



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

TUESDAY, JULY 1, 1800.

No. 37.

VOL. I.

TRIAL OF THOMAS COOPER.

(Continued from our last)

MR. RAWLE'S REPLY.

Gentlemen of the Jury,

THE defence you have just heard, is one of the most extraordinary and unexampled I ever remember to have witnessed in a court of justice. It is no less than to call into decision whether Thomas Cooper, the defendant, or the President of the United States, to whom this country has thought proper to confide its most important interests, is best qualified to judge whether the measures adopted by our government are calculated to preserve the peace, and promote the happiness of America. This, however, does not seem to me the real point which you are to try: and I shall therefore, under direction of the Court, proceed to state what I conceive to be the question which you, Gentlemen of the Jury, are now called upon to determine. Thomas Cooper is charged in the indictment with having published a false, scandalous, and malicious libel, with intent to defame the President of the United States, and to bring him into contempt and disrepute, and to excite against him the hatred of the good people of this country. In the act which defines this offence, and points out the punishment, a liberality of defence is given, unknown I believe in any other country where the party is tried for a libel on the Government. Here, the defendant is allowed under the third section of that act, to give in evidence the truth of the matters charged as a libel in the publication, and the Jury have a right to determine the law and the fact under the direction of the Court. The true spirit of the law is, that the defendant shall not be found guilty of publishing defamatory writings, unless they be false, nor although they may be false, shall he be considered as guilty under the law, unless the intent of the publication appear to be malicious.

That such publication has proceeded upon a knowledge of the truth, he is permitted to give as matter of evidence; and if true, it must be allowed to go far to satisfy the minds of the Jury, that the malicious motives imputed to him are not true. In private actions for slander, where a man seeks pecuniary redress for the injury his character has sustained, the defendant is entitled to give in evidence as a defence to the action, the truth of the words spoken, or the written libel; and if the truth of the assertions be proved, it will amount to a justification. There is no difference then between the defence that may be set up to an action of slander, or libel on a private person, and that which is permitted under the law whereon this indictment is grounded.

The defendant has undertaken to satisfy the mind of the Jury that in this publication he had no malicious intention against the President of the United States; I join issue with him on the point, and request your particular attention to it. He alleges that he did not impute improper motives to the President, and attempts to substantiate his allegation by referring you to his declaration in the outlet, where he says that "I cannot believe him (the President) capable of such gross misrepresentations, for I still think well of his intentions, however I may disapprove of his conduct;" but to this I shall add that he goes on, and concludes with a paragraph, evincing in the clearest manner, a settled design to persuade the public that the President of the United States is not fit for the high office he bears, and of this you must be fully convinced from the whole tenor of the expressions which have been read to you in the indictment.

It is very far from my views to press hard upon any part of his long address to you, or to make use against him of any unguarded expression, which on more deliberate consideration he might have omitted or corrected; yet when I cannot but observe from the whole tenor of his present argument, as well as from his publication, that his object is not so much to convince you, Gentlemen of the Jury, that his assertions are true, as to cast an unmerited reflection on the general character and conduct of the President, I cannot help suspecting him of the motives he disclaims, and I must do my duty by exposing the design as well as the fallacy of the justification he has set up.

The defendant has used a little observation respecting the separation in the indictment the text from the context, as I believe he was pleased to term it; and argued that by this means the most upright intentions and laudable expressions might be perverted from their true and obvious meaning. Such an insinuation however is not calculated to influence your minds. In framing an indictment, it is my duty to leave out matters of little importance, and to introduce those circumstances only that are truly and legally reprehensible: and he well knows that he can read if he pleases the whole of the publication, and that you will have it with you when you consider of your Verdict. You will judge therefore, whether by this observation it was his, or whether it is my design to confound and perplex the sense.

Whether the reflections he has thrown upon the conduct of Government in so many instances throughout his defence, as well as in his publication, evince the regard he professes to entertain for the intentions of the President, is to me, as it will be to you, extremely dubious; nor have those professions been confirmed by the singular manner in which he has cited and selected the passages on which his defence has been grounded. Throughout the quotations he has made, particularly from the address to the President, and the answers to them, there has been a series of misrepresentation which it will be my duty to observe upon, when I come to consider that part of the charge, and his vindication of it. But it is fair to observe, that if from the perusal of partial extracts and passages selected from various publications, he has thought proper to publish a libel, such as that for which he is indicted against the character of our President, there is no excuse for his conduct; if, on the other hand, he had the whole of the publications before him, and has extracted from them partially and unfairly, his conduct is still more reprehensible, and there is the less excuse, as it is evident, and as you, Gentlemen of the Jury, must have observed, that he is a man of talents and letters.

