

PART II.

THE VINDICATION.

CHAPTER I.

SETTING ASIDE THE VERDICT.

When the President of the United States, the Secretary of War, the Military Commission, the Judge-Advocates, and the Executioner-General had buried the woman against whose life the whole military power of the Government, fresh from its triumph over a gigantic rebellion, had been levelled;--buried her broken body deep beneath the soil of the prison-yard, in close contact with the bodies of confessed felons; flattened the earth over her grave, replaced the pavement of stone, locked the door of entrance to the charnel-house and placed the key in the keeping of the stern Secretary;--they may have imagined that the iniquity of the whole proceeding was hidden forever.

But, horrible dictu! the ghost of Mary E. Surratt would not down. It troubled the breast of the witness Weichman. It haunted the precincts of the Bureau of Military Justice. It pursued Bingham into the House of

Representatives. It blanch'd the laurels of the great War Minister. Politics, history and the very vicissitudes of human events seemed subservient to the vindication of this humble victim.

Hardly had the delivery of the prisons of Washington, which followed the close of the trial, taken place, before the man who, as he himself swore, always had been treated as a son by the woman he betrayed, began to make advances to her sorrowing friends. He pretended to make confession of his perjury. He told a friend that his testimony would have been very much more favorable had it not been dictated to him by the officers who had him in charge; that the meeting of Lloyd and Mrs. Surratt was accidental, as she and he (Weichman) had already started for home before Lloyd returned, and only turned back because the buggy was discovered to be broken. The traitor soon discovered that he made no headway by such disclosures, but only met with a sterner repulse and a deeper loathing. His troubled soul then turned to another quarter. It has been stated that his testimony on the trial was somewhat indefinite and inconclusive. Complaints had been uttered by the officers conducting the prosecution. It was proved upon a subsequent occasion that one of these officers had actually threatened the witness that he would hang as an accomplice in the assassination did he not make his evidence more satisfactory. It appeared, also, that the Secretary of War had promised to protect and take care of him. Driven back by Mrs. Surratt's friends from his attempt at propitiation, Weichman resolved that he would yet earn his reward by retouching his former testimony so as to make it more definite and telling. He saw, at last, that to save himself from everlasting ignominy he must, as far as in him lay, make sure of the guilt of his victim. Actuated by these or similar

motives, he, on the 11th day of August, 1865, wrote out, and swore to, a statement in which he, by a suspicious exercise of memory, detailed conversations with Mrs. Surratt and significant incidents, all pointing to complicity with Booth, no mention of which had been made on the trial, and which this candid witness stated "had come to my (his) recollection since the rendition of my (his) testimony."

This affidavit, containing (if true) more evidence of the guilt of Mrs. Surratt than his whole testimony on the trial, but, on the other hand, drawn up to suit himself without fear of cross-examination--he transmitted to Colonel Burnett, who, as though he, too, distrusted the sufficiency of the evidence against the dead woman as it had been actually given on the trial, was careful to append the ex parte statement to the published report.

Weichman, at length, gets his reward in the shape of a clerkship in the Custom House at Philadelphia.

But the final breaking down of the fabric of testimony against the leaders of the rebellion, as instigators of the assassination, threw consternation into the Bureau of Military Justice and the Cabinet. Jefferson Davis was still confined in Fort Monroe, and two companies of United States soldiers, who had fought and shed each other's blood in their eagerness to be the first to seize the fugitive, were already quarreling over the \$100,000 reward for his arrest as an accomplice of Booth. Clement C. Clay, for whose arrest \$25,000 reward had been offered, as another accomplice, was also still in the hands of the authorities. Jacob Thompson, George N.

Sanders and Beverly Tucker, for the arrest of each of whom \$25,000 had been offered, were still at large. Every one of these men, it should be borne in mind, had been pronounced guilty by the military board which had condemned Mrs. Surratt. John H. Surratt, her son, for whose capture an enormous reward had been offered both by the Government and by the City of Washington, and whom the Military Commission had condemned as the go-between of the President of the Confederacy and his agents in Canada in the instigation of the murderous conspiracy, and also as the active aider and abettor of both Booth and Payne in the perpetration of their bloody crimes; he, too, had so far eluded all efforts to find even his whereabouts. It is only fair to presume that the astute lawyers connected with the Bureau of Military Justice must have had serious misgivings from the first, concerning the testimony of the spies, Montgomery, Conover and others, going to implicate Davis and the Canadian Rebels in the assassination. Such testimony was hearsay or secondary evidence at best; and they could have cherished no hope that such loose talk and the fragmentary repetition of letters heard read would ever be allowed to pass muster by an impartial judge in a civil court. And they had reason to believe that public opinion would not tolerate the experiment of another military commission. As early as July, 1865, an attempt was made to buy the papers of Jacob Thompson, among which it was supposed were the criminatory letters of Davis; and Attorney-General Speed was dispatched with \$10,000 government money to effect the purchase. William C. Cleary, for whom \$10,000 reward had been offered as one of the conspirators, and who had just been found guilty by the Military Commission, was to deliver the letters and receive the money. Speed met Cleary at the Clifton House, but the latter, in the meanwhile, had seen in a newspaper a portion of the

