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Trial of JOHN PICKERING.

Continued.]

Mr. *Harper* then commenced the reading of the deposition of EDWARD SULLIVER, LIVERMORE. During the reading, particularly of that part where in the witness first his opinion that the infinity of judge Pickering did not arise from his intemperance, but the latter from the former, Mr. *Hopkinson* interrupted by the President, who desired him to read only that part which related to the allegation of infinity. In compliance with this injunction Mr. *Harper* read a single sentence of the deposition of the affidavit. Notwithstanding, however, this circumstance, we give it entire; remarking that only that part of it relative to the allegation of infinity was received in evidence.

Deposition of EDWARD SULLIVER LIVERMORE.

I, Edward St. Lee Livermore Esquire and say, that in the beginning of November in the year 1802, I was retained by Elisha Lad, Esq. of Portsmouth in the state of New-Hampshire, to attend a special District Court to be held at Portsmouth on the eleventh of said November, to exhibit a claim for a certain ship called the Eliza, and two cables, seized by the officers of the customs and libelled in said court. The statement of the cause made to me by the said Lad, was this—That in the month of September, 1802, the ship Eliza, owned by him and of which his brother was mariner, arrived at Boston with a cargo of salt, and nothing else, except some pieces of check linen which were the private property of the captain. That the ship was entered at Boston and the duties on the salt cleared, & the cargo upon the linen paid by the captain, and the vessel authorized to proceed to Portsmouth to discharge her cargo; and accordingly she arrived at Portsmouth, where the cargo was obtained agreeably to the collector for landing the linens and also a permit was given for landing the salt. That while the ship was at some distance place (I think Boscawen) her cables which were old, became much chafed, and injured, at some bad anchorage ground; and that a vessel of which a certain captain Lamb was master, came and away, the frames from the Eliza were employed in having goods from the wreck, and Capt. Lamb in consequence then gave them a new cable which had been found. This cable was then purchased by captain Lamb intending it for sale in the Southern States, but that it was a very ordinary one made of very bad materials. That Captain Lamb thinking the situation of his ship in Boston was unsafe, purchased a new cable and it set down for his ship's use; & that it was accordingly bent to an anchor on the passage home; and that with old and new the ship was but indifferently found. That while the ship was discharging her cargo of salt at Portsmouth, the cables (being in the way) were taken out of the ship, and put into a store upon the wharf; and that the vessel, after discharging, was intended to be have down for the purpose of graving—that she was had been collected to take out the cables, and set as the ship's falls, upon such occasions, and that the force had now been taken the presence of some of the collector, hostile officers; and no gentleman had ever been sent to the Eliza on such doings. From this statement (which was afterwards fully proved on the trial) I was of opinion that the revenue of the United States had not been in danger of suffering material injury and accordingly engaged with Mr. Lad to undertake his defence. The cables in information had been appraised by two merchants and a rope maker (all as respectable as any in the town of Portsmouth) at two hundred and fifty dollars value; and by an order from the district judge had been delivered to Lad, but had again been immediately seized by the officers, alleging that the judge had incompetent and the property had been irregular. I informed Lad that the trial must be tried in the court as the judge was infirm and wholly incapable of transacting business; and as there could be no appeal in the case of the cables, it was but the cell of a dispute whether he had been or not. It was on that time considered by me to be a unfortunate circumstance that the cables were valued so low; that the cables be informed me, was that the rope maker, who well understood the value of such articles, had the same cable was made of its bad materials, and others were so old and rotten they were scarcely little. But with respect to the ship he could appeal if the inflame judge decreed against him—and even if it were possible to convince that the cables were illegally landed, yet as the value did not amount to four hundred dollars, and the affair of the libel was appealing to be merely a mistake at the custom house, he was confident of a condemnation. Accordingly I attended at the time and place; from after the judge arrived and appeared to me very feeble in body and greatly deranged in mind. By his singular appearance and extravagant ideas and language he drew a large concourse of people into the court house, and behaved in so wild and disordered a manner, as to afford mirth to the giddy multitude, but the most painful feelings to the sober and wise. He was indeed, whether and had judgment enough to reflect on the impropriety of his conduct, or was when deprived of his reason. He seemed to have lost recollection of the business he was to hear, and ordered the parties to proceed;—saying that he had heard enough of the libels (using very profane language) and would decide upon them in a few minutes. But both the parties and their counsel, in the general confusion, that I suggested to the difficult attorney the propriety of postponing the business to a convenient day. Mr. Sherburne acquiesced. I accordingly moved to the court adjourn, upon which the judge demanded the reason. I informed him I wished for time to prepare my claims—more distinctly answered in his former hearing—that the cables were of little value, and eventually, and immediately ordered the court adjourned to nine o'clock the next day, adjoining that he would come to be sober." I do not recollect that he said "I am damned drunk now," and am strongly inclined to believe he did not utter those words, and think I should have recollected it, if he had uttered them, as the other expressions made a deep impression on my mind, and very particularly the word damned, and indeed as it behoves as I apprehend it did any others, that the judge was sober. At the hour appointed the next day he attended, and his appearance was sufficiently different from the preceding day, and equally as irrational. I then concluded it would be hard to get through the business of the preceding day, and was strongly inclined to believe he did not utter those words, and think I should have recollected them