An Act for Preventing the Frequent Abuses in Printing Seditious Treasonable and Unlicensed Books and Pamphlets and for Regulating Printing and Printing Presses

14 Chas. 2, c. 33 , 1662

Whereas the well-government and regulating of Printers and Printing Presses is matter of Publique care and of great concernment especially considering that by the general licentiousnes of the late times many evil disposed persons have been encouraged to print and sell heretical schismatical blasphemous seditious and treasonable Bookes Pamphlets and Papers and still doe continue such theire unlawfull and exorbitant practice to the high dishonour of Almighty God the endangering the peace of these Kingdomes and raising a disaffection to His most Excellent Majesty and His Government For prevention whereof no surer meanes can be advised then by reducing and limiting the number of Printing Presses and by ordering and setling the said Art or Mystery of Printing by Act of Parliament in manner as herein after is expressed. The Kings most Excellent Majesty by and with the Consent and Advise of the Lords Spiritual and Temporal & Commons in this present Parliament assembled doth therefore ordaine and enact And be it ordained and enacted by the Authority aforesaid That no person or persons whatsoever shall presume to print or cause to be printed either within this Realm of England or any other His Majesties Dominions or in the parts beyond the Seas any heretical seditious schismatical or offensive Bookes or Pamphlets wherein any Doctrine or Opinion shall be asserted or maintained which is contrary to Christian Faith or the Doctrine or Discipline of the Church of England or which shall or may tend or be to the scandall of Religion or the Church or the Government or Governors of the Church State or Common wealth or of any Corporation or particular person or persons whatsoever nor shall import publish sell or dispose any such Booke or Books or Pamphlets nor shall cause or procure any such to be published or put to sale or to be bound stitched or sowed togeather.

And be it further ordained and enacted by the Authority aforesaid That no private person or persons whatsoever shall att any time hereafter print or cause to be printed any Booke or Pamphlet whatsoever unlesse the same Booke and Pamphlet togeather with all and every the Titles Epistles Prefaces Proems Preambles Introductions Tables Dedications and other matters and things thereunto annexed be first entred in the Booke of the Register of the Company of Stationers of London except Acts of Parliament Proclamations and such other Books and Papers as shall be appointed to be printed by vertue of any Warrant under the Kings Majesties Sign Manual or under the Hand of one or both of His Majesties Principal Secretaries of State and unlesse the same Booke and Pamphlet and also all and every the said Titles Epistles Prefaces Proems Preambles Introductions Tables Dedications and other matters and things whatsoever thereunto annexed or therewith to be imprinted shall be first lawfully licensed and authorized to be printed by such person and persons only as shall be constituted and appointed to license the same according to the direction and true meaning of this present Act herein after expressed and by no other (that is to say) That all Books concerning the Common Lawes of this Realm shall be printed by the special allowance of the Lord Chancellor or Lord Keeper of the Great Seal of England for the time being the Lords Cheife Justices and Lord Cheife Baron for the time being or one or more of them or by theire or one or more of theire appointments And that all Books of History concerning the State of this Realm or other Books concerning any affaires of State shall be licensed by the Principal Secretaries of State for the time being or one of them or by theire or one of theire appointments And that all Bookes to bee imprinted concerning Heraldry Titles of Honour and Armes

or otherwise concerning the Office of Earle Marshal shall be licensed by the Earl Marshal for the time being or by his appointment or in case there shall not then be an Earl Marshal shall be licensed by the Three Kings of Armes Garter. Clarenceux and Norroy or any two of them whereof Garter Principal King of Armes to be one And that all other Bookes to bee imprinted or reprinted whether of Divinity Phisick Philosophy or whatsoever other Science or Art shall be first licensed and allowed by the Lord Arch Bishop of Canterbury and the Lord Bishop of London for the time being or one of them or by theire or one of theire appointments or by either one of the Chancellors or Vice-Chancellors of either of the Universities of this Realme for the time being Provided alwaies that the said Chancellors or Vice Chancellors of either of the said Universities shall only license such Bookes as are to be imprinted or reprinted within the limits of the said Universities respectively but not in London or else where not medling either with Bookes of the Common Lawes or matters of State or Government nor any Booke or Bookes the right of printing whereof doth solely and properly belong to any particular person or persons without his or theire Consent first obtained in that behalfe

And be it enacted by the Authority aforesaid That every person and persons who by vertue of this present Act are or shall be appointed or authorized to license the imprinting of Bookes or reprinting thereof with any Additions or Amendments as aforesaid shall have one written Copy of the same Booke or Bookes which shall be soe licensed to be imprinted or reprinted with the Titles Epistles Prefaces Tables Dedications and all other things whatsoever thereunto annexed which said Copy shall be delivered by such Licenser or Licensers to the Printer or Owner for the imprinting thereof and shall be safely and intirely returned by such Printer or owner after the imprinting thereof unto such Licenser or Licensers to be kept in the publick Registrys of the said Lord Archbishop or Lord Bishop of London respectively or in the Office of the Chancellor or Vice Chancellor of either the said Universities or with the said Lord Chancellor or Lord Keeper of the Great Seal for the time being or Lord Cheife Justices or Cheif Baron or one of them or the said Principal Secretaries of State or with the Earle Marshall or the said Kings of Armes or one of them of all such Books as shall be licensed by them respectively and if such Booke so to be licensed shall be an English Booke or of the English Tongue there shall be twoe Written Copies thereof delivered to the Licenser or Licensers (if he or they shall so require) one Copy whereof so licensed shall be delivered back to the said Printer or Owner and the other Copy shall be reserved and kept as is aforesaid to the end such Licenser or Licensers may be secured that the Copy so licensed shall not be altered without his or theire privity And upon the said Copy licensed to be imprinted he or they who shall so license the same shall testifie under his or their hand or hands That there is not any thing in the same contained that is contrary to Christian Faith or the Doctrine or Discipline of the Church of England or against the State or Government of this Realm or contrary to good life or good manners or otherwise as the nature and subject of the Worke shall require which License or Approbation shall be printed in the begining of the same Booke with the Name or Names of him or them that shall authorize or license the same for a Testimony of the allowance thereof

And be it further enacted by the Authority aforesaid That every Merchant of Bookes and person and persons whatsoever who doth or hereafter shall import or bring any Booke or Books into this Realm from any parts beyond the Seas shall import the same in the Port of London only and not elsewhere without the special License of the Archbishop of Canterbury and Bishop of London…

And be it further enacted by the Authority aforesaid That no person or persons shall within this Kingdome or else where imprint or cause to bee imprinted nor shall import or bring in or cause to be imported or brought into this Kingdome from or out of any other His Majesties Dominions nor from

any other parts beyond the Seas any Copy or Copies Booke or Bookes or part of any Book or Bookes or Forms of blanck Bills or Indentures for any His Majesties Islands printed beyond the Seas or else where which any person or persons by force or vertue of any Letters Patents granted or assigned or which shall hereafter be granted or assigned to him or them or (where the same are not granted by any Letters Patents) by force or vertue of any Entry or Entries thereof duly made or to be made in the Register Booke of the said Company of Stationers or in the Register Booke of either of the Universities respectively have or shall have the Right Priviledge Authority or Allowance solely to print without the consent of the Owner or Owners of such Booke or Bookes Copy or Copies Form or Forms of such blanck Bills nor shall binde stitch or put to Sale any such Booke or Books or part of any such Booke or Books Form or Forms without the like consent upon pain of losse and forfeiture of the same and of being proceeded against as an Offender against this present Act and upon the further penalty and forfeiture of Six shillings eight pence for every such Booke or Books or part of such Booke or Bookes Copy or Copies or Form or Forms of any such blanck Bills or Indentures so imprinted or imported bound stitched or put to sale The Moyetie of which said Forfeiture & Forfeitures shall be to the use of our Soveraigne Lord the King His Heirs and Successors and the other Moyety to the use of the Owner or Owners Proprietor or Proprietors of such Copy or Copies Booke or Bookes or Form of such blank Bills or Indentures if he or they shall sue for the same within Six moneths next after such imprinting importing binding stitching or putting to Sale And in default of such Suit by the Owner or Owners Proprietor or Proprietors commenced within the said Six moneths Then the same Moyety shall be to the use and behoofe of such other person or persons as within the space of one yeare next after the said Offence committed shall sue for the same to be recovered by Action of Debt Bill Plaint or Information in any of his Majesties Courts of Record held att Westminster called the Kings Bench Common Pleas or Exchequer wherein no Essoign Wager of Law or Protection shall be allowed to the Defendant or Defendants

And be it further enacted and declared That every person and persons that shall hereafter print or cause to be printed any Booke Ballad Chart Pourtracture or any other thing or things whatsoever shall thereunto or thereon print and set his or theire owne Name or Names …

