

“the King against his subjects.”—To whomsoever *that imputation* belongs, it is certainly the greatest offence that a subject of this kingdom (be he whom he will) can possibly commit : Gentlemen, whether that belongs to Mr. *Almon*, or to the *writer*, I must submit to your consideration.—Whether it belongs to the other, is not now the subject for your discussion.—Gentlemen, I should be very unwilling, as I have stated it to you, to have it totally immaterial ; as I am uninstructed by Mr. *Almon*, who knows nothing of this paper, either to defend it, or to submit to the criminality of it.—As I have no instructions, on the subject, I will not trouble you with many observations : whenever the *real* publisher comes to be tried, the Jury then concerned will consider and decide on the question. It has been said, that this is “to vilify, and asperse the King himself.”—The highest offence that the rancour of the most malevolent heart could ever conceive ; but is it such ? Is it to vilify and asperse the King ? Was it the opinion of the drawers of the information that it was so ? I am of opinion that it could not be so ; I am of opinion, from a single omission, that *that* was not the construction the drawer of the information put upon it. I have always been led to observe, that the word *false* has been inserted in these informations—every one of them.—How happened it to be omitted *here* ? If this conveyed personal reflection on the King, would not the drawer of the information have been prompted, for the honour of the King, to say that it was *false* ?—I do say it, that if there is a single word derogatory to the personal honour and virtues of his Majesty, it is false in the *highest degree*.—I say, they should have said it was so.—They cannot now, with decency, contend that the King is personally reflected on, because  
they

they have not undertaken to falsify the matter of that.—There is another observation that I would submit to you ; and I don't mean to submit it to you as at all preventing your going into the construction of this paper.—It was only given me to contend, that the publisher of this paper is innocent: but I must take some hints from what has been said, and some doctrines that have been laid down. I take notice of it, because on future occasions it will concern *others*, and because (in my opinion) it concerns the *public*. I do agree, that personal imputations on the King, can never be defended ; but, I do assert, that the freedom of political discussion is of the utmost consequence to all our liberty, and I do insist upon it, that the actions of this government may be canvassed, freely, and consistently with the duty of a good subject ; and then ought always to be defended.—The King's hand must be employed to the act.—It is no imputation to the King, to censure the acts of government.—In no sense is the King to be censured, when the conduct of government is only animadverted on. It would be idle to state, that there is a constitutional check, on the power of the Crown, lodged in those hands, where————— say that is criminal, and give them information. Having entered lately my protest against this doctrine, I shall not trouble you with any application of it to the present question. Let this imputation be what it will, Mr. Almon is not guilty of it : he is not the *publisher*.——Mr. Almon is a bookseller, lives I believe in Piccadilly, and you find the charge against him is, the having this book in his shop. I should really think, for the sake of the honour of the laws, for the safety of every man, that is by no means proper evidence to convict a man upon : I have always

thought, that to the *essence* of a *crime* belongs *intention*. I could never conceive that any man could be guilty who was not *criminal in his heart*. I have always understood too, that whatever is necessary to constitute an offence, is incumbent on the prosecutor to prove.—Gentlemen, is there the least tittle of evidence before you to affect Mr. Almon? not only with a black malevolent intention, ascribed to him in the information, but with any ill intention at all?—from any mischief done, or to be done?—a paper contained in a miscellaneous tract; found only at that shop.—Gentlemen, if Mr. Almon was to be convicted as an offender in the publication of this paper, I think we should be——what never will be allowed in this country I hope, and I believe what, in no civilized country ever was——that a man should be innocent in his intentions, and at the same time *guilty*.—It seems to me to be the greatest paradox, the greatest solecism that ever was attempted to be proved.—Gentlemen, therefore in behalf of Mr. Almon, we now insist upon it, that though the fact is, that this book was found in his shop, yet that Mr. Almon is in no sense the publisher; nor criminal; he never had it, or if he had, his mind never went with it.—After having observed to you upon what has been produced to you in support of the prosecution, it would be almost unnecessary to open to you the particular circumstances of Mr. Almon's case: but, gentlemen, we have not only that defect of evidence which we are to rely upon—we have not only to say that Mr. Almon has not been proved to be the intentional publisher of the paper (and this was absolutely necessary to be proved before he could be convicted) but we have it negatively to prove that this came to Mr. Almon's shop without his knowledge,



