

John Peter Zenger: A Brief Narrative of the Case and Trial of John Peter Zenger (1736)

On Tuesday, July 29, 1735, the Court opened. On the motion of Mr. Chambers for a struck jury, pursuant to the rule of the preceding term, the Court were of the opinion that I was entitled to have a struck jury. That evening at five o'clock some of my friends attended the clerk for striking the jury; when to their surprise the clerk [Harison], instead of producing the Freeholders book, to strike the jury from it in their presence as usual, produced a list of 48 persons whom he said he had taken out of the Freeholders book.

My friends told him that a great number of these persons were not freeholders; that others were persons holding commissions and offices at the Governor's pleasure; that others were of the late displaced magistrates of this city, who must be supposed to have resentment against me for what I had printed concerning them; that others were the Governor's baker, tailor, shoemaker, candle maker, joiner, etc.; that as to the few indifferent men that were upon that list, they had reason to believe (as they had heard) that Mr. Attorney had a list of them, to strike them out. And therefore they requested that he would either bring the Freeholders book, and choose out of it 48 unexceptional men in their presence as usual, or else that he would hear their objections particularly to the list he offered, and that he would put impartial men in the place of those against whom they could show just objections.

Notwithstanding this, the clerk refused to strike the jury out of the Freeholders book, and refused to hear any objections to the persons on the list; but told my friends that if they had any objections to any persons, they might strike those persons out. To which they answered that there would not remain a jury if they struck out all the exceptional men, and according to the custom they had a right to strike out only twelve.

Finding no arguments could prevail with the clerk to hear their objections to his list, nor to strike the jury as usual, Mr. Chambers told him that he must apply to the Court; which the next morning he did. And the Court upon his motion ordered that the 48 should be struck out of the Freeholders book as usual, in the presence of the parties, and that the clerk should hear objections to persons proposed to be of the 48, and allow of such exceptions as were just. In pursuance of that order a jury was that evening struck to the satisfaction of both parties. My friends and counsel insisted on no objections but want of freehold, although they did not insist that Mr. Attorney General should show any particular cause against any persons he disliked, but acquiesced that any person he disliked should be left out of the 48.

The Trial Begins

Before James DeLancey, Chief Justice of the Province of New York, and Frederick Philipse, Associate Justice, my trial began on August 4, 1735, upon an information for printing and publishing two newspapers which were called libels against our Governor and his administration.

The defendant, John Peter Zenger, being called, appeared.

MR. CHAMBERS, of counsel for the defense. "I humbly move, Your Honors, that we may have justice done by the sheriff, and that he may return the

names of the jurors in the same order as they were struck."

MR. CHIEF JUSTICE. "How is that? Are they not so returned?"

MR. CHAMBERS. "No they are not. For some of the names that were last set down in the panel are now placed first."

MR. CHIEF JUSTICE. "Make that out and you shall be righted."

MR. CHAMBERS. "I have the copy of the panel in my hand as the jurors were struck, and if the clerk will produce the original signed by Mr. Attorney and myself, Your Honor will see that our complaint is just."

MR. CHIEF JUSTICE. "Clerk, is it so? Look upon that copy. Is it a true copy of the panel as it was struck?"

CLERK. "Yes, I believe it is."

MR. CHIEF JUSTICE. "How came the names of the jurors to be misplaced in the panel?"

SHERIFF. "I have returned the jurors in the same order in which the clerk gave them to me."

MR. CHIEF JUSTICE. "Let the names of the jurors be ranged in the order they were struck, agreeable to the copy here in Court."

Which was done accordingly; and the jury, whose names were as follows, were called and sworn: Thomas Hunt (Foreman), Harmanus Rutgers, Stanly Holmes, Edward Man, John Bell, Samuel Weaver, Andries Marschalk, Egbert van Borsom, Benjamin Hildreth, Abraham Keteltas, John Goelet, Hercules Wendover.' Mr. Attorney General' opened the information, which was as follows:

Case for the Prosecution

MR. ATTORNEY. "May it please Your Honors and you, Gentlemen of the Jury. The information now before the Court, and to which the defendant, Zenger, has pleaded 'Not guilty,' is an information for printing and publishing a false, scandalous, and seditious libel in which His Excellency, the Governor of this Province, who is the king's immediate representative here, is greatly and unjustly scandalized as a person that has no regard to law or justice; with much more, as will appear upon reading the information. libeling has always been discouraged as a thing that tends to create differences among men, ill blood among the people, and oftentimes great bloodshed between the party libeling and the party libeled. There can be no doubt but you, Gentlemen of the Jury, will have the same ill opinion of such practices as judges have always shown upon such occasions. But I shall say no more at this time, until you hear the information, which is as follows:

"Be it remembered that Richard Bradley, Attorney General of the king for the Province of New York, who prosecutes for the king in this part, in his own proper person comes here into the Court of the king, and for the king gives the Court here to understand and be informed:

"That John Peter Zenger, of the City of New York, printer, being a seditious person; and a frequent printer and publisher of false news and seditious libels, both wickedly and maliciously devising the administration of His Excellency William Cosby, Captain

General] and Governor in Chief, to traduce, scandalize, and vilify both His Excellency the Governor and the ministers and officers of the king, and to bring them into suspicion and the ill opinion of the subjects of the king residing within the Province, on the twenty -eighth day of January, in the seventh year of the reign of George the Second, at the City of New York did falsely, seditiously, and scandalously print and publish, and cause to be printed and published, a certain false, malicious, seditious, scandalous libel entitled *The New York Weekly Journal*."

