



**EXTRACT FROM A SPEECH OF MR.
ERSKINE ON THE DOCTRINE OF LIBEL**

Thomas Cooper

The time may come when every man in this country, who thinks it his duty to communicate to the public his reflections on the general principles or temporary occurrences of Government and Politics, will find it worth while to make himself acquainted with the Law of Libel. The best men and the best writers are the most in danger where the press is most restrained; for warmth of heart and warmth of diction, however entertaining or beneficial to the public, are dangerous qualities for an author to possess under a government jealous of investigation; and though the truth of a *fact* may sometimes be proved, who can give in evidence the truth of an *opinion*? Yet from the collision of opinion, has all human improvement proceeded in metaphysics, morals, government and religion. The Revd. Mr. Loggan, Minister of the Gospel at Leith, published some years ago observations on the long continued trial of Mr. Hastings, in which it was conceived that the managers of the impeachment were improperly reflected on. On motion, the Attorney General was directed to prosecute the publisher, Mr. Stockdale; the obnoxious passages were *selected* and the bookseller indicted. I think my readers will be obliged to me for introducing to them the following beautiful passages, of forensic eloquence, from Mr. Erskine's defence on that occasion.

EDITOR.

“It only now remains to remind you, another consideration has been strongly pressed upon you, and, no doubt, will be insisted on in reply. You will be told, that the matters which I have been justifying as legal, and even meritorious, have therefore not been made the subject of complaint; and that whatever intrinsic[†] merit parts of the book may be supposed or even admitted to possess, such merit can afford no justification to the *selected* passages, some of which, even with the context, carry the meaning charged by the information, and which are indecent animadversions on authority.

“Gentlemen, to this I would answer (still protesting as I do against the application of any one of the innuendos,) that if you are firmly persuaded of the singleness and purity of the author’s intentions, you are not bound to subject him to infamy, because, in the zealous career of a just and animated composition, he happens to have tripped with his pen into an intemperate expression in one or two instances of a long work. If this severe duty were binding on your consciences, the liberty of the press would be an empty sound, and no man could venture to write on any subject, however pure his purpose, without an Attorney at one elbow, and a Counsel at the other.

“From minds thus subdued by the terrors of punishment, there could issue no work of genius to expand the empire of human reason, nor any of those masterly compositions on the general nature of government, by whose help the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard.

“Under such terrors, all the great lights of science and civilization must be extinguished; for men cannot communicate their free thoughts to one another with a lash held over their heads.

“It is the nature of every thing that is great and useful, both in the animate and inanimate world, to be wild and irregular; and we

[†] “Intrinsic” in original.

must be contented to take them with their alloys which belong to them, or live without them. Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom, when it advances in its path; subject it to the critic, and you tame it into dullness.

“One word more, Gentlemen, and I have done. Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves. Upon the principle which the Attorney General prays sentence upon my client—God have mercy upon us. Instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present for omniscient examination, a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us as I have been pointing out for your example. Holding up the great volume of our lives in his hands, and regarding the *general scope* of them;—if he discovers benevolence, charity, and good will to man beating in the heart, where he alone can look;—if he finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed;—his all-searching eye will assuredly never pursue us into those little corners of our lives, much less will his justice select them for punishment, without the general context of our existence; by which faults may be sometimes found to have grown out of virtues, and very many of our heaviest offences to have been grafted by human imperfection, upon the best and kindest of our affections.—No, Gentlemen, believe me, this is not the course of divine justice, or there is no truth in the Gospels of Heaven. If the general tenor of a man’s conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life; because he knows, that instead of a stern accuser to expose before the author of his nature those frail passages which, like the *scored* matter in the book before you, chequers the volume of the brightest and best spent life, his mercy will obscure them from the eye of his purity, and our repentance blot them out for ever.”