knowledge, and that he sent it back as soon as he knew it! Is that circumstance sufficient to prove Mr. Almon's guilt? Trifling indeed!—we know that advertisers will insert whatever they think proper! and Mr. Almon's name appearing to that advertisement, it ought not to be the occasion of any inference drawn against Mr. Almon. Gentlemen, you will be told, that among the trade, it is their constant custom to insert the names of such booksellers as are most conveniently situated for the circulation of such books—and this was inserted without his authority,—and the books returned unsold—the few that were sold, were without his knowledge or intention.—If these circumstances appear before you, how can you say that Mr. Almon is guilty of publishing this paper? If publication is an offence, Mr. Almon cannot be said to have committed it? Mr. Almon was entirely innocent, entirely ignorant of it—and, if this is to be the law of the land,—if a law so contrary to natural justice is to prevail, how is any situation of men—any age to be safe? The common excuse can never be admitted, because it is quite indifferent, if *intention is immaterial*—A man then is criminal in the highest degree, though, at the same time, he never knew what was doing.—I do most heartily subscribe to a doctrine laid down by the Attorney-General, as I build upon its authority a doctrine, which, I think, is highly wholesome and beneficial to the subjects of this kingdom. He has said, that in all cases whatever, the liberty of the press is the most sacred of all others. He has truly said, that that principle rests on the same principle, and the same security, and to be governed by the same law, as every other article of our liberty. It is most certainly so. Mr. Attorney-General has said, that the liberty of the press, is the liberty of writing what is just:—I,  
says

says he, have the liberty of *acting* and *doing*; but, if I abuse that liberty, I become *criminal*. Certainly so! no position can be clearer!—If there is an abuse of that liberty, undoubtedly it is the highest misdemeanor, in proportion to the value of the liberty he abuses; but apply that to any other liberty to the present case. I have the liberty of walking; (when I can, I have that liberty too) but supposing, that in the course of my walking, I abuse that by doing any mischief, then I abuse that liberty: or supposing, that in any other liberty that I have of acting, I act criminally, then I am punishable for it. Most certainly so!—Suppose I have the liberty of using my hands, if I use them to the assault, or to the annoyance of my neighbour, I am then criminal: *but under what circumstances?* If I do it *DESIGNEDLY*, then I am criminal; if *not*, I *cannot* be so; look into every liberty we enjoy, and you will find, that the exercise of it depends upon *this* principle, I will not abuse it. If a mischief arises to my neighbour, I am in some sense answerable in a civil act, but I can never be made a *criminal*, unless I am guilty of wilful abuse. Mr. Attorney-General has put in the very case: a man has the liberty of using his hands; if he uses them to the mischief of his neighbour, he is a *criminal*; but if by *accident* he hurt his neighbour, he is not criminal, he hath not offended against the peace. What means the distinction? Why, in the latter case, he is not criminal, because he had no intention to do the act he did; and to constitute criminality, it is necessary there should be a *wicked intention*—to apply this to the case of Mr. Almon. Supposing now, for argument sake, that you are convinced that this paper is *criminal*—Mr. Almon has, in the course of trade, published it; that it has been published at his shop; now, it does not  
 appear

appear that he had the *least knowledge* of it; indeed we will produce proof to you of the *negative*, that he had not the least knowledge of it. Stating the case thus, the same rules that extend to a man's answering for every act of wrong, where *there is an intention*, certainly the same rules must acquit, where there is *no wicked intention*. Gentlemen, I will therefore submit to you, upon all the circumstances of this case, that we are entitled to your verdict for Mr. Almon; that his conduct cannot be condemned, without violating one of the first principles of natural justice; and I do hope, that if I should be so unfortunate as to have that ever admitted to be violated, I hope it will be violated for some greater purpose, than merely to affect the ruin of a bookseller, who, in this part of his conduct, is not criminally guilty; and whom, in this case, Gentlemen, I must submit to you, as *an honest and an innocent man*.

*Mr. Davenport.* We will call a witness to prove, that Mr. Almon is the mistaken object of this prosecution; that the books were sent to his house without his knowledge.

*(Call John Miller.*

*John Miller sworn.*

*Serjeant Glynn.* I am not bound to prove the contrary of what they *have not proved*.

*Court.* Use your own judgment.