"In which libel, among other things therein contained, are these words, 'Your appearance in print at last gives a pleasure to many, although most wish you had come fairly into the open field, and not appeared behind entrenchment's made of the supposed laws against libeling, and of what other men had said and done before. 'These entrenchment's, gentlemen, may soon be shown to you and to all men to be weak, and to have neither law nor reason for their foundation, and so cannot long stand in your stead. Therefore you had much better as yet leave them, and come to what the people of this City and Province (the City and Province of New York meaning) think are the points in question. They (the people of the City and Province of New York meaning) 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, and this they collect from many past proceedings.'" (Meaning many of the past proceedings of His Excellency, the Governor, and of the ministers and officers of the king, of and for the said Province.)

"And the Attorney General likewise gives the Court here to understand and be informed:

"That the said John Peter Zenger afterwards, to wit on the eighth day of April, did falsely, seditiously and scandalously Print and publish another false, malicious, seditious, and Scandalous libel entitled *The New-York Weekly Journal*.

"In which libel, among other things therein contained, are these words, 'one of our neighbors (one of the inhabitants of New Jersey meaning) being in company and observing the strangers (some of the inhabitants of New York meaning) full of complaints, endeavored to persuade them to remove into Jersey. To which it was replied, c that would be leaping out of the frying pan into the fire; for,'says he,'we both are under the same Governor (His Excellency the said Governor meaning), and your Assembly have shown with a vengeance what is to be expected from them.' One that was then moving to Pennsylvania (meaning one that was then removing from New York with intent to reside at Pennsylvania), to which place it is reported that several considerable men are removing (from New York meaning), expressed in terms very moving much concern for the circumstances of New York (the bad circumstances of the Province and people of New York meaning), and seemed to think them very much owing to the influence that some men (whom he called tools) had in the administration (meaning the administration of government of the said Province of New York). He said he was now going from them, and was not to be hurt by any measures they should take, but could not help having some concern for the welfare of his countrymen, and should be glad to hear that the Assembly (meaning the General Assembly of the Province of New York) would exert themselves as became them by showing that they have the interest of their country more at heart than the gratification of any private view of any of their members, or being at all affected by the smiles or frowns of a governor (His Excellency the said Governor meaning); both of which ought equally to be despised when the interest of their country is at stake.

"'You,' says he, 'complain of the lawyers, but I think the law itself is at an end. We (the

people of the Province of New York meaning) see men's deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature (within the Province of New York meaning) by which it seems to me trial by jury is taken away when a governor pleases (His Excellency the said Governor meaning), and men of known estates denied their votes contrary to the received practice, the best expositor of any law. Who is there then in that Province (meaning the Province of New York) that can call anything his own, or enjoy any liberty, longer than those in the administration (meaning the administration of government of the said Province of New York) will condescend to let them do it? For which reason I have left it, as I believe more will.)

"These words are to the great disturbance of the peace of the said Province of New York, to the great scandal of the king, of His Excellency the Governor, and of all others concerned in the administration of the government of the Province, and against the peace of the king, his crown, and his dignity.

"Whereupon the said Attorney General of the king prays the advisement of the Court here, in the premises, and the due process of law against the said John Peter Zenger.

"To this information the defendant has pleaded not guilty, but we are ready to prove [Zenger's guilt]."

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 seditious or else we are not guilty."

He observed upon the excellency as well as the use of government, and the great regard and reverence which had been constantly paid to it, under both the law and the Gospels. That by government we were protected in our lives, religion, and properties; and for these reasons great care had always been taken to prevent everything that might tend to scandalize magistrates and others concerned in the administration of the government, especially the supreme magistrate. And that there were many instances of very severe judgments, and of punishments, inflicted upon such as had attempted to bring the government into contempt by publishing false and scurrilous libels against it, or by speaking evil and scandalous words of men in authority, to the great disturbance of the public peace. And to support this he cited various legal texts.

From these books he insisted that a libel was a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead. If he is a private man, the libeler deserves a severe punishment, but if it is against a magistrate or other public person, it is a greater offense. For this concerns not only the breach of the peace but the scandal of the government. What greater scandal of government can there be than to have corrupt or wicked magistrates appointed by the king to govern his subjects? A greater imputation to the state there cannot be than to suffer such corrupt men to sit in the sacred seat of justice, or to have any meddling in or concerning the administration of justice.

From the same books Mr. Attorney insisted that whether the person defamed is a private man or a magistrate, whether living or dead, whether the libel is true or false, or if the party against whom it is made is of good or evil fame, it is nevertheless a libel. For in a settled state of government the party grieved ought to complain, for every injury done him, in the ordinary course of the law. And as to its publication, the law had taken so great care of men's reputations that if one maliciously repeats it, or sings it in the presence of another, or delivers the libel or a copy of it over to scandalize the party, he is to be punished as a publisher of a libel.

