



THE BAILING OF JEFFERSON DAVIS

By George P. Lathrop

Shortly after daybreak of a morning star near the end of June 1865, Horace Greeley came to the house of George Shea (then Corporation Attorney, and afterwards Chief-Justice of the Marine Court), in New York. His errand was urgent. The preceding day he had received a letter, dated June 22, from Mrs. Varina Davis, whose husband, Jefferson Davis, was a prisoner at Fort Monroe. The "Bureau of Military Justice", headed by General Joseph Holt, had already charged him with guilty knowledge concerning the assassination of Lincoln. Mrs. Davis wrote from Savannah, and implored Greeley to obtain, if possible, a speedy public trial of Davis on this charge, and on any inferred charge of cruelty to prisoners of war. Greeley could not believe that Davis had anything to do with the assassination. He added that Davis had personally received from Francis P. Blair, in the preceding winter, sufficient assurance of Lincoln's kindly intentions toward the South. He then asked Mr. Shea to interest himself professionally on Davis's behalf and said : *"We can have with us those with whom you have been in confidential relations during the last two years"*. Shea said that unless the Government were willing to abandon the charge against Wirz for cruelty to prisoners, it could not overlook his superior, Davis, popularly supposed to be responsible. He should hesitate to act as counsel, if the case came before a military tribunal. Greeley said he did not know Mr. Davis, and Shea said : *"Neither do I. But I know those who are intimate with him ; and his reputation among them is universal for kindness of heart amounting, in a ruler, almost to weakness."* Greeley feared that the head of the Confederacy could not be held blameless, and that Wirz's impending trial had a "malign aspect" for Davis. *"If the contrary cannot be made to appear,"* said Shea, *"the case is hopeless."*

At last, it was agreed that Shea should consult with common friends, then in official power, and with representative citizens, in order to assist Davis, should the charge of cruelty prove unfounded. It was also agreed to take into confidence only pronounced Republicans.

Such was the extraordinary conference, held in the first light of morning, between the chief journalist of the Republican party and his friend, an uncompromising Democrat, with the object of aiding Davis ; a scheme which, had it been known, would have roused a storm of passionate protest in the North.

Shea had always been on intimate terms with Greeley, who had known him from childhood.¹ This brought him into friendly association with abolition leaders ; and as he was himself a strong Democrat, he was naturally sought out as the person most likely to conduct successfully the difficult task in view. Charles O'Connor was subsequently engaged to defend Davis. Shea was the attorney of record.

¹ Greeley's "Recollections of a Busy Life."

I must now go back a little. In July 1864, Greeley visited Shea at Brier Cliff, on the Hudson, respecting the proposed conference with Clement C. Clay, Jacob Thompson, and James P. Holcombe, on the Canada side of Niagara Falls, with a view to securing peace, based upon recognition of freedom for the slaves. Shea tried to dissuade him from taking part in it, since it was not likely that the gentlemen named had definite authority to negotiate. The meeting, as everyone is aware, came to nothing. Shea was now to be associated with Greeley in more effectual efforts to realize fully the peace concluded by the war.

Late in March 1865, Shea went to Hilton Head, and thence to Charleston. One of his objects, though not at first the chief one, was to meet certain republican leaders whom he could not visit at the North without, perhaps, exciting observation and inquiry. They were going down to Charleston on the *Arago*, to celebrate the restoration of the United States flag above Fort Sumter. He preceded them, and was the guest of General Q.A. Gillmore, then commanding in that department. He had just come from Hilton Head on the flagship with General Gillmore, when the *Arago* arrived and anchored outside the bar at daybreak of Good Friday, April 14th. Just then came the news, through Sherman's headquarters, of Lee's surrender; and the flagship, steaming out, announced it to the party on board the *Arago*, among whom were Henry Ward Beecher, Wm. Lloyd Garrison, Hon. Henry Wilson, and General Joseph Holt. A scene of great enthusiasm ensued. After the ceremony of raising the flag on Fort Sumter, and Beecher's oration, Shea went with Henry Wilson to the mansion, corner of Meeting Street and fronting the Battery of Charleston. The spirit of exultation had received a check in the news of that morning. Many thought that the war being ended, the Sumter affair was not as fitting as it would have been while hostilities continued.

