

"Ours are the Plans of fair delightful Peace,
"Unwar'p'd by Party Rage to live like Brothers."

TRIAL OF THOMAS COOPER.

(Continued from our last)

MR. RAWLE, Attorney General, began by observing that the Defendant stood charged with attempts which the practice and policy of all civilized nations had tho't it right at all times to punish with severity. With having published a false, scandalous, and malicious attack on the character of the President of the United States with an intent to excite the hatred and contempt of the people of this country against the man of their choice.

It was much to be lamented that every person who had a tolerable facility at writing should think he had a right to attack and overset those authorities and officers whom the people of this country had thought fit to appoint. Nor was it to be endured, that foul and infamous falsehoods should be uttered and published with impunity against the President of the United States, whom the People themselves had placed in that high office, and in which he had acted with so much credit to himself and benefit to them. Thomas Cooper stood charged in the indictment as follows:—(here the Attorney General read the indictment). It was a sense of public duty that called for this prosecution. It was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications. There was a peculiarity in the manner also of this publication; we generally observed that persons who take these liberties, endeavour to avoid punishment by sheltering themselves under fictitious signatures, or by concealing their names; but the defendant acted very differently. Being of the profession of the law, a man of education and literature, he availed himself of those advantages for the purpose of disseminating his dangerous productions in a remote part of the country where he had gained influence. Such conduct must have arisen from the basest motives. It would be proved to the jury, that at the time of this publication, the defendant went to a magistrate and acknowledged it to be his production in the same formal manner as if it had been a deed.

A conduct so grossly improper, had occurred in no instance within his recollection, and the manner constituted no slight aggravation of the offence. Indeed it was high time for the law to interfere and restrain the libellous spirit which had been so long permitted to extend itself against the highest and most deserving characters.

To abuse the men with whom the public has entrusted the management of their national concerns, to withdraw from them the confidence of the people, so necessary for conducting the public business, was in direct opposition to the duties of a good citizen. Mischief of this kind were to be dreaded in proportion as the country around is less informed, and a man of sense and education has it more in his power to extend the mischief which he is inclined to propagate. Government should not encourage the idea, that they would not prosecute such atrocious conduct, for if this conduct was allowed to pass over, the peace of the country would be endangered.

Error leads to discontent, discontent to a fancied idea of oppression, and that to insurrection, of which the two instances which had already happened, were alarming proofs, and well known to the jury.

That the jury, as citizens, must determine whether from publications of this kind the prosperity of the country was not endangered; and whether it was not their duty, when a case of this nature was laid before them, and the law was applicable, to bring in such a verdict as the law and the evidence would warrant; and shew, that these kind of attacks on the government of the country, were not to be suffered with impunity.

The Court. This indictment is founded on a statute which you will be pleased to read to the jury.

The Attorney General then read the second and third section of the Sedition Law.

John Bayers, examined by Mr. Rawle.
Q. Do you know this paper? (hands him a paper.)

A. Yes.
Court. Look at the back of it?
Q. Who brought that paper to you?

A. Thomas Cooper.

Q. At what time?

A. The evening of December 6, 1799.

Court. Where?

A. At my house in Sunbury. He came to me at the door of my house. Asked me to walk in: We walked in. This was between candle-light and day light. He asked for a candle. He perused this paper, which I have in my hand, pointed to his name, and said, this is my name, and I am the author of this piece.

There was nothing further passed, only he said, this may save you trouble another time. I knew very well what he meant by it.

Q. Did you give intimation of this to any one?

A. I gave it to Mr. Rawle's deputy, who prosecutes for the United States.

Cross-examined by Mr. Cooper.

Q. Had not you and I been in the habit of frequently joking each other upon political subjects?

A. O yes—very often.

The Attorney-General here read that part of the publication which is included in the indictment, for which reason it is omitted here.

MR. COOPER'S DEFENCE.

Gentlemen of the Jury,

If it were true, as it is not true, that, in the language of the Attorney-General of the district, I have been guilty of publishing with the basest motives, a foul and infamous libel on the character of the President; of exciting against him the hatred and contempt of the people of this country, by gross and malicious falsehoods—then indeed would it be his duty to bring me before this tribunal, it would be yours to convict, and the duty of the Court to punish me. But I hope in the course of this trial, I shall be enabled to prove to your satisfaction, that I have published nothing that truth will not justify. That the assertions for which I am indicted are free from malicious imputation: and that my motives have been honest and fair.

You will observe, Gentlemen of the Jury, that the law requires it to be proved as a necessary part of the charge, that the passages for which I am indicted should be false and scandalous, and published from malicious motives: and before you will be able, consistently with your oaths, to convict upon this indictment, you must be thoroughly satisfied that both these parts of the charge are well founded. Nor does it appear to me that the expression of the act, to bring the President into contempt, can be fulfilled, if the accusation, as in the present instance, related to an examination of his public conduct, and no improper motives are imputed to him. And that I have carefully avoided imputing any impropriety of intention to the President even in the very paper complained of—that the uniform tenor of my conduct and language has been to attribute honesty of motive, even where I have strongly disapproved of the tendency of his measures, I can abundantly shew.