He said it was likewise evident that libeling was an offense against the law of God. Acts 23:5: Then said Paul, "I wish not, brethren, that he was the high priest; for it is written Thou shalt not speak evil of the ruler of thy people." 11 Peter 2:10: "Despise government. Presumptuous are they, self-willed, they are not afraid to speak evil of dignities."

He then insisted that it was clear, by the laws of God and man, that it was a very great offense to speak evil of, or to revile, those in authority over us. And that Mr. Zenger had offended in a most notorious and gross manner, in scandalizing His Excellency our governor, who is the king's immediate representative and the supreme magistrate of this Province. For can there be anything more scandalous said of a governor than what is published in those papers? Nay, not only the Governor but both the Council and the Assembly are scandalized. For there it is plainly said that "as matters now stand, their liberties and properties are precarious, and that slavery is like to be entailed on them and their posterity." And then again Mr. Zenger says, "The Assembly ought to despise the smiles or frowns of a governor; that he thinks the law is at an end; that we see men's deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature; that it seems that trials by jury are taken away when a governor pleases; and that none can call anything his own longer than those in the administration will condescend to let him do it."

Mr. Attorney added that he did not know what could be said in defense of a man that

had so notoriously scandalized the Governor and the principal magistrates and officers of the government by charging them with depriving the people of their rights and liberties, taking away trial by jury, and, in short, putting an end to the law itself. If this was not a libel, he said, he did not know what was one. Such persons as will take those liberties with governors and magistrates he thought ought to suffer for stirring up sedition and discontent among the people.

He concluded by saying that the government had been very much traduced and exposed by Mr. Zenger before he was taken notice of; that at last it was the opinion of the Governor and the Council that he ought not to be suffered to go on to disturb the peace of the government by publishing such libels against the Governor and the chief persons in the government; and therefore they had directed this prosecution to put a stop to this scandalous and wicked practice of libeling and defaming His Majesty's government and disturbing His Majesty's peace.

Mr. Chambers then summed up to the jury, observing with great strength of reason on Mr. Attorney's defect of proof that the papers in the information were false, malicious, or seditious, which it was incumbent on him to prove to the jury, and without which they could not on their oaths say that they were so as charged.

It is a commonplace of legal thinking that in a jury trial it is one thing to have the facts on your side, another thing to have the law on your side, a third thing to have the judge on your side, but best of all is to have a respected lawyer. Zenger clearly had the last as well as the first - and his strong points were far weightier than his weaknesses with the jury.

Case for the Defense

MR. HAMILTON. "May it please Your Honor, I agree with Mr. Attorney that government is a sacred thing, but I differ widely from him when he would insinuate that the just complaints of a number of men who suffer under a bad administration is libeling that administration. Had I believed that to be law, I should not have given the Court the trouble of hearing anything that I could say in this cause.

"I own that when I read the information I had not the art to find out, without the help of Mr. Attorney's innuendos, that the Governor was the person meant in every period of that newspaper. I was inclined to believe that they were written by some who, from an extraordinary zeal for liberty, had misconstrued the conduct of some persons in authority into crimes; and that Mr. Attorney, out of his too great zeal for power, had exhibited this information to correct the indiscretion of my client, and at the same time to show his superiors the great concern he had lest they should be treated with any undue freedom.

"But from what Mr. Attorney has just now said, to wit, that this prosecution was directed by the Governor and the Council, and from the extraordinary appearance of people of all conditions, which I observe in Court upon this occasion, I have reason to think that those in the administration have by this prosecution something more in view, and that the people believe they have a good deal more at stake, than I apprehended. Therefore, as it is become my duty to be both plain and particular in this cause, I beg leave to bespeak the patience of the Court."

"I was in hopes as that terrible Court where those dreadful judgments were given, and that law established, which Mr. Attorney has produced for authorities to support this cause, was long ago laid aside as the most dangerous Court to the liberties of the people of England that ever was known in that kingdom - that Mr. Attorney, knowing this,

would not have attempted to set up a star chamber here, nor to make their judgments a precedent to us. For it is well known that what would have been judged treason in those days for a man to speak, has since not only been practiced as lawful, but the contrary doctrine has been held to be law."

"In Brewster's case for printing that subjects might defend their rights and liberties by arms in case the king should go about to destroy them, he was told by the Chief justice that it was a great mercy he was not proceeded against for his life; for to say the king could be resisted by arms in any case whatsoever was express treason. And yet we see since that time, that Doctor Sacheverell was sentenced in the highest court in Great Britain for saying that such a resistance was not lawful. Besides, as times have made very great changes in the laws of England, so in my opinion there is good reason that [other] places should do so too.

"Is it not surprising to see a subject, upon receiving a commission from the king to be a governor of a Colony in America, immediately imagining himself to be vested with all the prerogatives belonging to the sacred person of his princes? And, which is yet more astonishing, to see that a people can be so wild as to allow of and acknowledge those prerogatives and exemptions, even to their own destruction? Is it so hard a matter to distinguish between the majesty of our sovereign and the power of a governor of The Plantations?' Is not this making very free with our prince, to apply that regard, obedience, and allegiance to a subject, which is due only to our sovereign.

