

## ***The Trial of John Peter Zenger***

**- as abbreviated in Snyder and Morris, *A Treasury of Great Reporting*.**

MR. HAMILTON. "May it please Your Honor, I am concerned in this cause on the part of Mr. Zenger, the defendant. The information against my client was sent me a few days before I left home, with some instructions to let me know how far I might rely upon the truth of those parts of the papers set forth in the information, and which are said to be libelous.

"Although I am perfectly of the opinion with the gentleman who has just now spoken on the same side with me, as to the common course of proceedings meant in putting Mr. Attorney upon proving that my client printed and published those papers mentioned in the information yet I cannot think it proper for me (without doing violence to my own principles) to deny the publication of a complaint, which I think is the right of every freeborn subject to make when the matters so published can be supported with truth.

"Therefore I shall save Mr. Attorney the trouble of examining his witnesses to that point. I do (for my client) confess' that he both printed and published the two newspapers set forth in the information - and I hope that in so doing he has committed no crime."

MR. ATTORNEY. "Then if Your Honor pleases, since Mr. Hamilton has confessed the fact, I think our witnesses maybe discharged. We have no further occasion for them."

MR. HAMILTON. "If you brought them here only to prove the printing and publishing of these newspapers, we have acknowledged that, and shall abide by it."

MR. CHIEF JUSTICE. "Well, Mr. Attorney, will you proceed?"

MR. ATTORNEY. "Indeed, Sir, as Mr. Hamilton has confessed the printing and publishing of these libels, I think the jury must find a verdict for the king. For supposing they were true, the law says that they are not the less libelous for that. Nay, indeed the law says their being true is an aggravation of the crime."

MR. HAMILTON. "Not so neither, Mr. Attorney. There are two words to that bargain. I hope it is not our bare printing and publishing a paper that will make it a libel. You will have something more to do before you make my client a libeler. For the words themselves must be libelous that is, *false*, *scandalous*, and *seditionous* or else we are not guilty."

MR. ATTORNEY. ... The case before the Court is whether Mr. Zenger is guilty of libeling His Excellency the Governor of New York, and indeed the whole administration of the government. Mr. Hamilton has confessed the printing and publishing, and I think nothing is plainer than that the words in the information are *scandalous*, and *tend to sedition*, and *to disquiet the minds of the people of this Province*. If such papers are not libels, I think it may be said that there can be no such thing as a libel."

MR. HAMILTON. "May it please Your Honor, I cannot agree with Mr. Attorney. For although I freely acknowledge that there are such things as libels, yet I must insist at the same time that what my client is charged with is not a libel. And I observed just now

that Mr. Attorney, in defining a libel, made use of the words *scandalous, seditious, and tend to disquiet the people*. But, whether with design or not I will not say, he omitted the word *false*.

MR. ATTORNEY. "I think that I did not omit the word *false*. But it has been said already that it may be a libel notwithstanding that it may be true."

MR. HAMILTON. "In this I must still differ with Mr. Attorney. For I depend upon it that we are to be tried upon this information now before the Court and the jury, and to which we have pleaded *Not guilty*. By it we are charged with printing and publishing 'a certain false, malicious, seditious, and scandalous libel.' This word *false* must have some meaning, or else how came it there?..."

MR. CHIEF JUSTICE. "You cannot be admitted, Mr. Hamilton, to give the truth of a libel in evidence. A libel is not to be justified; for it is nevertheless a libel that it is true."

MR. HAMILTON. "I am sorry the Court has so soon resolved upon that piece of law. I expected first to have been heard to that point. I have not, in all my reading, met with an authority that says we cannot be admitted to give the truth in evidence upon an information for libel."

MR. CHIEF JUSTICE. "The law is clear that you cannot justify a libel."

MR. CHIEF JUSTICE. "Mr. Hamilton, the Court is of the opinion that you ought not to be permitted to prove the facts in the papers. These are the words of the book, *It is far from being a justification of a libel that the contents thereof are true, or that the person upon whom it is made had a bad reputation, since the greater appearance there is of truth in any malicious invective, so much the more provoking it is.*"

MR. HAMILTON. "These are Star Chamber cases, and I was in hopes that practice had been dead with the court."

