

whole kingdom, or rather throughout the whole civilized world, were anticipating the passions and judgments of the public against a subject of England upon his trial, so as to make the publication of answers to them not merely a privilege, but a debt and duty to humanity and justice. The Commons of Great Britain claimed and exercised the privilege of questioning the innocence of Mr. Hastings by their impeachment; but as, however questioned, it was still to be presumed and protected until guilt was established by a judgment, he whom they had accused had an equal claim upon their justice to guard him from prejudice and misrepresentation until the hour of trial.

Had the Commons, therefore, by the exercise of their high, necessary, and legal privileges, kept the public aloof from all canvass of their proceedings by an early punishment of printers who, without reserve or secrecy, had sent out the charges into the world from a thousand presses in every form of publication, they would have then stood upon ground today from whence no argument of policy or justice could have removed them; because nothing could be more incompatible with either than appeals to the many upon subjects of judicature which, by common consent, a few are appointed to determine, and which must be determined by facts and principles which the multitude have neither leisure nor knowledge to investigate. But then let it be remembered that it is for those who have the authority to accuse and punish, to set the example of and to enforce this reserve which is so necessary for the ends of justice. Courts of law therefore, in England, never endure the publication of their records; and a prosecutor of an indictment would be attached for such a publication; and upon the same principle a defendant would be punished for anticipating the justice of his country by the

publication of his defence, the public being no party to it until the tribunal appointed for its determination be open for its decision.

Gentlemen, you have a right to take judicial notice of these matters without the proof of them by witnesses, for jurors may not only, without evidence, found their verdicts on facts that are notorious, but upon what they know privately themselves, after revealing it upon oath to one another, and therefore you are always to remember that this book was written when the charges against Mr. Hastings, to which it is an answer, were, to the knowledge of the Commons (for we cannot presume our watchmen to have been asleep), publicly hawked about in every pamphlet, magazine, and newspaper in the kingdom. You well know with what a curious appetite those charges were devoured by the whole public, interesting as they were, not only from their importance, but from the merit of their composition; certainly not so intended by the honorable and excellent composer to oppress the accused, but because the commonest subjects swell into eloquence under the touch of his sublime genius. Thus, by the remissness of the Commons, who are now the prosecutors of this information, a subject of England, who was not even charged with contumacious resistance to authority, much less a proclaimed outlaw, and therefore fully entitled to every security which the customs and statutes of the kingdom hold out for the protection of British liberty, saw himself pierced with the arrows of thousands and ten thousands of libels.

Gentlemen, ere I venture to lay the book before you, it must be yet further remembered (for the fact is equally notorious) that under these inauspicious circumstances the trial of Mr. Hastings at the bar of the Lords had actually commenced long before its publication.

There the most august and striking spectacle was daily exhibited which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it as into a theatre of pleasure; there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared, day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity — rousing the pride of national resentment by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror by the most glowing pictures of insulted nature and humanity; ever animated and energetic from the love of fame, which is the inherent passion of genius; firm and indefatigable from a strong prepossession of the justice of their cause.

Gentlemen, when the author sat down to write the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigor of understanding, consuming and devouring eloquence, united with the highest dignity; was daily, and without prospect of conclusion, pouring forth upon one private, unprotected man, who was bound to hear it, in the face of the whole people of England, with reverential submission and silence. I do not complain of this, as I did of the publication of the charges, because it was what the law allowed and sanctioned in the course of a public trial; but when it is remembered that we are not angels, but weak fallible men, and that even the noble judges of that high tribunal are clothed beneath their ermines with the common infirmi-

ties of man's nature, it will bring us all to a proper temper for considering the book itself, which will in a few moments be laid before you. But first let me once more remind you that it was under all these circumstances, and amidst the blaze of passion and prejudice which the scene I have been endeavoring faintly to describe to you might be supposed likely to produce, that the author, whose name I will now give to you, sat down to compose the book which is prosecuted to-day as a libel.

The history of it is very short and natural.