"And yet in all the cases which Mr. Attorney has cited to show the duty and obedience we owe to the supreme magistrate, it is the king that is there meant and understood, although Mr. Attorney is pleased to urge them as authorities to prove the heinousness of Mr. Zenger's offense against the Governor of New York. The several Plantations are compared to so many large corporations, and perhaps not improperly. Can anyone give an instance that the head of a corporation ever put in a claim to the sacred rights of majesty? Let us not, while we are pretending to pay a great regard to our prince and his peace, make bold to transfer that allegiance to a subject which we owe to our king only.

"What strange doctrine is it to press everything for law here which is so in England? I believe we should not think it a favor, at present at least, to establish this practice. In England so great a regard and reverence is had to the judges that if any man strikes another in Westminster Hall while the judges are sitting, he shall lose his right hand and forfeit his land and goods for so doing. Although the judges here claim all the powers and authorities within this government that a Court of King's Bench has in England, yet I believe Mr. Attorney will scarcely say that such a punishment could be legally inflicted on a man for committing such an offense in the presence of the judges sitting in any court within the Province of New York. The reason is obvious. A quarrel or riot in New York can not possibly be attended with those dangerous consequences that it might in Westminster Hall; nor, I hope, will it be alleged that any misbehavior to a governor in The Plantations will, or ought to be, judged of or punished as a like undutifulness would be to our sovereign.

"From all of which, I hope Mr. Attorney will not think it proper to apply his law cases, to support the cause of his governor, which have only been judged where the king's safety or honor was concerned.

"It will not be denied that a freeholder in the Province of New York has as good a right to the sole and separate use of his lands as a freeholder in England, who has a right to bring an action of trespass against his neighbor for suffering his horse or cow to come

and feed upon his land or eat his corn, whether enclosed or not. Yet I believe it would be looked upon as a strange attempt for one man here to bring an action against another whose cattle and horses feed upon his grounds that are not enclosed, or indeed for eating and treading down his corn, if that were not enclosed.

"Numberless are the instances of this kind that might be given to show that what is good law at one time and in one place is not so at another time and in another place. So that I think the law seems to expect that in these parts of the world men should take care, by a good fence, to preserve their property from the injury of unruly beasts. And perhaps there may be a good reason why men should take the same care to make an honest and upright conduct a fence and security against the injury of unruly tongues."

MR. ATTORNEY. "I don't know what the gentleman means by comparing cases of freeholders in England with freeholders here. What has this case to do with actions of trespass or men's fencing their ground? 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? I hope Mr. Attorney will not say he put it there by chance, and I am of the opinion that his information would not be good without it. But to show that it is the principal thing which, in my opinion, makes a libel, suppose that the information had been for printing and publishing a certain true libel, would that be the same thing? Or could Mr. Attorney support such an information by any precedent in the English law? No, the falsehood makes the scandal, and both make the libel. And to show the Court that I am in good earnest, and to save the Court's time and Mr. Attorney's trouble, I will agree that if he can prove the facts charged upon us to be false, I shall own them to be scandalous, seditious, and a libel. So the work seems now to be pretty much shortened, and Mr. Attorney has now only to prove the words false in order to make us guilty."

MR. ATTORNEY. "We have nothing to prove. You have confessed the printing and publishing. But if it were necessary, as I insist it is not, how can we prove a negative? I hope some regard will be had to the authorities that have been produced, and that supposing all the words to be true, yet that will not help them. Chief Justice Holt, in his charge to the jury in the case of Tutchin, made no distinction whether Tutchin's

papers were true or false; and as Chief Justice Holt has made no distinction in that case, so none ought to be made here; nor can it be shown that, in all that case, there was any question made about their being false or true."

MR. HAMILTON. "I did expect to hear that a negative cannot be proved. But everybody knows there are many exceptions to that general rule. For if a man is charged with killing another, or stealing his neighbor's horse, if he is innocent in the one case he may prove the man said to be killed to be really alive, and the horse said to be stolen never to have been out of his master's stable, etc. And this, I think, is proving a negative.

"But we will save Mr. Attorney the trouble of proving a negative, take the onus probandi [burden of proof] on ourselves, and prove those very papers that are called libels to be true."

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. HAMILTON. "I own that, may it please Your Honor, to be so. But, with submission, I understand the word 'justify' there to be a justification by plea, as it is in the case upon an indictment for murder or an assault and battery. There the prisoner cannot justify, but pleads 'Not guilty.' Yet it will not be denied but he may be, and always is, admitted to give the truth of the fact, or any other matter, in evidence, which goes to his acquittal. As in murder he may prove that it was in defense of his life, his house, etc.; and in assault and battery he may give in evidence that the other party struck first: and in both cases he will be acquitted. In this sense I understand the word 'justify' when applied to the case before the Court."

MR. CHIEF JUSTICE. "I pray, show that you can give the truth of a libel in evidence."

