

T H E
T R Y A L

O F

John Peter Zenger,

O F

N E W - Y O R K, P R I N T E R,

Who was lately Try'd and Acquitted for PRINTING and
PUBLISHING a LIBEL against the Government.

With the PLEADINGS and ARGUMENTS on both Sides.

Ita cuique eveniat, ut de REPUBLICA meruit.

[Cicero.]



London: Printed for J. WILFORD, behind the Chapter-House, St. Paul's
Church-Yard. 1738.



A BRIEF NARRATIVE OF THE

CASE and TRYAL of JOHN PETER ZENGER, *Printer*
of the *NEW-YORK Weekly Journal*.



S there was but one Printer in the Province of *New-York*, that printed a publick News Paper, I was in Hopes, if I undertook to publish another, I might make it worth my while; and I soon found my Hopes were not groundless: My first Paper was printed, *Nov. 5th, 1733.* and I continued printing and publishing of them, I thought to the Satisfaction of every Body, till the *January* following; when the Chief Justice was pleased to animadvert upon the Doctrine of Libels, in a long Charge given in that Term to the Grand Jury, and afterwards on the third *Tuesday of October, 1734.* was again pleased to charge the Grand Jury in the following Words:

‘ *Gentlemen*; I shall conclude with reading a Paragraph or two out of the same Book, concerning Libels; they are arrived to that Height, that they call loudly for your Animadversion; it is high Time to put a Stop to them; for at the rate Things are now carried on, when all Order and Government is endeavoured to be trampled on; Reflections are cast upon Persons of all Degrees, must not these Things end in Sedition, if not timely prevented? Lenity, you have seen, will not avail, it becomes you then to enquire after the Offenders, that we may in a due Course of Law be enabled to punish them.

‘ If you, *Gentlemen*, do not interpose, consider whether the ill Consequences that may arise from any Disturbances of the publick Peace, may not in part lye at your Door?

‘ *Hawkins*, in his Chapter of Libels, considers three points. 1st. *What shall be said to be a Libel.* 2^{dly}. *Who are lyable to be punished for it.* 3^{dly}. *In what Manner they are to be punished.* Under the 1st. he says, §. 7. *Nor can there be any Doubt, but that a Writing which defames a private Person only, is as much a Libel as that which defames Persons intrusted in a publick Capacity, in as much as it manifestly tends to create ill Blood, and to cause a Disturbance of the publick Peace; however, it is certain, that it is a very high Aggravation of a Libel, that it tends to scandalize the Government, by reflecting on those who are entrusted with the administration of publick Affairs, which does not only endanger the publick Peace, as all other Libels do, by stirring up the Parties immediately concerned in it, to Acts of Revenge, but also has a direct Tendency to breed in the People a Dislike of their Governors, and incline them to Faction and Sedition.* As to the 2^d. Point he says, §. 10. *It is certain, not only he who composes or procures another to compose it, but also that he who publishes, or procures another to publish it, are in Danger of being punished for it; and it is said not to be material whether he who disperses a Libel, knew any Thing of the Contents or*

‘ Effects of it or not ; for nothing could be more easy
 ‘ than to publish the most virulent Papers with the
 ‘ greatest Security, if the concealing the Purport of
 ‘ them from an illiterate Publisher, would make him
 ‘ safe in the dispersing them : Also, it has been said,
 ‘ that if he who hath either read a Libel himself, or
 ‘ hath heard it read by another, do afterwards Mali-
 ‘ ciously read or report any Part of it in the Presence
 ‘ of others, or lend or shew it to another, he is guilty
 ‘ of an unlawful Publication of it. Also, it hath
 ‘ been holden, that the Copying of a Libel shall be a
 ‘ conclusive Evidence of the Publication of it, unless
 ‘ the Party can prove, that he delivered it to a
 ‘ Magistrate to examine it, in which Case the Act
 ‘ subsequent is said to explain the Intention prece-
 ‘ dent. But it seems to be the better Opinion, that
 ‘ he who first writes a Libel, dictated by another, is
 ‘ thereby guilty of Making of it, and consequently
 ‘ punishable for the bare Writing ; for it was no
 ‘ Libel till it was reduced to Writing.

‘ These, Gentlemen, are some of the Offences
 ‘ which are to make Part of your Enquiries ;
 ‘ and if any other should arise in the Course of
 ‘ your Proceedings, in which you are at a Loss,
 ‘ or conceive any Doubts, upon your Application
 ‘ here, We will assist and direct you.

The Grand Jury not indicting me as was
 expected, the Gentlemen of the Council pro-
 ceeded to take my Journals into Consideration,
 and sent the following Message to the general
 Assembly.

‘ *Die Jovis, 3 ho. P. M. 17th of October, 1734.*

‘ A Message from the Council by Philip Cort-
 landt, in these Words, to wit,

‘ That Board having had several of Zenger’s
 ‘ *New York Weekly Journals*, laid before them,
 ‘ and other scurrilous Papers, tending to alienate
 ‘ the Affections of the People of this Province
 ‘ from his Majesty’s Government, to raise Sedi-
 ‘ tions and Tumults among the People of this
 ‘ Province, and to fill their Minds with a Con-
 ‘ tempt of His Majesty’s Government : And con-
 ‘ sidering the pernicious Consequences that may
 ‘ attend such growing Evils, if not speedily and
 ‘ effectually put a Stop to. And conceiving that
 ‘ the most likely Method to put a Stop to such
 ‘ bold and seditious Practices, to maintain the
 ‘ Dignity of His Majesty’s Government, and to
 ‘ preserve the Peace thereof, would be by a Con-
 ‘ ference between a Committee of this Board,

‘ and a Committee of the Assembly ; it is there-
 ‘ fore ordered, That the Gentlemen of this Board,
 ‘ NOW ASSEMBLED, or any seven of them,
 ‘ be a Committee, to join a Committee of the
 ‘ House of Representatives, in order to confer
 ‘ together, and to examine and enquire into the
 ‘ said Papers, and the Authors and Writers
 ‘ thereof.

‘ Which Message being read.

‘ Ordered, That the Members of this House,
 ‘ or any fourteen of them, do meet a Committee
 ‘ of the Council, at the Time and Place therein
 ‘ mentioned.

‘ *Die Veneris, 9 ho. A. M. 18 October, 1734.*

‘ Mr. Garretson, from the Committee of this
 ‘ House reported, That they last Night met the
 ‘ Committee of the Council, on the subject Mat-
 ‘ ter of their Message of yesterday to this House ;
 ‘ and that after several Preliminaries between the
 ‘ said Committees, the Gentlemen of the Council
 ‘ reduced to Writing, what they requested of
 ‘ this House, and delivered the same to the
 ‘ Chairman, who delivered it in at the Table, and
 ‘ being read, is in the Words following.

‘ At a Committee of the Council held the 17th of
 ‘ October, 1734.

PRESENT.

Mr. Clarke. Mr. Harrison. Dr. Colden.
 Mr. Livingston. Mr. Kennedy. Mr. Chief Justice.
 Mr. Cortland. Mr. Lane. Mr. Horsmanden

‘ Gentlemen ;

‘ The Matters we request your Concurrence
 ‘ in, are, That Zenger’s Papers. No. 7. 47. 48.
 ‘ 49. which were read, and which we now deli-
 ‘ ver, be burnt by the Hands of the common
 ‘ Hangman, as containing in them many Things
 ‘ derogatory of the Dignity of His Majesty’s
 ‘ Government, reflecting upon the Legislature,
 ‘ upon the most considerable Persons, in the most
 ‘ Distinguished Stations in the Province, and tend-
 ‘ ing to raise Seditions and Tumults among the
 ‘ People thereof.

‘ That you concur with us in the Addressing
 ‘ the Governour, to issue His Proclamation,
 ‘ with a Promise of Reward for the Discovery of
 ‘ the Authors or Writers of these Seditious Libels.

‘ That

‘ That you concur with us in an Order for
‘ Prosecuting the Printer thereof.

‘ That you concur with us in an Order to the
‘ Magistrates, to exert themselves in the Execu-
‘ tion of their Offices, in order to preserve the
‘ publick Peace of the Province.

‘ By Order of the Committee.
‘ Fred. Morris, Cl. Con.

‘ Mr. Garretson delivered likewise to the House
‘ the several Papers refer’d to in the said
‘ Request.

‘ Ordered, That the said Papers be lodg’d
‘ with the Clerk of this House, and that the
‘ Consideration thereof, and the said Request, be
‘ referred till Tuesday next.

‘ Die Martis, 9 ho. A. M. 22 October, 1734.

‘ The House according to Order proceeded to
‘ take into Consideration the Request of a Com-
‘ mittee of Council, delivered to a Committee of
‘ this House, on the 16th Instant, as likewise of
‘ the several Papers therein referred to. And
‘ after several Debates upon the subject Matters,
‘ it was ORDERED, THAT THE SAID PA-
‘ PERS AND REQUEST LYE ON THE
‘ TABLE.’

The Council finding the General Assembly
would not do any Thing about it, they sent the
following Message to the House.

‘ Die Sabbati, 9 ho. A. M. 2 November, 1734.

‘ A Message from the Council by Mr Living-
‘ ston, desiring this House to return by him to
‘ that Board, the several seditious Journals of
‘ Zenger’s, No 7. 47. 48. 49. which were deli-
‘ vered by a Committee of that Board to a Com-
‘ mittee of this House, the 17th of October last,
‘ together with the Proposals of the Committee
‘ of that Board, delivered therewith to a Com-
‘ mittee of this House; and then withdrew.’

On Tuesday the 5th of November, 1734. the
Quarter Sessions for the City of New-York began,
when the Sheriff delivered to the Court AN
ORDER, which was read in these Words.

‘ At a Council held at Fort George, in New-York,
thezd of November, 1734.

* N.B. Dr. Colden was that Day at Esopus, 90 Miles from New-York, tho’ mention’d as present in Council.

PRESENT,

His Excellency William Cosby, Capt. General and
Governor in Chief, &c.

Mr. Clarke. Mr. Harrison. * Dr. Colden.
Mr. Livingston. Mr. Kennedy. Mr. Chief Justice.
Mr. Cortland. Mr. Lane. Mr. Horsmanden.

‘ Whereas by an Order of this Board, of this
‘ Day, some of John Peter Zenger’s Journals,
‘ entitled, The New-York Weekly Journal, con-
‘ taining the freshest Advices, foreign and domest-
‘ tick, No. 7. 47. 48. 49. were ordered to be burnt
‘ by the Hands of the common Hangman, or Whip-
‘ per, near the Pillory in this City, on Wednesday
‘ the 6th Instant, between the Hours of Eleven and
‘ Twelve in the Forenoon, as containing in them
‘ many Things tending to Sedition and Faction, to
‘ bring His Majesty’s Government into Contempt,
‘ and to disturb the Peace thereof, and containing in
‘ them likewise, not only Reflections upon His Excel-
‘ lency the Governor in particular, the Legislature in
‘ general, but also upon the most considerable Persons
‘ in the most distinguished Stations in this Province.
‘ It is therefore ordered, That the Mayor, and Magi-
‘ strates of this City, do attend at the Burning of
‘ the several Papers or Journals aforesaid, Num-
‘ bered as above mentioned.

Fred. Morris, D. Cl. Con.

‘ To Robert Lutting, Esq; Mayor of the City
‘ of New-York, and the Rest of the Magistrates
‘ for the said City and County.

Upon reading of which ORDER, the Court
forbad the Enttring thereof in their Books at that
Time, and many of them declared, that if it
should be entred, they would have their Protest
entered against it.