And be it further enacted by the Authority aforesaid That no Haberdasher of Small Wares Ironmonger Chandler Shopkeeper or other person or persons whatsoever not being licensed in that behalfe by the Lord Bishop of the Diocese wherein such Booke or Bookes shall be having been Seven yeares Apprentice to the Trade of Booke seller Printer or Bookbinder nor being a Freeman of the City of London by Patrimonial Right as Son of a Booke seller Printer or Booke binder nor being a Member of the said Company of Stationers shall within the City or Suburbs of London or any other Market Towne or elsewhere receive take or buy or barter sell againe change or doe away any Bibles Testaments Psalm books Common Prayer books Primers Abcees Licensed Almanacks Grammar School books or other Book or Books whatsoever upon pain of forfeiture of the same

And for that printing is and for many yeares hath been an Art & Manufacture of this Kingdom Therefore for the better encouraging thereof and the prevention of divers Libels Pamphlets and Seditious Books printed beyond the Seas in English and thence transported into this Realm Be it further enacted and ordained by the Authority aforesaid That no Merchant Bookseller or other person or persons whatsoever shall imprint or cause to be imprinted beyond the Seas nor shall import or bring nor knowingly assist or consent to the importation or bringing from beyond the Seas into this Realm any English Booke or Books or part of any Booke which is or shall bee or the greater part thereof is or shall be English or of the English Tongue whether the same Booke Books or part of

such Book have been here formerly printed or not upon pain of forfeiture of all such English Books so imprinted or imported contrary to the tenour hereof And that no Alien or Forreigner whatsoever shall hereafter bring in or be suffered to vend here within this Realm any Book or Books printed beyond the Seas in any Language whatsoever either by himselfe or his Factor or Factors except such only as bee Free Printers or Stationers of London or such as have been brought up in that Profession without the special License of the Archbishop of Canterbury and Bishop of London for the time being or one of them who are hereby authorized to grant Licenses for that purpose upon like pain of forfeiture of all such Books as shall be soe imprinted or vended contrary to the purport and true intent hereof

And be it further enacted by the Authority aforesaid That no person or persons within the City of London or the Liberties thereof or elsewhere shall erect or cause to be erected any Presse or Printing House nor shall knowingly demise or let or willingly suffer to be held or used any House Vault Cellar or other Room whatsoever to or by any person or persons for a Printing House or Place to print in unlesse he or they who erect such Presse or shall so knowingly demise or let such House Cellar Vault or room or willingly suffer the same to be used shall first give notice to the Master or Wardens of the said Company of Stationers for the time being of the erecting of such Presse or of such demise or suffering to worke or print in such House Vault Cellar or Room And that no Joyner Carpenter or other person shall make any Printing Presse no Smith shall forge any Iron worke for a Printing Presse no Founder shall cast any Letters which may be used for printing for any person or persons whatsoever neither shall any person or persons bring or cause to be brought in from any parts beyond the Seas any Letters founded or cast nor shall buy any such Letters for printing Printing Presses or other Materials belonging unto printing unlesse he or they respectively shall first acquaint the said Master and Wardens of the said Company of Stationers for the time being or some or one of them for whom the same Presses Iron Worke or Letters are to be made forged cast brought or imported upon pain that every person who shall erect any such Printing Press or shall demise or let any House or Room or suffer the same to be held or used and every person who shall make any Printing Press or any Iron worke for a Printing Presse or shall make import or buy any Letters for printing without giving notice as aforesaid shall forfeit for every such offence the sum of Five pounds the one Moyety whereof shall be to the use of our Soveraign Lord the King His Heires and Successors and the other Moyety to the use of such person or persons as shall sue for the same

And be it further enacted by the Authority aforesaid That for the time to come no man shall be admitted to be a Master Printer untill they who are now actually Master Printers shall be by death or otherwise reduced to the number of Twenty and from thence forth the number of Twenty Master Printers shall be continued and no more besides the Kings Printers and the Printers allowed for the Universities to have the use and exercise of printing of Books at one time and but four Master Founders of Letters for printing The which said Master Printers and four Master Founders of Letters for printing shall be nominated appointed and allowed by the Lord Archbishop of Canterbury and Lord Bishop of London for the time being…

And be it further enacted by the Authority aforesaid That none of the said Master Printers to be allowed from time to time as aforesaid shall keep above Two Printing Presses at once unlesse he hath been Master or Upper Warden of the Company who are hereby allowed to keepe Three Presses and no more unlesse for some great and special occasion for the Publique he or they have for a time leave of the said Lord Archishop of Canterbury or Lord Bishop of London for the time being to have or use one or more above the aforesaid Number as their Lordships or either of them shall thinke fit

And be it alsoe enacted by the Authority aforesaid That no Printer or Printers (except the Kings Printers) nor Founder or Founders of Letters for printing shall take or retain any more or greater number of Apprentices then is herein after limited and appointed…

And because a great part of the secret Printing in corners hath been caused for want of orderly imployment for Journey men Printers The said several Master Printers and Master Founders of Letters for Printing so to be allowed as aforesaid are hereby required to take special Care that all Journey men Printers and Journey men Founders of Letters for printing who are lawfully Free of the said respective Mysteries be set to worke and imployed in theire respective Trades…

And for the better discovering of printing in Corners without License Be it further enacted by the Authority aforesaid That one or more of the Messengers of his Majesties Chamber by Warrant under His Majesties Sign Manual or under the Hand of one or both of His Majesties principal Secretares of State or the Master and Wardens of the said Company of Stationers or any one of them shall have power and authority with a constable to take unto them such assistance as they shall thinke needfull and att what time they shall thinke fitt to search all Houses and Shops where they shall knowe or upon some probable reason suspect any Books or Papers to be printed bound or stitched especially Printing Houses Booksellers Shops and Warehouses and Bookbinders Houses and Shops and to view there what is imprinting binding or stitching and to examine whether the same be licensed and to demand a sight of the said License and if the said Booke soe imprinting binding or stitching shall not be licensed then to seize upon so much thereof as shall be found imprinted togeather with the several Offenders and to bring them before one or more Justices of the Peace whoe are hereby authorized and required to commit such Offenders to Prison there to remaine untill they shall be tried and acquitted or convicted and punished for the said Offences And in case the said Searchers shall upon theire said Search find any Booke or Bookes or part of Bookes unlicensed which they shall suspect to contain matters therein contrary to the Doctrine or Discipline of the Church of England or against the State and Government Then upon such suspition to seise upon such Book or Books or part of Book or Books and to bring the same unto the said Lord Archbishop of Canterbury and Lord Bishop of London for the time being or one of them or to the Secretaries of State or one of them respectively who shall take such further course for the suppressing thereof as to them or any of them shall seeme fit.

And be it ordained and enacted by the Authority aforesaid That all and every Printer and Printers of Books Founder and Founders of Letters for Printing and all and every other person and persons working in or for the said Trades who from and after the Tenth day of June in the Yeare One thousand six hundred sixty and two shall offend against this present Act or any Article Clause or Thing herein contained and shall be thereof convicted by verdict confession or otherwise shall for the first offence be disenabled from exercising his respective Trade for the space of three yeares and for the second offence shall for ever thence after be disabled to use or exercise the Art or Mystery of Printing or of Founding Letters for Printing and shall alsoe have and receive such further punishment by Fine Imprisonment or other Corporal Punishment not extending to Life or Limb as by the Justices of the Court of Kings Bench or Justices of Oyer and Terminer or Justices of Assize in theire several Circuits or Justices of the Peace in theire several Quarter Sessions shall be thought fitt to be inflicted The which said Justices of the Peace in theire several Quarter Sessions shall have full power and authority to heare and determine all and every offence and offences that shall be committed against this Act …

And be it further enacted by the Authority aforesaid That every Printer shall reserve three printed Copies of the best and largest Paper of every Book new printed or reprinted by him with Additions and shall before any publick venting of the said Book bring them to the Master of the Company of Stationers and deliver them to him one whereof shall be delivered to the Keeper of his Majesties Library and the other two to be sent to the Vice-Chancellors of the two Universities respectively for the use of the Publique Libraries of the said Universities

Provided alwaies That nothing in this Act contained shall be construed to extend to the p[re]judice or infringing of any the just Rights and Priviledges of either of the two Universities of this Realm touching and concerning the licensing or printing of Books in either of the said Universities

Provided alwaies That no search shall be att any time made in the House or Houses of any the Peers of this Realm or of any other person or persons not being free of or using any of the Trades in this Act before mentioned but by special Warrant from the Kings Majestie under His Sign Manual or under the Hand of one or both of His Majesties principal Secretaries of State or for any other Books then such as are in printing or shall be printed after the Tenth of June One thousand six hundred sixty two Any thing in this Act to the contrary thereof in any wise notwithstanding