MR. HAMILTON. "How shall it be known whether the words are libelous, that is, true or false, but by admitting us to prove them true, since Mr. Attorney will not undertake to prove them false? Besides, is it not against common sense that a man should be punished in the same degree for a true libel, if any such thing could be, as for a false one? I know it is said that truth makes a libel the more provoking, and therefore the offense is greater, and consequently the judgment should be the heavier. Well, suppose it were so, and let us agree for once that truth is a greater sin than falsehood. Yet, as the offenses are not equal, and as the punishment is arbitrary, that is, according as the judges in their discretion shall direct to be inflicted, is it not absolutely necessary that they should know whether the libel is true or false, that they may by that means be able to proportion the punishment?

"For would it not be a sad case if the judges, for want of a due information, should chance to give as severe a judgment against a man for writing or publishing a lie, as for writing or publishing a truth? And yet this, with submission, as monstrous and ridiculous as it may seem to be, is the natural consequence of Mr. Attorney's doctrine that truth makes a worse libel than falsehood, and must follow from his not proving

our papers to be false, or not suffering us to prove them to be true.

"In the case of Tutchin, which seems to be Mr. Attorney's chief authority, that case is against him; for Tutchin was, at his trial, put upon showing the truth of his papers; but he did not. At least the prisoner was asked by the king's counsel whether he would say that they were true. And as he never pretended that they were true, the Chief Justice was not to say so.

"But the point will be clearer on our side from Fuller's case.' Here you see is a scandalous and infamous charge against the late king; here is a charge no less than high treason, against the men in public trust, for receiving money of the French king, then in actual war with the crown of Great Britain; and yet the Court were far from bearing him down with that star chamber doctrine, to wit, that it was no matter whether what he said was true or false. No, on the contrary, Lord Chief Justice Holt asks Fuller, 'Can you make it appear that they are true? Have you any witnesses? You might have had subpoenas for your witnesses against this day. If you take it upon you to write such things as you are charged with, it lies upon you to prove them true, at your peril. If you have any witnesses, I will hear them. How came you to write those books which are not true? If you have any witnesses, produce them. If you can offer any matter to prove what you wrote, let us hear it.' Thus said, and thus did, that great man, Lord Chief Justice Holt, upon a trial of the like kind with ours; and the rule laid down by him in this case is that he who will take upon him to write things, it lies upon him to prove them, at his peril. Now, sir, we have acknowledged the printing and publishing of those papers set forth in the information and, with the leave of the Court, agreeable to the rule laid down by Chief Justice Holt, we are ready to prove them to be true, at our peril."

MR. CHIEF JUSTICE. "Let me see the book."

MR. CHIEF JUSTICE. "Mr. Attorney, you have heard what Mr. Hamilton has said, and the cases he has cited, for having his witnesses examined to prove the truth of the several facts contained in the papers set forth in the information. What do you say to it?"

MR. ATTORNEY. "The law, in my opinion, is very clear. They cannot be admitted to justify a libel, for by the authorities I have already read to the Court it is not the less a libel because it is true. I think I need not trouble the Court over again. The thing seems to be very plain, and I submit it to the Court."

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.

"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, yes or no.

MR. ATTORNEY. "The books, I think, have given a very full definition of libel."

MR. HAMILTON. "Ay, Mr. Attorney, but what standard rule have the books laid down by which we can certainly know whether the words or signs are malicious? Whether they are defamatory? Whether they tend to the breach of the peace, and are a sufficient ground to provoke a man, his family, or his friends to acts of revenge: especially the ironical sort of words? 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 mean, 'He is a knave or a fool.'"

MR. ATTORNEY. "I think the books are very full. It is said in Hawkins ' just now read, '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.' I think nothing can be plainer or more full than these words."

MR. HAMILTON. "I agree the words are very plain, and I shall not scruple to allow (when we are agreed that the words are false and scandalous, and were spoken in an ironical and scoffing manner) that they are really libelous. But here still occurs the uncertainty which makes the difficulty to know what words are scandalous, and what are not. For you say that they may be scandalous, whether true or false.

"Besides, how shall we know whether the words were spoken in a scoffing and ironical manner, or seriously? Or how can you know whether the man did not think as he

wrote? For by your rule, if he did, it is no irony, and consequently no libel.

"But under favor, Mr. Attorney, I think the same book, and under the same section, will show us the only rule by which all these things are to be known. The words are these, 'which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities as if they had directly and expressly done so.' Here it is plain that the words are scandalous, scoffing, and ironical only as they are understood. I know no rule laid down in the books but this, I mean, as the words are understood."

MR. CHIEF JUSTICE. "Mr. Hamilton, do you think it so hard to know when words are ironical or spoken in a scoffing manner?"

MR. HAMILTON. "I own it may be known. But I insist that the only rule by which to know is - as I do or can understand them. I have no other rule to go by but as I understand them."

MR. CHIEF JUSTICE. "That is certain. All words are libelous or not as they are understood. Those who are to judge of the words must judge whether they are scandalous, or ironical, or tend to the breach of the peace, or are seditious. There can be no doubt of it."

MR. HAMILTON. "I thank Your Honor. I am glad to find the Court of this opinion. 'f hen it follows that these twelve men must understand the words in the information to be scandalous -that is to say, false. For I think it is not pretended they are of the ironical sort. And [only] when they understand the words to be so, they will say that we are guilty of publishing a false libel, and not otherwise."