MR. CHIEF JUSTICE. "Mr. Hamilton, the Court have delivered their opinion, and we expect that you will use us with good manners. You are not to be permitted to argue against the opinion of the Court."

MR. HAMILTON. "With submission, I have seen the practice in very great courts, and never heard it deemed unmannerly to -- "

MR. CHIEF JUSTICE. "After the Court have declared their opinion, it is not good manners to insist upon a point in which you are overruled."

MR. HAMILTON. "I will say no more at this time. The Court, I see, is against us in this point -- and that I hope I may be allowed to say."

MR. CHIEF JUSTICE. "Use the Court with good manners and you shall be allowed all the liberty you can reasonably desire."

MR. HAMILTON. "I thank Your Honor. Then, Gentlemen of the Jury, it is to you that we must now appeal for witnesses to the truth of the facts we have offered, and are denied the liberty to prove. Let it not seem strange that I apply myself to you in this manner. I am warranted by both 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*. Were you to find a verdict against my client, you must take it 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 according to my brief, the facts which we offer to prove were not committed in a corner. *They are notoriously known to be true*. 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 that weight with you.

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, *to wit, 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.*"

... MR. ATTORNEY. "Pray, Mr. Hamilton, have a care what you say, don't go too far. I don't like those liberties."

MR. HAMILTON. "Surely, Mr. Attorney, you won't 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 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 exemptions. ...

"I hope to be pardoned, Sir, for my zeal upon this occasion. It is an old and wise caution that *when our neighbor's house is on fire we ought to take care of our own*. For though -blessed be God I live in a government where liberty is well understood and freely enjoyed, yet experience has shown us all - I am sure it has to me that a bad precedent in one government is soon set up for an authority in another. And therefore I cannot but think it my, and every honest man's, that while we pay all due obedience to men in authority we ought at the same time to be upon our guard against power wherever we apprehend that it may affect ourselves or our fellow subjects.

"I am truly very unequal to such an undertaking on many accounts. You see that I labor under the weight of many years, and am bowed down with great 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 services 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 that 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 one poor printer, nor of New York alone, which you are now trying. No! It may in its consequence affect every free man 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 entitle 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 attempt 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 to liberty of both exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth."

MR. CHIEF JUSTICE. "Gentlemen of the Jury: The great pains Mr. Hamilton has taken to show how little regard juries are to pay to the opinion of judges, and his insisting so much upon the conduct of some judges in trials of this kind, is done no doubt with a design that you should take but very little notice of what I might say upon this occasion. I shall therefore only observe to you that as the facts or words in the information are confessed, the only thing that can come in question before you is whether the words as set forth in the information make a libel. And that is a matter of law, no doubt, and which you may leave to the Court. But I shall trouble you no further with anything more of my own, but read to you the words of a learned and upright judge in a case of the like nature.

*To say that corrupt Officers are appointed to administer Affairs is certainly a reflection on the Government. If People should not be called to an Account for possessing the People with an ill Opinion of the Government, no Government can subsist. For it is necessary for all governments that the people should have a good opinion of it. And nothing can be worse to any government than to endeavor to procure animosities; as to the management of it, this has always looked upon as a crime, and no government can be safe without it be punished."*

MR. HAMILTON. "I humbly beg Your Honor's pardon, I am very much misapprehended if you suppose that what I said was so designed."

Sir, you know I made an apology for the freedom that I found myself under a necessity of using upon this occasion. I said there was nothing personal designed. It arose from the nature of our defense."

#### The Verdict

*The jury withdrew to begin deliberations, but quickly returned with their verdict. Asked by the clerk whether John Peter Zenger was guilty of printing and publishing the libels in the information, Thomas Hunt, the jury foreman replied: "Not guilty." Zenger wrote that with those two words "there were three huzzas in the hall, which was crowded with people; and the next day I was discharged from my imprisonment."*