

pulpit by the Rev. John Morehead, who not only thundered against the unfortunate Fleet, but against the printing-press also. It appears that the editor of the *Post* was fully equal to any of these assaults upon him or upon the liberty of the Press. In his replies Fleet was good-natured, and therefore the more severe and the more effective.

On the death of Thomas Fleet the *Evening Post* was carried on by his sons Thomas and John, and they continued to publish it till 1775. It was stopped then in consequence of the discontent growing out of the attempted neutrality of the paper in the great agitation leading to the Revolution. Then, as now, the press were accused of being corrupted and improperly influenced by money. On the 10th of March, 1775, the *Post* said :

Whereas it hath been hinted in several letters lately received from England, that one or more printers of the public newspapers in the principal towns in America are hired, or rather bribed, (from a fund said to be established for that use) for the vile purpose of publishing pieces in their respective papers tending to favor despotism and the present arbitrary and tyrannical proceedings of the ministry relative to America ; The publishers of the Boston *Evening Post* (whose papers have always been conducted with the utmost freedom and impartiality) do, for themselves, thus publicly declare, that no application has ever been made to them to prostitute their paper to such a base and mean purpose ; and should they hereafter be applied to for that design, they shall despise the offer and those who make it, with the greatest contempt ; not but that their paper shall, as usual, be open for the insertion of all pieces that shall tend to amuse or instruct, or to the promoting of useful knowledge and the general good of mankind, as they themselves (who are the sole directors and proprietors thereof) shall think prudent, profitable, or entertaining to their numerous readers.

The battles of Concord and Lexington were fought on the 19th of April, 1775. Without giving any of the particulars of that fight, the paper appeared on the 24th of April for the last time. These scenes of action were only two or three hours' drive from the printing-office of the *Post* ! The British troops had returned to their barracks in Boston on the 20th of that month.

John Peter Zenger, with the *New York Weekly Journal*, next appeared before the public. The first number of that paper was issued on the 5th of November, 1733. It was established in opposition to Bradford's *Gazette* for a political purpose, and published by Zenger, who was a good printer, the importer of the first piano-forte in America, something of a scholar, and a famous editor in his day. He came from Germany when he was thirteen years of age, and was an apprentice of Bradford's. For three years the *Journal* was in a state of bitter war with the administration of Governor William Cosby, and his successor, Lieutenant Governor George Clarke. Zenger, as a politician, was in the interest of Rip Van Dam, a wealthy merchant of New York, and in virtue of his office as President of the Council, acting Governor of the Province till the arrival of Cos-

by. In settling Van Dam's accounts, one half of his salary as governor had to be paid to his successor. This led to the formation of an opposition colonial party. The *Gazette*, under the management of William Bradford, was the government organ.

After repeated animadversions on the authorities in the *Journal*, its editor was arrested on the charge of libel on Sunday, November 17, 1734. He was imprisoned by the government, and kept in confinement nearly nine months before he could obtain a trial. The arrest produced great excitement, and the affair obtained wide-spread notoriety. It was the first action for newspaper libel on this continent. It created the most intense interest in the public mind, and the result was, in the opinion of Gouverneur Morris, "the dawn of that liberty which afterwards revolutionized America." In this view, as well as in the interest of journalism, we devote some space to this important event.

On the 6th of November the governor issued two proclamations on the subject. Here is one of them :

*By his Excellency William Cosby, Capt. General and Governour in Chief of the Provinces of New York, New Jersey, and Territories thereon depending in America, Vice Admiral of the same, and Colonel in his Majesty's Army, &c.*

#### A PROCLAMATION.

WHEREAS by the Contrivance of some evil Disposed and Disaffected Persons, divers Journals or Printed News-Papers (entitled *The New-York Weekly Journal, containing the freshest Advices, foreign and Domestick*) have been caused to be Printed and Published by *John Peter Zenger*, in many of which Journals or Printed News-Papers (but more particularly those numbered 7, 47, 48, 49) are contained divers Scandalous, Virulent, False and Seditious Reflections, not only upon the whole Legislature, in general, and upon the most considerable Persons in the most distinguish'd Stations in the Province, but also upon his Majesty's lawful and rightful Government, and just Prerogative. Which said Reflections seem contrived by the Wicked Authors of them, not only to create Jealousies, Discontents and Animosities in the Minds of his Majesty's Lige People of this Province to the Subversion of the Peace and Tranquility thereof but to alienate their Affection from the best of Kings, and raise *Factions, Tumults and Sedition* among them. Wherefore I have thought fit, by and with the Advice of his Majesty's Council, to issue this Proclamation, hereby Promising a Reward of *Fifty Pounds* to such Person or Persons who shall discover the Author or Authors of the said Scandalous, Virulent and Seditious Reflections contained in the said Journals or Printed News-Papers, to be paid to the said Person or Persons discovering the same as soon as such Author shall be convicted of having been the Author or Authors thereof.

