by them.

"8. That the limitations to a square league of grants to new settlers in Opelousas, Attakapas, and Natchitoches (in eighth article of O'Reily's regulations) prohibits a larger grant in upper Louisiana.

"9. That the regulations of the governor-general, Gayoso, dated 9th September, 1797, entitled 'Instructions to be observed for the admission of new settlers,' prohibit, in future, a grant for services, or have the effect of annulling that to Antoine Soulard, which was made in 1796, and not located or surveyed until February, 1804.

"10. That the complete titles made by Gayoso are not to be referred to as affording the construction made by Gayoso himself, of his own regulations.

"11. That, although the regulations of Morales were not promulgated as law in upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed, 'from the official station which he held,' to have had notice, of their terms.

"12. That the regulations of Morales 'exclude all belief that any law existed under which a confirmation of the title in question could have been claimed.'

"13. That the complete titles (produced to the court) made by the governor-general, or the intendant-general, though based on incomplete titles, not conformable to the regulations of O'Reily, Gayoso, or Morales, afford no inference in favor of the power of the lieutenant-governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees.

"14. That the language of Morales himself, in the complete titles issued by him, on concessions made by the lieutenant-governor of upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations.

"15. That the uniform practice of the subdelegates, or lieutenant-governor of upper Louisiana, from the first establishment of that province to the 10th March, 1804, is to be disregarded as proof of law, usage, or custom therein.

"16. That the historical fact that nineteen-twentieths of the titles to lands in upper Louisiana, were not only incomplete but not conformable to the regulations of O'Reily, Gayoso, or Morales at the date of the cession to the United States, affords no inference in favor of the general legality of those titles.

"17. That the fact that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the Government and population of Louisiana as property, salable, transferable, and the subject of inheritance and distribution ab intestato, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession, or of the law of nations.

"18. That the laws of Congress heretofore passed in favor of incomplete titles furnish no argument or protecting principle in favor of those titles of a precisely similar character, which remain unconfirmed.

"In addition to the above, a number of other errors, consequential on those indicated, might be stated. The judge's doctrine as to the forfeiture which he contends is inflicted by Morales's regulations, seems to me to be peculiarly pregnant with grievous consequences. I shall, however, not tire the reader with any further enumeration, and shall detain him only to observe, by way of conclusion, that the judge's recollection of the argument of the counsel for the petitioner, as delivered at the bar, differs materially from what I can remember, who also heard it. In justice to the counsel I beg to observe that all that I have now submitted to the public has been suggested by that argument as spoken, and by the printed report of it, which is even now before me.

"A CITIZEN."

And the said James H. Peck, judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same, by the Constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law, did, thereafter, at a term of the said district court of the United States for the district of Missouri, begun and held at the city of St. Louis, in the State of Missouri, on the 3d Monday in April, 1826, arbitrarily, oppressively, and unjustly, and under the further color and pretense that the said Luke Edward Lawless was answerable to the said court for the said publication signed "A Citizen," as for a contempt thereof, institute, in the said court, before him, the said James H. Peck, judge as aforesaid, certain proceedings against the said Luke Edward Lawless, in a summary way, by attachment issued for that purpose by the order of the said James H. Peck, as such judge, against the person of the said Luke Edward Lawless, touching the said pretended contempt, under and by virtue of which said attachment the said Luke Edward Lawless was, on the 21st day of April, 1826, arrested, imprisoned, and brought into the said court, before the said judge, in the custody of the marshal of the said State; and the said James H. Peck, judge as aforesaid, did, afterwards, on the same day, under the color and pretenses aforesaid, and with the intent aforesaid, in the said court, then and there, unjustly, oppressively, and arbitrarily, order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said district court for the period of eighteen calendar months from that day, and did then and there further cause the said unjust and oppressive sentence to be carried into execution; and the said Luke Edward Lawless was, under color of the said sentence, and by the order of the said James H. Peck, judge as aforesaid, thereupon suspended from practicing as such attorney or counsellor in the said court for the period aforesaid, and immediately committed to the- common- prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusations or impeachment, against the said James H. Peck, and also of replying to his answers which he shall make unto the article herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other articles, accusation, or impeachment, which shall be exhibited by them as the case shall require, do demand that the said James H. Peck may be put to answer the misdemeanors herein charged against him, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as may be agreeable to law and justice.

A. STEVENSON,
Speaker of the House of Representatives, United States.

Attest:

M. ST. CLAIR CLARKE,
Clerk House of Representatives, United States.

The Vice-President then informed the managers that the Senate would take proper order thereon, of which the House of Representatives should have due notice.

The managers, by their chairman, delivered the article of impeachment at the table of the Secretary, and then withdrew.

On motion by Mr. Tazewell, it was

Resolved, That the Secretary be directed to issue a summons, in the usual form, to James H. Peck, judge of the district court of the United States for the district of Missouri, to answer a certain article