Provided alsoe and be it further enacted by the Authority aforesaid That neither this Act nor any thing therein contained shall be construed to prohibit any person or persons to sell Books or Papers who have sold Books or Papers within Westminster Hall the Palace of Westminster or in any Shopp or Shopps within twenty yards of the great Gate of Westminster Hall aforesaid before the Twentieth day of November One thousand six hundred sixty and one…

Provided alsoe That neither this Act nor any thing therein contained shall extend to p[re]judice the just Rights or Priviledges granted by His Majesty or any of his Royall Predecessors to any person or persons under His Majesties Great Seale or otherwise but that such person or persons may exercise and use such Rights and Priviledges as aforesaid according to theire respective Grants

Provided alsoe That neither this Act nor any therein contained shall extend to prohibit John Streater Stationer from printing Bookes and Papers but that he may still follow the Art and Mistery of Printing as if this Act had never beene made Any thing therein to the contrary notwithstanding

Provided alsoe That neither this Act nor any thing therein contained shall extend to restrain the keeping and using of a Printing Presse in the City of Yorke so as all Bookes of Divinity there printed be first licensed by the Archbishop of Yorke for the time being or such person or persons whom he shall appoint and all other Bookes whatsoever there printed be first licensed by such persons respectively to whom the licensing thereof doth or shall appertain by the rules herein before mentioned and so as no Bibles be there printed nor any other Booke whereof the Original Copy is or shall be belonging to the Company of Stationers in London or any Member thereof and so as the Archbishop or Lord Mayor of Yorke for the time being do execute within the said City (which they are hereby impowered to do) all the Powers and Rules in this Act concerning Searchers for unlicensed Bookes and impose and levy the said penalties in the like cases Provided That this Act shall continue and be in force for two yeares to commence from the Tenth of June One thousand six hundred sixty and two and no longer

Exemption from arrest for debts and contracts.

ficers, musicians, seamen and marines, who are or shall be enlisted into the service of the United States; and the non-commissioned officers and musicians, who are or shall be enlisted into the army of the United States, shall be, and they are hereby exempted, during their term of service, from all personal arrests for any debt or contract.

What duty they shall be subject to do.

Sec. 6. *And be it further enacted*, That the marine corps, established by this act, shall, at any time, be liable to do duty in the forts and garrisons of the United States, on the sea-coast, or any other duty on shore, as the President, at his discretion, shall direct.

Approved, July 11, 1798.

Statute II.

July 14, 1798.

[Obsolete.]

Chap. LXXIII.—*An Act establishing an annual salary for the Surveyor of the port of Gloucester.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be allowed to the surveyor of the port of Gloucester, in the state of Massachusetts, the yearly salary of two hundred and fifty dollars; to commence from the last day of March, in the year of our Lord one thousand seven hundred and ninety-seven.

Approved, July 14, 1798.

Statute II.

July 14, 1798.

[Expired.]

Chap. LXXIV.—*An Act in addition to the act, entitled "An act for the punishment of certain crimes against the United States."*

Penalty on unlawful combinations to oppose the measures of government, &c.

Ante, p. 112.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

And with such intent counselling &c. insurrections, riots, &c.

Penalty on libelling the government.

Sec. 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by

the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

Truth of the matter may be given in evidence.
The jury shall determine the law and the fact, under the court's direction.
Limitation.

Sec. 3. *And be it further enacted and declared,* That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

Sec. 4. *And be it further enacted,* That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

Approved, July 14, 1798.

Statute II.

July 14, 1798.

Chap. LXXV.—*An Act to lay and collect a direct tax within the United States.*

[Obsolete.]
Act of July 9, 1798, ch. 70.
A direct tax of two millions laid.
1802, ch. 12.
Apportionment.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a direct tax of two millions of dollars shall be, and hereby is laid upon the United States, and apportioned to the states respectively, in the manner following:—

To the state of New Hampshire, seventy-seven thousand seven hundred and five dollars, thirty-six cents and two mills.

To the state of Massachusetts, two hundred and sixty thousand four hundred and thirty-five dollars, thirty-one cents and two mills.

To the state of Rhode Island, thirty-seven thousand five hundred and two dollars and eight cents.

To the state of Connecticut, one hundred and twenty-nine thousand seven hundred and sixty-seven dollars, and two mills.

To the state of Vermont, forty-six thousand eight hundred and sixty-four dollars eighteen cents and seven mills.

To the state of New York, one hundred and eighty-one thousand six hundred and eighty dollars, seventy cents and seven mills.

To the state of New Jersey, ninety-eight thousand three hundred and eighty-seven dollars, twenty-five cents, and three mills.

To the state of Pennsylvania, two hundred and thirty-seven thousand one hundred and seventy-seven dollars, seventy-two cents and seven mills.

To the state of Delaware, thirty thousand four hundred and thirty dollars, seventy-nine cents, and two mills.

To the state of Maryland, one hundred and fifty-two thousand five hundred and ninety-nine dollars, ninety-five cents, and four mills.

To the state of Virginia, three hundred and forty-five thousand four hundred and eighty-eight dollars, sixty-six cents, and five mills.

To the state of Kentucky, thirty-seven thousand six hundred and forty-three dollars, ninety-nine cents, and seven mills.

To the state of North Carolina, one hundred and ninety-three thousand six hundred and ninety-seven dollars, ninety-six cents, and five mills.

To the state of Tennessee, eighteen thousand eight hundred and six dollars, thirty-eight cents, and three mills.

Kentucky Resolutions

Elliot 4:540--45

[*10 Nov. 1798*]

1. *Resolved,* That the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each state acceded as a state, and is an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, *each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.*

2. *Resolved,* That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes whatever; and it being true, as a general principle, and one of the amendments to the Constitution having also declared "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people,"--therefore, also, the same act of Congress, passed on the 14th day of July, 1798, and entitled "An Act in Addition to the Act entitled 'An Act for the Punishment of certain Crimes against the United States;'" as also the act passed by them on the 27th day of June, 1798, entitled "An Act to punish Frauds committed on the Bank of the United States," (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution,) are altogether void, and of no force; and that the power to create, define, and punish, such other crimes is reserved, and of right appertains, solely and exclusively, to the respective states, each within its own territory.

3. *Resolved,* That it is true, as a general principle, and is also expressly declared by one of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;" and that, no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain, and were reserved to the states, or to the people; that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech, and of the press, may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use, should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgment, by the United States, of the freedom of religious principles and exercises, and retained to themselves the right of protecting the same, as this, stated by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference; and that, in addition to this general principle and express declaration, another and more special provision has been made by one of the

amendments to the Constitution, which expressly declares, that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding, in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others,--and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That therefore the act of the Congress of the United States, passed on the 14th of July, 1798, entitled "An Act in Addition to the Act entitled 'An Act for the Punishment of certain Crimes against the United States,'" which does abridge the freedom of the press, is not law, but is altogether void, and of no force. …

6. *Resolved,* That the imprisonment of a person under the protection of the laws of this commonwealth, on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by the said act, entitled, "An Act concerning Aliens," is contrary to the Constitution, one amendment in which has provided, that "no person shall be deprived of liberty without due process of law;" and that another having provided, "that, in all criminal prosecutions, the accused shall enjoy the right of a public trial by an impartial jury, to be informed as to the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defence," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defence, without counsel--contrary to these provisions also of the Constitution--is therefore not law, but utterly void, and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in the courts, the judges of which shall hold their office during good behavior," and that the said act is void for that reason also; and it is further to be noted that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

7. *Resolved,* That the construction applied by the general government (as is evident by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress power to lay and collect taxes, duties, imposts, excises; to pay the debts, and provide for the common defence and general welfare, of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution; that words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument; that the proceedings of the general government, under color of those articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8. *Resolved,* That the preceding resolutions be transmitted to the senators and representatives in Congress from this commonwealth, who are enjoined to present the same to their respective houses, and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

9. *Resolved,* lastly, That the governor of this commonwealth be, and is, authorized and requested to communicate the preceding resolutions to the legislatures of the several states, to assure them that this commonwealth considers union for special national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness, and prosperity, of all the states; that, faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation; that it does also believe, that, to take from the states all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special government, and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states; and that, therefore, this commonwealth is determined, as it doubts not its co-states are, to submit to undelegated and consequently unlimited powers in no man, or body of men, on earth; that, if the acts before specified should stand, these conclusions would flow from them--that the general government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them; that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction; that a very numerous and valuable description of the inhabitants of these states, being, by this precedent, reduced, as outlaws, to absolute dominion of one man, and the barriers of the Constitution thus swept from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation, or other grievous punishment, the minority of the same body, the legislatures, judges, governors, and counsellors of the states, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the states and people, or who, for other causes, good or bad, may be obnoxious to the view, or marked by the suspicions, of the President, or be thought dangerous to his or their elections, or other interests, public or personal; that the friendless alien has been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather has already followed; for already has a Sedition Act marked him as a prey: That these and successive acts of the same character, unless arrested on the threshold, may tend to drive these states into revolution and blood, and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron; that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights; that confidence is every where the parent of despotism; free government is founded in jealousy, and not in confidence; it is jealousy, and not confidence, which prescribes limited constitutions to bind down those whom we are obliged to trust with power; that our Constitution has accordingly fixed the limits to which, and no farther, our confidence may go; and let the honest advocate of confidence read the Alien and Sedition Acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits; let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted, over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection; that the men of our choice have more

respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice.