The Rev. Mr. Logan, minister of the gospel at Leith, in Scotland, a clergyman of the purest morals, and, as you will see by and by, of very superior talents, well acquainted with the human character, and knowing the difficulty of bringing back public opinion after it is settled on any subject, took a warm, unbought, unsolicited interest in the situation of Mr. Hastings, and determined, if possible, to arrest and suspend the public judgment concerning him. He felt for the situation of a fellow citizen exposed to a trial which, whether right or wrong, is undoubtedly a severe one; a trial certainly not confined to a few criminal acts like those we are accustomed to, but comprehending the transactions of a whole life and the complicated policies of numerous and distant nations; a trial which had neither visible limits to its duration, bounds to its expense, nor circumscribed compass for the grasp of memory or understanding; a trial which had therefore broken loose from the common forms of decision and had become the universal topic of discussion in the world, superseding not only every other grave pursuit, but every fashionable dissipation.

Gentlemen, the question you have therefore to try upon all this matter is extremely simple. It is neither more nor less

than this. At a time when the charges against Mr. Hastings were, by the implied consent of the Commons, in every hand and on every table; when, by their managers, the lightning of eloquence was incessantly consuming him and flashing in the eyes of the public; when every man was, with perfect impunity, saying, and writing, and publishing just what he pleased of the supposed plunderer and devastator of nations, — would it have been criminal in Mr. Hastings himself to have reminded the public that he was a native of this free land, entitled to the common protection of her justice, and that he had a defence, in his turn, to offer to them, the outlines of which he implored them in the meantime to receive, as an antidote to the unlimited and unpunished poison in circulation against him?

This is, without color or exaggeration, the true question you are to decide; because I assert, without the hazard of contradiction, that if Mr. Hastings himself could have stood justified or excused in your eyes for publishing this volume in his own defence, the author, if he wrote it *bona fide* to defend him, must stand equally excused and justified; and if the author be justified, the publisher cannot be criminal, unless you have evidence that it was published by him with a different spirit and intention from those in which it was written. The question, therefore, is correctly what I just now stated it to be: Could Mr. Hastings have been condemned to infamy for writing this book?

Gentlemen, I tremble with indignation to be driven to put such a question in England. Shall it be endured that a subject of this country (instead of being arraigned and tried for some single act in her ordinary courts, where the accusation, as soon at least as it is made public, is followed within a few hours by the decision) may be impeached by the Com-

mons for the transactions of twenty years, that the accusation shall spread as wide as the region of letters, that the accused shall stand, day after day, and year after year, as a spectacle before the public, which shall be kept in a perpetual state of inflammation against him; yet that he shall not, without the severest penalties, be permitted to submit anything to the judgment of mankind in his defence? If this be law (which it is for you to-day to decide), such a man has no trial. This great hall, built by our fathers for English justice, is no longer a court, but an altar; and an Englishman, instead of being judged in it by God and his country, is a victim and a sacrifice.

You will carefully remember that I am not presuming to question either the right or duty of the Commons of Great Britain to impeach; neither am I arraigning the propriety of their selecting, as they have done, the most extraordinary persons for ability which the age has produced to manage their impeachment. Much less am I censuring the managers themselves, charged with the conduct of it before the Lords, who are undoubtedly bound, by their duty to the House and to the public, to expatiate upon the crimes of the persons whom they had accused. None of these points are questioned by me nor are in this place questionable. I desire only to have it decided whether — if the Commons, when national expediency happens to call, in their judgment, for an impeachment, shall, instead of keeping it on their own records, and carrying it with due solemnity to the Peers for trial, permit it, without censure and punishment, to be sold like a common newspaper in the shop of my client, so crowded with their own members that no plain man, without privilege of Parliament, can hope even for the sight of the fire in a winter's day, every man buying it, reading it, and commenting upon it

— the gentleman himself who is the object of it, or his friend in his absence, may not, without stepping beyond the bounds of English freedom, put a copy of what is thus published into his pocket, and send back to the very same shop for publication a *bona fide*, rational, able answer to it, in order that the bane and antidote may circulate together, and the public be kept straight till the day of decision.

If you think, gentlemen, that this common duty of self-preservation in the accused himself, which nature writes as a law upon the hearts of even savages and brutes, is nevertheless too high a privilege to be enjoyed by an impeached and suffering Englishman; or if you think it beyond the offices of humanity and justice, when brought home to the hand of a brother or a friend, you will say so by your verdict of guilty; the decision will then be yours, and the consolation mine that I have labored to avert it. A very small part of the misery which will follow from it is likely to light upon me; the rest will be divided among yourselves and your children.