The sentiment of magnanimity sprang into life at once. Wilson and Shea thought this opportunity propitious and began to consider whether it might not be fostered and turned to practical account. They were together Saturday and Sunday. Wilson expressed joy at the prospect that, since Congress was not in session, peace could be arranged by military armistice, and the country adjusted to new conditions without bitter political debate. They agreed that the most powerful men in bringing about such a result would be John A. Andrew, Gerrit Smith, and Greeley. Thaddeus Stevens, they thought, would prove intractable were Seward's original view of the situation, now precipitated, to be acted upon.²

The plan which Wilson and Shea were now revolving looked towards bringing together representative men of the North and South, with the idea of carrying out that view. On Sunday, Shea had a long talk with Garrison, while walking through the streets of the city, lined with shattered edifices. Garrison, Mr. Shea says, was moved by the sight, and alluded to the fact that this same city had once burnt him in effigy and that a price had been offered for his head in the South. He said he had none but good wishes

² January 22, 1861, Senator Fitch of Indiana moved on the committees, caused by the withdrawal of Senators Jefferson Davis, Yulee, Fitzpatrick, Clay, and Mallory, whose States had seceded. In the debate that followed, Seward said: "I am utterly opposed, however, Mr. President, to this transaction (...) I am for leaving those seats for those Senators or for other Senators from the States which they represent, "to be resumed at their own time at their good pleasure." At that time there was much discussion in Congress as to whether the withdrawal of Southern members should be formally recognized, lest by such action the right of secession should be tacitly conceded. January 12, 1861, Seward had said in a speech on the state of the Union: "The Union can be dissolved not by secession, with or without force, but only by the voluntary consent of the people of the United States, in the manner prescribed by the Constitution of the United States." Taking these two utterances together, it is plain that Seward's view then was that under no circumstances could Southern States be regarded as out of the Union, and that they should always be free to resume their seats in Congress. - G.P.L.

for Charleston, and “mourned” to see that of its “great buildings not one stone was left upon another.” Shea then urged upon him that he extend this feeling of charity to the entire South and assist in bringing into cooperation with Northern men the Southern leaders, so as to effect speedily a good understanding and the resumption of peaceful works by the whole people. Garrison appeared anxious and inquiring. Shea expressed his belief that Wilson and Andrews would cooperate in such a plan.³ Other conversations followed while the party (which had left Charleston on Monday) was on its way to Hilton Head. But there is received the dire news of Lincoln’s assassination. Everything was now thrown into doubt, though Wilson still had great hopes of Johnson’s acting wisely. The steamer *Sueva Nada* was at once ordered to New York with those who wished to go. When she reached that port on April 26th, it was learned that she would stop first at Brooklyn, to land Mr. Beecher. Wilson, eager to get to Washington, left the vessel by a small boat and was rowed directly to Jersey City.

Within a few days he returned from the capital and, having first called on Greely, came to Shea’s house. There he told of his conversations with the new President. He appeared wholly disheartened. Johnson, he had found, wanted to adopt a plan for making all Southerners of former social position suppliants to him ; and when every Southerner owning property of more than \$ 40,000 value should be forced, as a condition of clemency, to give up the excess for the benefit of the poor in the South, the President thought their aristocracy would not longer “*have a heel to crush people with.*” From that hour Wilson and Johnson diverged ; and combinations were now formed to further a magnanimous policy, if need were, in opposition to the President. To that end Shea reopened negotiations with Governor Andrew and went to Boston to see him.

This, then, was the situation when Greeley received Mrs. Davis’s letter and talked with Shea in the grey dawn of that June morning. Two months afterwards Greeley had another letter from Mrs. Davis, evidently intended for publication. This caused him to write to Shea, August 28th, 1865, a letter which indicated a marked change in Greeley’s disposition towards Davis, and that he was becoming convinced of Davis’s moral responsibility for the crimes against prisoners. Dining with Greeley the next evening,⁴ Shea undertook to get evidence that Davis was free from blame on this score.