In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution. That this commonwealth does therefore call on its co-states for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment to limited government, whether general or particular, and that the rights and liberties of their co-states will be exposed to no dangers by remaining embarked on a common bottom with their own; but they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these states of all powers whatsoever. That they will view this as seizing the rights of the states, and consolidating them in the hands of the general government, with a power assumed to bind the states, not merely in cases made federal, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent; that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority; and that the co-states, recurring to their natural rights not made federal, will concur in declaring these void and of no force, and will each unite with this commonwealth in requesting their repeal at the next session of Congress.[1]

1. [Editors' note.--Thomas Jefferson's original draft of Resolutions 8 and 9, which he supplied to the Kentucky legislature, ran as follows (*Writings* 17:385--91):

   "8th. *Resolved,* That a committee of conference and correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the legislatures of the several States; to assure them that this commonwealth continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly to those specified in their late federal compact, to be friendly to the peace, happiness and prosperity of all the States: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness or prosperity of these States; and that therefore this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the General Government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (casus non foederis,) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them: that nevertheless, this commonwealth, from motives of regard and respect for its co-States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact, and subject as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified: that if the acts before specified should stand, these conclusions would flow from them; that the General Government may place any act they think proper on the list of crimes, and punish it themselves whether enumerated or not enumerated by the

Constitution as cognizable by them: that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge and jury, whose *suspicions* may be the evidence, his *order* the sentence, his *officer* the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these States being, by this precedent, reduced, as outlaws, to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the powers of a majority in Congress to protect from a like exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors, and counsellors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their election, or other interests, public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather, has already followed, for already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood, and will furnish new calumnies against republican government, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism--free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on our President, and the President of our choice has assented to, and accepted over the friendly strangers to whom the mild spirit of our country and its laws have pledged hospitality and protection: that the men of our choice have more respected the bare *suspicions* of the President, than the solid right of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. That this commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular. And that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked in a common bottom with their own. That they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration that that compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these States, of all powers whatsoever: that they will view this as seizing the rights of the States, and consolidating them in the hands of the General Government, with a power assumed to bind the States, (not merely as the cases made federal, (casus foederis,) but) in all cases whatsoever, by laws made, not with their consent, but by others against their consent: that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void, and of no force, and will each take measures of its own for providing that neither these acts, nor any others of the General Government not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories.

"9th. *Resolved,* That the said committee be authorized to communicate by writing or personal conferences, at any times or places whatever, with any person or persons who may be appointed by any one or more co-States to correspond or confer with them; and that they lay their proceedings before the next session of Assembly."]

People v. Croswell

3 Johns. Cas. 337 N.Y. 1804

An indictment was found against the defendant on a *libel,* at the general sessions of the peace in Columbia county, which was removed, by *certiorari,* into this court, in January term, 1803, and the issue of traverse thereon was tried, at the Columbia circuit, in July, 1803, before Mr. Chief Justice Lewis.

The indictment was as follows, to wit: "At a court of general sessions of the peace, holden, &c. It is represented that Harry Croswell, late of the city of Hudson, in the county of Columbia aforesaid, printer, being a malicious and seditious man, of a depraved mind and wicked and diabolical disposition, and also deceitfully, wickedly, and maliciously devising, contriving and intending, Thomas Jefferson, Esq., President of the United States of America, to detract from, scandalize, traduce, vilify, and to represent him, the said Thomas Jefferson, as unworthy the confidence, respect, and attachment of the people of the said United States, and to alienate and withdraw from the said Thomas Jefferson, Esq., President as aforesaid, the obedience, fidelity, and allegiance of the citizens of the state of New York, and also of the said United States; and wickedly and seditiously to disturb the peace and tranquility, as well of the people of the state of New York, as of the United States; and also to bring the said Thomas Jefferson, Esq., (as much as in him the said Harry Croswell lay) into great hatred, contempt, and disgrace, not only with the people of the state of New York, and the said people of the United States, but also with the citizens and subjects of other nations; and for that purpose the said Harry Croswell did, on the ninth day of September, in the year of our Lord one thousand eight hundred and two, with force and arms, at the said city of Hudson, in the said county of Columbia, wickedly, maliciously, and seditiously, print and publish, and cause and procure to be printed and published, a certain scandalous, malicious, and seditious libel, in a certain paper or publication, entitled 'The Wasp;' containing therein, among other things, certain scandalous, malicious, inflammatory, and seditious matters, of and concerning the said Thomas Jefferson, Esq., then and yet being President of the United States of America, that is to say, in one part thereof, according to the tenor and effect following, that is to say: Jefferson (the said Thomas Jefferson, Esq., meaning,) paid Callender (meaning one James Thompson Callender) for calling Washington (meaning George Washington, Esq., deceased, late President of the said United States,) a traitor, a robber, and a perjurer; for calling Adams (meaning John Adams, Esq., late President of the said United States,) a hoary-headed incendiary, and for most grossly slandering the private characters of men who he (meaning the said Thomas Jefferson) well knew to be virtuous; to the great scandal and infamy of the said Thomas Jefferson, Esq., President of the said United States, in contempt of the people of the said state of New York, in open violation of the laws of the said state, to the evil example of all others in like case offending, and against the peace of the people of the state of New York, and their dignity."

The defendant applied to the judge, at the circuit, to put off the trial of the cause, on affidavit, which stated that James Thompson Callender, of the state of Virginia, was a material witness for the defendant, without the benefit of whose testimony the defendant could not, as he was advised, safely proceed to the trial of the cause; that the defendant expected to be able to prove, by the said witness, the *truth of the charge* set forth in the indictment, so far forth as this; that the said James Thompson Callender was the writer of a certain pamphlet called "The Prospect before us," and that he caused the same to be printed, which pamphlet contains the charges against Washington and

Adams, as in the publication set forth in the indictment, &c., &c., and that Mr. Jefferson, well knowing the contents of the said publication, paid, or caused to be paid, to the said J. T. Callender, two several sums of 50 dollars each, one of which was prior to the publication of the said pamphlet, and the other subsequent to the publication thereof, as a reward, thereby showing his approbation thereof, &c., &c. That it had been wholly out of the power of the defendant to procure the voluntary attendance of the said Callender, at that court, though he had, at the last general sessions of the peace, and since, until a few days past, good reason to believe, that he would attend, as a witness, at the then court; and that the defendant expected to be able to procure the voluntary attendance of the said Callender at the next circuit court, to be held in the said county, &c., unless the court would grant a commission to examine the said Callender, upon the application of the defendant, which he intended to make, at the next term of the court, for that purpose.

The Chief Justice refused to put off the trial, on this affidavit. It was proved, on the part of the public prosecutor, that the defendant was editor of a newspaper entitled "The Wasp," a series of which were printed and published in the city of Hudson. In one of them (number 7,) was contained a piece, from which was extracted the matter charged in the indictment, as the libel, the whole of which piece was read by the prosecutor, in the following words: "Holt says, the burden of the federal song is, that Mr. Jefferson paid Callender for writing against the late administration. This is wholly false. The charge is explicitly this: Jefferson paid Callender for calling Washington a traitor, a robber and a perjurer; for calling Adams a hoary-headed incendiary; and for most grossly slandering the private characters of men whom he well knew were virtuous. These charges, not a democratic editor has yet dared, or ever will dare, to meet in an open and manly discussion." …

The prosecutor having rested on this evidence, the defendant offered to prove, that he had no agency in devising, writing, or inditing the publication in question, and that the same was handed to be printed to a person in his employ, and in his absence, without his knowledge. To the introduction of this testimony, the prosecutor objected, and the Chief Justice refused to receive the same, unless the defendant meant also to prove, that he was not privy to the printing and publication of the alleged libel. This the defendant's counsel did not offer to prove. … The Attorney-General further stated, that from an examination of every number of The Wasp, it would be manifest, that the intent of the defendant was malicious.

The judge charged the jury, among other things, that the rule of law which confined jurors to the consideration of facts alone, was strictly applicable to the case of libels, where the question of libel or no libel was an inference of law from the fact; and that it was, perhaps, the only case in which courts invariably regarded a general as a special verdict; and where they would, *ex mero motu,* arrest the judgment, if the law was with the defendant.