MR. CHIEF JUSTICE. "No, Mr. Hamilton, the jury may find that Zenger printed and published those papers, and leave it to the Court to judge whether they are libelous. You know this is very common. It is in the nature of a special verdict, where the jury leave the matter of the law to the court."

MR. HAMILTON. "I know, may it please Your Honor, the jury may do so. But I do likewise know that they may do otherwise. I know that they have the right beyond all dispute to determine both the law and the fact; and where they do not doubt of the law, they ought to do so. Leaving it to judgment of the court whether the words are libelous 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.

"Although I own it to be base and unworthy to scandalize any man, yet I think it is even more villainous to scandalize a person of public character. 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 failings, 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 things that are said in favor of rulers and of dignitaries, 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."

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."

Hamilton's Summation for Zenger

"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. it is true that 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, that 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 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 we may in a great measure prevent the committing of such wrongs by making a governor sensible that it is in his interest to be just to those under his care. For such is the sense that men in general - I mean free men - 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 that 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 - 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, that 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 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 that it may be considered - of what use is this mighty privilege if every man that suffers is silent? And if a man must be taken up as a libeler for telling his sufferings to his neighbor?

"I know that it may be answered, 'Have you not a legislature? Have you not a House of Representatives to whom you may complain?' 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? And what sort of trial must a man have? How is he to be remedied, especially if the case were, as I have known 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 can 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 farther, it is a right, which all free men claim,

that they are entitled to complain when they are hurt. They have a right publicly to remonstrate against the 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.

"When a House of Assembly composed of honest freemen sees the general bent of the people's inclination, 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 harkening to the voice of their country. As we all very well understand the true reason why gentlemen take so much pains and make such great interest to be appointed governors, so is the design of their appointment not less manifest. We know His Majesty's gracious intentions toward his subjects. He desires no more than that his people in The Plantations should be kept up to their duty and allegiance to the crown of Great Britain, that peace may be preserved among them, and justice impartially administered; so that we may be governed so as to render us useful to our mother country by encouraging us to make and raise such commodities as may be useful to Great Britain.

"But will anyone say that all or any of these good ends are to be effected by a governor's setting his people together by the ears, and by the assistance of one part of the people to plague and plunder the other? The commission that governors bear while they execute the powers given them according to the intent of the royal grantor requires and deserves very great reverence and submission. But when a governor departs from the duty enjoined on him by his sovereign, and acts as if he were less accountable than the royal hand that gave him all that power and honor that he is possessed of, this sets people upon examining and inquiring into the power, authority, and duty of such a magistrate, and to comparing those with his conduct. And just as far as they find he exceeds the bounds of his authority, or falls short in doing impartial justice to the people under his administration, so far they very often, in return, come short in their duty to such a governor.

"For power alone will not make a man beloved, and I have heard it observed that the man who was neither good nor wise before his being made a governor never mended upon his preferment, but has been generally observed to be worse. For men who are not imbued with wisdom and virtue can only be kept in bounds by the law; and by how much the further they think themselves out of the reach of the law, by so much the more wicked and cruel men are. I wish there were no instances of the kind at this day.

"Wherever this happens to be the case of a governor, unhappy are the people under his administration, and in the end he will find himself so too, for the people will neither love him nor support him.

"I make no doubt but there are those here who are zealously concerned for the success of this prosecution, and yet I hope they are not many; and even some of those, I am persuaded, when they consider to what lengths such prosecutions may be carried, and how deeply the liberties of the people may be affected by such means, will not all abide by their present sentiments. I say 'not all,' for the man who from an intimacy and acquaintance with a governor has conceived a personal regard for him, the man who has felt none of the strokes of his power, the man who believes that a governor has a regard for him and confides in him it is natural for such men to wish well to the affairs of such a governor. And as they may be men of honor and generosity, may, and no doubt will,

wish him success so far as the rights and privileges of their fellow citizens are not affected. But as men of honor I can apprehend nothing from them. They will never exceed that point.

"There are others that are under stronger obligations, and those are such as are in some sort engaged in support of the governor's cause by their own or their relations' dependence on his favor for some post or preferment. Such men have what is commonly called duty and gratitude to influence their inclinations and oblige them to go his lengths. I know men's interests are very near to them, and they will do much rather than forgo the favor of a governor and a livelihood at the same time. But I can with very just grounds hope, even from those men, whom I will suppose to be men of honor and conscience too, that when they see the liberty of their country in danger, either by their concurrence or even by their silence, they will like Englishmen, and like themselves, freely make a sacrifice of any preferment or favor rather than be accessory to destroying the liberties of their country and entailing slavery upon their posterity.

"There are indeed another set of men, of whom I have no hopes. I mean such who lay aside all other considerations and are ready to join with power in any shape, and with any man or sort of men by whose means or interest they may be assisted to gratify their malice and envy against those whom they have been pleased to hate; and that for no other reason than because they are men of ability and integrity, or at least are possessed of some valuable qualities far superior to their own. But as envy is the sin of the Devil, and there fore very hard, if at all, to be repented of, I will believe there are but few of this detestable and worthless sort of men, nor will their opinions or inclinations have any influence upon this trial.

