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## A Political Libel Suit

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## A Political Libel Suit

derer was awaiting trial, so the Judge instructed the clerk to enter an order of adjournment *sine die* as soon as he could get out of town, which he and the prosecutor proceeded to do. They hot footed it to Red Hill about five miles distant to the railway station, boarded the train for Denver and neither of them ever returned to Park County. Bowen soon after resigned, pursuant to an announcement which he had made prior to the episode above recounted.

He was elected to the General Assembly from Rio Grande County in the fall of the same year and to the United States Senate by that Assembly in January, 1883. He accomplished this feat by asking for and securing the pledge of a complimentary vote sufficiently large with his own to give him a bare majority. Being a member of the caucus, he could easily see that the vote was cast as promised. The result was a sensation, but his real supporters pressed their advantage and his election followed. As a senator his record was a blank. Beyond drawing his salary and voting with his party he did practically nothing,

except to verify his reputation as a poker player. He and Senator Riddleburger of Virginia became close friends, the latter being equally handy with the cards. On one New Year's day Riddleburger said to Bowen that he would make some late calls and leave cards without entering his friends' houses. "Leave a few packs for me", said Bowen, "and let 'em be squeezers."

Edward O. Wolcott easily beat Senator Bowen when he tood for re-election. He returned to Colorado and moved to Pueblo where he spent his last few years in relative seclusion. His party nominated him for Congress in 1894, but he was defeated by John C. Bell. He died soon afterwards. Thus ended his unique career. While most interesting, it can hardly be regarded as worthy of imitation. He possessed undoubted talents, which were nearly always misdirected. His ambitions were lofty, but, when realized, they were distorted to ignoble ends. While he achieved some distinctions, he ignored or despised their responsibilities. The fates have been kind to him, for he is gone and forgotten.

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### *A Political Libel Suit*

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It seems incredible that the man to whom his constituents gave the well known "Webster Vase", bearing the inscription "PRESENTED TO DANIEL WEBSTER, THE DEFENDER OF THE CONSTITUTION, BY THE CITIZENS OF BOSTON", and who is known today as "The Defender of the Constitution", should ever have thought it necessary, in protecting his reputation, to institute a prosecution against Theodore Lyman, Jr., for alleged criminal libel upon him, Webster, as a senator of the United States in publishing that he, Webster, conspired with other leading Federalists in 1807-

1808 to break up the Union and re-annex New England to England.

This prosecution arose out of the political campaign of 1828. The Federalist ticket for the election was headed by John Quincy Adams for President. The Democratic candidate was Andrew Jackson. Adams, in 1807 and 1808, as a Federalist senator had split with his local party over the Embargo Acts for which he had been a staunch advocate. However, in 1828, Webster and most Federalists in Massachusetts supported Adams as against Jackson, while other Federalists, who had not forgotten Adams' support of the detested Em-

bargo Acts, supported Jackson and established a semi-weekly paper, called the "Jackson Republican", to support Jackson. Theodore Lyman was one of the proprietors of this paper.

October 29, 1828, the following article appeared in this paper: "We publish this morning a letter of December, 1825, of Mr. Jefferson to Mr. Giles, and Mr. Adams' own statement, published last week in the National Intelligencer at Washington, concerning disclosures said, many months ago, to have been made by Mr. Adams to Mr. Jefferson, in regard to the conduct of the leaders of the Federal party in New England during the whole course of the commercial restrictive system. Mr. Adams confirms in his statement, in a positive and authentic form and shape, the very important fact that in the years 1807 and 1808, he did make such disclosures. The reader will observe that Mr. Adams distinctly asserts that Harrison Gray Otis, Samuel Dexter, William Prescott, Daniel Webster, Elizah H. Mills, Israel Thorndike, Josiah Quincy, Benjamin Russell, John Welles, and others of the Federal party of their age and standing were engaged in a plot to dissolve the Union and to re-annex New England to Great Britain; and that he (Mr. Adams) possessed 'unequivocal evidence' of that most solemn design. The reader will also observe that in the statement just published, of Mr. Adams, there is no intimation whatever, that he does not still believe what he revealed to Mr. Jefferson and Mr. Giles twenty years ago. All the gentlemen we have mentioned above are, with one exception, still living, and with two exceptions, are active and ardent political friends of Mr. Adams. We here beg leave to ask why Mr. Adams statement has been withheld from the public eye more than a year? Why it has been published only one