testimony before the Military Commission implicating him, and he utterly refused to give up the papers, as he had to rely upon them, as he said, to vindicate himself. The shadows thus began to darken over the credibility of the corps of spies that the Bureau had employed. Indictments for perjury against Montgomery, Conover and other paid witnesses began to be talked of. Friends, and enemies as well, of the imprisoned ex-President began to clamor for his trial or release. Even the implicated agents in Canada showed a bold front, and professed a willingness to meet the terrible charge if guaranteed a trial by jury. A jury! A jury of twelve men! Trial by jury! If there was anything that could shake the souls of the members of the Bureau of Military Justice, it was to hear of trial by jury. It was a damnable institution. It impeded justice. It screened the guilty. It was beyond control. It could not be relied on to convict. And yet it was to this tribunal they foresaw they must come.

In September, 1865, embarrassing news arrived at the Department of State. The consul at Liverpool informed the American Minister at London that John H. Surratt was in England and could be extradited at any time. Here was the villain who was, with Booth, the prime mover of the conspiracy and the active accomplice of Booth and Payne in their work of blood. At least, so the Military Commission found, who hung his mother in his stead. And yet the United States Government informed Mr. Adams, and Mr. Adams so informed the consul, that the Government did not intend to prosecute. On the 24th of November ensuing, the War Department, by general order, revoked the "rewards offered for the arrest of Jacob Thompson, Beverly Tucker, George N. Sanders, William S. Cleary and John H. Surratt." Where now was the redoubtable Bingham who, over and over again, had assured the Commission

he guided of the unmistakable guilt of all these persons? The whole theory of the Secretary of War, which he had preconceived in the midst of the panic following the assassination, that the murder of the President was the outcome of a deep-laid and widespread conspiracy, of which Jefferson Davis was the head and Booth and Payne the bloody hands--this theory, which the Bureau of Military Justice, aided by Baker and his detectives, had so sedulously labored to establish, and which Judge Bingham had so persistently pressed upon the nine military men who composed the Court, to the exclusion of any such hypothesis as a plot to capture--this preconceived theory all at once fell to the ground. The perjured spies, who had been the willing and paid tools to build it up, were about to be unmasked and their poisoned fangs drawn. After no great interval, Conover was, in fact, convicted of perjury in another case, and sentenced to imprisonment in the Albany penitentiary. The whole prosecution of the so-called conspirators, from its inception to its tragic close, turned out to have been founded on an enormous blunder. The findings of the Commission were falsified. Whatever the guilt of the doomed victims, they were not guilty of the crime of which they were convicted. The terrible conspiracy, stretching from Richmond to Canada, and from Canada back to Washington, involving statesmen and generals, and crowning the wickedness of rebellion with the Medusa-head of assassination, shrank into the comparatively common-place and isolated offense of the murder of Lincoln and the assault upon Seward, suddenly concocted by Booth, on the afternoon of the 14th of April, in wild despair over the collapse of the rebellion. In such a predicament, the hanging of Mrs. Surratt could not have been a pleasing reminiscence to the Secretary of War, to Judge-Advocate Holt, or to the hangers-on of the Bureau of Military Justice. At such a moment they

certainly had no use for her son John.

On the 12th of November, Preston King, who held one side of the door of the White House while the daughter of Mrs. Surratt pleaded for admission, walked off a ferry-boat into the Hudson River, with two bags of shot in the pockets of his overcoat, and was seen no more. This event might have passed as a startling coincidence, to be interpreted according to the feelings of the hearer, had it not been followed by the suicide of Senator James S. Lane, who held the other side of the door, and who, on the 11th day of July, 1866, blew his brains out on the plains of Kansas. That these two men had together stood between the President and the filial suppliant for mercy, in a case of life and death, and that, then, within a year, both had perished by their own hands, aroused whispers in the air, caused a holding of the breath and a listening, as if to catch the faint but increasing cry of innocent blood, coming up from the ground.

