GUITEAU'S LAST WITNESS.

THE LAWYERS PREPARING TO MAKE THE CLOSING ARGUMENTS.

Capt. Brooks's Story of what Guiteau Said on the Night Following the Assassination—Dr. Reard's Testimony Excluded—Witnesses Mr. Scoville was not Permitted to Call.

WASHINGTON, Jan. 4. The morning proceedings of the court were preceded by a remark from the prisoner to the effect that it was his usual time to make a speech, but that he had promised the Marshal he would not do so, and he would try to keep quiet. Mr. Scoville then read an affidavit to the Court in support of a motion for leave to introduce additional evidence. The affidavit states that since the case for the defence was closed on Dec. 15 he had learned of the existence of certain witnesses material for the defence on the subject of insanity. They are H. D. Braden, Marshal Green, James Brooks, Thomas Rathbone, Lelie Collins, George W. McElfresh, M. A. Austin, Edward Austin, and Dr. Andrew MacFarland. By four of these witnesses he expected to prove that in the month of June they frequently observed the singular and strange conduct of the prisoner, and were then convinced of his insanity, and freely commented on the fact among themselves. He expected to prove by Rathbone and Brooks that they had an interview with the prisoner in the jail on the 24 or 34 of July, and that he then said that he had been forced to do the act by an inspiration from God. He expected to prove by McElfresh and M. A. Austin that they rode with the prisoner to the jail on the 24 of July, and that all his actions and words were indicative of an insane man. He expected to prove by Dr. McFarland, for thirty-seven years Superintendent of the insane asylum at Jacksonville, Ill., that he knew Luther W. Guiteau, the prisoner's father, and had an opportunity for scientific observation of his mental condition in 1864, and that he then came to the conclusion that Luther W. Guiteau was insane on the subject of religion; also, that from the circumstances and facts developed in evidence in the case, and from the testimony of Dr. McFarland in court, he had formed the opinion that the prisoner is now insane. The affidavit further states that the affiant was related by the prosecution giving the name of McElfresh as one of its witnesses and then not calling him; otherwise he would have been called on the defence.

Mr. Reed argued in support of the motion and Mr. Davidge opposed it, and complained that the defence had taken more time than the prosecution.

Mr. Scoville—It has been said that we have had our experts here. To a limited extent that is true; but from want of means such as the Government controlled——

The District Attorney—What power has the Government had that you have not had?

Mr. Scoville—I will state what has appeared in evidence, that one expert came here at the request of the District Attorney; these scientific gentlemen have left their callings all over the Union and sat here week after week, expecting, as they have themselves testified, to be paid for their attendance; but for that fact, to be paid in full, as they supposed, for their time, not putting themselves at all to the expense of having the experts for the defence examined before us.

The District Attorney—Facts in all the experts for the Government have had.

Mr. Scoville—I will say that every one has sworn that he expected to be paid a compensation for his time, and we all know what that is with a gentleman of that character. The difficulty under which the defence has suffered has been to obtain these experts. Where is the expert for the defence who has been paid? We know of none, and we know that we have no time to pay after the last train when his time was up. And here are these gentlemen waiting now in the vain expectation of seeing the result in the haunting of this man, but the law and the jury slip between them and their pay still.

The Prisoner—I did not intend to say anything about the case this morning. But I simply propose to state what can be proved by McElfresh and Brooks. I tell the district attorney, who is endeavoring to restrain him. Now, do you want quiet, or I will stand four months in the jail? I tell you that I was the man who made the political situation which made much of the President. I propose to show by Mr. Brooks that he came to my cell on the 24 or 34 of July and talked to me on the supposition that there was a conspiracy against the President. I reminded him of that point, and he said that there was no conspiracy in the matter; but that I was induced to do the act on account of the political situation and under Divine pressure. These are the two points that I want to prove by these scientific men.