Given under my Hand and Seal at Fort George, in New York, the sixth day of November, in the 8th year of his Majesty's Reign, Annoq Domini, 1734.

W. COSBY.

The other proclamation offered a reward of £20 for the discovery of "the Author of two late scandalous Songs or Ballads, Printed and dispersed in this City, &c., highly defaming the Administration of his Majesty's Government in this Province." The arrest of Zenger was the result of these official documents. The specific libel complained of was, in substance, that "the people of this city (New

York) and province think, as matters now stand, that their liberties and properties are precarious, and that slavery is like to be entailed on them and their posterity, if some past things be not amended."

On the 20th of November Zenger was brought, by a writ of habeas corpus, before the Chief Justice at his chamber, where the writ was returnable. The argument of that matter was ordered to be at the City Hall on the 23d. After a long debate on that day, the Chief Justice directed that Zenger should be admitted to bail, and bound by recognizance, with two securities, in the sum of \$2000. He was remanded to prison in default thereof. It does not appear that Zenger at all wilted under this persecution, for on the 25th of November the *Journal* contained the following card to his readers :

*To all my Subscribers and Benefactors who take my weekly Journall: Gentlemen, Ladies and Others:*

As you last week were Disappointed of my Journall, I think it incumbent upon me, to publish my Apology which is this. On the Lords Day, the Seventeenth of this Instant, I was Arrested, taken and Imprisoned in the common Gaol of this City, by Virtue of a Warrant from the Governour, and the Honourable Francis Harrison, Esq; and others in Council of which (God willing) you'll have a Copy, whereupon I was put under such Restraint that I had not the Liberty of Pen, Ink, or Paper, or to see, or speak with People, till upon my Complaint to the Honourable the Chief Justice, at my appearing before him upon my *Habeas Corpus* on the Wednesday following. Who discountenanced that Proceeding, and therefore I have had since that Time, the Liberty of Speaking through the Hole of the Door; to my Wife and Servants by which I doubt not you'll think me sufficiently Excused for not sending my last week's *Journall*, and I hope for the future by the Liberty of Speaking to my Servants thro' the Hole of the Door of the Prison, to entertain you with my weekly *Journall* as formerly

*And am your obliged,  
Humble Servant*

J. PETER ZENGER.

The *Journal* continued to be published, and Zenger to write for it, in spite of his imprisonment. Indeed, the event made that paper the most popular of the two then printed in New York. Bradford, as publisher of the official organ, the *Gazette*, was compelled to print articles and communications reflecting on his rival in business; but Zenger manfully met his opponents, giving blow for blow, and a little more. Some idea of his style may be had in the annexed communication, which appeared in the *Journal* after he had been one month in jail :

*From my Prison, December 20th, 1734.*

Oh cruelty unknown before  
To any barbarous savage shore,  
Much more when Men so much profess  
Humanity and Godliness

It is no new Thing for even a Man of Vertue to fall under Distress; but to mock him when distress'd or under Misfortunes, is what has been accounted a Vice among the more civilized Heathens; however it is my case at present, and my Adversaries are not content with my Imprisonment, but I am made their laughing Stock.

There is a great Noise made in that ridiculous Letter in Mr. Bradford's last *Gazette* about setting the Province in Flames, raising of Sedition and Tumults, &c.

I know of none, either past or intended; if my Adversaries know of any, they'd do well to discover them and prevent ill Consequences. I have printed some Complaints to the Public, those complain'd of had a Remedy to answer without coming to me; and had they come to me, they would have found the same Fidelity some of them experienc'd before; They may tax me with Weaknesses accident to human Nature; but it is out of their Power (and I hope ever will be) truly to prove me guilty of any premeditated Wickedness.