He at once went to see Francis P. Blair, whom he found at his country seat, Silver Springs, Maryland. Justice Shea has narrated to me the substance of the interview, which took place there, and I give it from his dictation.

Chief-Justice Shea’s Narrative

On my arriving at the cottage which Mr. Blair then occupied, his mansion having been destroyed by Confederate troops, Mr. Blair said that we would walk out in the grounds, so that our conversation might be entirely free. He said, “*I believe that Mr. Davis has not been allowed to appoint counsel.*” I said, “*No ; that a letter had been sent by Mr. O’Conor to Davis at Fortress Monroe ; that we understood that an answer had been returned by Mr. Davis but had been intercepted and stopped in the State Department.*”

Blair - “*You surely mean the War department.*”

³ Shea visited Garrison at Roxbury the following summer, but found him changed in mind, and urgent for the extreme punishment of Davis. Garrison said: “I am with the President, and desire to make treason infamous.” - G. Shea.

⁴ At the old Delmonico’s, corner of Chambers Street.

Shea - *“No, Sir. The State Department seems to take an irregular and unusual interest concerning Mr. Davis personally.”*

Mr. Blair looked puzzled for some time ; then smiled as if something occurred to him confirming my statement.

Shea - *“One of the objects, though quite incidental, of my visit to you, Mr. Blair is that the counsel already selected by Mr. Davis’s friends at a proper time be allowed access to him. This is a right which the Constitution gives to every citizen accused, and unless the case of a prisoner of war is an exception, it should not be denied in a case so important and conspicuous as that of Mr. Davis. Your intimacy with President Johnson and the confidence which he has in your friendship, and respect for your judgement, point you out to Mr. Greeley, Mr. Wilson, Gerrit Smith, and Governor Andrew as the one person able, and likely willing, to aid their plan for a comprehensive magnanimity towards the South. They are sure you could not have approved of President Johnson’s impolitic and unjust amnesty of last May.”*

Blair (after a few moments’ silence) - *“Mr. Shea, I am already made aware that you are in the confidence of those gentlemen and represent them. Have you not seen the Chief-Justice also ?”* - with a significant look.

Shea - *“I certainly have and have come to confer with you upon what I consider necessary interferences from the conversation which I had with him at his house last month. It is clear that he considers the late armed strife between the States as an open and public war, and that no charge of treason attaches to anyone engaged in it on the part of the Southern States.”*

Blair - *“No ; not in strict terms. But let me relate the fact to you. I called by appointment at his residence at 8.30 o’clock in the evening. He was dining out and had not yet returned. The porter said that the Chief-Justice would be in soon, as he expected me to take tea with him ; and in a few moments Mr. Chase returned and said that he had been to a dinner party at Secretary Stanton’s and had some trouble in breaking away from it. While we slipped out tea, I found Mr. Chase growing very communicative, especially concerning the rehabilitation of the Democratic party, and the probability that if it would, unequivocally and decisively, accept the actual situation of public affairs, - especially the abolition of slavery and the citizenship of the black man,- the next Presidential election might see that party restored to power.”* “I”, he said, *“have always been somewhat Democratic in my opinions ; and now that slavery is at end, there is no reason why I should not be more so. You may yet see some old abolitionist candidate of that party for Presidency.”*⁵ After a few moments I continued the conversation by saying : *“Mr. Thaddeus Stevens, with whom I have recently talked, regards the accession of the blacks in the South to all rights of citizenship as a political result of the war. He says it was an open and public war, and the Southern States are to be dealt with as conquered territory.”* Mr. Chase here fell into a moment of thought, and then said : *“ Congress itself has been of the same opinion. Have you considered the effect of Section 3 of Article 14 of the Amendment to the Constitution?”* Leaving me, Mr. Chase went across the hall into the small library room on the left as you enter the street door, returned with a volume of the United States Laws, and having read to me the part of the Amendment he referred to, said : *“That is in harmony with Mr. Stevens’s idea, and it seems to make doubtful the liability to further punishment for treason of persons engaged in the rebellion.”* This meaning was certainly new to me ; but of