fortnight before the election for President all over the Country? Why for three years he has held to his bosom, as a political counsellor, Daniel Webster, a man, whom he called in his midnight denunciation, a traitor in 1808? And as the last question, why, during the visits he has made to Boston, he always met in friendly and intimate and social terms all the gentlemen whose names a few years before he placed upon a secret record in the archives of our Government as traitors to their country? Why did he eat their salt, break their bread and drink their wine?"

The letter of Mr. Jefferson, referred to in this article and published in the same issue of the Jackson Republican, mentioned that Mr. Adams said "certain citizens of the Eastern States" without mentioning Webster or anyone, and did not use the words "engaged in a plot to dissolve the Union."

Webster had been a leader in opposition to the Embargo Acts and had openly stated they were unconstitutional. There were many movements in opposition to these acts, some of which contemplated secession. Mr. Webster, in his second speech on Foot's Resolution, when charged by Hayne with having advocated secession as a last resort in opposition to the Embargo Acts, replied that he had always stated that the Acts were unconstitutional but had never advocated anything but submitting to the decision of the Supreme Court.

Perhaps it deeply hurt the dignity of Webster to be thus linked up with his past. More probably it was for political purposes that a criminal prosecution was instituted. At any rate, Mr. Webster in the six volume edition of his works, compiled by himself, makes no mention of this trial and omits any reference to his writings or speeches on the Embargo Acts.

It is historical that no demand was made for an explanation, although Webster and Lyman had been close political bed-fellows in 1807 and 1808 and still were on intimate social terms in 1828. Moreover, it was a criminal prosecution which was started, and not a civil suit for damages for defamation.

Seemingly, without a word of warning, Webster struck by complaining before the Grand Jury and securing a true bill which charge that Theodore Lyman, Jr., "unlawfully, maliciously and deliberately, devising, contriving and intending to traduce, vilify and bring into contempt and detestation, one Daniel Webster \* \* \* to cause it to be believed that the said Daniel Webster \* \* \* had been engaged in an atrocious and treasonable plot to dissolve the Union \* \* \* unlawfully, maliciously and deliberately, did compose, print and publish, and did cause and procure, to be composed, printed and published, \* \* \* of and concerning him, the said Daniel Webster, an unlawful, malicious and infamous libel" \* \* \* charging Webster with having "entered into a plot to dissolve the Union."

Mr. Lyman appeared with Samuel Hubbard and Franklin Dexter, as counsel, and was arraigned on November 17th, pleading "not guilty". Mr. Lyman's counsel then moved for a continuance to 1829, and in support of the motion filed an affidavit, which, in substance, set forth (1) that Mr. Lyman did not intentionally libel Mr. Webster, (2) but that it might become necessary to prove the truth of the statements set forth in the alleged libel, and time would therefore be required to get evidence.

Solicitor-General Davis filed objections to the affidavit of Lyman and contended that the affidavit did not make any positive statements and the Solicitor-General admitted:

1. That Mr. John Quincy Adams

did publish the statement ascribed to him.

2. The letter of Mr. Jefferson to Mr. Giles.

3. That Mr. Webster in 1808 was a conspicuous member of the Federal party.

4. That Mr. Adams wrote the letters ascribed to him, but denied that Mr. Webster was comprehended or included in the terms of Mr. Adams' statement.