On Wednesday the 6th of November, the Sher-
riff of New-York moved the Court of Quarter
Sessions, to comply with the said Order, upon
which one of the Aldermen offered a protest,
which was read by the Clerk, and approved of by
all the Aldermen, either expressly or by not
objecting to it, and is as followeth.

‘ Whereas an ORDER has been served on this
Court, in these Words.

[The Order as above inserted.]

‘ And

‘ And whereas this Court conceives, they are only to be commanded by the King’s Mandatory Writs, authorized by Law, to which they conceive they have the Right of shewing Cause why they don’t obey them, if they believe them improper to be obey’d, or by ORDERS, which have some known Laws to authorize them; and whereas this Court conceives THIS ORDER to be no Mandatory Writ warranted by Law, nor knows of no Law that authorizes the making the Order aforesaid; so they think themselves under no Obligation to obey it: Which Obedience, they think, would be in them, an opening a Door for arbitrary Commands, which, when once opened, they know not what Dangerous Consequences may attend it. Wherefore this Court conceives it self bound in Duty (for the Preservation of the Rights of this Corporation, and as much as they can, the Liberty of the Press, and the People of the Province, since an Assembly of the Province, and several Grand Juries, have refused to meddle with the Papers, when applied to by the Council) to protest against the ORDER aforesaid, and to forbid all the Members of this Corporation, to pay any Obedience to it, until it be shewn to this Court, that the same is Authorized by some known Law, which they neither know nor believe that it is.’

Upon reading of which, it was required of the Honourable Francis Harrison, Recorder of this Corporation, and one of the Members of the Council, (present at making the said Order) to shew by what Law or Authority the said ORDER was made; upon which he spoke in Support of it, and cited the Case of Doctor Sacheverel’s Sermon, which was by the House of Lords ordered to be burnt by the Hands of the Hangman, and that the Mayor and Aldermen of London should attend the doing of it. To which one of the Aldermen answered to this Purpose; That he conceived the Case was no ways parallel, because Doctor Sacheverel, and his Sermon, were impeached by the House of Commons of England, which is the Grand Jury of the Nation, and Representative of the whole People of England: That this their Impeachment they prosecuted before the House of Lords, the greatest Court of Justice of Britain, and which beyond Memory of

Man, has had Cognizance of Things of that Nature, that there Sacheverel had a fair Hearing in Defence of himself and of his Sermon. And after that fair Hearing, he and his Sermon were justly, fairly and legally condemned; that he had read the Case of Dr. Sacheverel, and thought he could charge his Memory, that the Judgment of the House of Lords in that Case was, That the Mayor and Sheriffs of London and Middlesex, only should attend the Burning of the Sermon, and not the Aldermen; and farther he remembred; that the Order upon that Judgment, was only directed to the Sheriffs of London, and not even to the Mayor, who did not attend the doing it; and farther said, that would Mr. Recorder shew, that the Governour and Council had such Authority as the House of Lords, and that the Papers ordered to be burnt were in like manner legally prosecuted and condemned, there the Case of Doctor Sacheverel might be to the Purpose; but without shewing that, it rather proved that a Censure ought not to be pronounced, till a fair Trial by a competent and legal Authority were first had. Mr. Recorder was desired to produce the Books from whence he cited his Authorities, that the Court might judge of them themselves, and was told, that if he could produce sufficient Authorities to warrant this ORDER, they would readily obey it, but otherwise not. Upon which he said, he did not carry his Books about with him. To which it was answer’d, he might send for them, or order a Constable to fetch them. Upon which he arose, and at the lower End of the Table he mentioned, That Bishop Burnet’s Pastoral Letter, was order’d by the House of Lords, to be burnt by the High Bailiff of Westminster*; upon which he abruptly went away, without waiting for an Answer, or promising to bring his Books, and did not return fitting the Court.

After Mr. Recorder’s Departure, it was moved that the Protest should be enter’d, to which it was answer’d, that the Protest could not be entered without entering also the ORDER, and it was not fit to take any Notice of IT, and therefore it was propos’d that no Notice should be taken in their Books of either, which was unanimously agreed to by the Court.

The Sheriff then moved, that the Court would direct their Whipper to perform the said ORDER,

to

* Bp. Kennet says, That this Letter seem’d to be sacrific’d to a poor Jest on the Author’s Name [Burn et] Compleat Hist of Eng. Vol. 3. P. 587. 2 Ed. in Lond. 1719.

to which it was answered, That as he was the Officer of the Corporation, they would give no such Order. Soon after which the Court adjourned, and did not attend the Burning of the Papers. Afterwards about Noon, the Sheriff after reading the Numbers of the several Papers which were ordered to be burnt, delivered them unto the Hands of his own Negroe, and ordered him to put them into the Fire, which he did, at which Mr. Recorder, *Jeremiah Dunbar, Esq;* and several of the Officers of the Garrison attended.

On the Lord's Day the 17th of November, 1734. I was taken and imprisoned by Virtue of a Warrant in these Words.

' At a Council held at Fort George in New-York, the 2d Day of November, 1734.

PRESENT,

His Excellency *William Cosby*, Captain General and Governour in Chief, &c.

Mr. Clarke. Mr. Harrison. Mr. Livingston.
Mr. Kennedy. Chief Justice. Mr. Cortlandt.
Mr. Lane. Mr. Horsmanden.

' It is ordered that the Sheriff for the City of New-York, do forthwith take and apprehend *John Peter Zenger*, for printing and publishing several Seditious Libels, dispersed throughout his Journals or News Papers, entituled, *The New-York Weekly Journal, containing the freshest Advices, foreign and domestick*; as having in them many Things, tending to raise Factions and Tumults, among the People of this Province, inflaming their Minds with Contempt of His Majesty's Government, and greatly disturbing the Peace thereof, and upon his taking the said *John Peter Zenger*, to commit him to the Prison or common Jail of the said City and County.

Fred. Morris, D. Cl. Con.

And being by Virtue of that Warrant so imprisoned in the Jail, I was for several Days denied the use of Pen, Ink and Paper, and the Liberty of Speech with any Persons. — Upon my Commitment, some Friends soon got a *Habeas Corpus*, to bring me before the Chief Justice, in order to my Discharge or being bail'd; on the Return whereof, on Wednesday the 20th of Novem-

ber, my Council delivered Exceptions to the Return, and the Chief Justice ordered them to be argued publicly at the City-Hall, on the Saturday following.

On Saturday the 23d. of November, the said Exceptions came to be argued, by *James Alexander* and *William Smith*, of Council for me, and by Mr. Attorney General and Mr. Warrel, of Council against me, in Presence of some Hundreds of the Inhabitants; where my Council (saying the Benefit of Exception to the Illegality of the Warrant) insisted that I might be admitted to reasonable Bail. And to shew that it was my Right to be so, they offered *Magna Charta, The Petition of Right, 3 Car. The Habeas Corpus, Act of 31 Car. 2.* which directs the Sum in which Bail is to be taken, to be, ' according to the Quality of the Prisoner, and Nature of the Offence.' Also 2d. *Hawkins*, Cap. 15. §. 5. in these Words, ' But Justices must take Care, that under Pretence of demanding sufficient Security, they do not make so excessive a Demand, as in Effect amounts to a Denial of Bail, for this is lookt on as a great Grievance, and is complained of as such, by 1 W. & M. Sels. 2d. by which it is declared, That excessive Bail ought not to be requir'd.' It was also shewn, that the seven Bishops, who in King James the 1st's Time, were charged with the like Crime that I stood charged with, were admitted to Bail on their own Recognizances, the Arch-Bishop in 200 l. and each of the other six in a 100 l. a piece only. Sundry other Authorities and Arguments were produced and insisted on by my Council, to prove my Right to be admitted to moderate Bail, and to such Bail as was in my Power to give; and sundry Parts of History they produced, to shew how much the requiring excessive Bail had been reſented by Parliament. And in order to Enable the Court to judge what Surety was in my Power to Give, I made Affidavit, That (my Debts paid) I was not worth Forty Pounds, (the Tools of my Trade and wearing Apparel excepted).

Some warm Expressions (to say no worse of them) were dropt on this Occasion, sufficiently known and reſented by the Auditory, which for my Part I desire may be buried in Oblivion: Upon the whole it was Ordered that I might be admitted to Bail, my self in 400 l. with two Sureties, each in 200 l. and that I should be remanded till I Gave it. And as this was Ten Times more, than was in my Power to counter-secure any Person in giving Bail for me, I conceived I could not ask any to become my Bail on these

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Terms;

Terms; and therefore I returned to Jail, where I lay until *Tuesday* the 28th of *January*, 1734, 5, being the last Day of that Term; and the Grand Jury having found nothing against me, I expected to have been discharged from my Imprisonment: But my Hopes proved vain; for the Attorney General then charged me by *Information*, for Printing and Publishing Parts, of my Journals No. 13. and 23. as being *false, scandalous, malicious, and seditious*.

To this *Information* my Council appeared, and offered *Exceptions*, leaving a Blank for inserting the Judges *Commissions*, which the Court were of opinion not to receive till those Blanks were filled up. In the succeeding Vacation the Judges gave Copies of their *Commissions*; and on *Tuesday* the 15th of *April* last, the first Day of the succeeding Term, my Council offered these *Exceptions*; which were as follows.

The Attorney General,

v.

John Peter Zenger.

} On *Information* for
a Misdemeanour.

‘ *Exceptions* humbly offered by *John Peter Zenger*, to the Honourable *James De Lancey*, Esq; to judge in this Cause.

‘ The Defendant comes and prays Hearing of the *Commissions*, by Virtue of which the Honourable *James De Lancey*, Esq; claims the Power and Authority to judge in this Cause, and it is read to him in these Words;

‘ *GEORGE the second, by the Grace of God, King of Great Britain, France and Ireland, King, Defender of the Faith, &c. To Our trusty and well beloved James De Lancey, Esq; We reposing special Trust and Confidence in your Integrity, Ability and Learning, have assigned, constituted and appointed, and We do by these Presents assign constitute and appoint you the said James De Lancey, to be Chief Justice in and over our Province of New-York, in America, in the Room of Lewis Morris, Esq; Giving and by these Presents granting unto you, full Power and lawful Authority, to hear, try, and determine all Pleas whatsoever, civil, criminal and mixt, according to the Laws, Statutes and Customs of Our Kingdom of England, and the Laws and Usages of Our said Province of New-York, not being repugnant thereto, and Executions of all Judgments of the said Court to award, and to make such Rules and Orders in the said Court, as may be found convenient and useful, and as near as may be agreeable to the Rules*

and Orders of Our Courts of King's Bench, Common Pleas, and Exchequer in England. To have, hold, and enjoy the said Office or Place of Chief Justice in and over Our said Province, with all and singular the Rights, Privileges, Profits and Advantages, Sallaries, Fees and Perquisites unto the said Place belonging, or in any Ways appertaining, in as full and ample Manner as any Person heretofore Chief Justice of Our said Province hath held and enjoyed, or of Right ought to have held and enjoyed the same, To you the said James De Lancey, Esq; for and DURING OUR WILL AND PLEASURE. In Testimony whereof we have caused these Our Letters to be made Patent, and the great Seal of Our Province of New-York, to be hereunto affixed. Witness our trusty and well beloved WILLIAM COSBY Esq; Our Captain General and Governour in Chief of Our Provinces of New-York, New-Jersey, and the Territories thereon depending in America, Vice-Admiral of the same, and Colonel in our Army, at Fort George in New-York, the Twenty first Day of August, in the seventh Year of Our Reign, Annoq; Domini, 1733.