His honor then read to the jury the opinion of Lord Mansfield, in the case of The Dean of St. Asaph, (as reported in a note in 3 Term Rep. 428,) and charged them, that the law therein laid down was the law of this state; that it was no part of the province of a jury to inquire or decide on the intent of the defendant; or whether the publication in question was true, or false, or malicious; that the only questions for their consideration and decision were, first, whether the defendant was the publisher of the piece charged in the indictment; and, second, as to the truth of the *innuendoes*; that if they were satisfied as to these two points, it was their duty to find him guilty; that the intent of the publisher, and whether the publication in question was libellous or not, was, upon the return of the

postea, to be decided *exclusively* by the court, and, therefore, it was not his duty to give any opinion to them, on these points; and accordingly no opinion was given.

A motion was made, in behalf of the defendant, for a new trial, on the following grounds:

1. Because the trial ought to have been put off, in order to give an opportunity to the defendant to procure the testimony in the affidavit mentioned.

2. That the piece alleged to be libellous, and which was read in evidence, from number 7 of The Wasp, is materially and substantially different from that charged in the indictment, and the piece so read is not libellous.

3. For the misdirection of the judge, in his charge to the jury, that in cases of libel, they were not the judges of law and fact; that in case of libel only, could a court set aside a general verdict of guilty; that the law laid down in the case of The Dean of St. Asaph, is the law of this state; that the intent was simply a question of law, and, therefore, not to be left to the jury, but to be decided exclusively by the court on the return of the *postea;* and that whether the piece in question was libellous or not, was not to be decided by the jury; and because the judge did not, as he ought to have done, give his opinion to the jury, on the point last mentioned.

. . . . .

The following is a brief summary of the argument of [Alexander] Hamilton, in reply.

He said, that the two great questions that arose in the cause were: 1. Can the truth be given in evidence? 2. Are the jury to judge of the intent and the law? The first point might be more embarrassing, but the second was clear.

The liberty of the press consisted in publishing with impunity, truth with good motives, and for justifiable ends, whether it related to men or to measures. To discuss measures without reference to men, was impracticable. Why examine measures, but to prove them bad, and to point out their pernicious authors, so that the people might correct the evil by removing the men? There was no other way to preserve liberty, and bring down a tyrannical faction. If this right was not permitted to exist in vigor and in exercise, good men would become silent; corruption and tyranny would go on, step by step, in usurpation, until at last, nothing that was worth speaking, or writing, or acting for, would be left in our country.

But he did not mean to be understood as being the advocate of a press wholly without control. He reprobated the novel, the visionary, the pestilential doctrine of an unchecked press, and ill fated would be our country, if this doctrine was to prevail. It would encourage vice, compel the virtuous to retire, destroy confidence, and confound the innocent with the guilty. Single drops of water constantly falling may wear out adamant. The best character of our country, he to whom it was most indebted, and who is now removed beyond the reach of calumny, felt its corrosive effects. No, he did not contend for this terrible liberty of the press, but he contended for the right of publishing truth, with good motives, although the censure might light upon the government, magistrates, or individuals.

The check upon the press ought to be deposited, not in a permanent body of magistrates, as the court, but in an occasional and fluctuating body, the jury, who are to be selected by lot. Judges might be tempted to enter into the views of government, and to extend, by arbitrary constructions, the law of libels. In the theory of our government, the executive and legislative departments are operated upon by one influence, and act in one course, by means of popular election. How, then, are our judges to be independent? How can they withstand the combined force and spirit of the other departments? The judicial is less independent here than in England, and, of course, we have more reason, and stronger necessity, to cling to the trial by jury, as our greatest safety.

Men are not to be implicitly trusted, in elevated stations. The experience of mankind teaches us, that persons have often arrived at power by means of flattery and hypocrisy; but instead of continuing humble lovers of the people, have changed into their most deadly persecutors.

Lord Camden said, that he had not been able to find a satisfactory definition of a libel. He would venture, however, but with much diffidence, after the embarrassment which that great man had discovered, to submit to the court the following definition. *A libel is a censorious or ridiculing writing, picture or sign, made with a mischievous and malicious intent towards government, magistrates or individuals.* According to Blackstone, it is a malicious defamation made public, with intent to provoke or expose to public hatred and ridicule. The malice and intent enter into the essence of the crime, and must be proved, and are, accordingly, to be left to the jury, as parcel of the fact. The definition of Lord Coke does not oppose this result. He speaks of a libel, as having a tendency to break the peace. This, also, is a fact to be proved to the jury, for the tendency depends upon time, manner, circumstance, and must of necessity be a question of fact.

Texts taken from the holy scriptures and scattered among the people, may, in certain times, and under certain circumstances, become libellous, nay, treasonable. These texts are, then, innocent, libellous, or treasonable, according to the time and intent; and surely the time, manner, and intent are matters of fact for a jury. It is the intent that constitutes the crime. This is a fundamental principle of jurisprudence. . . . Whether crime or not, will always depend upon intent, tendency, quality, manner, &c., and these must be matters of fact for the jury. The law cannot adjudge a paper to be a libel, until a jury have found the circumstances connected with the publication.

But it is not only the province of the jury, in all criminal cases, to judge of the intent with which the act was done, as being parcel of the fact; they are also authorized to judge of the law as connected with the fact. In civil cases, the court are the exclusive judges of the law, and this arose from the nature of pleadings in civil suits; for anciently, matters of law arising in the defence, were required to be spread upon the record, by a special plea, and the jury were liable to an *attaint* for finding a verdict contrary to law. But in criminal cases, the law and fact are necessarily blended by the general issue, and a general verdict was always final and conclusive, both upon the law and the fact. Nor were the jury ever exposed to an *attaint* for a verdict in a criminal case; and this is decisive to prove that they had a concurrent jurisdiction with the court on questions of law; for where the law allows an act to be valid or definitive, it presupposes a legal and rightful authority to do it. This is a sure and infallible test of a legal power.

In England trial by jury has always been cherished, as the great security of the subject against the oppression of government; but it never could have been a solid refuge and security, unless the jury had the right to judge of the intent, and the law.

The jury ought undoubtedly to pay every respectful regard to the opinion of the court; but suppose a trial in a capital case, and the jury are satisfied from the arguments of counsel, the law authorities that are read, and their own judgment, upon the application of the law to the facts, (for the criminal law consists in general of plain principles,) that the law arising in the case is different from that which the court advances, are they not bound by their oaths, by their duty to their creator and themselves, to pronounce according to their own convictions? To oblige them, in such a case, to follow implicitly the direction of the court, is to make them commit perjury, and homicide, under the forms of law.

The case of the Seven Bishops, and Fuller's and Tuchin's Cases, are a series of precedents in favor of the right of the jury. The opposite precedents begin with Lord Raymond, but they have not been uniform nor undisputed. It has been constantly a floating and litigious question in Westminster Hall. A series of precedents only can form law. There can be no embarrassment in the court; they are at liberty to examine the question upon principles. The English declaratory act recites that doubts had existed, and being declaratory, it is evidence of the sense of the nation. The Marquis of Lansdowne observed, in the house of lords, that the same declaratory bill had been brought in twenty years before, and was then deemed unnecessary.

The question how far the truth is to be given in evidence, depends much on the question of intent; for if the intent be a subject of inquiry for the jury, the giving the truth in evidence is requisite as a means to determine the intent. Truth is a material ingredient in the evidence of intent. In the whole system of law there is no other case in which the truth cannot be shown; and this is sufficient to prove the proposition, which denies it in the present case, to be a paradox.

The Roman law permitted the truth to justify a libel. The ancient English statutes prove also, that in the root and origin of our law, falsity was an ingredient in the crime, and those statutes were declaratory of the common law. The ancient records and precedents prove the same thing, and they are the most authoritative evidence of the ancient law. In the celebrated case of the Seven Bishops, the court permitted the defendants to prove the truth of the facts stated in the petition. That case is also very important, in various views. It establishes the necessity of inquiring into the circumstances and intent of the act. It was an instance of a firm and successful effort to recall the principles of the common law, and was an important link in the chain of events that led on to the glorious aera of their revolution.

In *Fuller's Case,* Lord Holt allowed the defendant to go into proof of the truth of the charge. But while, he said, he advocated the admission of the truth, he subscribed to the doctrine of *Want's Case,* in Moore, that the truth ought only to be given in evidence, to determine *quo animo* the act was done. It ought not to be a justification in every case, for it may be published maliciously. It may be abused, to the gratification of the worst of passions, as in the promulgation of a man's personal defects or deformity.

The court of Star Chamber was the polluted source from whence the prosecutor's doctrine was derived. That is not the court from which we are to expect principles and precedents friendly to freedom. It was a most arbitrary, tyrannical and hated tribunal, under the control of a permanent body of magistrates, without the wholesome restraints of a jury. The Whigs in England, after the revolution, in order to prop up their power, adopted, as in *Franklin's Case,* the arbitrary maxims of

that court which had been reprobated at the revolution; and this ought to serve as a monitory lesson to rulers at the present day, for such is the nature, progress and effect of the human passions.

