

and authorities, arising under the English common law. But it is impossible for this court to add any thing to the deep, learned, and conclusive arguments of judge, now chancellor, Kent, and of the late Alexander Hamilton; both of them among the greatest men and lawyers of the age. Their arguments stated at large in 3 Johnson's cases, p. 337, are as complete as they are unanswerable.

"The doctrine here maintained is deduced by them from the ancient fountains of the common law, as they existed in its earliest purity; the modern doctrine of libels being, in the course of their analysis, satisfactorily proved to be" an usurpation on the rights of the jury, "not justified by the fundamental principles of the common law." To adopt the language of chancellor Kent, "*The true rule of law is, that the intent and tendency of the publication, is, in every instance, to be the substantial enquiry on the trial, and that the truth is admissible, in evidence, to explain the intent, and not, in every instance, to justify it.*" The comprehensive and accurate definition of Alexander Hamilton is perfectly correct, that, "THE LIBERTY OF THE PRESS CONSISTS IN THE RIGHT TO PUBLISH, WITH IMPUNITY, *truths, with good motives and for justifiable ends, WHETHER THEY RESPECT GOVERNMENT, MAGISTRACY, OR INDIVIDUALS.*"

The opinion of the Court having thus been delivered, rendering evidence of the truth admissible, some discussion took place as to the receiving of depositions taken in other States, of persons who were out of the legal controul of the Court; but these were not admitted; and the defendant opened his defence which, as a masterpiece of its kind, I am induced to give almost entire.

"GENTLEMEN OF THE JURY; I am indicted by the grand jury of the county of Suffolk, for an alleged offence against the peace and dignity of the commonwealth. To this charge I have said that I am not guilty; I have appealed to my

nature of her defence; his exposition of the law was rejected; his precedents and cases in point vanished before her arguments, his interruptions were unheard, unnoticed, or disregarded; the bench sat confounded; the bar stood aghast; and notwithstanding the Judge told the Jury in his charge to them that they were to consider nothing but the fact of the publication of the libel (which the defendant had admitted,) and that they were neither to judge of the intention and tendency, nor of the truth or falsity, of the libel, which were points that solely belonged to the court; yet the jury exercised their right of likewise judging as to *whether the judge was right or wrong in his charge*, and acquitted the defendant. Mrs. Turner was afterwards generally and facetiously called Mrs. Mary Ann Ticklewig.