‘ Which being read and heard, the said *John Peter Zenger*, by Protestation not confessing nor submitting to the Power of any other Person to Judge in this Cause, doth except to the Power of the Honourable *James De Lancey*, Esq; aforesaid, to judge in this Cause, by Virtue of the Commission aforesaid, for these Reasons, viz.

‘ 1st. For that the Authority of a Judge of the King's Bench, in that Part of Great Britain called England, by which the Cognizance of this Cause is claimed, is by the said Commission granted to the Honourable *James De Lancey*, Esq; aforesaid, only during Pleasure; whereas that Authority (by a Statute in that Case made and provided) ought to be granted during good Behaviour.

‘ 2^d. For that by the said Commission, the Jurisdiction and Authority of a Justice of the Court of Common Pleas at Westminster, in that Part of Great Britain, called England, is granted to the said *James De Lancey*, Esq; which Jurisdiction and Authority, cannot be granted to, and exercised by, any one of the Justices of the King's Bench.

‘ 3^d. For that the Form of the said Commission, is not founded on nor warranted by the Common Law, nor any Statute of England, nor of Great Britain, nor any Act of Assembly of this Colony.

‘ 4th. For that it appears by the Commission aforesaid, that the same is granted under the

Seal

Seal of this Colony, by His Excellency *William Cosby*, Esq; Governour thereof; and it appears not, that the same was granted, neither was the same granted, by and with the Advice and Consent of His Majesty's Council of this Colony; without which Advice and Consent, His Excellency could not grant the same.

Wherefore, and for many other Defects in the said Commission, this Defendant humbly hopes, that the Honourable *James De Lancey*, Esq; will not take Cognizance of this Cause, by Virtue of the Commission aforesaid.

Was signed, } *James Alexander.*
 } *William Smith.*

The Exceptions to the Commission of the Honourable *Frederick Philipse*, Esq; were the same with the foregoing, including therein his Commission, which is in these Words.

GEORGE the second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To Our trusty and well beloved Frederick Philipse, Esq; Greeting: Whereas it is Our Care, that Justice be duly administered to Our Subjects within Our Province of New-York, and Territories thereon depending in America; and We reposing especial Confidence in your Integrity, Ability and Learning, have assigned, constituted and appointed, and We do by these Presents assign, constitute and appoint you the said Frederick Philipse, to be second Justice of Our Supream Court of Judicature for Our Province of New-York, in the Room of James De Lancey, Esq; Giving and granting with you the said Frederick Philipse, full Power and Authority, with Our other Justices of Our said Supream Court, to hear, try and determine, all Pleas whatsoever, civil, criminal and mixt, according to the Laws, Statutes and Customs of Our Kingdom of England, and the Laws and Usages of Our said Province of New-York, not being repugnant thereto, and Executions of all Judgments of the said Court to award, and to act and do all Things, which any of Our Justices of either Bench, or Baron of the Exchequer, in Our said Kingdom of England, may or ought to do; and also to assist, in the making such Rules and Orders in Our said Court, as shall be for the Good and Benefit of Our said Province; and as near as con-

veniently may be, to the Rules and Orders of Our said Courts in Our said Kingdom of England: To have, hold and enjoy, the said Office or Place of second Justice of Our said Province of New-York, together with all and singular the Rights, Privileges, Sallarys, Fees, Perquisites, Profits and Advantages thereto, now or at any Time heretofore belonging, or in any wise of Right appertaining; unto you the said Frederick Philipse, for and during our Pleasure. In Testimony whereof, We have caused these our Letters to be made Patent, and the Great Seal of Our said Province of New-York to be hereunto affixed. Witness Our trusty and well beloved WILLIAM COSBY, Esq; Our Captain General and Governour in Chief, of Our Provinces of New-York, New-Jersey, and Territories thereon depending in America, Vice Admiral of the same, and Colonel in Our Army, &c. at Fort George, in New-York, the Twenty first Day of August, in the Seventh Year of Our Reign, Anno: Domini, 1733.

Fred. Morris, D. Secry.

Tuesday the 15th of April, 1735.

Mr. *Alexander* offered the above Exceptions to the Court, and prayed that they might be filed. Upon this the Chief Justice said to Mr. *Alexander* and Mr. *Smith*, That they ought well to consider the Consequences of what they offered; to which both answered, That they had well considered what they offered, and all the Consequences. And Mr. *Smith* added, that he was so well satisfied of the Right of the Subject to take an Exception to the Commission of a Judge, if he thought such Commission illegal, ——— that he durst venture his Life upon that Point. As to the Validity of the Exceptions then offered, he said, he took that to be a second Point; but was ready to argue them both, if their Honours were pleased to hear him. To which the Chief Justice replied, That he would consider the Exceptions in the Morning; and ordered the Clerk to bring them to him.

Wednesday, the 16th of April, 1735.

The Chief Justice delivered one of the Exceptions to the Clerk, and Justice *Philipse* the other, upon which Mr. *Smith* arose and asked the Judges, whether their Honours would hear him upon these two Points. 1st That the Subject has a Right to take such Exceptions, if they judged the Commission illegal

Sal^o. 2dly. That the Exceptions tendred were legal and valid. To which the Chief Justice said, That they would neither hear nor allow the Exceptions; for (said he) you thought to have gained a great Deal of Applause and Popularity by opposing this Court, as you did the Court of Exchequer; but you have brought it to that Point, That either, We must go from the Bench, or you from the Bar: Therefore We exclude you and Mr. Alexander from the Bar; and delivered a Paper to the Clerk, and ordered it to be entered, which the Clerk entered accordingly, and returned the Paper to the Chief Justice; after which the Chief Justice ordered the Clerk to read publicly what he had written; an attested Copy whereof follows.

At a Supream Court of Judicature held for the Province of New York, at the City Hall of the City of New York, on Wednesday, the 16th Day of April, 1735.

P R E S E N T,

The Hon. James De Lancey, Esq; Chief Justice.
The Hon. Frederick Philipse, Esq; Second Justice.

James Alexander, Esq; and William Smith, Attornies of this Court, having presumed (notwithstanding they were forewarned by the Court of their DISPLEASURE if they should do it) to sign, and having actually signed, and put into Court, Exceptions, in the Name of John Peter Zenger; thereby denying the Legality of the Judges their Commissions; tho' in the usual Form, and the being of this Supream Court. It is therefore ordered, that for the said Contempt, the said James Alexander, and William Smith, be excluded from any farther Practice in this Court, and that their Names be struck out of the Roll of Attornies of this Court.

per Cur^o.

James Lyne. Cl.

After the Order of the Court was read, Mr. Alexander asked whether it was the Order of Mr. Justice Philipse as well as of the Chief Justice? To which both answered, that it was their Order; upon which Mr. Alexander added, That it was

proper to ask that Question, That they might know how to have their Relief: He farther observed to the Court, upon reading of the Order, That they were mistaken in their Wording of it, because the Exceptions were only to their Commissions, and not to the being of the Court, as is therein alledged; and prayed that the Order might be altered accordingly. The Chief Justice said, they conceived the Exceptions were against the Being of the Court. Both Mr. Alexander and Mr. Smith denied that they were, and prayed the Chief Justice to point to the Place that contained such Exceptions; and further added; That the Court might well exist, tho' the Commissions of all the Judges were void; which the Chief Justice confessed to be true: And therefore they prayed again that the Order in that Point might be altered; but it was denied.

Then Mr. Alexander desired to know, whether they over ruled or rejected the Exceptions; the Chief Justice said, he did not understand the Difference; to which said Alexander replied, that if he rejected the Exceptions then they could not appear upon the Proceedings, and in that Case the Defendant was entitled to have them made Part of the Proceedings, by Bills of Exceptions: But if they over-ruled them, then by so doing, they only declared them not sufficient, to hinder them from proceeding by virtue of those Commissions, and the Exceptions would remain as Records of the Court, and ought to be entered on the Record of the Cause as Part of the Proceedings. The Chief Justice said, they must remain upon the File, to warrant what we have done; as to being Part of the Record of the Proceedings in that Cause, he said, you may speak to that Point to morrow.

Fryday, April 18th. 1735.

Mr. Alexander signified to the Court, That on Wednesday last their Honours had said, That the Council for Zenger might speak to the Point, concerning the Rejecting or Over-ruling of Zenger's Exceptions on the Morrow: To which the Chief Justice answered, That he said, You may get some Person to speak to that Point on the Morrow, not meaning that the said Alexander should speak to it, that being contrary to the Order. Both Mr. Alexander

* This first Point is largely treated on, in the Arguments of Van Dam's Council, in Support of their Plea to the Jurisdiction of the Supream Court, printed here above a Year before that, from Pag. 14 to 35, to which no Answer has as yet appeared; which Argument, contains also some Part of the Arguments necessary to support the 2d. Point.

ander and Mr. Smith said, they understood it otherwise.

They both also mentioned, that it was a Doubt, whether by the Words of the Order they were debarred of their Practice as Council, as well as Attorneys, whereas they practised in both Capacities? To which the Chief Justice answered, That the Order was plain, *That James Alexander, Esq; and William Smith, were debarred and excluded from their whole Practice at this Barr, and that the Order was intended to barr their acting both as Council and as Attornies, and that it could not be construed otherwise.* And it being asked Mr. Philips, Whether he understood the Order so; he answered, that he did.

Upon this Exclusion of my Council I petitioned the Court to order Council for my Defence, who thereon appointed *John Chambers, Esq;* who pleaded *Not Guilty* for me to the Information. But as to the Point. *Whether my Exceptions should be part of the Record as was moved by my former Council.* Mr. Chambers thought not proper to speak to it; Mr. Chambers also moved, that a certain Day in the next Term, might be appointed for my Tryal, and for a *Struck Jury*; whereupon my Tryal was ordered to be on *Munday the 4th of August*, and the Court would consider till the first Day of next Term, whether I should have a *Struck Jury* or not, and ordered that the Sheriff should in the mean Time, at my Charge, return the Freeholders Book.

At a Supream Court of Judicature held for the Province of *New-York*, before the Honourable *James De Lancey, Esq;* Chief Justice of the said Province; and the Honourable *Frederick Philips, Esq;* second Justice of the said Province.

On *Tuesday the 29th of July, 1735.* the Court opened, and on *Motion of Mr. Chambers for a Struck Jury*, pursuant to the Rule of the preceding Term, the Court were of Opinion, that I was entitled to have a *Struck Jury*; and that Evening at five of the Clock, some of my Friends attended the Clerk, for striking the Jury; when to their Surprize, the Clerk instead of producing the Freeholders Book, to strike the Jury out of it in their Presence as usual, he produced a List of 48 Persons, who, 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 Governour's Pleasure, hat

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 Governour's Baker, Taylor, Shoemaker, Candlemaker, Joiner, &c. 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 requested that he would either bring the Freeholders Book, and chuse out of it 48 unexceptionable 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 shew 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 his List, but told my Friends, if any Objections they had to any Persons, they might strike those Persons out; to which they answered, there would not remain a Jury, if they struck out all the exceptionable Men, and according to the Custom, they had only a Right to strike out 12.

But 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, 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, who my Friends and Council insisted on no Objections but *want of Freeholders*; and tho' they did not insist, that Mr. Attorney General (who was assisted by Mr. Blagge,) should shew any particular Cause, against any Persons he disliked, but acquiesced that any Person he disliked should be out of the 48.

Before *James De Lancey, Esq;* Chief Justice of the Province of *New-York*, and *Frederick Philips*, second Judge, came on my Tryal, on the fourth Day of *August, 1735.* upon an Information for printing and publishing two News Papers, which were called Libels against our Governour and his Administration.