That Author begins the Confession he would have me make with a very puny Witticism on my Address to my Readers; by saying *It sounds like the Language of the Prize-fighter or Poppet Show Man*. I can assure him that many *Gentlemen and Ladies* read my *Journals*; there is also some *others* and among them some *S—s*, witness that Author. I might tell him that the Whole of his Performance sounds too much like the Language of a bankrupt Vinter or ——— &c.

That I was brought over at the charitable Expence of the Crown is the only Truth that grooping Fumbler found when he studied that clumsy Performance. I acknowledge it; Thanks to QUEEN ANNE whose Name I Mention with Reverence, her Bounty to me and my distress'd County Folks is to be gratefully remembered. If that Author has contributed any Thing towards it, I begg to be informed. I assure him that my Acknowledgement shall not be wanting, notwithstanding his ill Treatment: If he has not, I begg leave to tell him, that it is mean for him to twit me with Benefits that I am no ways beholden to him for.

That my Friends are prettendly so, will (I hope) prove as false as my Enemies are malicious; whatever some of my Adversaries may be, I beleive my Friends to be Men of Honour and Probity. And if they even should forsake me, I would say of them as *Cicero* said in Answer to the Notion the *Epicureans* had of a God, *fatales sint Amici, ut nulla gratia, nulla hominum, charitate teneantur valeant*. I'll trust to the Laws of the Realm and my country, and still retain my Integrity: FOR HONESTY IS THE BEST POLICY.

My Sword was never intended to protect me against a sworn Officer in the Discharge of his Duty: But since this Scribbler must needs make himself merry with it, I think it may not be amiss to tell my Readers a serious but true Story. About 8 Weeks agoe the Honourable *Francis Harrison*, came to my House, and swore by the God that made him he would lay his Cane over me the first Time he met me in the Street, with some scurrilous Expressions more fit to be uttered by a Dray Man than a Gentleman. Against such Assaults my Sword not only could but would have protected me, and shall while I have it, against any Man that has Impudence enough to attempt any thing of that Nature—*Veni vi repelle licet*.

What private Orders the Sheriff had concerning me are best known to himself. This I know that from the time of my being apprehended till the Return of the Precept by virtue of which I was taken, I was deny'd the Use of Pen, Ink, and Paper; Alterations were purposely Made on my Account, to put me in a Place by myself, where I was strictly confin'd above 50 Hours, that my Wife might not speak to me but in presence of the Sub-sheriff; to say this was done without Orders is Lybelling the Sheriff, and I hope he will resent it.

To conclude, I begg of this indifferent Gentleman (indifferent indeed but how impartial!) That if he needs will continue Author, to write Ballads for Children if he has the Knack of Versifying; if he has not, then let him write some Thing in Imitation of *Tom Thum, Jack*, the Giant Killer, or any Thing, the more nonsensical it is the better it will suit his Genius; let him bring his Lucubrations to me, and on the Word of an honest Man, I'll earn his Money as faithfully as any Printer in America. But let him leave Lampooning of me, a Task equally mean as wicked, for I think no honest Man can be guilty of deriding his Fellow mortal when he sees him struggling in the Waves of Adversities, Laughing is catching, what has hapned to me may befall him & perhaps with double weight. I am,

J. PETER ZENGER

The *Gazettes* containing the libels and the ballads were ordered to be burnt by the common hangman. The mayor and magistrates of the city were directed to be present at this holocaust to the freedom of the Press. The corporation refused to attend. The Pro-