When the Congress met in December, 1865, the leaders of the dominant party were in a fierce and bitter humor. The Rebellion had been suppressed, the South subjugated and its chiefs captured, yet no one--not even the arch-traitor Davis--had been hung. And, more deeply exasperating still, the man they had elected Vice-President, and who had thus succeeded the martyred Lincoln, upon whom their hopes had been fixed to make treason odious, to hang the leaders higher than Haman, and to set aside the humane policy of reconstruction his predecessor had already outlined and substitute a more radical and retributive method--this man, whose precious life had been providentially spared from the pistol of the assassin to be the Moses of the colored people, and for harboring any such blasphemous

purpose as lying in wait for him, a Court, appointed by himself and whose sentence he himself had approved, had hung a bewildered German--why this man had already shown himself a renegade, was bent on a general amnesty, appeared to have forgotten the assassination, was already hobnobbing with southern traitors, and was attempting to carry out a policy of reconstruction in the South, the result of which could be nothing less than the dethronement of the party who had brought the war for the Union to a triumphant end. These men resolved that such treachery should be balked at whatever cost. Ignorant as yet of the tainted character and of the break-down of the evidence adduced to show Confederate complicity in the assassination, the House of Representatives passed resolutions calling for the trial of Jefferson Davis for treason and for the other crimes with which he was charged; the ill-starred Bingham, once again in the House, insisting that the Confederate Chief should be put upon trial before a military tribunal for the same offense of which his former court had found him guilty in his absence. The House appointed a committee to investigate the complicity of Davis and others in the assassination, and in July, 1866, through its chairman, Mr. Boutwell, made a report, followed by a resolution, "that it is the duty of the executive department of the Government to proceed with the investigation of the facts connected with the assassination of the late President without unnecessary delay, that Jefferson Davis and others named in the proclamation of President Johnson of May 2d, 1865, may be put upon trial," which was adopted nem. con. In this action, little as they reeked, these radical politicians were the unconscious tools of that Nemesis which stalks after lawlessness and triumphant crime. This resolution, and the news that John H. Surratt had been betrayed by one of his comrades in the Papal Zouaves into the hands

of the Roman authorities, who had detained him to await the order of the American Government, and that the prisoner had escaped from his guard and fled to Malta, forced the Department of War to revoke the order of November, 1865, withdrawing the reward for the arrest of the fugitive.

Meanwhile the great contest over the reconstruction of the South waxed fiercer and fiercer. Congress, during this session, became farther and farther alienated from the President, so that when that body met in December, 1866, the reckless majority in both Houses united in the resolve to get rid of Andrew Johnson, not indeed by the bloody method employed by Booth, but by the no less efficient, though more insidious and less bold, expedient of impeachment by the House and conviction by the Senate. No sooner had Congress convened than Mr. Boutwell made an attack upon the Executive for its dilatory action in the arrest of John H. Surratt, stating that he had reason to believe that the Government knew where the assassin was the May before. A committee appointed to investigate the matter made a report just at the close of the session obliquely censuring the Executive Department for its lack of diligence in effecting the arrest. On January 7th, 1867, the famous Ashley introduced his resolutions impeaching Andrew Johnson. The Judiciary Committee, to which they were referred, took testimony during the winter and made a report at the close of the session that it was unable to complete the investigation, and handed it over to the Fortieth Congress. That Congress met immediately at the close of the Thirty-ninth, and the testimony already taken was referred to the Judiciary Committee of its House, which proceeded with the matter during the spring and summer, and in November, 1867, after the recess; with the final result of a failure to pass the resolution of

impeachment reported by a bare majority of the committee.

In process of this investigation all sorts of accusations and charges were made against the President. His enemies now employed the very same weapons against him which had been employed to convict the alleged assassins of his predecessor and the alleged conspirators against his own life. General Baker and his detectives, Conover and his allies, appear once more upon the scene. They actually invaded the privileged quarters of the White House and stationed spies in the very private apartments of the President. This time, however, they are ready to swear, and in fact do swear, not to having seen letters from Jefferson Davis to his agents in Canada advising assassination, but letters from Andrew Johnson to Davis squinting in that direction. They actually charged the President with being an accomplice in the assassination of Abraham Lincoln. Forgetting that a human being had been hung for lying in wait to kill Andrew Johnson as a part of a general conspiracy to murder the heads of the Government, these desperate men propose to impeach the President for being an accomplice in his own attempted murder. Ashley openly denounced him, in the House of Representatives on the 7th of March, 1867, as "the man who came into the Presidency through the door of assassination," and alluded to the "dark suspicion which crept over the minds of men as to his complicity in the assassination plot," and "the mysterious connection between death and treachery which this case presents." Ashley had private interviews in the jail with Conover and Cleaver, who were confined there for their crimes, and they assured him of the guilt of Andrew Johnson. They furnished him with memoranda and letters purporting to show that Andrew Johnson and Booth were in communication with each other before the murder of Lincoln,