The Defendant *John Peter Zenger* being called appeared.

And the Sherif returned his *Venire* for the Tryal of the said Cause.

D

Mr

Mr. Chambers, of Council for the Defendant. I humbly move Your Honours 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.

Chief Justice. *How is that? Are they not so returned?*

Mr. Ch. No, they are not: For some of the Names that were last set down in the Pannel, are now placed first.

Ch. J. *Make out that, and you shall be righted.*

Mr. Ch. I have the Copy of the Pannel in my Hand, as the Jurors were struck, and if the Clerk will produce the Original signed by Mr. Attorney and my self, Your Honour will see our Complaint is just.

Ch. J. *Clerk, is it so? Look upon that Copy; is it a true Copy of the Pannel as it was struck?*

Clerk. Yes, I believe it is,

Ch. J. *How came the Names of the Jurors to be misplaced in the Pannel annexed to the Venire?*

Sherif. I have returned the Jurors in the same Order in which the Clerk gave them to me.

Ch. J. *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.

Hermanus Rutgers, Stanly Holmes, Edward Man, John Bell, Samuel Weaver, Andries Marschalk, Egbert van Borstein, Thomas Hunt, Form. Benjamin Hildreth, Abraham Keteltas, John Goelet, Hercules Wendover.

Mr. Attorney General opened the Information, which was as follows.

Mr. Attorney. May it please Your Honours, 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 Governour 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 nor Justice: with much more, as will appear upon reading the Informations. This of Libelling is what 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 Libelling and the Party Libelled. There can be no Doubt but

you Gentlemen of the Jury will have the same ill Opinion of such Practices, as the Judges have always shewn upon such Occasions: But I shall say no more at this Time, until you hear the Information, which is as follows.

New-York, Supream Court.

Of the Term of *January*, in the Eighth Year of the Reign of our Sovereign Lord King GEORGE the second, &c.

New-York, ss. BE it remembered, That Richard Bradley, Esq; Attorney General of Our Sovereign Lord the King, for the Province of *New-York*, who for Our said Lord the King in this Part prosecutes, in his own proper Person comes here into the Court of Our said Lord the King, and for Our said Lord the King gives the Court here to understand, and be informed, That John Peter Zenger, late of the City of *New-York*, Printer, (being a seditious Person, and a frequent Printer and Publisher of false News and seditious Libels, and wickedly and maliciously devising the Government of Our said Lord the King of this His Majesty's Province of *New-York*, under the Administration of His Excellency William Cosby, Esq; Captain General and Governour in Chief of the said Province, to traduce, scandalize and vilify, and His Excellency the said Governour, and the Ministers and Officers of Our said Lord the King of and for the said Province to bring into Suspicion and the ill Opinion of the Subjects of Our said Lord the King residing within the said Province) the Twenty eighth Day of *January*, in the seventh Year of the Reign of Our Sovereign Lord George the second, by the Grace of God of *Great-Britain, France and Ireland*, King, Defender of the Faith, &c. 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, containing the freshest Advices foreign and domestick*; in which Libel (of and concerning His Excellency the said Governour, and the Ministers and Officers of Our said Lord the King, of and for the said Province) among other Things therein contained are these Words: 'Your Appearance in Print at last, gives a Pleasure to many, tho' most wish you had come fairly into the open Field, and not appeared behind Retrenchments' grade

“ made of the supposed Laws against Libelling,
 “ and of what other Men have said and done be-
 “ fore; these *Retrenchments*, Gentlemen, may
 “ soon be shewn to you and all Men to be weak,
 “ and to have neither Law nor Reason for their
 “ Foundation, so cannot long stand you in 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
 “ (to wit) They (the People of the City and Pro-
 “ vince of New-York meaning) think as Matters
 “ now stand, that their LIBERTIES and PRO-
 “ PERTIES are precarious, and that SLAVERY
 “ is like to be intailed 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 Excel-
 “ lency the said Governour, and of the Ministers
 “ and Officers of our said Lord the King, of and
 “ for the said Province.) And the said Attorney
 “ General of our said Lord the King, for Our
 “ said Lord the King, likewise gives the Court
 “ here to understand and be informed, that
 “ the said John Peter Zenger afterwards (to
 “ wit) the eight Day of April, in the seventh
 “ Year of the Reign of Our said Lord the
 “ King, at the City of New-York aforesaid,
 “ did falsly, seditiously and scandalously print and
 “ publish, and cause to be printed and published,
 “ another false, malicious, seditious, and scandalous
 “ Libel, intitled, *The New-York Weekly Journal*,
 “ containing the freshest Advices foreign and domestic.
 “ In which Libel, (of and concerning the Go-
 “ vernment of the said Province of New-York,
 “ and of and concerning His Excellency the said
 “ Governour, and the Ministers and Officers of
 “ Our said Lord the King, of and for the said Pro-
 “ vince) among other Things therein contained,
 “ are these Words, *One of our Neighbours* (one of
 “ the Inhabitants of New-Jersey meaning) being
 “ in Company, observing the Strangers (some of
 “ the Inhabitants of New-York meaning) full of
 “ Complaints, endeavoured to persuade them to re-
 “ move into Jerley; to which it was replied, that
 “ would be leaping out of the Frying Pan into the
 “ Fire; for, says he, we both are under the same
 “ Governour (His Excellency the said Governour
 “ meaning) and your Assembly have shewn with a
 “ Witness what is to be expected from them; one
 “ that was then moving to Pensilvania, (meaning
 “ one that was then removing from New-York,
 “ with intent to reside at Pensilvania) to which
 “ Place it is reported several considerable Men are
 “ removing (from New-York meaning) expressed in

“ Terms very moving, much Concern for the Cir-
 “ cumstances of New-York (the bad Circumstances
 “ of the Province and the People of New-York
 “ meaning) 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 Pro-
 “ vince of New-York) 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 Country-Men, 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
 “ shewing that they have the Interest of their Country
 “ more at Heart, than the Gratification of any pri-
 “ vate View of any of their Members, or being at
 “ all affected, by the Smiles or Frowns of a Gover-
 “ nour, (His Excellency the said Governour
 “ meaning) both 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 it self is at an End, WE (the
 “ People of the Province of New-York meaning)
 “ SEE MENS DEEDS DESTROYED, JUD-
 “ GES ARBITRARILY DISPLACED, NEW
 “ COURTS ERECTED, WITHOUT CON-
 “ SENT OF THE LEGISLATURE (within
 “ the Province of New-York meaning) BY
 “ WHICH IT SEEMS TO ME, TRYALS
 “ BY JURIES ARE TAKEN AWAY WHEN
 “ A GOVERNOUR PLEASES, (His Excellency
 “ the said Governour meaning) MEN OF
 “ KNOWN ESTATES DENIED THEIR
 “ VOTES, CONTRARY TO THE RE-
 “ CEIVED PRACTICE, THE BEST EXPO-
 “ SITOR OF ANY LAW: Who is then in that
 “ Province (meaning the Province of New-York),
 “ that call (can call meaning) any Thing his own,
 “ or enjoy any Liberty (Liberty meaning) longer
 “ than those in the Administration (meaning the
 “ Administration of Government of the said Pro-
 “ vince of New-York) will condescend to let them
 “ do it, for which Reason I have left it, (the Pro-
 “ vince of New-York meaning) as I believe more
 “ will.’ To the great Disturbance of the Peace
 “ of the said Province of New-York, to the Great
 “ Scandal of Our said Lord the King, of His
 “ Excellency the said Governor, and of all
 “ others concern’d in the Administration of
 “ the Government of the said Province, and
 “ against the Peace of Our Sovereign Lord the
 “ King His Crown and Dignity, &c. Where-
 “ upon the said Attorney General of Our said
 “ Lord

' Lord the King, for Our said Lord the King, prays
' the Advifement of the Court here, in the Pre-
' mifes, and the due Procefs of the Law, againft
' him the said *John Peter Zenger*, in this Part to
' be done, to answer to Our said Lord the King
' of and in the Premifes, &c.

' *R. Bradley*, Attorney General.

To this Information the Defendant has pleaded
Not Guilty, and we are ready to prove it.

Mr. Chambers has not been pleased to favour me
with his Notes, so I cannot, for Fear of doing
him Injustice, pretend to set down his Argu-
ment; But here *Mr. Chambers* set forth very
clearly the Nature of a Libel, the great Allow-
ances that ought to be made for what Men
speak or write, That in all Libels there must
be some particular Persons so clearly pointed
out, that no Doubt must remain about who is
meant; That he was in hopes *Mr. Attorney*
would fail in his Proof, as to this Point; and
therefore desired that he would go on to examine
his Witnesses.

Then *Mr. Hamilton*, who at the Request of
some of my Friends, was so kind as to come
from *Philadelphia* to assist me on the Tryal, spoke.

Mr. Hamilton, May it please your Honour;
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 libellous. And tho' I
am perfectly of the Opinion with the Gentleman
who has just now spoke, on the same Side with
me, as to the common Course of Proceedings, I
mean 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
free-born Subject to make, when the Matters so
published can be supported with Truth; and
therefore I'll save *Mr. Attorney* the Trouble of
Examining his Witnesses to that Point; and I do
(for my Client) confess, that he both printed and
published the two News Papers set forth in the
Information, and I hope in so doing he has com-
mitted no Crime.

Mr. Attorney, Then if Your Honour pleases,
since *Mr. Hamilton* has confessed the Fact, I think

our Witnesses may be discharged; we have no
further Occasion for them.

Mr. Hamilton, If you brought them here, only
to prove the Printing and Publishing of these
News Papers, we have acknowledged that, and
shall abide by it.

*Here my Journeyman and two Sons (with several
others subpoena'd by Mr. Attorney, to give Evi-
dence against me) were discharged, and there
was Silence in the Court for some Time.*

Mr. Chief Justice. Well *Mr. Attorney*, will
you proceed?

Mr. Attorney, Indeed Sir, as *Mr. Hamilton* has
confessed the Printing and Publishing 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 libellous 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 Libel-
ler; for the Words themselves must be libellous,
that is, false, scandalous, and seditious, or else we
are not guilty.