vincial Assembly also declined to join in this crusade against the Press. It was in consequence of this rebellion that the government party made up their minds to crush the editor under the weight of legal proceedings, and, to accomplish this more effectually, Zenger's counsel, on some quibble, and in the most arbitrary manner, was "thrown over the bar" by the judge, who had been named by Cosby alone, without the sanction of his council, on the plea of Zenger's counsel that he could not have an impartial trial before a court thus constituted. But the friends of the editor met this contingency. They quietly engaged Andrew Hamilton, the celebrated jurist of Philadelphia, the warm personal friend of Franklin, and the sturdy upholder of the rights of the Press and the people, to defend Zenger. The court met on the 4th of August, 1735. The chamber was crowded. The unexpected appearance of Hamilton by the side of Zenger increased the excitement in the case. The publication of the article was admitted. Mr. Hamilton offered to prove the truth of the statements embraced in the alleged libel, but this proposition was overruled by the court, which was unmistakably on the government side of the question. It was optional with judges in England to admit or refuse evidence in such cases, and they were sustained in this action by the government. Indeed, they were encouraged to do so. On the trial of Franklin in 1731, in London, for the publication of a libel in the *Craftman*, Lord Raymond refused, as the chief justice in the case of Zenger did, to admit any evidence to prove the matter to be true, and stated that he was only following precedents in cases of a similar character. But Pemberton permitted evidence to be given as to the truth of an alleged libel in protesting that Sir Edmondbury Godfrey had murdered himself; and Holt repeatedly offered to let Fuller, on a similar charge, prove the truth of what he said. Interest regulated these rulings. It was not for the interest of Governor Cosby that the truth of the alleged libels of Zenger should be proved. There being no evidence, therefore, in the case, Mr. Hamilton proceeded to sum up, and addressed the jury as follows:

Then, gentlemen of the jury, it is to you we must now appeal for witnesses to the truth of the facts we have offered, and are denied the liberty to prove; and let it not seem strange that I apply myself to you in this manner; I am warranted so to do, both by law and reason. The law supposes you to be summoned out of the neighborhood where the fact is alleged to be committed; and the reason of your being taken out of the neighborhood is because you are supposed to have the best knowledge of the fact that is to be tried; and were you to find a verdict against my client, you must take upon you to say that the papers referred to in the information, and which we acknowledge we printed and published, are false, scandalous and seditious; but of this I can have no apprehension. You are citizens of New York; you are really what the law supposes you to be, honest and lawful men; and the facts which we offer to prove were not committed in a corner. They are notoriously known to be true; and, therefore, in your justice lies

our safety. And as we are denied the liberty of giving evidence to prove the truth of what we have published, I will beg leave to lay it down as a standing rule in such cases, that the suppressing of evidence ought always to be taken for the strongest evidence, and I hope it will have weight with you. But since we are not admitted to examine our witnesses, I will endeavor to shorten the dispute with Mr. Attorney, and to that end I desire he would favor us with some standard definition of a libel, by which it may be certainly known whether a writing be a libel, yea or not.

*Attorney-General.*—The books, I think, have given a very full definition of a libel. They say it is in a strict sense taken for a malicious defamation, expressed either in writing or printing, and tending either to blacken the memory of one who is dead or the reputation of one who is alive, and to expose him to public hatred, contempt or ridicule. But it is said that, in a larger sense, the notion of a libel may be applied to any defamation whatsoever, expressed either by signs or pictures; as by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner; and since the chief cause for which the law so severely punishes all offences of this nature is the direct tendency of them to a breach of the public peace, by provoking the parties injured, their friends and families to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most seriously felt; and since the plain meaning of such scandal, as is expressed by signs or pictures, is as obvious to common sense and as easily understood by every common capacity, and altogether as provoking as that which is expressed by writing or printing, why should it not be equally criminal? From the same ground it also appears to follow that such scandal as is expressed in a scoffing and ironical manner makes a writing as properly a libel as that which is expressed in direct terms; as where a writing in a taunting manner, reckoning up several acts of public charity done by one, says: "You shall not play the Jew nor the hypocrite," and so goes on in a strain of ridicule to insinuate that what he did was owing to his vain glory; or where a writing, pretending to recommend to one the character of several great men for his imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such qualities only which their enemies charge them with the want of, as by proposing such a one to be imitated for his courage who is known to be a great statesman, but no soldier; and another to be imitated for his learning who is known to be a great general but no scholar &c, which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly said so.

*Hamilton.*—Ay, Mr. Attorney, but what certain standard rule have the books laid down by which we can certainly know whether the words or the signs are malicious? Whether they are defamatory? Whether they tend to a breach of the peace, and are a sufficient ground to provoke a man, his family or friends to acts of revenge, especially those of the ironical sort of words? And what rule have you to know when I write ironically? I think it would be hard when I say such a man is a very worthy, honest gentleman, and of fine understanding, that therefore I meant he was a knave or a fool.