⁵ A prophecy. This came near being his own case in 1868 and was actually Greeley’s in 1872. - G.P.L.

course, whether the reading was intended as a suggestion or not, it has left a deep impression.⁶

I said : “Mr. Chief-Justice, Mr. Stevens’s opinion comes from the general principles of the law of nations, and not from any particular legislation. I called the attention of Mr. Stevens to Daniel Webster’s declaration of the doctrine, and he esteems it as satisfactory and authoritative ; so much so, that he told me he would use it in a speech which he is preparing in support of his bill for the confiscation of Southern lands.”

I then read to the Chief-Justice the passage to which I had called Mr. Stevens’s attention, from Webster’s Bunker Hill Monument speech of June 17th, 1825: “The battle of Bunker Hill was attended with the most important effects, beyond its immediate result as a military engagement. It created at once a state of open public war. There could no longer be a question of proceeding against individuals as guilty of treason or rebellion.”

Having told Mr. Blair all this, I added : “You can judge for yourself whether there is reason to make the inference I have drawn as to the Chief-Justice’s opinion.”

Blair - “I expect that you have some definite plan for me to lay before the President.”

Shea - “Yes. Yet, before entering on that, let me earnestly call your attention to the continued denial of Mrs. Davis’s application to visit or even correspond with her husband. I have seen Mr. Stanton, and he told me that the intention of the Government remained unchanged as to this. Why, - of course I could not ask him. I wish you and, if permissible, Mrs. Blair would see what can be done through the President and Mr. Stanton to grant Mrs. Davis even a limited correspondence with her husband. The definite plan which our friends wish you to lay before the President, in a friendly spirit and not officially in the first instance, is this : To have Mr. Davis released from actual imprisonment by some means known to the law - such, for instance, as that which Chief-Justice Marshall allowed in the case of Aaron Burr, between the time of his arrest and trial. This could not be done till after Davis was manumitted from the military and delivered into civil jurisdiction. I know that the pendency of the Wirz case before the military commission may continue to be an impediment to that course ; but it is a significant circumstance that the name of Jefferson Davis, notwithstanding all that has been threatened, has not been placed in the charges and specifications in that case, as one of those with whom it has been charged that Wirz conspired. Is it not, Mr. Blair, an admission on the part of the Government that it is possessed of no evidence implicating Mr. Davis in that charge ? If it could be arranged, according to recognized procedures, that Mr. Davis be delivered into civil custody, then the matter may take its usual course before a civil tribunal ; and time may then fairly be taken by the Government to consider whether public policy requires further prosecution. Mr. Davis at liberty would be as any other person in the South. In prison, he is a power, and there, an obstruction to any plan for the conciliation of the whole country. Mr. Blair, should you find that the President thinks himself committed by what he has said about having this question of secession considered and determined by our highest legal tribunal, so as judicially to cast it out of our political system, in that case counsel for the defense of either Davis, Clay, or other prisoners of state might interpose a special plea in addition to the usual plea of not guilty ; by which the whole controversy as to an act of secession constituting the crime of treason might be brought before the Supreme Court, without the complication of a trial by jury. This plan I have submitted to Mr. O’Conor, and it has

⁶ It was this construction of that law which formed the very ground of the division of the court and produced the final abandonment of the prosecution of Davis by the Government. - G.P.L.

his approval. He has authorized me to say so. However, Mr. Blair, in order to allow the case surely to reach the Supreme Court, it may be necessary that Congress give by statute the right of a writ of error in such cases, since at present there is no law allowing such an appeal. It must go there on a division of opinion in the court below.⁷ Our friends are most anxious that all we attempt should have in view the political situation of the President, as well as the rights of Mrs. Davis."