Mr. Cooper has thought proper to take up the several passages of his publication, in the order in which they stand in the indictment, and in replying to what he has said, I shall follow the order which he has pursued. I pass over the passages respecting the incapacity of the President, and the infancy of political mistakes, as of no great importance, and proceed to that part of the publication which accuses our Chief Magistrate of having fashioned and promoted a permanent Navy, a Standing Army, and a loan at the high interest of 8 per cent. in time of peace, while the unnecessary violence of official expressions might justly have provoked a war.

Here, then, the implication against the President, is, that at the same time when he was unnecessarily plunging us into a war, he promoted a navy, a standing army, and borrowed money at an exorbitant interest, the one measure calculated to enslave, and the other

to oppress. But Gentlemen, how has the defendant shewn this: what proof has he offered, that these are measures for which the President in particular is blameable? Need I recal to your recollection the summer of the year 1798, when in consequence of the disgraceful and insulting treatment and rejection of our Envoys by the French Government, the Citizens of this country from every part of the United States, addressed the President, approving his measures, and pledging their support? Amongst others, the Marine Society at Boston came forward, congratulating the American Nation that their beloved Washington had been succeeded by a Man who treads with equal steps the honest, plain, and straight road so strictly followed by that wise and able statesman.

In this particular case, gentlemen, with your permission, I will read the whole of the answer (reads the answer from Patriotic Addresses, page 95.) Now, Gentlemen, I appeal to you, was it not natural and becoming, that in answering the address of a Marine Society, the President should dwell upon the topic most congenial to their institution? Those who do not look with a jealous eye on every action, and catch with a propensity to blame at every word he utters, those who know the character of that gentleman in private life, and who have impartially witnessed his unremitting endeavours to promote the welfare of his country, can surely find nothing but what they may sincerely praise in the answer I have just read to you.

The next passage Mr. Cooper has quoted, is from the address of the young men of Boston: this address and the answer has been used for two purposes: to support his position that the President had recommended a navy and an army. Gentlemen, I will read the whole of the answer (reads from page 370 Patriotic Addresses.) I confess, that after the President had recommended them to follow the "example of their fathers, one of whose first principles it was to unite in themselves the character of citizens and soldiers, and especially to preserve the latter always subordinate to the former," I was much surprized to find that such an answer could be quoted as reprehensible.

"To arms, then, my young friends--to arms; especially by sea, to be used as the law directs." Gentlemen, can such sentiments, so honestly guarded, be tortured into proof of the President's intention to plunge us into a war, to introduce a standing army and a permanent navy? Gentlemen, these are not the conclusions you will draw. The paternal care of the President has hitherto happily watched over this country, and he knew and wisely signified the time when we ought to be prepared for those gloomy events, which we had too much reason to expect. Whether the adduction of these passages can support the defendant in his defence against a malicious libel, you are the best judges.

The defendant has read to you a passage culled from the answer of the President to the students of Dickinson College, wherein he hopes that none of them but such as feel a natural genius and disposition to martial exercise and exertions, will ever be called from the pleasing walks of science to repel any attack on their rights, liberties, and independence: surely, gentlemen, if a moderate and affectionate sentiment of this kind is to be tortured into an approbation of a military force, or a standing army, the most innocent expressions are not safe from perversions. I cannot, however, forbear to remark with how little propriety the defendant has complained of passages being selected from his publication for indictment without the context, as he calls it, when his whole defence rests upon passages thus picked out.

to suit the unfair and malicious purposes of his defence, an epithet which I feel myself entitled to use, when I consider how that defence has been conducted, and on what it rests.

But, Gentlemen of the Jury, the defendant must have very little knowledge of the existing circumstances of this country,* when he talks to you of a standing army.—There neither is nor can be a standing army in this country; the appropriations for the pay of the army cannot be made for more than two years at a time, nor has the President more to do with the army than the Congress, and the reflections thrown upon your first magistrate, are equally applicable to your Representatives. A man so ignorant of the subject, or whose reading has been so careless, is very unqualified to cast a reflection on the conduct of our government, or to instruct the people on the nature and tendency of the measures of administration.

With respect to the loan at eight per cent. if money has been borrowed at that rate of interest, of which however the defendant has produced to you no proof, it has been done under the authority of Congress and their measures. In this respect, the President has functioned, as he had a right to do, and as I think (confiding in his wisdom and integrity) he has rightly done.

Gentlemen, I do not pretend to be a judge of the propriety of this measure. The defendant says, no other country has borrowed at so high a rate of interest in time of peace; but neither is he qualified to judge of this any more than myself. Those who are qualified, and who have been appointed for the purpose, have judged for the nation; and I am satisfied, as I doubt not you are, but to raise surmises and suspicions of the wisdom and design of measures of this kind, which he cannot know sufficient of to explain, or the people to understand, is evidence, in my opinion, that his design, at least, was to excite the hatred of the good people of this country against their President.