After a brief discussion on the question whether the jury or the judges were to find the libelous character of the publication, the court intimated that "the jury could find that Zenger printed and published those papers, and leave it to the court to judge whether they were libelous," Mr. Hamilton continued:

I know, may it please your Honor, the jury may do so; but I likewise know they may do otherwise. I know they have the right, beyond all dispute, to determine both the law and the fact, and where they do not doubt the law they ought to do so. This manner of leaving it to the judgement of the Court whether the words are libellous or not, in effect renders juries useless, to say no worse, in many cases; but this I shall have occasion to speak to by-and-by; and I will, with the Court's leave, proceed to examine the inconveniences that must inevitably arise from the doctrines Mr. Attorney has laid down; and I observe in support of this

prosecution, he has frequently repeated the words taken from the case *de libellis famosis*, in the fifth of Coke. This is indeed the leading case to which almost all the cases upon the subject of libels refer; and I must insist upon saying that, according as this case seems to be understood by the Court and Mr. Attorney, it is not law at this day. For though I own it to be base and unworthy to scandalize any man, yet I think it is even villainous to scandalize a person of public character, and I will go so far into Mr. Attorney's doctrine as to agree, that if the faults, mistakes, nay, even the vices of such a person be private and personal, and do not affect the peace of the public, or the liberty or property of our neighbor, it is unmanly and unmannerly to expose them either by word or writing. But when a ruler of a people brings his personal feelings, but much more his vices into his administration, and the people find themselves affected by them either in their liberties or properties, that will alter the case mightily; and all the high things that are said in favor of rulers and of dignities, and upon the side of power, will not be able to stop people's mouths when they feel themselves oppressed—I mean in a free government. It is true, in times past it was a crime to speak truth, and in that terrible court of star chamber many worthy and brave men suffered for so doing; and yet, even in that court, and in those bad times, a great and good man durst say what I hope will not be taken amiss of me to say in this place, that the practice of informations for libels is a sword in the hands of a wicked King, and an arrant coward to cut down and destroy the innocent; the one cannot because of his high station, and the other dares not, because of his want of courage, revenge himself in another manner.

*Attorney-General.*—Pray, Mr. Hamilton, have a care what you say, do not go too far, either! I do not like those liberties.

*Hamilton.*—Sure, Mr. Attorney, you will not make any applications; all men agree that we are governed by the best of Kings, and I cannot see the meaning of Mr. Attorney's caution; my well known principles, and the sense I have of the blessings we enjoy under his present Majesty, make it impossible for me to err, and I hope, even to be suspected, in that point of duty to my King. May it please your honor, I was saying, that notwithstanding all the duty and reverence claimed by Mr. Attorney to men in authority, they are not exempt from observing the rules of common justice, either in their private or public capacities; the laws of our mother country know no exemption. It is true, men in power are harder to be come at for wrongs they do either to a private person or to the public, especially a governor in the plantations, where they insist upon an exemption from answering complaints of any kind in their own government. We are indeed told, and it is true, they are obliged to answer a suit in the King's Courts at Westminster for a wrong done to any person here; but do we not know how impracticable this is to most men among us, to leave their families, who depend upon their labor and care for their livelihood, and carry evidence to Britain, and at a great, nay a far greater expense than almost any of us are able to bear, only to prosecute a governor for an injury done here. But when the oppression is general, there is no remedy even in that way; no, our Constitution has, (blessed be God) given us an opportunity, if not to have such wrongs redressed, yet by our prudence and resolution to prevent in a great measure the committing of such wrongs, by making a governor sensible that it is his interest to be just to those under his care; for such is the sense that men in general (I mean freemen) have of common justice, that when they come to know that a chief magistrate abuses the power with which he is trusted for the good of the people, and is attempting to turn that very power against the innocent, whether of high or low degree, I say, mankind in general seldom fail to interpose, and as far as they can, prevent the destruction of their fellow subjects. And has it not often been seen (and I hope it will always be seen) that when the representatives of a free people, are by just representations or remonstrances made sensible of the sufferings of their fellow subjects, by the abuse of power in the hands of a governor, they have declared (and loudly too) that they were not obliged by any law to support a governor who goes about to destroy a province or a colony, or their privileges, which by his Majesty he was appointed, and by the law he is bound to protect and encourage. But I pray it may be considered, of what use is this mighty privilege if every man that suffers must be silent, and if a man must be taken up as a libeler for telling his sufferings to his neighbor? I know I may be answered, have you not a legislature? Have you