Mr. Blair said : *"We will think further of this."*

After dinner we resumed our walk and talk. Mr. Blair began by saying : *"What you have proposed, I think well of. Even Sumner has said that a trial before a jury would be a farce. I shall see the President tomorrow afternoon, as on Sundays he has leisure ; and he will act promptly in this matter. If you will hasten back to New York and put what you have said to me into writing, particularly regarding the Chief-Justice, I shall lay it before the President privately, if I get any encouragement from him. I shall see what can be done for Mrs. Davis and ask my wife to intercede with the President for her."*

Mr. Blair, remaining silent for some time, finally said : *"Much of his trouble need not have been. Mr. Davis himself had it in his power to advance the interests of our whole country. We all know that European nations are combined to establish on this continent interests inimical to our institutions and commerce. We should have held all of Mexico after the Mexican war. You remember how strongly Robert J. Walker, then a member of the Cabinet, advised it. This country should never permit the policy of the Monroe doctrine to become inert."*

Here he turned and looked at me and, with a degree of warmth unusual to him, said : *"I presume you are not aware of the object of the visits which I made to Richmond last January ? - though one of our friends could have told you of it."*

I answered : *"One of your particular friends did suggest something in the spirit of what you have already suggested, and it now begins to form an intelligibility for me which it had not before."* "It is well" resumed Mr. Blair, *"that you should know all now ; so that you can avoid in further conversations with others of our intimate friends at the North any curious inquiries. I got permission to visit Richmond and went there early in January. That visit was made not without some, although an indefinite, understanding with friends in power at Washington.⁸ So far as my interview with Mr. Davis was concerned, I was there individually, without authority, but as an old friend of his and a man of many Southern tender relations. My proposition was : that the Confederate army should recognize that Richmond was no longer tenable, and should evacuate that place; that the army should move south-westward, and should be followed by the national troops, but pitched battles should be avoided ; that this pursuit should be continued until the Confederate armies should have crossed the Mississippi and gathered upon the frontier of Mexico ; and that then they should be driven into that country and followed, as a matter of course, by the Federal troops. There, once in association on a foreign soil, nothing could prevent a fraternizing of both the Northern and Southern soldiers. This would have been a consummation that would have reconciled all concerned and would have obviated any elaborate political device for reorganizing or restoring any State of the Union. No other foreign nation could have found fault with our following a belligerent army into the territory of a neighboring*

⁷ This was said in order to demonstrate the futility of bringing the political question before the Circuit Court. - G. Shea.

⁸ This, I am assured, was the exact expression used. - G.P.L.

country,⁹ which had habitually given aid and comfort to the Southern Confederacy, and had set up an imperial government, with a European prince, as a menace to us and a home of refuge for those in open war with us. I urged upon Mr. Davis that our people, once there, could not be made to leave ; and Europe and Mexico would soon understand that we were there to stay.¹⁰ European powers had combined, and were then actually proceeding to occupy that country permanently, against the will of the Mexican people, and the maintenance of the Monroe doctrine should impel us to prevent their success.”

Shea returned shortly to New York, and there, a few days later, received from Mr. Blair the following letter :

“Silver Springs, September 9, 1865.

George Shea, Esq.

My Dear Sir,

I saw the President yesterday and gave him the views you communicated to me. I told him frankly whence they came. He gave me no answer to communicate in return - although he conversed freely on the subject.

In my opinion it would be well, if it is in your propose to pursue the matter in the way you suggest, to put your views in writing and submit them to the President. I suppose in such form they might be made the subject of consideration in Cabinet, and in all likelihood the law officer might apprise you of the result.

Your obedient servant,

F.P. Blair.”

Mr. Shea soon afterwards visited Mr. Blair again, and said that it appeared to him embarrassing that he should have Mr. Blair hand to the President such a written statement, coming from one acting on behalf of a State prisoner, it were to be submitted to the Cabinet.