The Defendant proceeds to charge the President with unnecessary violence of official expression that might justly have provoked a war. Gentlemen, you all know the provoking and unjustifiable conduct of the French Nation towards our envoys; the repeated designs and attempts of this country to procure an adjustment of differences on equitable grounds, and the strange and unexampled propositions made in return by the government of France. It is not for me to dilate upon these topics, or on the depredations subsequently committed by that nation on the American commerce: You all of you know, you all must have felt in some degree the consequence of her injustice. The President, far better acquainted with these proceedings against America, and the tendency of them, made use of such expressions as the state of the country and the sentiments of the people required. Of this he was the best judge, and I doubt not, in this instance, as in every other of his wise and patriotic administration, he judged for the best. The defendant, however, still wiser than the President, judged otherwise, and has accordingly ventured to advance before the public the harsh crimination we are now considering.

* Either Mr. Rawle or I (says Mr. C. in a note) must have very little knowledge of the existing circumstances of this country. I fear he is liable to the remark, mutato nomine de te fabula narratur. The term, Standing Army, we got from England, where it is applied to a Military force in continental, and not to periodical discipline, like the Militia. In that country, there has been a standing army, i. e. a continual military force, independent of the Militia, for 150 years, at least; the men are enlisted for life, and yet the mutiny bill, under which that force exists, is annual. Does Mr. Rawle know, or does he not, that in the five-year army of this country, as Judge Chase would call it, the men continue to be enlisted for five years, from the date of their enlistment; so that at the end of two years, for instance, a man is not enlisted for three years, but still for five years!

Gentlemen, the defendant has quoted passages from the address of the inhabitants of Vergennes in Vermont. I have before remarked to you the singular, and I think the unfair method of selection, the defendant has adopted; and the impropriety of stating the sentiments of the address itself, as if it were the answer of the President and attributable to him; for, whether the sentiments contained in that address are true or not, they purport to be the sentiments of others, and not of the President. Such is the way in which this defence has been conducted. I will not go through the rest of Mr. Cooper's quotations, because I do not think they have produced any effect on your minds, or on the minds of the Court, which it is necessary for me to obviate.

The defendant next recurs to the complaints of the French government to our envoys, of expressions in the President's speech. No doubt, gentlemen, it was the interest and inclination of the French Executive to raise up some frivolous objection to the conduct of our government, that they might have some plausible pretext to justify their own. But I am fully satisfied, as I hope and believe you are, that the President had sufficient foundation for all that he has said on the conduct of France towards this country, and I shall leave you to judge for yourselves whether he or the defendant are the most proper to decide what conduct or language ought to have been adopted on such provocation.

The next, and most serious part of this indictment, is that which relates to Thomas Nash, or as he has been called, Jonathan Robbins. He read that part of the indictment, and desired the Jury to remember the remote part of the country in which this libel was published, and the class of people among whom it was disseminated, and the effect of assertions thus boldly advanced. Mr. C. either had evidence before him of the facts he has asserted respecting this Nash or Robbins, or he had not. If he had no evidence, what shall we say of a man deliberately propagating, among an ignorant people, libels of the most serious nature, and accusations against the highest characters, which, if he does not know to be false, he cannot know to be true? In support of his assertions, he has read to you the Message of the President on the subject of Thomas Nash, or rather he has read, in a mutilated manner, the letter of Mr. Pickering. It is observable, that he could not have had this evidence before him at the time he wrote, and yet this is the only evidence he has offered to the court in his own defence on this part of the charge.

Mr. Cooper. I do not wish improperly to interrupt Mr. R. but I did state, that I had other evidence before me: that the facts had been very generally published in the newspapers of every description: that they were commonly known and much discussed: that I offered the Message of the President as additional and corroborative testimony of what was very generally known to the public. Besides this, I had before me Mr. Pinckney's letters containing all the facts: these also were published in the papers before they were collected in a pamphlet, and that pamphlet was published in August, 1799, while the paper indicted was not published till November, 1799.

Judge Chase. Sir, you must not indirectly accuse the court of want of indulgence: there has not been any evidence denied you: you may even go into fresh evidence now, if you please.

Mr. Cooper. Sir, I do not complain of want of indulgence. Mr. Rawle. Since the defendant has thought fit to read only a part of Mr. Pickering's letter, I will read the whole of it. [Reads it.] You observe, Gentlemen of the Jury, the part omitted. This opinion of the President was confirmed by the