*As Mr. Attorney has not been pleased to favour us
with his Argument, which he read, or with the
Notes of it, we cannot take upon us to set down
his Words, but only to shew the Book Cases he
cited, and the general Scope of his Argument,
which he drew from those Authorities. He ob-
served upon the Excellency, as well as Use of
Government, and the great Regard and Reverence,
which had been constantly paid to it, both under
the Law and the Gospel. That by Government
we were protected in our Lives, Religion and Pro-
perties; and that for these Reasons, great Care
had always been taken to prevent every Thing
that might tend to scandalize Magistrates, and
others concerned in the Administration of the Go-
vernment, especially the supream Magistrate.
And that there were many Instances of very se-
vere Judgments, and of Punishments inflicted
upon such, as had attempted to bring the Govern-
ment into Contempt; by publishing false and scur-
rilous Libels against it, or by speaking evil and
scandalous Words of Men in Authority; to the
great Disturbance of the publick Peace. And to
support this, he cited, 5 Coke 121. suppose it
should*

should be 125.) Wood's Instit. 430. 2 Lilly 168. 1 Hawkins 73. 11. 6. From these Books be 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 Libeller deserves a severe Punishment, but if it is against a Magistrate or other publick Person, it is a greater Offence; for this concerns not only the Breach of the Peace, but the Scandal of the Government; for what greater Scandal of Government can there be, than to have corrupt or wicked Magistrates to be appointed by the King, to govern his Subjects under him? And a greater Imputation to the State cannot be, than to suffer such corrupt Men to sit in the sacred Seat of Justice, or to have any Medling in, or concerning the Administration of Justice: And 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 Libelling was an Offence against the Law of God. Act. xxiii. 5. Then said Paul, I wist not, Brethren, that he was the High Priest: For it is written, thou shalt not speak evil of the Ruler of the People. 2 Pet. x. 11. Despise Government, presumptuous are they, self willed, they are not afraid to speak evil of Dignities, &c. He then insisted that it was clear, both by the Law of God and Man, That it was a very great Offence 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 Governour, who is the King's immediate Representative, and the supreme Magistrate of this Province: For can there be any Thing more scandalous said of a Governour than what is published in those Papers? Nay, not only the Governour, but both the Council and 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 Governour; That he thinks the Law is at an End; That we see Mens Deeds destroyed, Judges arbitrarily displaced, new Courts erected, without Consent of the Legislature; And That it seems Tryals by Juries are taken away when a Governour pleases; That none can call any Thing their own, longer than those in the Administration will condescend to let them do it.----- And Mr. Attorney added, that he did not know what could be said in Defence of a Man, that had so notoriously scandalized the Governour and principal Magistrates and Officers of the Government, by charging them with depriving the People of their Rights and Liberties, and taking away Tryals by Juries, and in short, putting an End to the Law it self. ----- If this was not a Libel, he said, he did not know what was one. Such Persons as will take those Liberties with Governours and Magistrates, he thought ought to suffer for stirring up Sedition and Discontent among the People. And 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 Governour and Council, that he ought not to be suffered to go on, to disturb the Peace of the Government; by publishing such Libels against the Governour, 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 libelling and defaming His Majesty's Government and disturbing his Majesty's Peace. Mr. Chambers then sum'd 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 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.

Mr. Hamilton, May it please Your Honour; I agree with Mr. Attorney, that Government is a sacred Thing, but I differ very widely from him when he would insinuate, that the just Complaints of a Number of Men, who suffer under a bad Administration, is libelling that Administration. Had I believed that to be Law, I should not have given the Court the Trouble of hearing any Thing that I could say in this Cause. I own,

when I read the Information, I had not the Art to find out (without the Help of Mr. Attorney's *Innuendv's*) that the Governor was the Person meant in every Period of that News Paper; and I was inclined to believe, that they were wrote 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 shew 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 Council, and from the extraordinary Appearance of People of all Condition 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: And 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 judg'd Treason in those Days for a Man to speak, I think, has since not only been practis'd as lawful, but the contrary Doctrine has been held to be Law.

In *Brewster's* Case, for Printing, *That the 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 that to say, the King could be resisted by Arms in any Case whatsoever, was express Treason. And yet we see since that Time, Dr. *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 Places should do so too.

Is it not surprizing to see a Subject, upon his 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 Prince? 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 shew the Duty and Obedience we owe to the Supreme Magistrate, it is the King that is there meant and understood, tho' Mr. Attorney is pleas'd to urge them as Authorities to prove the Heinousness of Mr. *Zenger's* Offence against the Governor of *New York*. The several Plantations are compared to so many large Corporations, and perhaps not improperly; and can any one give an Instance, that the Mayor or 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 every Thing for Law here which is so in *England*? I believe we should not think it a Favour, at present at least, to establish this Practice. In *England* so great a

Regard and Reverence is had
* *C. 3 Inst.* 140. 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. And tho' 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 Offence, 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* cannot possibly be attended with those dangerous Consequences that it might in *Westminster Hall*; nor (I hope) will it be alledged, that any Misbehaviour to a Governor in the Plantations will, or own ought to be, judg'd of or punished, as a like Undutifulness would be, to Our Sovereign. From all which, I hope Mr. Attorney will not think it proper to apply his
Law.

Law-Cases (to support the Cause of his Governor) which have only been judged, where the King's Safety or Honour was concerned. It will not be denied but 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 Neighbour, for suffering his Horse or Cow to come and feed upon his Lands or eat his Corn, whether inclosed or not inclosed; and 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 not inclosed, or indeed for eating and treading down his Corn, if that were not inclosed. Numberless are the Instances of this Kind that might be given, to shew, 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 as 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 the 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 Libelling 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*. And if such Papers are not Libels, I think it may be said, there can be no such Thing as a Libel.

Mr. Hamilton, May it please Your Honour; I cannot agree with *Mr. Attorney*: For tho' 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 I did not omit the Word *false*: But it has been said already, that it may

be a Libel, notwithstanding it may be true.

Mr. Hamilton, In this I must still differ with *Mr. Attorney*; for I depend upon it, we are to be tried upon this Information now before the Court and Jury, and to which we have pleaded *Not Guilty*, and 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 Opinion his Information would not be good without it. But to shew that it is the principal Thing which, in my Opinion, makes a Libel, I put the Case, 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 Falshood makes the Scandal, and both make the Libel. And to shew 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'll 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 was necessary (as I insist it is not) how can we prove a Negative? But 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, that 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 shewn 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 every Body knows there are many Exceptions to that general Rule: For if a Man is charged with killing another, or stealing his Neighbour'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, &c. and this I think is proving a Negative. But we will save *Mr. Attorney* the Trouble of proving a Negative, and take the *Onus probandi* upon our selves, and prove
thoſe

those very Papers that are called Libels to be true.

Mr. Ch. 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 a Libel.

Mr. Ch. Justice, The Law is clear, That you cannot justify a Libel.

Mr. Hamilton, I own that, may it please Your Honour, 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 plead *Not Guilty*: Yet it will not be denied but he may, 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 it was in Defence of his Life, his House, &c. and in Assault and Battery, he may give in Evidence, that the other Party struck first, and in both Cases he will be acquitted. And in this Sense I understand the Word *justify*, when applied to the Case before the Court.

Mr. Ch. Justice, I pray shew that you can give the Truth of a Libel in Evidence.

Mr. Hamilton, I am ready, both from what I understand to be the Authorities in the Case, and from the Reason of the Thing, to shew that we may lawfully do so. But here I beg leave to observe, That Informations for Libels is a Child, if not born, yet nursed up, and brought to full Maturity, in the Court of Star-Chamber.

Mr. Ch. Justice, *Mr. Hamilton* you'll find your self mistaken; for in *Coke's Institutes* you'll find Informations for Libels, long before the Court of Star-Chamber.

Mr. Hamilton, I thank Your Honour; that is an Authority I did propose to speak to by and by: But as you have mention'd it, I'll read that Authority now. I think it is in 3 *Co. Inst.* under Title *Libel*; it is the Case of *John de Northampton* for a Letter wrote to *Robert de Ferrers*, one of the King's privy Council, * concerning Sir *Will.*

Scot, Chief Justice, and his Fel-

lows; but it does not appear to have been upon Information; and I have good Grounds to say it

was upon Indictment, as was the Case of *Adam de Ravenworth*, just mentioned before by Lord *Coke* under the same Title; and I think there cannot be a greater, at least a plainer Authority for us, than the Judgment in the Case of *John de Northampton*, which my Lord has set down at large. *Et quia prædictus Johannes cognovit dictam Literam per se scriptam Roberto de Ferrers, qui est de Concilio Regis, qua litera continet in se nullam veritatem, &c.* Now Sir, by this Judgment it appears the libellous Words were utterly false, and there the Falshood was the Crime, and is the Ground of that Judgment: And is not that what we contend for? Do not we insist that the Falshood makes the Scandal, and both make the Libel? And how shall it be known whether the Words are libellous, *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 Offence is the 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 Falshood*: Yet as the Offences 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 Falshood*, and must follow from his not proving our Papers to be *false*, or not suffering us to prove them to be *true*. But this is only reasoning upon the Case, and I will now proceed to shew, what in my Opinion will be sufficient to induce the Court, to allow us to prove the Truth of the Words, which in the Information are called libellous. And first, I think there cannot be a greater Authority for us, than the Judgment I just now mentioned, in the Case of *John de Northampton*, and that was in early Times, and before the Star-Chamber came to its Fulness of Power and Wickedness. In that Judgment

Judgment, as I observed, the *Falshood* of the Letter which was wrote, is assigned as the very Ground of the Sentence. And agreeable to this it was urged by Sir Robert Sawyer, * in the Tryal of the Seven Bishops, *That the Falsity, the Malice, and Sedition of the Writing, were all Facts to be proved.* But here it may be said, Sir Robert was one of the Bishop's Council, and his Argument is not to be allowed for Law: But I offer it only to shew that we are not the first who have insisted, that to make a Writing a Libel, it must be *false*. And if the Argument of a Council must have no Weight, I hope there will be more Regard shewn to the Opinion of a Judge, and therefore I mention the Words of Justice Powel in the same Tryal, where he says (of the Petition of the Bishops, which was called a Libel, and upon which they were prosecuted by Information) *That to make it a Libel, it must be false and malicious, and tend to Sedition; and declared, as he saw no Falshood or Malice in it, he was of Opinion, that it was no Libel.* Now I should think this Opinion alone, in the Case of the King, and in a Case which that King had so much at Heart, and which to this Day has never been contradicted, might be a sufficient Authority, to entitle us to the Liberty of proving the Truth of the Papers, which in the Information are called *false, malicious, seditious and scandalous*. If it be objected, *that the Opinions of the other three Judges were against him*, I answer, That the Censures the Judgments of these Men have undergone, and the Approbation Justice Powel's Opinion, his Judgment and Conduct upon that Tryal has met with, and the Honour he gained to himself, for daring to speak Truth at such a Time, upon such an Occasion, and in the Reign of such a King, is more than sufficient, in my humble Opinion, to warrant our insisting on his Judgment, as a full Authority to our Purpose, and it will lye upon Mr. Attorney to shew, that this Opinion has since that Time been denied to be Law, or that Justice Powel who delivered it, has ever been condemned or blamed for it, in any Law-Book extant at this Day, and this I will venture to say, Mr. Attorney cannot do. But to make this Point yet more clear, if any Thing can be clearer, I will on our Part proceed and shew, that in the Case of Sir Samuel Barnardiston, his Council, notwithstanding he stood before one of the greatest Monsters that ever presided in an English Court (Judge Jefferies) insisted on the

* *State Tryals*, Vol. 4.

Want of Proof to the *Malice and seditious Intent* of the Author, of what was called a *Libel*. And in the Case of *Tutchin*, which seems to be Mr. Attorney's chief Authority, that Case is against him; for he was upon his Tryal put upon shewing the Truth of his Papers, but did not, at

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least the Prisoner was asked, by the King's Council, whether he would say they were true? And as he never pretended, that they were true, the Chief Justice was not to say so. But the Point

will still be clearer on our Side from Fuller's Case, *For falsely and wickedly causing to be printed a false and scandalous Libel, in which (amongst other Things) were contained these Words; ' Mr. Jones has also made Oath, That he paid L. 5000. more by the late King's Order, to several Persons in Places of Trust, that they might compleat my Ruin, and invalidate me for ever. Nor is this all; for the same Mr. Jones will prove by undeniable Witnesses and Demonstration, that he has distributed more than L. 180,000. in Eight Years last past, by the French King's Order, to Persons in publick Trust in this Kingdom.'* 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 publick 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, they are true? Have you any Witnesses? You might have had Subpcena's for your Witnesses against this Day. If you take 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 have wrote, let us hear it.* Thus said, and thus did, that great Man Lord Chief Justice Holt, upon a Tryal 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. Ch. Justice, Let me see the Book.

Here the Court had the Case under Consideration, a considerable Time, and every one was silent.

Mr. Ch. Just. 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 with reading the Cases over again; the Thing seems to be very plain, and I submit it to the Court.