Gentlemen of the Jury, you, and all who hear me, well know that this country is divided, and almost equally divided, into two grand parties; usually termed, whether properly or improperly, Federalists, and Anti-Federalists: and that the governing powers of the country, are ranked in public opinion under the former denomination—of these divisions, the one wishes to increase, the other to diminish the powers of the Executive; the one thinks that the people (the Democracy of the country) has too much, the other, too little influence on the measures of government: the one is hostile, the other friendly, to a standing army and a permanent navy: the one thinks them necessary to repel invasions and aggressions from without, and commotions within; the other, that a well-organized militia is a sufficient safeguard, for all that an army could protect, and that a navy

is more dangerous and expensive than any benefit derived from it can compensate: the one thinks the liberties of our country endangered by the licentiousness, the other, by the restrictions of the press: Such are some among the leading features of these notorious divisions of political party. It is evident, Gentlemen of the Jury, that each will view with a jealous eye the positions of the other, and that there cannot but be a bias among the partisans of the one side, against the principles and doctrines inculcated by the other: In the present instance I fear it cannot but have its effect: For without impeaching the integrity of any person directly concerned in the progress of the present trial, I may fairly state, that under the Sedition Law, a defendant, such as I stand before you, is placed in a situation unknown in any other case.

Directly or indirectly, the public, if not the private character of the President of the United States is involved in the present trial. Who nominates the judges who are to preside? The jury who are to judge of the evidence? The Marshal who has the summoning of the jury? The President. Suppose a case of arbitration concerning the property of any one of you, where the adverse party should claim the right of nominating the persons whose legal opinions are to decide the law of the question, and of the very man who shall have the appointment of the arbitrators? What would you say to such a trial? And yet such is mine, and such is the trial of every man who has the misfortune to be indicted under this law. But altho' I have a right to presume something of political bias against my opinions, from the court who try me, to you who sit there as jurors, I am still satisfied you will feel that you have some character to support, and some character to lose: and whatever your opinions may be on the subjects alluded to in the indictment, you will reverence as you ought the sacred obligations of the oath you have taken.

Gentlemen of the Jury, I acknowledge as freely as any of you can, the necessity of a certain degree of confidence in the executive Government of the country. But this confidence ought not to be unlimited, and need not be paid up in advance; let it be earned before it be repaid; let it be claimed by the evidence of benefits conferred, of measures that compel approbation, of conduct irreproachable.—It cannot be exacted by the guarded provisions of sedition laws, by attacks on the freedom of the Press, by prosecutions, pains, and penalties on those who boldly express the truth, or who may honestly and innocently err in their political sentiments.—Let this required confidence be the meed of desert, and the public will not be backward to pay it.

But in the present state of affairs, the press is open to those who will praise, while the threats of the Law hang over those who blame the conduct of the men in power. Indiscriminate approbation of the measures of the Executive, is not only unattacked, but fostered and received with the utmost avidity, while those who venture to express a sentiment of opposition, must do it in fear and trembling, and run the hazard of being dragged like myself before the frowning tribunal, erected by the Sedition Law. Be it so; but surely this anxiety to protect public character must arise from fear of attack. That conduct which will not bear investigation will naturally shun it; and whether my opinions are right or wrong as they are stated in the charge, I cannot help thinking they would have been better confuted by evidence and argument than by indictment. Fines and imprisonment will produce conviction neither in the mind of the sufferer, nor of the public.

Nor do I see how the people can exercise, on rational grounds, their elective franchise, if perfect freedom of discussion of public characters be not allowed. Electors are bound in conscience to reflect and decide who best deserves their suffrages; but how can they do it, if these prosecutions in *terrore* close all the avenues of information, and

throw a veil over the grossest misconduct of our periodical rulers.

Gentlemen of the Jury,

After having offered these preliminary remarks, I shall give an account of the paper on which I am accused, and then proceed to examine the charges of the indictment in the order in which they are laid: much that I intended to have advanced I must relinquish, that I may not trespass too long on your time, or weaken the effect of my own defence by fatiguing your attention.

The scored paper now handed to me by the Attorney General, suggests an observation, which, though trite, is material. Upon the plan usually adopted in these *ex officio* accusations, a good Christian might easily be proved an arrant atheist. "The fool hath said in his heart there is no God." Take the four last words and they are atheistical: take the sentence, and it is scripture. So, take the marked passages in this paper, and they may perhaps be forced into something like improper imputation against the President: take the paper itself, and the very first paragraph is a plain and positive approbation of his intention. Tho' I must acknowledge, that however upright I might formerly have believed his motives of action, I cannot, upon reflection, pay that tribute to his conduct or his motives on the present occasion.