Gentlemen, I observe plainly and with infinite satisfaction that you are shocked and offended at my even supposing it possible you should pronounce such a detestable judgment, and that you only require of me to make out to your satisfaction, as I promised, that the real scope and object of this book is a *bona fide* defence of Mr. Hastings and not a cloak and cover for scandal on the House of Commons. I engage to do this, and I engage for nothing more. I shall make an open, manly defence. I mean to torture no expressions from their natural constructions; to dispute no innuendoes on the record, should any of them have a fair application; nor to conceal from your notice any unguarded, intemperate expressions which may perhaps be found to chequer the vigorous and animated career of the work.

Such a conduct might, by accident, shelter the defendant; but it would be the surrender of the very principle on which alone the liberty of the English press can stand, and I shall never defend any man from a temporary imprisonment by the permanent loss of my own liberty and the ruin of my country. I mean, therefore, to submit to you that, though you should find a few lines in page thirteen or twenty-one, a few more in page fifty-one, and some others in other places, containing expressions bearing on the House of Commons, even, as a body, which if written as independent paragraphs by themselves would be indefensible libels, yet that you have a right to pass them over in judgment provided the substance clearly appears to be a *bona fide* conclusion arising from the honest investigation of a subject which it was lawful to investigate, and the questionable expressions the visible effusion of a zealous temper engaged in an honorable and legal pursuit. After this preparation I am not afraid to lay the book in its genuine state before you.

The pamphlet begins thus:

“The House of Commons has now given its final decision with regard to the merits and demerits of Mr. Hastings. The grand inquest of England have delivered their charges and preferred their impeachment; their allegations are referred to proof; and, from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, the question comes to be determined whether Mr. Hastings be guilty or not guilty?”

Now, if immediately after what I have just read to you (which is the first part charged by the information) the author had said, “Will accusations built on such a baseless fabric prepossess the public in favor of the impeachment? What credit can we give to multiplied and accumulated charges,

when we find that they originate from misrepresentation and falsehood?"—every man would have been justified in pronouncing that he was attacking the House of Commons, because the groundless accusations mentioned in the second sentence could have no reference but to the House itself mentioned by name in the first and only sentence which preceded it.

But, gentlemen, to your astonishment, I will now read what intervenes between these two passages. From this you will see, beyond a possibility of doubt, that the author never meant to calumniate the House of Commons, but to say that the accusations of Mr. Hastings before the whole House grew out of a Committee of Secrecy established some years before, and were afterwards brought forward by the spleen of private enemies and a faction in the government. This will appear, not only from the grammatical construction of the words, but, from what is better than words, from the meaning which a person writing as a friend of Mr. Hastings must be supposed to have intended to convey. Why should such a friend attack the House of Commons? Will any man gravely tell me that the House of Commons, as a body, ever wished to impeach Mr. Hastings? Do we not all know that they constantly hung back from it and hardly knew where they were or what to do when they found themselves entangled with it? My learned friend the attorney-general is a member of this assembly; perhaps he may tell you by and by what he thought of it, and whether he ever marked any disposition in the majority of the Commons hostile to Mr. Hastings. But why should I distress my friend by the question? The fact is sufficiently notorious; and what I am going to read from the book itself (which is left out in the information) is too plain for controversy.

"Whatever may be the event of the impeachment, the proper exercise of such power is a valuable privilege of the British constitution, a formidable guardian of the public liberty and the dignity of the nation. The only danger is that from the influence of faction and the awe which is annexed to great names they may be prompted to determine before they inquire and to pronounce judgment without examination."

Here is the clue to the whole pamphlet. The author trusts to and respects the House of Commons, but is afraid their mature and just consideration may be disturbed by faction. Now, does he mean government by faction? Does he mean the majority of the Commons by faction? Will the House, which is the prosecutor here, sanction that application of the phrase — or will the Attorney-General admit the majority to be the true innuendo of faction? I wish he would; I should then have gained something at least by this extraordinary debate. But I have no expectation of the sort; such a concession would be too great a sacrifice to any prosecution at a time when everything is considered as faction that disturbs the repose of the Minister in Parliament. But indeed, gentlemen, some things are too plain for argument. The author certainly means my friends, who, whatever qualifications may belong to them, must be contented with the appellation of faction while they oppose the Minister in the House of Commons; but the House, having given its meaning to the phrase of faction for its own purposes, cannot in decency change the interpretation in order to convict my client. I take that to be beyond the privilege of Parliament.

The same bearing upon individual members of the Commons, and not on the Commons as a body, is obvious throughout. Thus, after saying, in page nine, that the East India Company had thanked Mr. Hastings for his meritorious