Mr. Ch. Just. Mr. *Hamilton*, the Court is of Opinion, 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 Inveective, 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. Ch. Just. Mr. *Hamilton*, the Court have delivered their Opinion, and we expect 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. Ch. Just. After the Court have declared their Opinion, it is not good Manners to insist upon a Point, in which you are over-ruled.

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. Ch. Just. Use the Court with good Manners, and you shall be allowed all the Liberty you can reasonably desire.

Mr. *Hamilton*, I thank Your Honour. 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 Neighbourhood where the Fact is alledged to be committed*; and the Reason of your being taken out of the Neighbourhood 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, 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; 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 that Weight with you. But since we are not admitted to examine our Witnesses, I will endeavour to shorten the Dispute with Mr. Attorney, and to that End, I desire he would favour us with some Standard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or not.

Mr. Attorney, The Books, I think, have given a very full Definition of a Libel; they say it is in a strict
1 *Hawk. Chap.* 73. §. 1. & seq. Sense taken for a malicious Defamation, expressed either in 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 publick Hatred, Contempt or Ridicule. §. 2. 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. §. 3. 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 Publick 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 Publick Justice for Injuries of this kind, which of all others are most sensibly 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

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? § 4. And from the same Ground it seemeth also clearly 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 publick Charity done by one, says, You will 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 Characters 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 done so.

Mr. 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 the 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.

Mr. Attorney, I think the Books are very full; it is said in 1 Hawk. p. 193. just now read, 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 says, reckoning up several Acts of Charity done by one, says, you will not play the Jew or the Hypocrite, and so goes on to insinuate, that what he did was owing to his Vain-Glory, &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 done so. 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, &c.) that they are really libellous; but here still occurs the Uncertainty, which makes the Difficulty to know, what Words are scandalous and what not; for you say, they may be scandalous, true or false; besides, how shall we know whether the Words were spoke 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 Favour, Mr. Attorney, I think the same Book, and the same Section will shew 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, 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. Ch. Just. Mr. Hamilton, do you think it so hard to know, when Words are ironical, or spoke in a scoffing Manner?

Mr. Hamilton, I own it may be known; but I insist, the only Rule to know is, as I do or can understand them; I have no other Rule to go by, but as I understand them.

Mr. Ch. Just. That is certain. All Words are libellous or not, as they are understood. Those who are to judge of the Words, must judge whether they are scandalous or ironical, tend to the Breach of the Peace, or are seditious: There can be no Doubt of it.

Mr. Hamilton, I thank Your Honour; I am glad to find the Court of this Opinion. Then it follows that those 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 when they understand the Words to be so, they will say we are guilty of Publishing a false Libel, and not otherwise.

Mr. Ch. Just. 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 libellous; you know this is very common; it is in the Nature of a special Verdict, where the Jury leave the Matter of Law to the Court.

Mr. Hamilton, I know, may it please Your Honour, the Jury may do so; but I do likewise know, they may do otherwise. I know they have

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. This of leaving it to the Judgment 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 of *Libel, famosus*, in 5 Co. This is indeed the leading Case, and to which almost all the other Cases upon the Subject of Libels do refer; and I must insist upon saying, That according as this Case seems to be understood by the and Mr. Attorney, it is not Law at this Day: For tho' I own it to be base and unworthy to scandalize any Man, yet I think it is even vilanous to scandalize a Person of publick 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 don't affect the Peace of the Publick, or the Liberty or Property of our Neighbour, 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 high Things that are said in Favour 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, *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 neither, I don't like those Liberties.

Mr. Hamilton, Sure, 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 present Majesty, makes 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 Honour, 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 publick 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 publick; especially a Governour 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 Labour and Care for their Livelihood) and carry Evidences to *Britain*, and at a great, nay, a far greater Expence than almost any of us are able to bear, only to prosecute a Governour 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 Governour 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 Governour, they have declared (and loudly too) that they were not obliged by any Law to support a Governour who goes about to destroy a Province or Colony, or their Priviledges, which by His Majesty he was appointed,

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 Libeller, for telling his sufferings to his Neighbour? I know it 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 Governour? 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 Governour 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 model'd 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 Governour, to an Assembly who may properly enough be said, to be made by the same Governour against whom the Complaint is made? The Thing answers it self. No, it is natural, it is a Privilege, I will go farther, it is a Right which all Freemen claim, and are entitled to complain when they are hurt; they have a Right publickly to remonstrate the Abuses of Power, in the strongest Terms, to put their Neighbours 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 Peoples Inclinations, That is it which must and will (I'm sure it ought to) weigh with a Legislature, in Spite of all the Craft, Carreッシング and Cajoling, made use of by a Governour, to divert them from hearkning 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 Governours, so is the Design of their Appointment not less manifest. We know his Majesty's gracious Intentions to 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 amongst them, and Justice impartially administered; 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 any one say, that all or any of these good Ends are to be effected, by a Governour'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 which Governours bear, while they execute the Powers given them, according to the Intent of the Royal Grantor, expressed in their Commissions, requires and deserves very great Reverence and Submission; but when a Governour departs from the Duty enjoyned him by his Sovereign, and acts as if he was less accountable than the Royal Hand that gave him all that Power and Honour which he is possessed of; this sets People upon examining and enquiring into the Power, Authority and Duty of such a Magistrate, and to compare 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 Governour. 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 Governour, never mended upon his Preferment, but has been generally observed to be worse: For Men who are not endued 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. And wherever this happens to be the Case of a Governour, 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 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 Governour 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 Governour has a Regard for him and confides in him, it is natural for such Men to wish well to the Affairs of such a Governour; and as they may be Men of Honour and Generosity, may, and no Doubt will, wish him Success, so far as the Rights and Priviledges of their Fellow Citizens are not affected. But as Men of Honour, 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 a Governor's Cause, by their own or their Relations Dependence on his Favour, 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 forgoe the Favour of a Governour, 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 Honour and Conscience too, that when they see, the Liberty of their Country is 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 Favour rather than be accessary 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 joyn with Power in any Shapes, 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, but because they are Men of Abilities and Integrity, or at least are possessed of some valuable Qualities far superiour to their own. But as Envy is the Sin of the Devil, and therefore 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 Tryal. But to proceed; I beg Leave to insist, That the Right of complaining or remonstrating is natural; and 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 which 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 publick Magistrate. Truth ought to govern the whole Affair of Libels, and yet the Party accused runs Risque enough even then; for if he fails of proving every Title of what he has wrote, 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 favour it. And from thence (it is said) has arisen the great Diversity of Opinions among Judges, about what Words were or were not scandalous or libellous. 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; and 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 and destructive Judgments and Opinions were given, that ever an *Englishman* heard of, at least in his own Country: I say, Prosecutions for Libels 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.) To say more to this Point may not be proper. And yet I cannot think it unwarrantable, to shew the unhappy Influence that a Sovereign has sometimes had, not only upon Judges, but even upon Parliaments themselves.

It has already been shewn, 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 them, to their immortal Honour,

Honour, to determine both *Law* and *Fact*, and to *understand* the Petition of the Bishops to be no *Libel*, that is, to contain no *Falshood* nor *Sedition*, and therefore found them *Not Guilty*. And remarkable is the Case of Sir Samuel Barnardiston, who was fined 10,000 *L.* for Writing a Letter, in which, it may be said, none saw any Scandal or Falshood but the Court and Jury; for that Judgment was afterwards looked upon as a cruel and detestable Judgment, and therefore was reversed by Parliament. Many more Instances might be given of the Complaisance of Court-Judges, about those Times and before; but I will mention only one Case more, and that is the Case of Sir Edward Hales, who tho' a Roman Catholic, was by King James II. preferred to be a Colonel of his Army, notwithstanding the Statute of 25 *Cha. 2d. Chap. 2.* by which it is provided, *That every one that accepts of an Office, Civil or Military, &c. shall take the Oaths, subscribe the Declaration, and take the Sacrament, within three Months, &c. otherwise he is disabled to hold such Office, and the Grant for the same to be null and void, and the Party to forfeit 500 *l.** Sir Edward Hales did not take the Oaths or Sacrament, and was prosecuted for the 500 *l.* for exercising the Office of a Colonel by the Space of three Months, without conforming as in the Act is directed. Sir Edward pleads, *That the King by His Letters Patents did dispence with his taking the Oaths and Sacrament, and subscribing the Declaration, and had pardoned the Forfeiture of 500 *l.** And whether the King's Dispensation was good, against the said Act of Parliament? was the Question. I shall mention no more of this Case, than to shew how in the Reign of an arbitrary Prince, where Judges hold their Seats at Pleasure, their Determinations have not always been such as to make Precedents of, but the contrary; and so it happened in this Case where it was solemnly judged, *That, notwithstanding this Act of Parliament, made in the strongest Terms, for Preservation of the Protestant Religion, That yet the King had, by his Royal Prerogative, a Power to dispence with that Law; and Sir Edward Hales was acquitted by the Judges accordingly.* So the King's Dispensing Power, being by the Judges set up above the Act of Parliament, this Law, which the People looked upon as their chief Security against Popery and Arbitrary Power, was by this Judgment rendered altogether ineffectual. But this Judgment is sufficient-

Enquiry into the *Atkins*, late one of the Power of Dispensing Judges of the Court of with penal Statutes. Common Pleas in his Enquiry into the King's Power of dispensing with penal Statutes; where it is shewn Who it was that first invented Dispensations; how they came into England; what ill Use has been made of them there; and all this principally owing to the Countenance given them by the Judges. He

* Postscript to the Power, * The Pope was the Enquiry, pag. 51. Inventor of it; our Kings have borrowed it from

them; and the Judges have from Time to Time nursed and dressed it up, and given it Countenance; and it is still upon the Growth, and encroaching, till it has almost subverted all Law, and made the Regal Power absolute if not dissolute. This seems not only to shew how far Judges have been influenced by Power, and how little Cases of this Sort, where the Prerogative has been in Question in former Reigns, are to be relied upon for Law: But I think it plainly shews too, that a Man may use a greater Freedom with the Power of His Sovereign and the Judges in Great Britain, than it seems he may with the Power of a Governour in the Plantations, who is but a Fellow-Subject. Are these Words with which we are charged, like these? Do Mr. Zenger's Papers contain any such Freedoms with his Governour or His Council, as Sir Edward Atkins has taken, with the Regal Power and the Judges in England? And yet I never heard of any Information brought against him for these Freedoms.

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; and we well know that it is not two Centuries ago that a Man would have been burnt as an Heretick, for owning such Opinions in Matters of Religion as are publicly wrote 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; and I must presume, that in taking these Freedoms in thinking and speaking about Matters of Faith or Religion, we are in the right: For, tho' it is said there are

Sir Edw. Atkins's ly expoid by Sir Edward

very great Liberties of this Kind taken in *New-York*, yet I have heard of no Information preferred by Mr. Attorney for any Offences 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 special Care what he says of his Governour. It is agreed upon by all Men that this is a Reign of Liberty, and 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; It is Government that protects our Persons and Estates; That 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 be regarded, and so in the End the Laws cannot be put in Execution.* These I say, and such as these, are the general Topicks 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, which 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 Pretences, which have often been made use of by Men in Power, to introduce arbitrary Rule, and destroy the Liberties of a free People. I will give two Instances; and as they are Authorities not to be denied, nor can be misunderstood, I presume they will be sufficient.