Blair - *“if you do not trust the President, how can you expect him to trust you ?”*

Shea - *“I am willing to trust Mr. Johnson, but not to expose the project to the President’s Cabinet. There two members of the Cabinet whose passions on this subject would frustrate any plan, however commendable.”*¹¹

⁹ Compare, on this point, the remarkable order given by General Grant to General McDowell, in a letter dated at City Point, Va., January 8, 1865 (and published in the “Tribune” November 8, 1885), respecting the possible invasion of California by Dr. Gwin, the Duke of Sonora. “In an event like the one alluded to”, says Grant in his letter, “I would not rest satisfied with simply driving the invaders on to Mexican soil, but would pursue them until overtaken, and would retain possession of the territory from which the invader started, until indemnity for the past and security for the future, satisfactory to the Government, was insured” Grant also says : “I write without having discussed this matter with anyone (...) This letter is written (...) entirely without knowledge of what the President would advise in case of an invasion of our territory from that of Mexico, but with a conviction that it is right and just.” The date is of the month when Blair visited Davis, and the letter seems to show that the idea of occupying Mexico was “in the air”, and in more than one mind, even though not officially acknowledged. - G.P.L.

¹⁰ Blair’s exact words, according to Justice Shea. - G.P.L.

¹¹ Mr. Stanton, Judge Shea says, was not one of the two. - G.P.L.

Mrs. Davis was soon accorded liberty to correspond with her husband and presently to visit him at Fort Monroe. This was the only immediate good that came from these conferences. The trial of Wirz proceeded. He was condemned because of his agency in the cruelty to prisoners and executed November 10th, 1865. Now it seemed clear to many that the trial of Wirz was largely a proceeding of discovery for evidence implicating another higher than himself. The single point, also, on which light was desired by the band of friends - mainly Republicans - who had united to secure a large-minded policy towards ex-Confederates was this same question as to Mr. Davis's possible responsibility for ill-usage of our soldiers while in the hands of the enemy. Evidence on this point, I have already stated, Shea had undertaken to procure for Greeley, Henry Wilson, and - as Shea was given to understand - for Thaddeus Stevens. He went in the first week of January 1866, to Canada, where he was to meet General John C. Breckinridge, stopping on his way, however, at Boston, to consult there with John A. Andrews and others. General Joseph R. Davis, of Mississippi, accompanied him.

At Montreal the two put up at St. Lawrence Hall. Breckinridge, who was at Toronto, telegraphed as follows :

“Toronto, January 8, 1866.

*To General J.R. Davis, St. L. Hall.
I leave for Montreal on afternoon train.*

John C. Breckinridge”

There, in a private room of that hotel, were placed in the hands of Mr. Shea some of the archives of the Confederate States. They were bound volumes, in canvas covers, secured with wax, and sealed. General Joseph R. Davis cut the covers open with a knife, and Mr. Shea carefully read and considered the contents - especially those messages and other acts of the Executive, with the Senate in its secret sessions, concerning the care and exchange of prisoners. From these documents, not made to meet the public eye, it was manifest that the people of the South believed that reports of supposed inhuman and unwarlike treatment of their own captured soldiers by agents of our own Government were trustworthy, and those people individually, through their representative in Richmond, had pressed upon Mr. Davis instant measures of active retaliation upon Northern prisoners. It was equally and decisively manifest from these archives that Mr. Davis unflinchingly set himself in opposition to such demands and declined to adopt the violent measures proposed. His refusal impaired his personal popularity and brought censure upon him from many persons in the South. The evidence obtained in this way was brought home by Mr. Shea, and submitted to Mr. Greeley, Gerrit Smith, and, in part to Henry Wilson. The result was that these gentlemen and others associated with them laid aside all former suspicion towards him.