and that Booth had said before his death that if Andrew Johnson dared go back on him he would have him hung higher than Haman. To such preposterous stuff, from professional perjurers, did the zealous Ashley seriously incline.

It was during this investigation that the evidence given by Secretaries Seward and Stanton and by Attorney-Generals Speed and Stansbery, demonstrated the utter futility of an attempt to establish complicity in the assassination on the part of Davis, Thompson and the rest, by witnesses who had been shown, in other cases, to be unworthy of a moment's belief.

While the impeachers were in the very act of pursuing the President as an accomplice in the murder of Abraham Lincoln, while the mighty Bingham, who had so eloquently defended President Johnson before the Military Commission against the charge of usurpation of power, and so bitterly denounced Jefferson Davis for alluding to Johnson as "The Beast," now, with a complete change of tune, was clamoring for the impeachment of "his beloved Commander-in-Chief;"--Jefferson Davis, himself, is brought, by direction of the Secretary of War, in obedience to a writ of habeas corpus, before the United States Court at Richmond; there, without a word of remonstrance, transferred to the custody of the civil authority; and forthwith discharged on bail, Horace Greeley, who had never seen him before, becoming one of his bondsmen. Since that day in May, 1867, no attempt has ever been made to call the ex-President of the Southern Confederacy to account as one of the conspirators in the murder of Lincoln. Clay had been let go on parole as long before as April 19th,

1866; his property was restored to him in February, 1867; and proceedings under an indictment found against him for treason and conspiracy, indefinitely suspended on the 26th of March of the same year. Thompson and Sanders and Tucker returned to their country and appeared unmolested amongst us. Jefferson Davis died recently full of years and honors. At the death of Thompson, the flags of the Interior Department were lowered half-mast. Tucker was appointed to office not long ago by President Harrison. And all this, notwithstanding the Judge-Advocate had assured the Military Commission that the guilt of these men was as clear as the guilt of Booth or of Surratt, notwithstanding the Military Commission under his guidance so found, and, had these men been present before that tribunal, would doubtless have hung them on the same scaffold with Mrs. Surratt.

It was during this same investigation, that the diary of Booth, which had been so carefully concealed by the War Department and the Bureau of Military Justice from the Military Commission, was unearthed. Its publication produced a profound sensation, as it made clear the reality of a plan to capture the President; a plan, which had been blasted by the collapse of the Rebellion and, only at the last moment and without consultation, arbitrarily superseded by a hurried resolution to kill. When produced by Judge Holt before the committee, its mutilated condition gave rise to a terrible suspicion. Holt, himself, and Stanton were confident the book was in the same condition as when they first saw it. Colonel Conger, also, though not positive, thought it was unchanged since he took it from the dead body of Booth. But, to the great wonder of everybody, the distinguished detective, General Baker, testified, and stuck to it with emphasis when recalled, that, when he first examined the diary before it

was lodged with the Secretary of War, there were no leaves missing and no stubs, although the diary, as exhibited to the committee, showed by means of the stubs remaining that sixteen or twenty leaves had been cut or torn out. The disclosures made by the production of the diary, together with the fact of its suppression, stirred the soul of General Butler; and, in this way, it came about that the ghost of Mrs. Surratt stalked one day into the House of Representatives. Judge Bingham, in his rollicking way, was upbraiding General Butler for having voted for Jefferson Davis fifty times as his candidate for President, and slurring his war record by calling him "the hero of Fort Fisher;" when, suddenly, at the petrific retort of his adversary that "the only victim of the gentleman's prowess was an innocent woman hung upon the scaffold!" the spectre stood before him, forcing, as from "white lips and chattering teeth," the exclamation of Macbeth: "Thou canst not say I did it!"

"Look to the true and brave and honorable men who found the facts upon their oaths and pronounced the judgment!" he retorted, clutching at the self-soothing sophistry of the murderer of Banquo, ignoring the fact that he himself was a part of the tribunal and virtually dictated the judgment.