not a house of representatives to whom you may complain? And to this I answer, we have. But what then: is an assembly to be troubled with every injury done by a governor? Or are they to hear of nothing but what those in the administration will please to tell them? Or what sort of a trial must a man have? And how is he to be remedied: especially if the case were as I have known it to happen in America in my time; that a governor who has places, (I will not say pensions, for I believe they seldom give that to another which they can take to themselves) to bestow, and can or will keep the same assembly, after he has modeled them so as to get a majority of the house in his interest, for near twice seven years together? I pray what redress is to be expected for an honest man, who makes his complaint against a governor, to an assembly who may properly enough be said to be made by the same governor against whom the complaint is made? The thing answers itself. No, it is natural, it is a privilege. I will go further, it is a right which all freemen claim, and are entitled to, to complain when they are hurt; they have a right publicly to remonstrate against abuses of power in the strongest terms; to put their neighbors upon their guard against the craft or open violence of men in authority, and to assert with courage the sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it as one of the greatest blessings Heaven can bestow. And when a house of assembly, composed of honest freemen, sees the general bent of the people's inclinations, that is it which must and will—I am sure it ought to—weigh with a legislature in spite of all the craft caressing and cajoling, made use of by a governor to divert them from hearkening to the voice of their country.

Mr. Hamilton then examined the law of libel at some length, and continued:

From all which, I insist, it is plain that the jury are by law at liberty (without any affront to the judgement of the Court) to find both the law and the fact in our case, as they did in the case I am speaking to, which I will beg leave just to mention, and it is this:—Messrs. Penn and Mead, being Quakers, and having met in a peaceable manner, and after being shut out of their meeting-house, preached in Grace Church street, in London, to the people of their own persuasion, and for this they were indicted, and it was said, “that they, with other persons, to the number of three hundred, unlawfully and tumultuously assembled, to the disturbance of the peace, &c.” To which they pleaded not guilty. And the petit jury being sworn to try the issue between the king and the prisoners, that is, whether they were guilty according to the form of the indictment; here there was no dispute but that they were assembled together to the number mentioned in the indictment; but, whether that meeting together was riotously, tumultuously and to the disturbance of the peace was the question. And the Court told the jury it was, and ordered the jury to find it so; “for,” said the Court, “the meeting was the matter of fact, and that is confessed, and we tell you it is unlawful, for it is against the statute; and the meeting being unlawful, it follows, of course, that it was tumultuous and to the disturbance of the peace.” But the jury did not think fit to take the Court's word for it; for they could find neither riot, tumult or anything tending to breach of the peace committed at that meeting, and they acquitted Messrs. Penn and Mead. In doing of which they took upon them to judge both the law and the fact, at which the Court (being themselves true courtiers) were so much offended that they fined the jury forty marks a piece, and committed them till paid. But Mr. Bushel, who valued the right of a jurymen, and the liberty of his country more than his own, refused to pay the fine, and was resolved (though at a great expense and trouble too,) to bring, and did bring his *habeas corpus*, to be relieved from his fine and imprisonment, and he was released accordingly; and this being the judgement in his case it is established for law, “that the judges how great soever they be, have no right to fine, imprison and punish a jury for not finding a verdict according to the discretion of the Court.” And this, I hope, is sufficient to prove that jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings, in judging of the lives, liberties, or estates of their fellow subjects; and so I have done with this point.

This is the second information for libelling of a governor that I have ever known in America, and the first, though it may look like a romance, yet, as it is



true, I will beg leave to mention it :—Governor Nicholson, who happened to be offended with one of his clergy, met him one day upon the road, and, as was usual with him, under the protection of his commission, used the parson with the worst of language, threatened to cut off his ears, slit his nose, and at last to shoot him through the head. The parson being a reverend man, continued all this time uncovered in the heat of the sun, until he found an opportunity to fly for it, and coming to a neighbor's house, felt himself very ill of a fever, and immediately writes for a doctor, and, that his physician might be the better judge of his distemper, he acquainted him with the usage he had received, concluding that the governor was certainly mad, for that no man in his senses would have acted in that manner. The doctor unhappily shows the parson's letter ; the governor came to hear it, and so an information was preferred against the poor man for saying he believed the governor was mad ; and it was laid in the information to be false, scandalous and wicked, and wrote with intent to move sedition among the people, and bring his Excellency in contempt. But by an order from the late Queen Anne, there was put a stop to that prosecution, with sundry others set on foot by the same governor, against gentlemen of the greatest worth and honor in that government.