The “Tribune” at once began a series of leading editorials demanding that the Government should proceed with the trial ; and Senator Howard, of Michigan, offered, January 16th, 1866, a joint resolution, seconded by Charles Sumner, and passed, recommending the trial of Jefferson Davis and Clement C. Clay before a military tribunal, on charges mentioned by the Secretary of War in his Report of March 4th,

1865. It was however, privately known to the Bureau of Military Justice that, if a trial of that kind were held, Thaddeus Stevens would act as counsel for Mr. Clay.¹²

Charles O'Connor and Mr. Shea, being already engaged for the defense of Davis, it was essential that they should be allowed to confer with him personally. Mr. Shea was sent to Washington to bring this about, and to apply directly to the President. Late on Saturday evening, May 19th, 1866, accompanied by an eminent Major General,¹³ Shea called upon President Johnson. He told the President that the object of his visit was to learn whether, if a writ of *Habeas Corpus* were to be issued by the Chief-Justice of the United States, or by the United States Circuit Judge of Northern Virginia, Jefferson Davis would be delivered by the military authorities into the civil jurisdiction. Instantly the President burst into violent anger, and in loud tones declared that he would "*not talk on that subject.*" Mr. Shea said : "*I have come here for this purpose, Mr. President, supported by Senators and others who are disposed to act in this matter with the administration. I think it would be wise at least to listen to what I have to say*" ; and he was about to name the men whom he meant, when President Johnson interrupted him with increased - nay, furious - anger, and burst into such a tirade, that Mr. Shea, turning his back on the President, walked with his friend instantly from the room.

The next day was Sunday. In the morning an aide-de-camp, who dragged a clashing saber at his heels, brought to Mr. Shea the following communication, written within half an hour after the time when he had left the White House :

*"Executive Mansion, Washington D.C.,
May 19, 1866 (10:30 P.M.).*

Mr. George Shea, Willard's Hotel.

Sir : The President directs me to say that he will try and see you and the gentleman with you on Monday morning, if you find it convenient to call at that time."

With great respect,

*R. Morrow,
Bt. Col. and A.A.G."*

The suddenness of this summons, following upon the recent scene, and brought by a military officer, might have suggested to Mr. Shea at first, before reading the communication, the possibility that he was to be summarily put under arrest, for such things were possible in those days. He returned a written answer by the President's messenger. The next morning, he called at the executive Mansion alone, and was met in a few moments by an official, who came to him in the upper hallway and said that the President would see him at once. Mr. Shea relates to me, as follows, the interview which then took place :

¹² I am informed, on very high authority, that among the papers of Thaddeus Stevens, in the hands of his literary executor, full evidence of this had been found. Mr. Burton N. Harrison also recalls that William B. Reed of Philadelphia was assured that Stevens was ready to act as counsel for Davis. Stevens's object was to prove at the trial that the Southern States had been in open war, out of the Union, and therefore subject to treatment as conquered territory. In this manner, from an opposite motive, he fell in with the reconciliations. - G.P.L.

¹³ Q.A. Gillmore.

“When I entered the President’s retiring room, the President and Senator James H. Lane of Kansas were together. Mr. Johnson had his hand upon the Senator’s shoulder, talking to him in a very collected, earnest manner. On seeing me, Senator Lane said to the President : You have important business with Mr. Shea ; from which I at once inferred that Lane, who was one of the Senators whom I had in mind to name on Saturday night, had brought about the change in the President’s mood and caused me to be sent for.¹⁴ The President continued talking with Lane in a subdued voice, briefly, and when the senator left the room seated himself at his desk near the window. We were alone. He then requested me to take a chair close by the desk, and asked : Whom did you intend to allude to, last Saturday, as your supporters ?”

“I answered : Senator Lane, Senator Dixon, Ex-Governor Andrew, Senator Wilson ; and the opinion of Thaddeus Stevens, I know, would favor everything that might tend to treat Mr. Davis like any other prisoner of war. Mr. Greeley and Gerrit Smith favor my application ; and I am authorized to say that, when the Government consents to have Davis tried according to the civil law, Cornelius Vanderbilt will be one of the bondsmen for bail.”

“The President looked at me steadfastly and seemed to be amazed. I told him that we had determined to wait, before approaching him, until the Administration could depend upon proper support from those most active in upholding the Union. I said : The communication which I am told that old Mr. Blair forwarded to you from me has not been followed up by us.” I also said : “that the letter in which Mr. O’Conor had sent, about the same time, offering to give his bond for \$ 100,000, and to become thereupon the special custodian of Jefferson Davis, was not known to us until afterwards, when O’Conor complained that he had received no reply. The gentlemen whom I represented, said : I wished that the law should take usual course, without further impediment from the Government.”