The right of giving the truth in evidence, in cases of libels, is all-important to the liberties of the people. Truth is an ingredient in the eternal order of things, in judging of the quality of acts. He hoped to see the axiom, that truth was admissible, recognized by our legislative and judicial bodies. He always had a profound reverence for this doctrine, and he felt a proud elevation of sentiment in reflecting, that the act of congress, which had been the object of so much unmerited abuse, and had been most grossly misrepresented by designing men, established this great vital principle. It was an honorable, a worthy and glorious effort in favor of public liberty. He reflected also, with much pleasure, on the fact, that so illustrious a patriot as Mr. Jay had laid down, correctly and broadly, the power of the jury. These acts were monuments, were consoling vestiges of the wisdom and virtue of the administration and character that produced them.

He maintained that the common law applied to the United States. That the common law was principally the application of natural law to the state and condition of society.

That the constitution of the United States used terms and ideas which had a reference to the common law, and were inexplicable without its aid. That the definition of treason, of the writ of *habeas corpus,* of crimes and misdemeanors, &c., were all to be expounded by the rules of the common law. That the constitution would be frittered away or borne down by factions, (the evil *genii,* the pest of republics,) if the common law was not applicable. That without this guide, any political tenet or indiscretion might be made a crime or pretext to impeach, convict and remove from office the judges of the federal courts. That if we departed from common law principles, we would degenerate into anarchy, and become the sport of the fury of conflicting passions. The transition from anarchy was to despotism, to an armed master.

The real danger to our liberties was not from a few provisional troops. The road to tyranny will be opened by making dependent judges, by packing juries, by stifling the press, by silencing leaders and patriots. His apprehensions were not from single acts of open violence. Murder rouses to vengeance; it awakens sympathy, and spreads alarm. But the most dangerous, the most sure, the most fatal of tyrannies, was by selecting and sacrificing single individuals, under the mask and forms of law, by dependent and partial tribunals. Against such measures we ought to keep a vigilant eye, and take a manly stand. Whenever they arise, we ought to resist, and resist, till we have hurled the demagogues and tyrants from their imagined thrones. He concurred most readily with the learned counsel opposed to him, in the opinion that the English were a free, a gloriously free people. That country is free where the people have a representation in the government, so that no law can pass without their consent; and where they are secured in the administration of justice, by the trial by jury. We have gone further in this country into the popular principle, and he cordially united his prayers with the opposite counsel, that the experiment with us might be successful.

The question on the present libel ought to be again tried. It concerns the reputation of Mr. Jefferson. It concerned deeply the honor of our country. It concerned the fame of that bright and excellent character General Washington, in which he had left a national legacy of inestimable value.

He concluded, by recapitulating the substance of the doctrine for which he contended, in the following words:

"1. The liberty of the press consists in the right to publish, with impunity, truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals.

"2. That the allowance of this right is essential to the preservation of a free government; the disallowance of it fatal.

"3. That its abuse is to be guarded against by subjecting the exercise of it to the animadversion and control of the tribunals of justice; but that this control cannot safely be intrusted to a permanent body of magistracy, and requires the effectual co-operation of court and jury.

"4. That to confine the jury to the mere question of publication, and the application of terms, without the right of inquiry into the intent or tendency, reserving to the court the exclusive right of pronouncing upon the construction, tendency, and intent of the alleged libel, is calculated to render nugatory the function of the jury; enabling the court to make a libel of any writing whatsoever, the most innocent or commendable.

"5. That it is the general rule of criminal law, that the intent constitutes the crime; and that it is equally a general rule, that the intent, mind, or *quo animo,* is an inference of fact to be drawn by the jury.

"6. That if there are exceptions to this rule, they are confined to cases in which not only the principal fact, but its circumstances, can be, and are, specifically defined by statute or judicial precedent.

"7. That, in respect to libel, there is no such specific and precise definition of facts and circumstances to be found; that, consequently, it is difficult, if not impossible, to pronounce that any writing is *per se,* and exclusive of all circumstances, libellous; that its libellous character must depend on intent and tendency; the one and the other being matter of fact.

"8. That the definitions or descriptions of libels to be met with in the books, founded them upon some malicious or mischievous intent or tendency, to expose individuals to hatred or contempt, or to occasion a disturbance or a breach of the peace.

"9. That in determining the character of a libel, the truth or falsehood is, in the nature of things, a material ingredient, though the truth may not always be decisive; but being abused may still admit of a malicious and mischievous intent, which may constitute a libel.

"10. That, in the Roman law, one source of the doctrine of a libel, the truth, in cases interesting to the public, was given in evidence; that the ancient statutes, probably declaratory of the common law, make the falsehood an ingredient of the crime; that the ancient precedents in the courts of justice correspond, and that the precedents to this day charge a malicious intent.

"11. That the doctrine of excluding the truth, as immaterial, originated in a tyrannical and polluted source, in the court of Star Chamber; and though it prevailed a considerable length of time, yet there are leading precedents down to the revolution, and ever since, in which a contrary practice prevailed.

"12. That the doctrine being against reason and natural justice, and contrary to the original principles of the common law, enforced by statutory provisions, the precedents which support it deserve to be considered in no better light than as a *malus usus,* which ought to be abolished.

"13. That, in the general distribution of power, in any system of jurisprudence, the cognizance of law belongs to the court, of fact to the jury; that as often as they are not blended, the power of the court is absolute and exclusive. That, in civil cases, it is always so, and may rightfully be so exerted. That, in criminal cases, the law and fact being always blended, the jury, for reasons of a political and peculiar nature, for the security of life and liberty, are intrusted with the power of deciding both law and fact."

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The following are the opinions of Kent, J., and Lewis, Ch. J., as prepared, and intended to have been delivered by them.

Kent, J. The defendant was convicted, at the last circuit court in Columbia county, of printing and publishing a scandalous, malicious and seditious libel upon Thomas Jefferson, the President of the United States. . . .

1 The criminality of the charge in the indictment consisted in a malicious and seditious *intention*. (Hawk. tit. Libel, s. 1. 2 Wils. 403. 1 Esp. Cas. 228.) There can be no crime without an evil mind. . . . The simple act of publication, which was all that was left to the jury, in the present case, was not, in itself, criminal. It is the applications to times, persons and circumstances; it is the *particular* intent and tendency that constitutes the libel. Opinions and acts may be innocent under one set of circumstances, and criminal under another. This application to circumstances, and this particular intent, are as much *matters of fact,* as the printing and publishing. (Winne's Eunomus, dial. 3, s. 53.) Where an act, innocent in itself, becomes criminal, when done with a particular intent, that intent is the material *fact* to constitute the crime. (Lord Mansfield, 3 Term Rep. 429, in the note.) And I think there cannot be a doubt, that the mere publication of a paper is not, *per se,* criminal; for otherwise, the copying of the indictment by the clerk, or writing a friendly and admonitory letter to a father, on the vices of his son, would be criminal. The intention of the publisher, and every circumstance attending the act, must therefore be cognizable by the jury, as questions of fact. And if they are satisfied that the publication is innocent; that it has no mischievous or evil tendency; that the mind of the writer was not in fault; that the publication was inadvertent, or from any other cause was no libel, how can they conscientiously pronounce the defendant guilty, from the mere fact of publication? A verdict of *guilty,* embraces the whole charge upon the record, and are the jury not permitted to take into consideration the only thing that constitutes the crime, which is the malicious intent? According to the doctrine laid down at the trial, all that results from a verdict of guilty is, that the defendant has published a certain paper, and that it applies to certain persons, according to the *innuendoes*; but whether the paper be lawful or unlawful; whether it be criminal, or innocent, or meritorious; whether the intent was wicked or virtuous, are matters of law which do not belong to the jury, but are reserved for the determination of the court. . . .

To deny to the jury the right of judging of the intent and tendency of the act, is to take away the substance, and with it the value and security of this mode of trial. It is to transfer the exclusive

cognizance of crimes from the jury to the court, and to give the judges the absolute control of the press. There is nothing peculiar in the law of libels, to withdraw it from the jurisdiction of the jury…

So in the case of a public libeller, the jury are to try, not only whether he published such a writing, but whether he published it *seditiously*. In all these cases, from the nature of the issue, the jury are to try not only the *fact,* but the *crime,* and in doing so they must judge of the *intent,* in order to determine whether the charge be true, as set forth in the indictment. (Dagge on Criminal Law, b. 1, c. 11, s. 2.) The law and fact are so involved, that the jury are under an indispensable necessity to decide both, unless they separate them by a special verdict.

This right in the jury to determine the law as well as the fact has received the sanction of some of the highest authorities in the law. . . .