The continuance was denied and the trial commenced on December 16th. Isaac Parker, Chief Justice of the Supreme Court, presided. After the jury was empanelled, the prosecution proceeded to prove the election of Mr. Webster to the Senate of the United States, the publication of the alleged libel, the circulation of the paper, its ownership by Mr. Lyman, and rested. Mr. Dexter opened for the defense; a certain pamphlet, which it was stated had been written by Mr. Webster, called "Considerations on the Embargo Laws" was introduced for the purpose of using certain extracts from it; the objection to its introduction without its being read entire was sustained. Mr. Webster was then called and admitted writing a pamphlet with that title. The question again came up on reading the entire document. Chief Justice Parker observed that the time to be embraced in reading it was material; that he had no doubt but that Mr. Webster wrote as strongly against the Embargo as anyone could. Mr. Webster from his seat said, "I meant to." The Chief Justice then ruled that the constitutionality of the Embargo was not on trial. The attempt to introduce the Rockingham Memorial met the same result. Witnesses were put on who testified as to statements made by General Lyman, that he did not intend to libel Mr. Webster, and that the article was directed at Mr. Adams. The defense rested. The prosecution called Mr.

Webster, and, among other questions, asked "Did you at that or any other period, ever enter into any plot to dissolve the Union?" Mr. Webster answered "No sir." The evidence in the case was closed.

At three o'clock in the afternoon Mr. Hubbard began the closing argument for Mr. Lyman. He said to a common sense view, the question was whether the circumstances of the case showed beyond a reasonable doubt that General Lyman intended to libel Mr. Webster, pointing out that the paper was organized to oppose the election of Mr. Adams, and not in a malicious effort directed against Mr. Webster. "Mr. Adams meant somebody", and Mr. Lyman, in putting in the names of the self-acknowledged leaders of the Federalist party at that time, was merely descriptive of Mr. Adams' meaning, not libeling Mr. Webster. "The prosecution originated in a mistake, an undoubted mistake. No explanation was made by General Lyman, or called for by Mr. Webster, and no opportunity was given to explain." Mr. Hubbard closed his argument without any intermission at seven o'clock in the evening.

The closing argument of the prosecution was postponed until the 17th. Solicitor-General Davis argued for three hours, and the argument was closed.

In charging the jury, the Chief Justice began by saying "It is unfortunate there ever was occasion for this prosecution, unfortunate that there has not been some amicable disposition of it upon explanations not derogatory to the honor of the accused, and yet satisfactory to the aggrieved. It is apparent but that for some point of etiquette, to which importance has been attached, such disposition of the case would have taken place. \* \* \* We can only regret that the controversy must be determined by the ultima ratio of peaceable citizens—a ver-

dict of the jury of their country." The Chief Justice then discussed the question of the liberty of the press. Proceeding he said, "I am of the opinion that if you should be satisfied that the gentlemen named in Mr. Lyman's article were the persons whom Mr. Adams intended to designate as the leaders of the Federal party at that time \* \* \* the insertion of those names would not be an unfair or unjustifiable commentary upon the communication \* \* \* ." As to the words of the article, saying that Mr. Adams had placed the names of the gentlemen mentioned upon a secret record in the archives of the Government, as traitors to their country, he said: "if this were a mere rhetorical flourish \* \* \* the remark is not libelous".

The jury disagreed and were discharged (it is reported they stood ten to two for conviction), and the case was dismissed in the November Term of Court, 1829.

Aside from the historic interest, this trial illustrates how even the greatest men sometimes make mistakes in the heat and bitterness of a political campaign.

—C. M. H.

(The arrangement and conclusions of this article are by the writer. The record facts are taken in the main from the excellent book on this trial by Josiah H. Benton, Jr.)

#### THE REASON WHY

Hubby: "I miss the old cuspidor since its gone."

Wifey: "You missed it before—that's why it's gone".

#### ONLY A WARNING

Landlady: "You seem to be musically inclined, Mr. Jones, I have so often heard you singing while taking your morning bath."

Roomer: "I do enjoy music, but the reason I sing in the bathroom because the door won't lock."