“The President said he thought this application was in the right spirit, and ought to be considered. It would be well for you, he said, to see the Attorney General. ”

“I answered : I have already done so, and I think he does not object to Mr. O’Conor and myself communicating with Mrs. Davis as counsel. But he hinted no opinion as to delivering Mr. Davis on a writ of Habeas Corpus. ”

“The interview lasted fully half an hour. The President spoke on other topics, and always in a low, sad voice. Had I not seen his wild, passionate behavior at our meeting two days before, I should not have believed that he was capable of such rage. Finally, he took a small sheet of paper, folded it once, and slowly wrote with a short wood lead-pencil - an end of which he had held in his mouth while considering the words - a few lines, put the sheet in an envelope, and sealed it with a common red wafer. I suppose no act so important was ever done with less formality. As he pressed the wafer down, I remember that his thumb slipped and made a smear of wafer from the center to the corner of the envelope. Writing the address, also in pencil, to ‘Honorable Jason Speed’, he handed me the note and said : Will you take that to the Attorney General ?”

“I took my leave. The President rising, went with me towards the door, and there, offering his hand, said : Don’t forget to call when you are in Washington again. But it so chanced that I never saw Andrew Johnson after that time. A few minutes with Mr. Speed, who seemed equally surprised by the President’s note and by what I told him about my allies, sufficed. The next day I received from him an assurance that the Government had sent orders to Fort Monroe that Mr. O’Conor and I should be

¹⁴ Lane himself, the next day, told me that this was the fact.

admitted to see Mr. Davis. No answer was given as to the writ of Habeas Corpus. On the next Sunday morning, Mr. O'Connor and I landed at Fort Monroe, and saw Mr. Davis, then imprisoned in a casemate. His beard, which had grown, I presume, while he was in prison, had changed the expression of his face, and at first, I did not recognize him. I had seen him but once before, and now met him for the first time. The danger of a military court to try Davis, like that which had condemned Wirz, was still imminent. I was aware that officers had been named for it, and that General David Hunter was to be President. But, later, the prospect of any sort of trial taking place became vague."

The time seemed ripe, at last, for attempting to liberate Davis on a writ of *Habeas Corpus* and bail-bond. Commodore Vanderbilt, Gerrit Smith, and Horace Greeley now gave Mr. Shea their individual and unlimited powers of attorney to act in their behalf as bondsmen for Davis. This was in June 1866. The attempt failed. On May 1st, 1867, another and like effort proved successful ; and then Vanderbilt sent to Richmond his own son-in-law, the Honorable Horace F. Clark, to act for him ; but Gerrit Smith and Greeley were there present in person.

The case of the United States *vs.* Jefferson Davis was not disposed of until near the end of 1868, and then on demurrer to the indictment. Chief-Justice Chase and Mr. Justice Underwood presided. The Chief-Justice announced on December 5th, 1868, that the court had failed to agree upon a decision, and then this certificate of division and of the question was filed: "*Whether, by the operation and effect of the third clause of the Fourteenth Amendment to the Constitution, the defendant is exempted from indictment or prosecution for treason in levying war and participating or engaging in the late rebellion. And upon that question the opinions of the judges were opposed. And thereupon the said point is upon the request of the said defendant, stated under the direction of the said Judges, and certified under the seal of the said Circuit Court to the Supreme Court of the United States at its next session.*"

Thus ended a prosecution which, as Charles Sumner foretold in the Senate, was to be a failure. But there was one person who, if present in the courtroom, would not have shared the general surprise when the Chief-Justice, as the court adjourned *sine die*, "*instructed the reporter to record him as having been of the opinion, on the disagreement, that the indictment should be quashed, and all further proceedings barred by the effect of the Fourteenth Amendment to the Constitution of the United States.*"



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