The first is the Statute of 3d. of Hen. 7. Cap. 1. The Preamble of the Statute will prove all,

and more than I have alledged. It begins, *'The King Our Sovereign Lord remembereth how by unlawful Maintinances, giving of Liveries, Signs and Tokens, &c. untrue Demeanings of Sheriffs in making of Pannels, and other untrue Returns, by taking of Money, by Injuries, by great Riots, and unlawful Assemblies; the Policy and good Rule of this Realm is almost subdued; and for the not punishing these Inconveniences, and by Occasion of the Premises, little or nothing may be found by Inquiry, &c. to the increase of Murders, &c. and Unsafety of all Men living, and Losses of their Lands and Goods.'* Here is a fine and specious Pretence for introducing the Remedy, as it is called, which is provided by this Act, *that is*; instead of being lawfully accused by 24 good and lawful Men of the Neighbourhood, and afterwards tried by 12 like lawful Men, here is a Power given to the Lord Chancellor, Lord Treasurer, the Keeper of the King's privy Seal, or two of them, calling to them a Bishop, a temporal Lord, and other great Men mentioned in the Act, (who, it is to be observed, were all to be Dependants on the Court) to receive Information against any Person for any of the Misbehaviours recited in that Act, and by their Discretion to examine, and to punish them according to their Demerit.

The second Statute I proposed to mention, is the 11th of the same King, Chap. 3d. the Preamble of which Act has the like fair Pretences as the former; *for the King calling to his Remembrance the good Laws made against the receiving of Liveries, &c. unlawful Extortions, Maintinances, Embracery, &c. unlawful Games, &c. and many other great Enormities, and Offences committed against many good Statutes, to the Displeasure of Almighty God, which, the Act says, could not, nor yet can, be conveniently punished by the due Order of the Law, except it were first found by 12 Men, &c. which, for the Causes aforesaid, will not find nor yet present the Truth.* And therefore the same Statute directs, *that the Justices of Assize, and Justices of the Peace, shall upon Information for the King before them made, have full Power, by their Discretion, to hear and determine all such Offences.* Here are two Statutes that are allowed to have given the deepest Wound to the Liberties of the People of England of any that I remember to have been made, unless it may be said, that the Statute made in the Time of Henry 8th, by which his Proclamations were to have the Effect of Laws, might in its Consequence be worse.

worse. And yet we see the plausible Pretences found out by the great Men to procure these Acts. And it may justly be said, That by those Pretences the People of England were cheated or aw'd into the Delivering up their antient and sacred Right of Tryals by Grand and Petit Juries. I hope to be excused for this Expression, seeing my Lord Coke calls

4. *Inst.* it unjust and strange Act, that tended in its Execution to the great Displeasure of Almighty God, and the utter Subversion of the common Law.

These, I think, make out what I alledged, and are flagrant Instances of the Influence of Men in Power, even upon the Representatives of a whole Kingdom. From all which I hope it will be agreed, that it is a Duty which all good Men owe to their Country, to guard against the unhappy Influence of ill Men when intrusted with Power, and especially against their Creatures and Dependants, who, as they are generally more necessitous, are surely more covetous and cruel. But it is worthy of Observation, that tho' the Spirit of Liberty was borne down and oppressed in England at that Time, yet it was not lost; for the Parliament laid hold of the first Opportunity to free the Subject from the many insufferable Oppressions and Outrages committed upon their Persons and Estates by Colour of these Acts, the last of which being deemed the most grievous, was repealed in the first Year of Hen. 8th. Tho' it is to be observed, that Hen. 7th, and his Creatures reap'd such great Advantages by the grievous Oppressions and Exactions, grinding the Faces of the poor Subjects, as my Lord Coke says, by Colour of this Statute by information only, that a Repeal of this Act could never be obtained during the Life of that Prince. The other Statute being the favourite Law for Supporting arbitrary Power, was continued much longer. The Execution of it was by the great Men of the Realm; and how they executed it, the Sense of the Kingdom, expressed in the 17th of Charles 1st. (by which the Court of Star Chamber, the Soil where Informations grew rankest) will best declare. In that Statute *Magna Charta*, and the other Statutes made in the Time of Edw. 3d. which, I think, are no less than five, are particularly enumerated as Acts, by which the Liberties and Priviledges of the People of England were secured to them, against such oppressive Courts as the Star Chamber and others of the like Jurisdiction. And the Reason assigned for their pulling down the Star Chamber,

is, *That the Proceedings, Censures and Decrees of the Court of Star Chamber, even tho' the great Men of the Realm, nay, and a Bishop too (holy Man) were Judges, had by Experience been found to be an intolerable Burthen to the Subject, and the Means to introduce an arbitrary Power and Government.* And therefore that Court was taken away, with all the other Courts in that Statute mentioned, having like Jurisdiction.

I don't mention this Statute, as if by the taking away the Court of Star Chamber, the Remedy for many of the Abuses or Offences censured there, was likewise taken away; no, I only intend by it to shew, that the People of England saw clearly the Danger of trusting their Liberties and Properties to be tried, even by the greatest Men in the Kingdom, without the Judgment of a Jury of their Equals. They had felt the terrible Effects of leaving it to the Judgment of these great Men to say what was *scandalous and seditious, false or ironical.* And if the Parliament of England thought this Power of judging was too great to be trusted with Men of the first Rank in the Kingdom, without the Aid of a Jury, how sacred soever their Characters might be, and therefore restored to the People their original Right of Tryal by Juries, I hope to be excused for insisting, that by the Judgment of a Parliament, from whence no Appeal lies, the Jury are the proper Judges, of what is *false* at least, if not of what is *scandalous and seditious.* This is an Authority not to be denied, it is as plain as it is great, and to say, that this Act indeed did restore to the People Tryals by Juries, which was not the Practice of the Star Chamber, but that did not give the Jurors any new Authority, or any Right to try Matters of Law, I say this Objection will not avail; for I must insist, that where Matter of Law is complicated with Matter of Fact, the Jury have a Right to determine both. As for Instance; upon Indictment for Murder, the Jury may, and almost constantly do, take upon them to judge whether the Evidence will amount to Murder or Manslaughter, and find accordingly; and I must say I cannot see, why in our Case the Jury have not at least as good a Right to say, whether our News Papers are a Libel or no Libel, as another Jury has to say, whether killing of a Man is Murder or Manslaughter. The Right of the Jury, to find such a Verdict as they in their Conscience do think is agreeable to their Evidence, is supported by the Authority of *Bushel's Case*, in *Vaughan's Reports*, pag. 135. beyond any Doubt. For, in the Argument of
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that Case, the Chief Justice who delivered the Opinion of the Court, lays it down for Law, *That in all General Issues, as upon Non Cul. in Trespass, Vaughan's Rep. p. 150 Non Tort. Nul Disseizin in Affize, &c. tho' it is Matter of Law, whether the Defendant is a Trespasser, a Disseizer, &c. in the particular Cases in Issue, yet the Jury find not (as in a special Verdict) the Fact of every Case, leaving the Law to the Court; but find for the Plaintiff or Defendant upon the Issue to be tried, wherein they resolve both Law and Fact complicately.* It appears by the same Case, that tho' the discreet and lawful Assistance of the Judge, by Way of Advice, to the Jury, may be useful; yet that Advice or Direction ought always to be upon Supposition, and not positive, and upon Coersion. The pag. 144.

Reason given in the same Book is, *Because the Judge (as Judge) cannot know what the Evidence is which the Jury have, that is, he can only know the Evidence given in Court; but the Evidence which the Jury have, may be of their own Knowledge, as they are returned of the Neighbourhood. They may also know from their own Knowledge, that what is sworn in Court is not true; and they may know the Witnesses to be stigmatized, to which the Court may be Strangers.* But what is to my Purpose, is, that suppose that the Court did really know all the Evidence which the Jury know, yet in that Case it is agreed, *That the Judge and Jury may differ in the Result of their Evidence as well as two Judges may, which often happens.* And in pag. 148. the Judge subjoins the Reason, why it is no Crime for a Jury to differ in Opinion from the Court, where he says, *That a Man cannot see with another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the Thing by another's Understanding or Reasoning.* From all which (I insist) it is very plain, *That the Jury are by Law at Liberty (without any affront to the Judgment 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 was this. Mr. Penn and Mead being Quakers, and having met in a peaceable Manner, after being shut out of their Meeting-House, preached in Grace-Church-Street in London, to the People of their own Perswasion, and for this they were indicted; and it was said, That they with other Persons, to the Number of 300. 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 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 Courts Word for it, for they could neither find Riot, Tumult, or any Thing tending to the Breach of the Peace committed at that Meeting; and they acquitted Mr. 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 40 Marks a-piece, and committed them till paid. But Mr. Busbel, 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 (tho' at a great Expence 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 Judgment in his Case, it is established for Law, *That the Judges, how great soever they be, have no Right to fine, imprison, or punish a Jury, for not finding a Verdict according to the Direction 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 Governour that I have known in America. And the first, tho' it may look like a Romance, yet as it is true, I will beg Leave to mention it. Governour 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 poor Parson with the worst of Language, threatened to cut off his Ears, slit his Nose, and at last to shoot him

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 Neighbour's Houſe 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 Governour was certainly mad, for that no Man in his Senſes would have behaved in that manner. The Doctor unhappily ſhews the Parſons Letter; the Governour came to hear of it; and ſo an Information was preferred againſt the poor Man for ſaying *he believed the Governour 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 into Contempt*. But by an Order from the late Queen Anne, there was a Stop put to that Proſecution, with fundry others ſet on foot by the ſame Governour, againſt Gentlemen of the greateſt Worth and Honour in that Government.

And may not I 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 *Innuendo*, be conſtrued to be a Libel, according to Mr. Attorney's Definition of it, That *whether the Words are ſpoke of a Perſon of a publick 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, 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.

[Here were ſeveral Caſes put to ſhew, That tho' what a Man writes of a Governour was true, proper and neceſſary, yet according to the forgoing Doctrines it might be conſtrued to be a Libel: But Mr. Hamilton after the Tryal was over, being informed, That ſome of the Caſes he had put had really happened in this Government, he declared he had never heard of any ſuch; and as he meant no perſonal Reflections, he was ſorry he had mentioned them, and therefore they are omitted here.]