The general circumstances that gave rise to the paper I now hold, are these: Dr. Priestley, a man whose name implies a greater combination of learning, science, and ability, of important discovery, of exertion for the benefit of mankind, and of private integrity, than any other man now living can boast—whose conduct towards me in the instance detailed in this paper is praise sufficient to bear up my mind against any consequences that the present trial can produce—had long been an acquaintance, and an intimate acquaintance of Mr. Adams in England, and in this country.

The letters of the latter to Dr. Priestley are full of strong expressions of friendship and esteem. Relying upon this long intercourse of cordiality between them, Dr. Priestley urged me to permit him to write to Mr. Adams, on the subject of a vacancy mentioned in this paper, and which, as you will have it before you when you retire, I shall not read at length. This application was from one friend to another; upon the face of it a confidential communication; altho' containing nothing but what might do credit to all the parties concerned. Mr. Adams, however, did not think it so confidential; and from some disclosure, on his part, has been founded the base and cowardly slander which dragged me, in the first instance, before the public, in vindication of my moral and political character, and has at length dragged me before this Tribunal, to protect, if I can, my personal liberty and my private fortune against the legal attack of an *ex officio* information. Hence it is evident, Gentlemen of the Jury, that this is not a voluntary, but an involuntary publication on my part: it has originated not from motives of turbulence and malice, but from self-defence; not from a desire of attacking the character of the President, but of vindicating my own. And in what way have I done this? My motives, my private character, my public character, were the object of falsehood and calumny, apparently founded on information of high authority. In reply, I give credit to the intentions of the President, I say nothing of his private character, and I attack only the tendency of measures notorious to the world, which having been known to disapprove publicly, I was charged with being ready, from motives of interest, to approve privately. I think, Gentlemen, you cannot help feeling this contrast of behaviour, and if the President is satisfied with his side of the picture, I am with mine.

The first article selected for accusation is, that at the time I allude to, "he was but in the infancy of political mistake." Why this expression should have been fixed on as seditious, I know not, unless it be that *quem deus vult perdere prius* de-

mentat; for have we advanced so far in the road to despotism in this republican country, that we dare not say our President may be mistaken? Is a plain citizen encircled at once by the mysterious attribute of political infallibility, the instant he mounts the presidential chair? If so, then indeed may it be seditious to say he is mistaken; but before you can condemn me for this kind of sedition, you must become catholic believers in this new-fangled doctrine of infallibility. I know that, in England, the King can do no wrong, but I did not know, till now, that the President of the United States had the same attribute.

I have said, and am accused for saying it, "that even those who doubted his capacity, thought well of his intentions." Is it a crime to doubt the capacity of the President? Suppose I had said that there were some who did not give him credit for capacity sufficient for the office he holds, is that a crime? Or if in them, is it a crime in me, who have not said it? Nor can the word *capacity* here be fairly construed into any other than a comparative meaning; for surely no one who has read his defence, as it is called, of the American constitution, or who reflects that he has had abilities enough to raise himself to his present situation, can say that he is devoid either of industry or talents. But those who voted for his opponent, must have believed Mr. Adams of inferior capacity to that gentleman. Of that number was I; of that number was at least one-half of the people of the United States. If it be a crime thus to have thought and thus to have spoken, I fear I shall continue in this respect incorrigible. But if of two constructions the one is absurd, improbable, & unfavourable, surely it should be rejected in favour of that meaning which was most likely to have occurred, and which in its effects will do least injury to a defendant like myself. This is common, this is legal charity.

"Nor had we yet, under his auspices, been saddled with the expence of a permanent navy."

Gen. Lemen, is it true, or not, that we are saddled with the expence of a permanent navy? Is it necessary that I should enter into a detail of authorities to prove that the sun shines at Noon-day? But further, is it true, that we incur this expence under his auspices and sanction?

I have before me two publications, the one the Gazette of the United States, published by Mr. Fenno in this city; and another in a form more portable and convenient, purporting to be a selection of addresses and answers to and from the President, during the summer of 1798. Not having been able to procure office copies of the documents I wished to refer to, I must offer in evidence such publications as I can find; that class of publications, upon which, in fact, the mind of the public is usually made up; and upon whose authority the electors of this country determine the characters whom they honour with their suffrage. Indeed if the opinion that fell from the Court this morning be accurate, that no man should hazard an assertion, but upon sufficient and legal evidence; and if documents from public offices in proof of notorious facts are required as such evidence, then are the mouths of the people completely shut up on every question of public conduct or public character: but I cannot help thinking it a fair and reasonable position, that a defendant in such a case as this, should be permitted to offer to the jury any evidence that appears to him a sufficient ground for his assertion, and let them decide on its credibility.

Judge Chace. What is it you say, Sir, fell from the Court? they have not yet decided what was, or what was not proper evidence for you to adduce. The Court said, if you thought the public documents at your service, you were mistaken. If you undertake to publish, without having proper evidence before you to justify your assertions, you do it at your own risk. Most assuredly, in common traverses, you could not offer the evidence you mention. But we acknowledge that in such a