Judge Cox said he had appreciated from the outset the difficulties under which counsel for the defence labored. Mr. Scoville had come here a stranger to the place and people and to the practices of the court, and had been comparatively a stranger to the practice in criminal for several years. It was seen at the outset that he could receive very little assistance from the prisoner in the development of the defence. The most serious difficulty had undoubtedly been over the claim of the prisoner of the assassination, and which disinclined people from appearing as witnesses for the defence. These were very great difficulties, and he appreciated them so fully that he felt it his duty, in order to secure the prisoner a fair trial, to give a certain latitude to the defence and such facilities as corresponded with the difficulties. If any new fact were developed now that struck his mind as having an important bearing on the defence, or as necessary to a fair presentation of the case, he would do it. It was only on the understanding that the testimony for the defence was formally closed, to allow that fact to be given in evidence. Part of the testimony now proposed to be introduced was offered in the character of corroborating testimony in the first instance. The question was the use of a medical expert as to the condition of the prisoner's mind. He understood the law and practice to be simply this: The law presumed sanity, and the first affirmative testimony on this issue had come from the defence. Expert testimony was a part of the evidence in chief for the defence on that issue, and all the expert testimony on which the defence relied must be offered in chief. Part of it could not be reserved to be offered in way of corroborating testimony. It was the proper time for it because the only and the right of the prosecution to offer evidence on the general question of insanity. The prosecution was not confined to the mere contradiction of witnesses for the defence; but it might go at length into the question and offer independent and affirmative proof on that question. A part of that testimony was that of medical experts. That testimony was not offered strictly in contradiction of the medical testimony for the defence, because one man's opinion was not a contradiction of another man's opinion; but it was offered as independent testimony. When this testimony was closed on the part of the Government then the defence was restricted to a contradiction of facts that may have been testified to on the part of the prosecution, but was not allowed to contradict an expert on the part of the prosecution by the testimony of another expert who had a different opinion. So the privilege of producing expert testimony was limited to the evidence in chief for the defence, and it had to be given in the opinion of the witnesses. He therefore thought the testimony of Dr. McFarland could not be received on the question of the prisoner's sanity.

The offer was also made to prove that immediately after the assassination the prisoner claimed to have acted under a inspiration. At the time the offer was at the stand as a witness to testify that he had committed this act under what he called, indifferently, inspiration or pressure. To rebut that testimony the prosecution had put on the stand Mr. Reynolds, who testified that he had spoken with the prisoner one or two weeks after the assassination, and that in that interview the prisoner did not claim to have acted under inspiration, but assigned exclusively political motives. It was not the object of the prosecution to prove that the act did not inspire the prisoner to ask the jury to infer that the prisoner never did claim this inspiration until several weeks after the assassination, and after he had discovered that those men whom he supposed he was benefiting by his deed had repudiated it and were denouncing him. The hypothesis of counsel by the prosecution to the experts was simply that no claim of having acted under inspiration was made by the prisoner until two weeks afterward, and up to the time of this interview of Mr. Reynolds with him. It would be a waste of time to attempt to show that on the day of the assassination the prisoner did claim inspiration. As surrebuttal testimony that evidence ought to be received.

As to the other testimony offered, which was not simply in anything on the part of the investigation, the common law practice was that the Government should admit all the witnesses whose names were endorsed on the indictment, and it was really incumbent on the Government as a matter of fairness to summon all the witnesses who had been present at the transaction in question. The Government was not bound to call all the witnesses to testify; but as soon as the case of the Government was closed, those witnesses were at the disposal of the defence. The proper time for the defence to call upon them was when the relevant evidence was in course of presentation. The fairness of that was illustrated by the fact that it was in reference to the testimony of Detective McElfresh, who confronted the prisoner in the jail immediately after the occurrence, that it would then be impossible to determine what McElfresh would prove.

The Prisoner—Had a talk with McElfresh prior to the time I had the interview with Mr. Brooks? I had a talk with McElfresh in the jail. I had a talk with Brooks. I had a talk with McElfresh before I had a talk with Brooks. I had a talk with McElfresh before I had a talk with Brooks. I had a talk with McElfresh before