"But to proceed. I beg leave to insist that the right of complaining or remonstrating is natural; that the restraint upon this natural right is the law only; and that those restraints can only extend to what is false. For as it is truth alone that can excuse or justify any man for complaining of a bad administration, I as frankly agree that nothing ought to excuse a man who raises a false charge or accusation even against a private person, and that no manner of allowance ought to be made to him who does so against a public magistrate.

"Truth ought to govern the whole affair of libels. And yet the party accused runs risk enough even then; for if he fails in proving every title of what he has written, and to the satisfaction of the court and jury too, he may find to his cost that when the prosecution is set on foot by men in power it seldom wants friends to favor it.

"From thence (it is said) has arisen the great diversity of opinions among judges about what words were or were not scandalous or libelous. I believe it will be granted that there is not greater uncertainty in any part of the law than about words of scandal. It would be mispending of the Court's time to mention the cases. They may be said to be numberless. Therefore the utmost care ought to be taken in following precedents; and the times when the judgments were given, which are quoted for authorities in the case of libels, are much to be regarded.

"I think it will be agreed that ever since the time of the Star Chamber, where the most arbitrary judgments and opinions were given that ever an Englishman heard of, at least in his own country; I say, prosecutions for libel since the time of that arbitrary Court, and until the Glorious Revolution, have generally been set on foot at the instance of the crown or its ministers. And it is no small reproach to the law that these prosecutions were too often and too much countenanced by the judges, who held their places 'at pleasure,' a disagreeable tenure to any officer, but a dangerous one in the case of a

judge. Yet I cannot think it unwarrantable to show the unhappy influence that a sovereign has sometimes had, not only upon judges, but even upon parliaments themselves.

"It has already been shown how the judges differed in their opinions about the nature of a libel in the case of the Seven Bishops."

"There you see three judges of one opinion, that is, of a wrong opinion in the judgment of the best men in England, and one judge of a right opinion. How unhappy might it have been for all of us at this day if that jury had understood the words in that information as the Court did? Or if they had left it to the Court to judge whether the petition of the Bishops was or was not a libel? No, they took upon themselves—to their immortal honor—to determine both law and fact, and to understand the petition of the Bishops to be no libel, that is, to contain no falsehood or sedition; and therefore found them not guilty.

"If then upon the whole there is so great an uncertainty among judges - learned and great men - in matters of this kind, if power has had so great an influence on judges, how cautious ought we to be in determining by their judgments especially in The Plantations, and in the case of libels?"

"There is heresy in law as well as in religion, and both have changed very much. We well know that it is not two centuries ago that a man would have been burned as a heretic for owning such opinions in matters of religion as are publicly written and printed at this day. They were fallible men, it seems, and we take the liberty not only to differ from them in religious opinions, but to condemn them and their opinions too. I must presume that in taking these freedoms in thinking and speaking about matters of faith or religion, we are in the right; for although it is said that there are very great liberties of this kind taken in New York, yet I have heard of no information preferred by Mr. Attorney for any offenses of this sort. From which I think it is pretty clear that in New York a man may make very free with his God, but he must take a special care what he says of his governor.

"It is agreed upon by all men that this is a reign of liberty. While men keep within the bounds of truth I hope they may with safety both speak and write their sentiments of the conduct of men in power, I mean of that part of their conduct only which affects the liberty or property of the people under their administration. Were this to be denied, then the next step may make them slaves; for what notions can be entertained of slavery beyond that of suffering the greatest injuries and oppressions without the liberty of complaining, or if they do, to be destroyed, body and estate, for so doing?"

"It is said and insisted on by Mr. Attorney that government is a sacred thing; that it is to be supported and revered; that it is government that protects our persons and estates, prevents treasons, murders, robberies, riots, and all the train of evils that overturns kingdoms and states and ruins particular persons. And if those in the administration, especially the supreme magistrate, must have all their conduct censured by private men, government cannot subsist. This is called a licentiousness not to be tolerated. It is said that it brings the rulers of the people into contempt, and their authority not to be regarded, and so in the end the laws cannot be put into execution.

"These, I say, and such as these, are the general topics insisted upon by men in power and their advocates. But I wish it might be considered at the same time how often it has happened that the abuse of power has been the primary cause of these evils, and that it was the injustice and oppression of these great men that has commonly brought them

into contempt with the people. The craft and art of such men is great, and who that is the least acquainted with history or law can be ignorant of the specious pretenses that have often been made use of by men in power to introduce arbitrary rule, and to destroy the liberties of a free people?"

"This is the second information for libeling of a governor that I have known in America. The first, although 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 usual with him (under the protection of his commission) used the poor parson with the worst of language, and 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. Coming to a neighbor's house, he felt himself very ill of a fever, and immediately writes for a doctor. And that his physician might 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 behaved in that manner.

"The doctor unhappily showed the parson's letter. The Governor came to hear of it. And so an information was preferred against the poor man for saying he believed the Governor was mad. It was laid down in the information to be false, scandalous, and wicked, and written with intent to move sedition among the people, and to bring His Excellency into contempt. But by an order from the late Queen Anne there was a stop put 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 not I be allowed, after all this, to say that by a little countenance almost anything that a man writes may, with the help of that useful term of art called an innuendo, be construed to be a libel, according to Mr. Attorney's definition of it -to wit, 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 and repeats it, or laughs at it, they are all punishable. It is true that Mr. Attorney is so good as to allow it must be 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 a person safe from being called to an account as a libeler. For Moses, meek as he was, libeled Cain; and who is it that has not libeled the Devil?"