To meet and resist directly this stream of authority, is impossible. But while the *power* of the jury is admitted, it is denied that they can *rightfully* or *lawfully* exercise it, without compromitting their consciences, and that they are bound implicitly, in all cases, to receive the law from the court. The law must, however, have intended, in granting this power to a jury, to grant them a lawful and rightful power, or it would have provided a remedy against the undue exercise of it. The true criterion of a legal power is its capacity to produce a definitive effect liable neither to censure nor review. And the verdict of not guilty, in a criminal case, is, in every respect, absolutely final. . . .

The first case I have met with, in which the question arose between the jurisdiction of the court and jury, was upon the trial of Lilburne for high treason, in 1549. (2 St. Tr. 69, 81, 82.) He insisted, in coarse but intelligible language, that the jury were judges of law and fact, but the court, in language equally rude, denied it. He insisted upon the privilege of reading law to the jury, but the court refused it. The jury, however, acquitted him, and they declared that they took themselves to be judges of the law as well as of the fact, notwithstanding the court had said otherwise. *Bushell's Case* followed soon after, and it is in every view important. (Vaughan, 132. Sir T. Jones, 13.) He was one of the jurors, on the trial of an indictment for a misdemeanor, before the court of *oyer and terminer* in London, and was fined and committed, because he and the other jurors acquitted the defendant against full proof, *and against the direction of the court, in matter of law*. He was brought into the court of C. B. upon *habeas corpus* and discharged; and Lord Ch. J. Vaughan delivered, upon that occasion, in behalf of the court, a learned and profound argument in favor of the rights of the jury. He admitted that where the law and fact were distinct, the provinces of the court and jury were exclusive of each other, so that if it be demanded what is a fact, the judge cannot answer it, and if what is the law, the jury cannot answer it. But that upon all general issues, where the jury find a general verdict, they resolve both law and fact completely, and not the fact by itself…

The constant struggle of counsel and of the jury, against the rule, so emphatically laid down by Lord Raymond, the disagreement among the judges, and the dangerous tendency of the doctrine, as it affected two very conspicuous and proud monuments of English liberty, trial by jury, and the freedom of the press, at length attracted and roused the attention of the nation. The question was brought before the parliament, and debated in two successive sessions. (In 1791 and 1792, see Debates in the Senator, vols. 3, 4, 5.) There was combined, in the discussion of this dry law question, an assemblage of talents, of constitutional knowledge, of practical wisdom, and of professional erudition, rarely if ever before surpassed. It underwent a patient investigation and severe scrutiny, upon principle and precedent, and a bill *declaratory* of the right of the jury to give a general verdict

upon the whole matter put in issue, without being required or directed to find the defendant guilty merely on the proof of publication and the truth of the *innuendoes,* was at length agreed to and passed with uncommon unanimity. It is entitled "An act to remove doubts respecting the functions of juries in cases of libel;" and, although I admit, that a declaratory statute is not to be received as conclusive evidence of the common law, yet it must be considered as a very respectable authority in the case; and especially, as the circumstances attending the passage of this bill, reflect the highest honor on the moderation, the good sense, and the free and independent spirit of the British parliament…

The result, from this view, is, to my mind, a firm conviction that this court is not bound by the decisions of Lord Raymond, and his successors. By withdrawing from the jury the consideration of the essence of the charge, they render their function nugatory and contemptible. Those opinions are repugnant to the more ancient authorities which had given to the jury the power, and with it the right, to judge of the law and fact, when they were blended by the issue, and which rendered their decisions, in criminal cases, final and conclusive. The English bar steadily resisted those decisions, as usurpations on the rights of the jury. Some of the judges treated the doctrine as erroneous, and the parliament, at last, declared it an innovation, by restoring the trial by jury, in cases of libel, to that ancient vigor and independence, by which it had grown so precious to the nation as the guardian of liberty and life, against the power of the court, the vindictive persecution of the prosecutor, and the oppression of the government.

I am aware of the objection to the fitness and competency of a jury to decide upon questions of law, and especially, with a power to overrule the directions of the judge. In the first place, however, it is not likely often to happen, that the jury will resist the opinion of the court on the matter of law. That opinion will generally receive its due weight and effect; and in civil cases it can, and always ought to be, ultimately enforced by the power of setting aside the verdict. But in human institutions, the question is not, whether every evil contingency can be avoided, but what arrangement will be productive of the least inconvenience. And it appears to be most consistent with the permanent security of the subject, that in criminal cases the jury should, after receiving the advice and assistance of the judge, as to the law, take into their consideration all the circumstances of the case, and the intention with which the act was done, and to determine upon the whole, whether the act done, be, or be not, within the meaning of the law. This distribution of power, by which the court and jury mutually assist, and mutually check each other, seems to be the safest, and, consequently, the wisest, arrangement, in respect to the trial of crimes. The constructions of judges on the intention of the party may often be (with the most upright motives) too speculative and refined, and not altogether just in their application to every case. Their rules may have too technical a cast, and become, in their operation, severe and oppressive. To judge accurately of motives and intentions, does not require a master's skill in the science of law. It depends more on a knowledge of the passions, and of the springs of human action, and may be the lot of ordinary experience and sagacity.

My conclusion on this first point then, is, that upon every indictment or information for a libel, where the defendant puts himself upon the country, by a plea of not guilty, the jury have a right to judge, not only of the fact of the publication, and the truth of the *innuendoes,* but of the intent and tendency of the paper, and whether it be a libel or not; and, in short, of "the whole matter put in issue upon such indictment or information." (Stat. 32 Geo. III.) That in this, as in other criminal cases, it is the duty of the court, "according to their discretion, to give their opinion and direction to the jury on the matter in issue;" and it is the duty of the jury to receive the same with respectful

deference and attention, and, unless they choose to find a special verdict, they are then to exercise their own judgments on the matter in issue, with discretion and integrity.

2. The second point in the case, although a question of evidence merely, is equally important, and still more difficult. It was made a very prominent point upon the argument, and the decision of it is essential for the direction of the judge who is to preside at the new trial that may be awarded.

As a libel is a defamatory publication, made with a malicious intent, the truth or falsehood of the charge may, in many cases, be a very material and pertinent consideration with the jury, in order to ascertain that intent. There can be no doubt that it is competent for the defendant to rebut the presumption of malice, drawn from the fact of publication; and it is consonant to the general theory of evidence, and the dictates of justice, that the defendant should be allowed to avail himself of every fact and circumstance that may serve to repel that presumption. And what can be a more important circumstance than the truth of the charge, to determine the goodness of the motive in making it, if it be a charge against the competency or purity of a character in public trust, or of a candidate for public favor, or a charge of actions in which the community have an interest, and are deeply concerned? To shut out wholly the inquiry into the truth of the accusation, is to abridge essentially the means of defence. It is to weaken the arm of the defendant, and to convict him, by means of a presumption, which he might easily destroy by proof that the charge was true, and that, considering the nature of the accusation, the circumstances and time under which it was made, and the situation of the person implicated, his motive could have been no other than a pure and disinterested regard for the public welfare. At the same time, this doctrine will not go to tolerate libels upon private character or the circulation of charges for seditious and wicked ends, or to justify exposing to the public eye one's personal defects or misfortunes. The public have no concern with, nor are they injured by such information, and the truth of the charge would rather aggravate than lessen the baseness and evil tendency of the publication. It will, therefore, still remain, in every case, a question for the jury, what was the intent and tendency of the paper, and how far the truth, in the given case, has been used for commendable, or abused for malicious purposes.

This principle in the law of libels is considered as rational and sound, in an ethical point of view; (Paley's Moral Philosophy, p. 188,) and to this extent, the writers on the civil law have allowed the truth to excuse a defamatory accusation. . . .

That falsehood is a material ingredient in a public libel, is a doctrine not without precedent in former times; it has always been asserted, and occasionally admitted, by the English courts. In this country it has taken firmer root, and in regard to the measures of government, and the character and qualifications of candidates for public trust, it is considered as the vital support of the liberty of the press.

The English decisions on the subject of libels have not been consistent in principle. The reason assigned for the punishment of libels, whether true or false, is because they tend to a breach of the peace, by inciting the libelled party to revenge, or the people to sedition. It is not the matter, but the manner, say the books, which is punishable. (1 Hawk. tit. Libel, s. 3, 6, 7. Hudson on the Star Chamber, p. 102.) This reason, however, according to some late decisions, is made to yield to stronger reasons of a public nature, although the instances given come equally within the rule, as they equally tend to defame and provoke. It is no libel to publish a true account of proceedings in parliament or courts of justice, notwithstanding the paper may be very injurious to the character of

individuals or of magistrates; because those proceedings are open to all the world, and it is of vast importance to the public, that they should be generally known. (8 Term Rep. 297, 298; 1 Bos. & Pull. 226.) It was held no libel to treat with asperity the character of the officers of Greenwich hospital, where the publication was distributed only among the governors of the hospital, because they are the persons who, from their situation, are called upon to redress the grievance, and have the power to do it. (*Rex* v. *Baillie,* Mich. 20 Geo. III, by Lord Mansfield. Esp. Dig. 506.) It might be easily perceived, that according to the same doctrine, it ought not to be a libel to publish generally a true account of the character and conduct of public rulers, because it is of vast importance that their character and actions should be accurately understood, and especially by the public, to whom alone they are responsible. This rule of decision, in the different cases, varies, but the principle applies equally to each.