*Mr. Davenport.* I apprehend, in a cause of this sort, we need call no witnesses at all. I shall be very short upon it. This charge is a malicious and wilful publication of this libel, that has been read to you from the *paper itself*, and from the *record*. You will try whether that evidence satisfies you, that Mr. Almon is the *real* or the *mistaken* object of this prosecution? The parties who prove the *supposed* publication, prove the going into Mr. Al-



Almon's shop, in Piccadilly, and buying there a pamphlet that they asked for, under the title of the London or British Museum. *That is the evidence.* There is no letter produced to you; there is no specification of that sort of libel, that is contained upon the face of the record. The book, the pamphlet was sold there without the others knowledge of the contents of it. It is usual, and I believe many of you know it, for booksellers, in different parts of the town, to send pamphlets and books published for themselves to other booksellers; and this appears to be by one John Miller, who stands forth, not only as the printer, but the actual publisher of it. If that be the case, and, if it were possible, that this might be published for some other man, who avows the publication, it might be sent very honestly to Mr. Almon's, or any other shop in this town, and they would be equally the objects of this prosecution; if consent, if concurrence does not go with the crime, of that you are to be the Judges; of *that*, no evidence has been given; nor is it possible to stamp a crime of so enormous a nature, as has been described by the Attorney-General, on a man, who himself has had no communication with the publisher. I advised my client to call no witnesses, and I do submit to you, that he is very clear of this charge: if they mean to try it again, they will get better evidence of his guilt.

LORD MANSFIELD }  
TO THE JURY. }

T H E R E are two grounds in this trial for your consideration. The first is matter of fact, whether *he did publish it.* The second is, whether the construction put upon the paper by the information in those words where there are dashes, and not words at length, is the *true* construction; *that*

*that is*, whether the application is to be made to the King, to the administration of his government, to his ministers, to the Members of the House of Commons, to England, Scotland, America, Ireland, as put upon it by the information; because, after your verdict, the sense so put upon it, will be taken to be the *true* sense: therefore, if you are of opinion, that that is materially the *wrong* sense, it will be a reason for *not* convicting him upon *that* sense.

In the first place, as to the *publication*, there is nothing more certain, more clear, nor more established, than that the publication—a sale at a man's shop—and a sale *therein*, by his servant, is evidence, and not contradicted, and explained, is evidence to convict the *master of publication*; because, whatever any man does by *another*, he does it *himself*. He is to take care of what he publishes; and, if what he publishes is *unlawful*\*, it is at his peril. If an author is at liberty to write, he writes at his *peril*, if he writes or publishes that which is contrary to law; and, with the intention or view, with which a man *writes* or *publishes*, that is in his own breast. It is impossible for any man to know what the views are, but from the *act itself*: if the act itself is such, as infers, in point of law, a *bad view*, *then* the act itself proves the thing. And as to the terms *malicious*, *seditious*, and a great many  
I other

---

\* What is unlawful?—The only statutes against libel are 3d Edw. I. 2d and 12th Ric. II. condemn or punish no other than *false* news. They say, “That whoever shall be so boldy  
“ to tell, or publish any *false* news or tales, whereby discord  
“ or slander may grow between the King and his people, or  
“ the great men of the realm, shall be taken and kept in pri-  
“ son, until he has brought him into Court, which was the  
“ the first author of the tale.” Junier's letter does not fall within these statutes, for the Attorney-General, in his information, does not call it *false*.



other words that are drawn in these informations, they are all inferences of law, arising out of the fact, in case it be *illegal*. If it is a *legal* writing\*, and a man has published it, *notwithstanding these epithets*, he is guilty in no shape at all. And Mr. Serjeant Glynn told you what was true in libels *formerly*: they had more epithets of that kind, and, among the rest, they put in the word *false*; but he is mistaken as to the time; it was left out many years ago; and the meaning of leaving this out is, that it is totally *immaterial* in point of proof, *true* or *false*: if it is *true*, there is, by the constitution, a legal method of prosecution, from the highest to the lowest—every man for his offences. It has been left out, and many others of the same nature, a great many years ago, in prosecutions of *this* kind †: but as to the two facts now before you.

As

\* How is any man to know *what is a legal writing*?

† How many years ago?—It was left out in the information against Mr. Wilkes, because all the Crown lawyers know very well, that every word of that North-Briton was *TRUE*. But does Lord Mansfield mean, that it has been left out ever since he knew the Court of King's-Bench? He certainly does not, for he knows better. He cannot have forgot, (being Solicitor-General at that time) that in the information against W. Owen, tried the 6th of July 1752, for publishing the case of Alexander Murray, Esq; the words are, a wicked, *false*, scandalous, seditious, and malicious libel. Therefore it is not a *great* many years ago, since the word *false* was left out. But it seems to be omitted now, in conformity with, and perhaps the better to enforce that *new* and *absurd* doctrine, that any writing, *true* or *false* *against* a minister, is a libel. It may be so, according to the imperial slavish civil law; but it is contradicted by natural reason, upon which is founded the mild and liberal law of England. Indeed, Lord Mansfield's definition of the liberty of the press, warrants us in this supposition, for, upon Mr. Woodfall's trial, he said, "The liberty of the press consists in no more than this, a liberty to print now without a licence, what formerly could be printed only with one."—And, in the information against Richard Nutt, for printing and publishing in the London