And, may I not be allowed, after all this, to say that by a little countenance, almost any thing which a man writes may, with the help of that useful term of art, called an *inuendo*, be construed to be a libel, according to Mr. Attorney's definition of it ; that whether the words are spoken of a person of a public character, or of a private man, whether dead or living, good or bad, true or false, all make a libel, for according to Mr. Attorney, after a man hears a writing read, or reads or repeats it, or laughs at it, they are all punishable. It is true, Mr. Attorney is so good as to allow, after the party knows it to be a libel ; but he is not so kind as to take the man's word for it.

If a libel is understood in the large and unlimited sense urged by Mr. Attorney, there is scarce a writing I know that may not be called a libel, or scarce any person safe from being called to an account as a libeller ; for Moses, meek as he was, libelled Cain, and who is it that has not libelled the devil ; for according to Mr. Attorney, it is no justification to say one has a bad name. Echarad was libelled by our good King William. Burnet has libelled, among many others, King Charles and King James, and Rapin has libelled them all. How must a man speak or write, or what must he hear, read or sing, or when must he laugh, so as to be secure from being taken up as a libeller ? I sincerely believe, that were some persons to go through the streets of New York now-a-days, and read a part of the Bible, if it was not known to be such, Mr. Attorney, with the help of his *inuendos*, would easily turn it into a libel. As for instance, the sixteenth verse of the ninth chapter of Isaiah : "The leaders of the people caused them to err and they that are led by them are destroyed." But, should Mr. Attorney go about to make this a libel he would read it thus : "The leaders of the people (*inuendo*, the Governor and Council of New York) cause them (*inuendo*, the people of this province) to err, and they (the people of this province meaning) are destroyed (*inuendo*, are deceived into the loss of their liberty), which is the worst kind of destruction. Or, if some person should publicly repeat, in a manner not pleasing to his betters, the tenth and eleventh verses of the fifty-fifth chapter of the same book, there Mr. Attorney would have a large field to display his skill, in the artful application of his *inuendos*. The words are, "His watchmen are all blind, they are ignorant ; yea, they are greedy dogs, that can never have enough." But, to make them a libel no more is wanting but the aid of his skill in the right adapting his *inuendos*. As for instance, "His watchmen (*inuendo*, the Governor, Council and Assembly,) are blind, they are ignorant, (*inuendo*, will not see the dangerous designs of his Excellency,) yea, they, (the Governor and Council meaning,) are greedy dogs which can never have enough, (*inuendo*, enough of riches and power.)

Such an instance as this seems only fit to be laughed at ; but I may appeal to Mr. Attorney himself, whether these are not at least equally proper to be applied to his Excellency and his ministers, as some of the inferences and *inuendos* in his information against my client. Then, if Mr. Attorney is at liberty to come into court and file an information in the king's name, without leave, who is secure, whom he is pleased to prosecute as a libeller ? And, as the crown law is contended for in bad times, there is no remedy for the greatest oppression of this sort,

even though the party prosecuted is acquitted with honor. And give me leave to say, as great men as any in Britain have boldly asserted that the mode of prosecution by information, when a grand jury will not find a bill of indictment, is a national grievance, and greatly inconsistent with that freedom which the subjects of England enjoy in most other cases. But, if we are so unhappy as not to be able to ward off this stroke of power directly, yet let us take care not to be cheated out of our liberties by forms and appearances; let us always be sure that the charge in the information is made out clearly, even beyond a doubt; for though matters in the information may be called form, upon trial, yet they may be and often have been found to be matters of substance upon giving judgment.

Gentlemen the danger is great in proportion to the mischief that may happen through our too great credulity. A proper confidence in a court is commendable; but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the discretion of other persons. If you should be of opinion that there is no falsehood in Mr. Zenger's papers, you will, nay, (pardon me for the expression,) you ought to say so; because you do not know whether others, (I mean the Court,) may be of that opinion. It is your right to do so, and there is much depending upon your resolution, as well as upon your integrity.