The doctrine that the truth of the matter charged was no defence to a public prosecution for a libel, came from the court of Star Chamber. William Hudson, who was an eminent practiser in that court, in the reign of James I., compiled, early under his successor, a very copious and learned treatise on its jurisdiction and practice. (See 2 Collectanea Juridica.) He says, that libels had in all ages been severely punished there, but especially when they began to grow frequent, about the reign of Elizabeth. This fact would lead to interesting reflection. The era here referred to, was the very time when the use of printing had grown familiar, when learning was disseminated, when civil and political rights became objects of inquiry, and, to use the words of Mr. Hume, when "symptoms had appeared of a more free and independent genius in the nation." Hudson cites upwards of twenty adjudged cases, in the Star Chamber, upon libels, and says that there were two gross errors, which had crept into the world concerning libels, one of which was, that it was not a libel, if true, but this, he adds, had been long since expelled out of that court; and he mentions the case of *Breverton,* (Mich. 2 Jac. I.) in which that species of defence was attempted to a charge of bribery and extortion in a public trust, and was overruled. This treatise of Hudson establishes two very important facts; the one that the court of Star Chamber established the doctrine in question, and the other, that it was still the public sentiment, which he calls "a gross error in the world," that the truth might be a defence to a libel; and this defence was attempted in that court as late as the reign of James. Mr. Barrington (Observations on the Statutes, 68,) has given us a part of a curious letter, written at that time by the Dean of St. Paul's, from which we may infer his alarm and disgust at the new libel doctrines of the Star Chamber. "There be many cases," he observes, "where a man may do his country good service, by libelling; for where a man is either too great, or his vices too general to be brought under a judiciary accusation, there is no way but this extraordinary method of accusation. *Sealed letters in the Star Chamber have nowadays been judged libels.*" …

The form of the record of a conviction of one John Northampton in the K. B., for a libellous letter upon the court, is given by Coke, in his 3d Institute (p. 174.) The defendant confessed a libel, and was imprisoned and bound to his good behavior, and the record stated that the libel was false: *quae litera continet in se nullam veritatem*. The records of the courts have always been esteemed as the most authentic memorials of the law; and it is an important fact, which may now be noticed, that the indictments for libels have always charged the libel to be *false,* as well as malicious; and it was not until very lately that this epithet has been omitted. (7 Term Rep. 4.) I am aware that it has been said, (9 St. Tr. 302,) that the falsehood of the libel was not the ground of the judgment in this case of Northampton; but I see no reason for that assertion, for the words could have no other use or meaning upon the record; and it is absurd to suppose they were inserted by the judges, in order to acquit themselves to the king.

It appears clear, from this historical survey, that the doctrine now under review, originated in the court of Star Chamber, and was introduced and settled there about the beginning of the reign of James I. . . .

After the abolition of the Star Chamber under Charles I. we hear very little of the doctrine of libels, till we have followed the judicial precedents down to the era of the revolution. During the reign of the Stuarts, the press was stifled by the *imprimaturs* of government, which were first introduced by the acts of uniformity and borrowed from the inquisition. (1 Bl. Rep. 114, 115. 4 Bl. Comm. 152, note.) After the Star Chamber had ceased, the parliament subjected all publications to the arbitrary control of a license. Whoever has the curiosity to examine the licensing act of 13 and 14 Car. II. c. 33, will at once perceive that there was no longer any need, either of the jurisdiction or doctrines of the Star Chamber, to control seditious and libellous publications. The case of the seven bishops (4 St. Tr.) is the first instance in which the new doctrine of libel was brought into the court of K. B. and submitted to the test of a jury; and here we consult once more the genuine oracles of the common law, and although their responses may not be altogether consistent or unequivocal, we listen to them with delight and instruction. On this trial, the Attorney-General contended that it was not to be made a question, whether the libel was true or false, and he grounded himself entirely upon the decisions in the Star Chamber, as he cited no other. But the counsel for the defendants, under the permission of the court, went at large into argument and proof, to show the dispensing power of the crown illegal, and that the allegation in the petition was true. And when the judges came to charge the jury, which they did separately, two of them were of opinion that the petition was a libel, and that whether true or false, was immaterial. The third judge placed the question altogether upon the *quo animo* of the defendants, but the fourth judge (Mr. Justice Powell) told the jury, that to make a libel, it must be *false,* it must be malicious, and it must tend to sedition; and that if there was no dispensing power in the king, which he believed, then it was no libel to say that the king's declaration was illegal. The jury were of his opinion, and acquitted the defendants…

I have thus shown, that the rule denying permission to give the truth in evidence, was not an original rule of the common law…

But, whatever may be our opinion on the English law, there is another and a very important view of the subject to be taken, and that is with respect to the true standard of the freedom of the American press. In England they have never taken notice of the press in any parliamentary recognition of the principles of the government, or of the rights of the subject, whereas the people of this country have always classed the freedom of the press among their fundamental rights… The first American congress, in 1774, in one of their public addresses, (Journals, vol. 1, p. 57,) enumerated five invaluable rights, without which a people cannot be free and happy, and under the protecting and encouraging influence of which these colonies had hitherto so amazingly flourished and increased. One of these rights was the *freedom of the press,* and the importance of this right consisted, as they observed, "besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs." …I shall mention, lastly, the act of congress, of the 14th July, 1798, which prescribed penalties for certain specified libels upon the government of the United States, and allowed the truth to be given in evidence, on every prosecution under that act; and it is worthy of notice that the part of the act

allowing the truth to be given in evidence, was *declaratory,* and thereby conveyed the sense of congress that such was the already existing law.

These multiplied acts and declarations are the highest, the most solemn, and commanding authorities, that the state or the nation can produce. They are generally the acts of the people themselves, when they came forward in their original character, to change the constitution of the country, and to assert their indubitable rights. And it seems impossible that they could have spoken with so much explicitness and energy, if they had intended nothing more than that restricted and slavish press, which may not publish anything, true or false, that reflects on the character and administration of public men. Such is the English doctrine of the liberty of the press, as asserted in Franklin's Case. (See also, Hawk. tit. Libels, 7.) A treatise on hereditary right has been held a libel, although it contained no reflections on any part of the subsisting government. (*Queen* v. *Bedford,* Str. 189; Gilbert's Rep. K. B. 297.) And if the theory of the prevailing doctrine in England, (for even there it is now scarcely anything more than theory,) had been strictly put in practice with us, where would have been all those enlightened and manly discussions which prepared and matured the great events of our revolution, or which, in a more recent period, pointed out the weakness and folly of the confederation, and roused the nation to throw it aside, and to erect a better government upon its ruins? They were, no doubt, libels upon the existing establishments, because they tended to defame them, and to expose them to the contempt and hatred of the people. They were, however, libels founded in truth, and dictated by worthy motives.

I am far from intending that these authorities mean, by the freedom of the press, a press wholly beyond the reach of the law, for that would be emphatically *Pandora's box, the source of every evil.* And yet the house of delegates in Virginia, by their resolution of the 7th January, 1800, and which appears to have been intended for the benefit and instruction of the union, came forward as the advocates of a press totally unshackled, and declare, in so many words, that "the baneful tendency of the *sedition act* was but little diminished by the privilege of giving in evidence the truth of the matter contained in political writings." They seem also to consider it as the exercise of a pernicious influence, and as striking at the root of free discussion, to punish, even for a *false and malicious* writing, published *with intent* to defame those who administer the government. If this doctrine was to prevail, the press would become a pest, and destroy the public morals. Against such a commentary upon the freedom of the American press, I beg leave to enter my protest. The founders of our governments were too wise and too just, ever to have intended, by the freedom of the press, a right to circulate falsehood as well as truth, or that the press should be the lawful vehicle of malicious defamation, or an engine for evil and designing men, to cherish, for mischievous purposes, sedition, irreligion, and impurity. Such an abuse of the press would be incompatible with the existence and good order of civil society. The true rule of law is, that the intent and tendency of the publication is, in every instance, to be the substantial inquiry on the trial, and that the truth is admissible in evidence, to explain that intent, and not in every instance to justify it. I adopt, in this case, as perfectly correct, the comprehensive and accurate definition of one of the counsel at the bar, (Gen. Hamilton,) *that the liberty of the press consists in the right to publish, with impunity, truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals.*

Thompson, J., concurred in the opinion of Kent. Lewis, Ch. J., reviewing the same English authorities came to the conclusion that the law required the affirmance of the conviction.