Mr. Hamilton, 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 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. *Echard* has libelled 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 thro' 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 *Innuendo's*, would eaſily turn it into a Libel. As for Inſtance, *Iſ. ix. 16. The Leaders of the People cauſe 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 [innuendo, the Governour and Council of New-York] cauſe them [innuendo, the People of this Province] to err, and they [the Governour and Council meaning] are deſtroyed [innuendo, are deceived into the Loſs of their Liberty] which is the worſt Kind of Deſtruction*. Or if ſome Perſons ſhould publickly repeat, in a Manner not pleaſing to his Betters, the 10th and 11th Verſes of the 14th Chap. of the ſame Book, there Mr. Attorney would have a large Field to diſplay his Skill, in the artful Application of his *Innuendo's*. The Words are, *His Watchmen are all blind, they are ignorant, &c. Yea, they are greedy Dogs, that can never have enough*. But to make them a Libel, there is according to Mr. Attorney's Doctrines, no more wanting but the Aid of his Skill, in the right adapting his *Innuendo's*. As for Inſtance; *His Watchmen [innuendo, the Governour's Council and Aſſembly] are blind, they are ignorant [innuendo, will not ſee the dangerous Deſigns of His Excellency] Yea, they [the Governour and Council meaning] are greedy Dogs, which can never have enough [innuendo, enough of Riches and Power]*. Such an Inſtance as this it ſeems only fit to be laugh'd 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 *Innuendo's* in his Information againſt my Client. Then if Mr. Attorney is at Liberty to come into Court,

Court, and file an Information in the King's Name, without Leave, who is secure, whom he is pleas'd 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 tho' the Party prosecuted is acquitted with Honour. And give me Leave to say, as great Men as any in *Britain*, have boldly asserted, That the Mode of Prosecuting by Information (when a Grand Jury will not find *Billa vera*) 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 tho' Matters in the Information may be called *Form* upon Tryal, 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 Falshood in Mr. Zenger's Papers, you will, nay (pardon me for the Expression) you ought to say so; because you don't 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 there have been those in all Ages, who for the sake of Preferment, or some imaginary Honour, have freely lent a helping Hand, to oppress, nay to destroy their Country. This brings to my Mind that saying of the immortal *Brutus*, when he look'd upon the Creatures of *Cæsar*, 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 *Cæsar* to forge those very Chains, which one Day he will make your selves wear." This is what every Man (that 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 shew the Value he put upon the Freedom of his Country. After this great Man, with his Fellow Citizens whom he had engag'd in the Cause, had banish'd *Tarquin* the Proud, the last King of *Rome*, from a Throne which he ascended by inhuman Murders, and possess'd by the most dreadful Tyranny and Proscriptions, and had by this Means, amass'd incredible Riches, even sufficient to bribe to his Interest, many of the young Nobility of *Rome*, to assist him in recovering the Crown; but the Plot being discover'd, and 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 restoring of *Tarquin*, and destroying the Liberty of *Rome*. And 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) caus'd their Heads to be struck off in his own Presence; and when he observ'd that his rigid Virtue, occasion'd a sort of Horror among the People, it is observ'd he only said, "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 esteem'd 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 *Hamden*, 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,

more, I think, than 3 Shillings, resolv'd to undergo, and for their Liberty of their Country did undergo the greatest Extremities, in that arbitrary and terrible Court of Star Chamber, to whose arbitrary Proceedings, (it being compos'd 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 a Parliament.

Power may justly be compar'd to a great River, while kept within its due Bounds, is both Beautiful and Useful; but when it overflows, its Banks, it is then too impetuous to be stemm'd, 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 liv'd.

I hope to be pardon'd, Sir, for my Zeal upon this Occasion: It is an old and wise Caution, *That when our Neighbour's House is on Fire, we ought to take Care of our own.* For tho', blessed be God, I live in a Government where Liberty is well understood, and freely enjoy'd; yet Experience has shewn us all (I'm 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 mine, and every Honest Man's Duty, 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. And you see I labour under the Weight of many Years, and am born down with great Infirmities of Body; yet Old and Weak as I am, I should think it my Duty, if required, to go the utmost Part of the Land, where my Service cou'd 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 Op-

pressions 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 nor private Concern, it is not the Cause of a poor Printer, nor of *New-York* alone, which you are now trying: No! It may in its Consequence, 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 entitle you to the Love and Esteem of your Fellow-Citizens; but every Man, who prefers Freedom to a Life of Slavery, will bleis and honour 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 Neighbours, 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 these Parts of the World, at least) by speaking and writing Truth.

Here Mr. Attorney observ'd, that Mr. Hamilton had gone very much out of the Way, and had made himself and the People very merry: But that he had been citing Cases, not at all to the Purpose; he said, there was no such Cause as Mr. Bushel's or Sir Edward Hales before the Court; and he could not find out what the Court or Jury had to do with Dispensations, Riots or unlawful Assemblies: All that the Jury had to consider of, was Mr. Zenger's Printing and Publishing two scandalous Libels, which very highly reflected on his Excellency and the principal Men concern'd in the Administration of this Government, which is confess'd. That is, the Printing and Publishing of the Journals set forth in the Information is confess'd. And concluded; that as Mr. Hamilton had confess'd the Printing, and there could be no doubt but they were scandalous Papers, highly reflecting upon his Excellency, and the principal Magistrates in the Province. And therefore he made no doubt but the Jury would find the Defendant Guilty, and would refer to the Court for their Direction.

Mr. Ch. Just. Gentlemen of the Jury. The great Pains Mr. Hamilton has taken, to shew how little Regard Juries are to Pay to the Opinion of the Judges; and his insisting so much upon the Conduct of some Judges in Tryals of this kind; is done, no doubt, with a Design that

you should take but very little Notice of what I may 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 any Thing 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 account for possessing the People with an ill Opinion of the Government, no Government can subsist. For it is very necessary for all Governments that the People should have a good Opinion of it. And nothing can be worse to any Government, than to endeavour to procure Animositities; as to the Management of it, this has been always look'd upon as a Crime, and no Government can be safe without it be punished.

' Now you are to Consider, whether these Words I have read to you, do not tend to beget an ill

* Ch. J. Holt in *Tutchin's Case*.

' Opinion of the Administration of the Government? To tell us, that those that are employed know nothing of the Matter, and those that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Interest, and not to their Fitness for the Places; this is the Purport of these Papers.'

Mr. Hamilton I humbly beg Your Honour's Pardon; I am very much mis-apprehended, if you support what I said was so designed.

Sir, you know, I made an Apology for the Freedom 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 Defence.

The Jury withdrew, and in a small Time returned, and being asked by the Clerk, Whether they were agreed of their Verdict, and whether John Peter Zenger was guilty of Printing and Publishing the Libels in the Information mentioned? They answered by Thomas Hunt, their Foreman, *Not Guilty*. Upon which there were three Huzzas in the Hall which was crowded with People, and the next Day I was discharged from my Imprisonment.

A P P E N D I X.

City of New-York. } **A**T a Common Council, held at the City-Hall of the said City, on Tuesday the Sixteenth Day of September, Anno Dom. 1735.

P R E S E N T.

Paul Richards, Esq; Mayor.
Gerardus Stuyvesant, Esq; Deputy-Mayor.
Daniel Horsmanden, Esq; Recorder.

A L D E R M E N.

William Roome, Esq; Christopher Fell, Esq;
Sir on Johnson, Esq; Stephen Bayard, Esq;
John Walter, Esq; Johannes Burger, Esq;

A S S I S T A N T S.

Mr. Johannes Waldron, Mr. John Fred,
Mr. Ede Myer, Mr. Charles Le Roux,
Mr. John Moore, Mr. Evert Byvauck,

Ordered, That Andrew Hamilton, Esq; of Philadelphia, Barrister at Law, be presented with the Freedom of this Corporation; and that Alderman Bayard, Alderman Johnson, and Alderman Fell, be a Committee to bring in a Draught thereof.

City of New-York. } **A**T a Common-Council, held at the City-Hall of the said City on Monday the Twenty Ninth Day of September, being the Feast Day of St. Michael the Archangel, Anno Dom. 1735.

P R E S E N T.

Paul Richards, Esq; Mayor.
Daniel Horsmanden, Esq; Recorder.

A L D E R M E N.

William Roome, Esq; Christopher Fell, Esq;
Simon Johnson, Esq; Stephen Bayard, Esq;
John Walter, Esq; Johannes Burger, Esq;

TRYAL of JOHN PETER ZENGER, &c.

ASSISTANTS.

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Mr. Johannes Waldron, Mr. Evert Bywank,
Mr. John Fred, Mr. Henry Bogert,
Mr. Charles Le Roux,

Stephen Bayard, Simon Johnson and Christopher Fell, Esqrs. Aldermen, to whom it was referred to prepare the Draught of the Freedom of this Corporation, to be presented to Andrew Hamilton Esq; make their Report thereon, in the Words following (to wit) That they have prepared the Form of the Grant, to the said Andrew Hamilton, Esq; of the Freedom of the City of New-York, in these Words (to wit.)

City of New-York. } ^{Paul Richards Esq;} the Recorder, Aldermen, and Assistants of the City of New-York, convened in Common-Council, To all to whom these Presents shall come Greeting. WHEREAS, Honour is the just Reward of Virtue, and public Benefits demand a public Acknowledgment. We therefore, under a grateful Sense of the remarkable Service, done to the Inhabitants of this City and Colony, by Andrew Hamilton Esq; of Pennsylvania, Barrister at Law, by his Learned and generous Defence of the Rights of Mankind, and the Liberty of the Press, in the Case of John Peter Zenger, lately tried on an Information exhibited in the Supream-Court of this Colony, do by these Presents, bear to the said Andrew Hamilton Esq; the public Thanks of the Freemen of this Corporation for that signal Service, which he cheerfully undertook under great Indisposition of Body, and generously performed, refusing any Fee or Reward: And in Testimony of our great Esteem for his Person, and Sense of his Merit, do hereby present him with the Freedom of this Corporation. These are therefore to Certify and Declare, that the said Andrew Hamilton Esq; is hereby admitted, received and allowed a Freedom and Citizen of the said City: To Have, Hold, Enjoy and Partake of all the Benefits, Liberties, Priviledges, Freedoms and Immunities whatsoever, granted or belonging to a Freeman and Citizen of the same City. In Testimony whereof, the Common-Council of the said City, in Common-Council assembled, have caused the Seal of the said City to be hereunto affixed this twenty ninth Day of September, Anno Domini One Thousand Seven Hundred and Thirty Five.

By Order of the Common Council.

William Sharpas, Clerk.

And we do further Report, that sundry of the Members of this Corporation and Gentlemen of this City have voluntarily Contributed sufficient for a Gold Box of five Ounces and a half, for Inclosing the Seal of the said Freedom; Upon the Lid of which, we are of Opinion should be engraved the Arms of the City of New-York: Witness Our Hands this twenty ninth Day of September, 1735.

Stephen Bayard.
Simon Johnson.
Christopher Fell.

Which Report is approved by this Court, and Ordered, That the Freedom and Box be forthwith made, pursuant to the said Report, and that Mr. Sharpas, the Common Clerk of this City, do affix the Seal to the same Freedom, and inclose it in the said Box.

Mr. Alderman Bayard going to Philadelphia, and offering to be the Bearer of the said Freedom to Mr. Hamilton, Ordered, That Mr. Sharpas deliver it to Alderman Bayard for that Purpose; and that Alderman Bayard do deliver it to Mr. Hamilton, with Assurances of the great Esteem, that this Corporation have for his Person and Merit.

City of New-York. } ^{At a Common-Council, held at the City-Hall of the said City, on Wednesday the fifteenth Day of October, Anno Domini 1735.}

P R E S E N T.

Paul Richards, Esq; Mayor.
Daniel Horsmanden, Esq; Recorder.

A L D E R M E N.

John Walter, Esq; William Roome, Esq;
Simon Johnson, Esq; Johannes Burger, Esq;

A S S I S T A N T S.

Mr. Johannes Waldron, Mr. Peter Stutenburgh,
Mr. Abraham De Peyster, Mr. Henry Bogert,
Mr. Gerrardus Beckman,

Ordered, That the Freedom, granted by this Corporation, to Andrew Hamilton, Esq; with the Report of the Committee, for preparing a Draught of the same, and the Order of this Court, thereon, may be printed. William Sharpas.

Round on the Lid of the Box mentioned in the abovesaid Report and Order, there is engraved
no

not only the the Arms of the City of *New-York*,
but also this Motto in a Garter ;

DEMERSÆ LEGES - TIMEFACTA LIBER-
TAS - HÆC TANDEM EMERGUNT.

On the inner Side of the Lid of the Box shew-
ing it self at the same Time with the Certificate
of the Freedom ; there is Engraven in a flying
Garter, these Words,

NON NUMMIS, - VIRTUTE PARATUR.

As an Incentivè to public Virtue, on the Front
of the Rim of the said Box, there is engraven a
Part of *Tully's* Wish ;

ITA CUIQUE EVENIAT, UT DE REPUB-
LICA MERUIT.

Which Freedom and Box was presented in the
Manner that had been directed, and gratefully
accepted by the said *Andrew Hamilton*, Esq ;

F I N I S.