Another discovery was made by the Judiciary Committee in the "Article" which, as recorded in his diary, Booth had left behind him for publication in the National Intelligencer. John Matthews, a fellow actor and an intimate friend of the assassin, testified that on the afternoon of the 14th of April Booth had met him in the street and left with him a letter directed to that newspaper, to be delivered in the morning. The witness

was on the stage of the theatre that night at the time the fatal shot was fired, and, in the confusion that followed, he called to mind the communication. Hurrying to his lodgings he opened the envelope, read the letter, and, fearing to be compromised by the possession of such a document, burnt it up. The substance of the letter, as near as Matthews could recollect, was that for a long time he (Booth) had devoted his money, time and energies to the accomplishment of an end, but had been baffled. "The moment has at length arrived when my plans must be changed. The world may censure me for what I do; but I am sure that posterity will justify me." And the communication was signed (all the names being in the hand-writing of Booth): "Men who love their country better than gold or life. J. W. Booth, ---- Payne, ---- Atzerodt, ---- Herold."

The significance of this piece of testimony was negative. The name of Surratt was not there.

One suggestive circumstance was called out in the testimony of Secretary Seward and General Eckert. It appeared that Payne before his trial had talked with General Eckert about his motives and movements in the assault upon the disabled Secretary of State, the particulars of which conversation Eckert had related to Seward, after the recovery of the latter from his wound, and had promised to reduce to writing. Among other things, Payne had said that he and Booth were in the grounds in front of the White House on the night of Tuesday, the 11th of April, when Abraham Lincoln made his speech of congratulation on the fall of Richmond and the surrender of Lee; and that on that occasion Booth tried to persuade him to shoot the President as he stood in the window, but that he would take no

such risk; and that Booth, turning away, remarked: "That is the last speech he will ever make."

Such an incident is consistent only with the theory that the assassination plot was concocted at the last moment as a forlorn hope, and that, if there had been any conspiracy, it was a conspiracy to capture. It is easy to see why the Bureau of Military Justice suppressed this testimony also, because, although it bears hard upon Payne himself, and Herold, and possibly John Surratt, it renders it highly improbable that Mrs. Surratt was aware of any design to kill.

Even such a fragmentary review, as the foregoing, of the public history of the two years succeeding the execution--which any reader may complete, as well as test, for himself by referring to the Congressional Globe of that period, to the printed reports of the Committee, and to the leading newspapers of the day--is sufficient to indicate how the general tendency of events, and every event in its place, appear to have conspired to the accomplishment of one result,--the setting aside, in the public mind, of the verdict of the Military Commission in the case of Mrs. Surratt.

This was not done by a direct assault upon that tribunal, or upon its mode of procedure; not even upon the character of the witnesses against the particular culprit, nor upon the weakness of the case made against her. These points of attack were all passed by, and the verdict was taken on the flank.

The condemnation of the woman was subverted by the wind, so to speak, of

passing events.

The irrepressible conflict between the President and the Congress; the consequent schism in the very ranks of the triumphant conquerors; the insane charge against Andrew Johnson of complicity in a conspiracy against his own life, supported by the incredible statements of the very witnesses who were responsible for the charge of complicity against Jefferson Davis and others; the final and complete exposure of the fiction of a conspiracy to assassinate, either by the Confederate authorities, or anybody else; and the true, historical character of the Assassination of Abraham Lincoln;--all combined to shake the edifice of guilt, which the Bureau of Military Justice had so carefully built up around their helpless victim, upon such an aerial foundation. Whilst the gradual abatement of that furious uncharitableness, which in the hey-day of the war could find nothing not damnable in the Southern people, and no secessionist who was not morally capable either of murder or of perjury in its defense or concealment, was, surely but imperceptibly, clearing up the general atmosphere of public opinion, and thus preparing for the cordial reception of such a measure of retributive justice, as Time, with his sure revenges, was daily disclosing to be more and more inevitable.

The Milligan decision dissipated the technical jurisdiction of the Commission. But lawyers could still distinguish, and the hyperloyal could still maintain the essential rightfulness of the verdict.

But the explosion of the great assassination conspiracy; the nol-pros. of the awful charge against Jefferson Davis, Clement C. Clay, Jacob Thompson,

and their followers--a crime, which, if capable of proof, no government on earth would have dared to condone--discredited forever the judgment of the Military Commission, reopened wide all questions of testimony, of character, of guilt or innocence, and summoned the silent and dishonored dead to a new and benignant trial.