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I am truly unequal to such an undertaking, on many accounts. And you see I labor under the weight of many years, and am borne down by many infirmities of body; yet old and weak as I am I should think it my duty, if required, to go to the utmost part of the land, where my service could be of any use in assisting to quench the flame of prosecutions upon informations set on foot by the government, to deprive a people of the right of remonstrating, (and complaining too,) of the arbitrary attempts of men in power. Men who injure and oppress the people under their administration provoke them to cry out and complain, and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind. But to conclude, the question before the Court and you, gentlemen of the jury, is not of small or private concern; it is not the cause of a poor printer, nor of New York alone, which you are trying. No! it may, in its consequences, affect every freeman that lives under a British government, on the main of America. It is the best cause; it is the cause of liberty; and I make no doubt but your upright conduct, this day, will not only intitle you to the love and esteem of your fellow citizens, but every man who prefers freedom to a life of slavery, will bless and honor you as men who have baffled the attempts of tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us a right—the liberty—both of exposing and opposing arbitrary power in those parts of the world at least, by speaking and writing truth.

Mr. Hamilton was heard with intense interest. His address was in tone, sentiment, and eloquence equal to that of the celebrated Erskine in 1792, in the great libel suit of Thomas Paine for the publication of the Rights of Man in London. On the conclusion of Mr. Hamilton's remarks, the Attorney General briefly replied. The Chief Justice charged the jury, and again said that as the defendant had confessed the publication of the words, the only question for them was whether or not the words were libelous, and as this was a question of law, the jury could safely leave it to the Court. After a short absence, the jury returned with a verdict of Not Guilty.

The reception of the verdict by the crowd was immense. Shouts filled the court. When the Chief Justice admonished the audience, and threatened the leader with imprisonment, a son of Admiral Norris declared himself the leader, and called for more cheers; and

they were repeated with a strong and significant will. Mr. Hamilton was conducted by the crowd to a splendid entertainment. When he left the city for his home in Philadelphia, a grand salute was fired on starting in the barge across the North River. He was presented with the freedom of the city by the Common Council for "the remarkable service done by him to the city and colony by his learned and generous defence of the rights of mankind, and the liberty of the Press." On the splendid gold box in which the certificate of the freedom of the city was inclosed were these words, encircling the arms of the city :

*Demensæ Sleges—Timesfacta Libertas—Hæc tandem emergunt.*

In a flying garter :

*Non nummis, virtute paratur.*

On the front :

*Ita cuique eveniat ut de republica meruit.*

Thus concluded this remarkable case, important in every aspect to the Press, and the key-note to the revolutionary spirit that was then springing up throughout the colonies.

The *Journal* was a small-sized sheet, and printed on much-worn Pica type. Sometimes one, and sometimes two or three advertisements would appear in this famous paper. Among the few thus published was the following, which would indicate that Orange County butter has, in later times, perhaps by the introduction of Tricopherous, lost some of its virtues :

†† To be sold, by Peter Lynch, near Mr. Rutgers' Brewhouse, very good Orange Butter. It is excellent for Gentlewomen to comb up their hair with. It also cures children's sore heads.

Zenger continued to publish the *Journal* till his death in 1746. His widow then managed the paper for a time. It afterward passed into the hands of his son, John Zenger, who conducted it till 1752. On the 28th of February, 1751, the following curious announcement appeared :

The country subscribers are earnestly entreated to send in their arrears ; if they do not pay promptly, I shall leave off sending the paper, and try to recover my money otherwise. Some of these easy subscribers are in arrear for more than seven years. After serving them so long, I fancy it is time, and high time, that they should repay me my advances ; for the truth is—and they may believe me—I have worn my clothes threadbare.

N.B. Gentlemen, if you have no money to spare, still think of your printer. When you have read this Advertisement, and thought on it, you cannot do less than say, "Come, wife !" (I address myself principally to married folk, but let bachelors take it to heart also), "Come, wife, let us send the poor printer some flour, or a few hams, butter, cheese, poultry, etc."

In the mean while, I am your obedient servant,

JOHN ZENGER.

In spite of this appeal for bread and butter, in spite of the fame of his father's trial in 1735, in spite of the freedom of the city in a