"For according to Mr. Attorney it is no justification to say that one has a bad name. Echard has libeled our good King William; Burnet has libeled, among others, King Charles and King James; and Rapin has libeled 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 libeler?"

"I sincerely believe that were some persons to go through the streets of New York nowadays and read a part of the Bible, if it was not known to be such, Mr. Attorney, with the help of his innuendos, would easily turn it into a libel. As for instance Isaiah 9:16: 'The leaders of the people cause them to err; and they that are led by them are destroyed.' Should Mr. Attorney go about to make this a libel, he would read it thus: 'The leaders of the people (innuendo, the Governor and Council of New York) cause

them (innuendo, the people of this Province) to err, and they (the people of this Province meaning) that are led by them (the Governor and Council meaning) are destroyed (innuendo, 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 fourth and fifth verses of the 56th chapter of the same book, there Mr. Attorney would have a large field to display his skill in the artful application of his innuendos. The words are: 'His watchmen are blind, they are all ignorant, ... Yea, they are greedy dogs which can never have enough.' To make them a libel there is, according to Mr. Attorney's doctrine, no more wanting but the aid of his skill in the right adapting of his innuendos. As for instance: 'His watchmen (innuendo, the Governors Council and his Assembly) are blind, they are all ignorant (innuendo, will not see the dangerous designs of His Excellency). Yea, they (the Governor and Council meaning) are greedy dogs which can never have enough (innuendo, enough of riches and power).'

"Such an instance as this seems only fit to be laughed at; but I 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 innuendos 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 libeler?

"And give me leave to say that the mode of prosecuting by information, when a grand jury will not find a true bill, is a national grievance, and greatly inconsistent with that freedom that 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 although 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 the 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.

"The loss of liberty, to a generous mind, is worse than death. And yet we know that there have been those in all ages who for the sake of preferment, or some imaginary honor, have freely lent a helping hand to oppress, nay to destroy, their country.

"This brings to my mind that saying of the immortal [Marcus] Brutus when he looked upon the creatures of Caesar, who were very great men but by no means good men. 'You Romans,) said Brutus, 'if yet I may call you so, consider what you are doing. Remember that you are assisting Caesar to forge those very chains that one day he will make you yourselves wear.' This is what every man who values freedom ought to consider. He should act by judgment and not by affection or self-interest; for where those prevail, no ties of either country or kindred are regarded; as upon the other hand, the man who loves his country prefers its liberty to all other considerations, well knowing that without liberty life is a misery.

"A famous instance of this you will find in the history of another brave Roman of the same name, I mean Lucius Junius Brutus, whose story is well known, and therefore I shall mention no more of it than only to show the value he put upon the freedom of his country. After this great man, with his fellow citizens whom he had engaged in the cause, had banished Tarquin the Proud, the last king of Rome, from a throne that he ascended by inhuman murders and possessed by the most dreadful tyranny and proscriptions, and had by this means amassed incredible riches, even sufficient to bribe to his interest many of the young nobility of Rome to assist him in recovering the crown; the plot being discovered, the principal conspirators were apprehended, among whom were two of the sons of Junius Brutus. It was absolutely necessary that some should be made examples of, to deter others from attempting the restoration of Tarquin and destroying the liberty of Rome. To effect this it was that Lucius Junius Brutus, one of the consuls of Rome, in the presence of the Roman people, sat judge and condemned his own sons as traitors to their country. And to give the last proof of his exalted virtue and his love of liberty, he with a firmness of mind only becoming so great a man caused their heads to be struck off in his own presence. When he observed that his rigid virtue occasioned a sort of horror among the people, it is observed that he said only, 'My fellow citizens, do not think that this proceeds from any want of natural affection. No, the death of the sons of Brutus can affect Brutus only. But the loss of liberty will affect my country.'

"Thus highly was liberty esteemed in those days, that a father could sacrifice his sons to save his country. But why do I go to heathen Rome to bring instances of the love of liberty? The best blood in Britain has been shed in the cause of liberty; and the freedom we enjoy at this day may be said to be in a great measure owing to the glorious stand the famous Hampden, and others of our countrymen, made against the arbitrary demands and illegal impositions of the times in which they lived; who, rather than give up the rights of Englishmen and submit to pay an illegal tax of no more, I think, than three shillings, resolved to undergo, and for the liberty of their country did undergo, the greatest extremities in that arbitrary and terrible Court of the Star Chamber, to whose arbitrary proceedings - it being composed of the principal men of the realm, and calculated to support arbitrary government - no bounds or limits could be set, nor could any other hand remove the evil but Parliament."

"Power may justly be compared to a great river. While kept within its due bounds it is both beautiful and useful. But when it overflows its banks, it is then too impetuous to be stemmed; it bears down all before it, and brings destruction and desolation wherever it comes. If, then, this is the nature of power, let us at least do our duty, and like wise men who value freedom use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition the blood of the best men that ever lived.

"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."

Court's Instruction to Jury

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."

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 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."

zdroj: <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/zengerrecord.html>