As to the publication, here are two witnesses that swear to the fact: *Bibbins* swears, that being led by an advertisement, that such a pamphlet was published and sold at the defendant's, in Piccadilly, that he went there, asked for it publicly; it was publicly exposed to sale, and sold to him by a lad in the shop, that acted as a servant at the defendant's. There is another witness, *Crowder*, who likewise swears, that he asked publicly for one, and that it was sold him by the defendant's man: *thus it stands upon their evidence.* If there had been any artifice, or trick, of sending a man privately into another man's shop, to sell it, in order to trap him, if he has such a thing; that is to be proved by the defendant. In this case, the defendant may call a servant of his to give evidence; but they have judged it wiser and prudenter not to call him; therefore it rests entirely upon this suggestion.

*Glynn.* We did not call the servant, we called Mr. Miller the publisher.

*Mansfield.* It certainly rests singly upon the evidence of the two witnesses, with regard to the publication of this paper: if you believe these two witnesses, you will be satisfied as to the fact: if you believe that what they have sworn is false, and not true, you will *not be satisfied.*

As to the sense put on the words by the information, you will exercise your own judgment: but this certainly, in point of law, is against the defendant; and, if you are also satisfied with the sense put on the words by the information, you

I 2

will

---

don Evening Post, of Sept. 10, 1754, the paper is called a *false*, wicked, scandalous, seditious, and malicious libel. This information was filed by Lord Mansfield himself when he was Attorney-General. And, in the information against Dr. Shebeare, tried by Lord Mansfield in Trinity term 1758, for publishing the Sixth Letter to the People of England; that letter is called a *false*, wicked, scandalous, &c. libel.

*See Digest of the Law of Libels.*

will find the defendant *guilty*. They severally prove there being bought there; but if you believe they were not bought there, or should not agree with the information, with regard to the sense there put on the words, in these parts of the paper; in *either* of these circumstances, you will *acquit* the defendant; and therefore, in order to guide your judgment the better, you will take the paper and the information with you.

The trial was over about twelve. The Jury then went out, and staid out near two hours and an half. When they returned into Court, Herbert Mackworth, Esq; (one of the Jury) said to Lord Mansfield,

My Lord, I am instructed to ask a question;

Whether selling in the shop by a servant, of a pamphlet, without the knowledge, privity, or concurrence of the master in the sale, or even without a knowledge of the contents of the libel or pamphlet so sold, be sufficient evidence to convict the master?

To which Lord Mansfield answered,

I have always understood, and take it to be clearly settled, that evidence of a public sale, or public exposal to sale, in the shop, by the servant, or any body in the house or shop, is sufficient evidence to convict the master of the house or shop, though there was no privity or concurrence in him, unless he proves the contrary; or that there was some trick or collusion.

The Jury then agreed among themselves; but before the verdict was given, Lord Mansfield desired,

That the Attorney-General and Mr. Serjeant Glynn, to attend and take down his opinion; and here he repeated as above to the Jury, except, that  
instead



instead of saying it was sufficient evidence, he said it was *prima facie* evidence to charge him, unless he could shew it was by trick or collusion, and without his knowlege or privity; and then added, "If I am wrong, they may move the Court, and the trial will be set aside."

The Jury being now agreed, the foreman, Leonard Morse, Esq; said GUILTY.

Previous to the beginning of the succeeding term, the defendant having had a consultation with his council, was advised to move for a new trial; which was accordingly done on the 27th of June, upon the ground of law, that the master is not answerable, in a criminal case, for the conduct of his servant, where his privity is not proved; but the Court did not think proper to grant a new trial.

On the 28th of November, 1770, the defendant was brought up for judgment, when his council produced affidavits of the several facts mentioned in Mr. Serjeant Glynn's speech upon the trial. However, the judgment of the Court was, to pay ten marks (*i. e.* 6l. 13s. 4d.) to the King, and to give security for his good behaviour, for two years, in EIGHT HUNDRED POUNDS; himself in four hundred, and two sureties in two hundred pounds each.

The real printers and publishers being tried at Guildhall, each by a Jury of independent citizens of London, were all acquitted.

The law proceedings attending this trial, cost the defendant ONE HUNDRED AND THIRTY-NINE POUNDS and eleven-pence.