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IMPORTANT LIBEL CASE IN BER-MUDA.

[Inserted by Request.]

THE LIBERTY OF THE PRESS DEFINED.

His Honor Chief Justice Butterfield recently passed sentence as follows upon Mr. Ward, proprietor of the Bermuda Herald, for a libel in that Journal upon the House of Assembly.

THE QUEEN vs. ROBERT WARD—LIBEL.

Robert Ward, you have been indicted for printing and publishing a Libel on the House of Assembly in the Herald newspaper, of the 8th September last, edited by you: on this indictment you have been found guilty, after having had the benefit of able professional assistance. In the course of your trial much was said, as is usual in such cases, on the Liberty of the Press. No one regards the Liberty of the Press more than I do; and it shall never want due protection from me while I hold a seat in this Court; but it is all important to the security of that Liberty itself, that there should be no misapprehension as to its nature and extent. Nor do I think there is any danger of such misapprehension if we look inwardly and consult the Moral Sense. Herein I agree perfectly with Mr. Holt, in his "Law of Libel"—that "it is, i. e., what constitutes Libel, is supposed to be written in the Hearts and Reasons of all." "It is not enacted in words," says he, "far the same reason that murder, arson, larceny, and other atrocious crimes are not in like manner prohibited. The knowledge of these crimes is amongst the first elements of human reason."

It is a principle of our Common Law that every one shall be presumed to know the duties of morality. There is no need, therefore, of deep research into our books of law, or a familiar acquaintance with adjudged cases, to enable us to avoid offences in this respect. Were such information necessary, however, it may be readily found in our Text Writers, and in the decisions of our Courts in all periods of English History. We need only refer to these Commentaries, with which it is supposed that every man of liberal education is more or less acquainted, and we see the definition of Libels as quoted from the earlier writers—They are described as "malicious defamation of any person, and especially a Magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt and ridicule." This definition is easy of apprehension to every mind of ordinary capacity; and in accordance with it have been all the numerous decisions which have taken place in Courts of Justice, many, perhaps most of which have been made known to the public by means of the Press.

In several of those decisions we have striking expositions of the Doctrine by some of our most revered Luminaries of the Law. I shall refer to a few of them: "Libelling against a private man," says Lord Holt, "is a moral offence; but when it is against a government, it tends to the destruction of it." "This notion of libelling is as old as the Law."—Lord Ray, 417. "To be free," says Lord Mansfield, "is to live under a Government by Law. The Liberty of the Press consists in printing, without any previous Licence, subject to the consequences of Law. The licentiousness of the Press is Pandora's Box, the source of every evil. Miserable is the condition of individuals, dangerous is the condition of the State, if there is no certain Law, or, which is the same thing, no certain administration of Law, to protect individuals, or to guard the State." "All Governments," says Lord Cobden, "must set their faces against Libels, and whenever they come before a Court and a Jury, they will set their faces against them. And if Juries do not prevent them, they may prove fatal to liberty, destroy governments, and introduce anarchy; but tyranny is better than anarchy, and the worst government better than none at all."

In the King vs. Franklin, in 1730, Sir Philip Yorke, afterwards Lord Chancellor Hardwicke, expressed himself thus to the Jury:—"Gentlemen, I would have you to know, that even the Prerogative of the King is founded upon Law, and limited by it, and so are all things relating to his subjects; and it cannot be supposed that a printer only is exempted, and at liberty to use his press for what purposes he pleases. If he is, I desire that the defendant's counsel would point out that law. No; the law is not so absurd as to allow such a liberty of the press. The Liberty of the Press,—the liberty meant, is to be understood of a legal one. He may lawfully print and publish what belongs to his own trade, but he is not to publish anything reflecting on the character, reputation, and administration of his Majesty or his Ministers; nor yet to stain the character or reputation of any of his subjects. For, as I said before, to scandalize and libel people is no part of his trade; so I say, that it is only that Liberty of the Press which he is to use, that is regulated by Law, and is subjected to it; and if he breaks that Law, and exceeds that Liberty of the Press, he is to be punished for it, as well as for breaking other Laws or Liberties. This law of libel is not a new law, but one that has been almost of 500 years' standing."

This, though delivered *arguendo*, had the entire sanction of the Judge in charging the Jury in the case. To come to a case of a more recent date—the King vs. Sir Francis Bardon—Justice Best said: "My opinion of the Liberty of the Press is—that every man ought to

be at liberty to instruct his fellow creatures; that every man may fearlessly advance any new doctrine, provided he does so with proper respect to the religion and government of the country: that he may point out errors in the measures of public men, but he must not impute criminal conduct to them. The Liberty of the Press cannot be carried to this extent without violating another equally sacred right, namely, the right of character." "Where vituperation begins, the Liberty of the Press ends. This maxim was acted upon by the greatest States of Antiquity." And here I may remark that not by England only, among modern States, has this maxim been adopted. We find this passage from Judge Best's opinion quoted with approbation by Chancellor Kent of New York, in a late edition of his Commentaries on American Law, page 19, volume 2—"In our country," Judge Kent goes on to say, "the Liberty of the Press allows us to persuade men to use their constitutional influence over their Representatives to obtain in a regular, parliamentary manner, a redress of real or supposed grievances; but this must be done with temper and moderation."

Now, applying this Law and these Tests, under the direction of the Court, to the publication for which you were indicted, the Jury found you guilty. With the conclusion which the Jury drew, I, and the Court generally, do most fully concur: for certainly had a different verdict been returned, there would have been ample cause to have applied the language of Lord Mansfield—"Miserable is the condition" of the Legislative Assembly of Bermuda; for since it has not the same right of punishing for contempt, or of vindicating its dignity as the House of Commons of the mother country, or as the Assemblies of one or more of the Sister Colonies have acquired, that body, entrusted by the Constitution with some of the most important powers for the public, would have been altogether defenceless, and been exposed, in future, to attacks which must have greatly impaired, if not entirely destroyed, its proper weight as a constituent part of the Legislature; and although it is to be hoped that a sense of dignity and a respect for the laws would have restrained every member from seeking redress in an irregular manner, yet it must not be lost sight of "that the chief cause for which the Law so severely punishes all offences of this nature, (Libels) is the direct tendency of them to a breach of the peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt." 1. Hawk, P. G. ch. 73, s. 3.

The right of a free, candid, and temperate discussion of the measures of the different branches of the Legislature, by the Press, is not questioned; its salutary effect both on men and measures is undeniable, and of daily experience in all free countries; while it is equally undeniable that the licentiousness of the press goes far to neutralize these good effects by often rendering men indifferent to its strictures. In the exercise of this right, "no man," said the late Lord Ellenborough, (King vs. Cobbett) "has the right to render the person or abilities of another ridiculous. It has been observed that it has been the right of British subjects to exhibit the folly or imbecility of the members of the government, but we must confine ourselves within limits, if in so doing individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation." This position of Lord Ellenborough accords in substance with the maxim adduced by Best J.—"Where vituperation begins the liberty of the press ends."

Now, in the publication which has been the subject of the present prosecution, we in vain look for anything like discussion. It is one strain of bitter vituperation from beginning to end. I have thought fit to enter more fully into an exposition of the law as contained in our text writers and adjudged cases than I otherwise should have done, because trials for Libel have been of unrequited occurrence on these islands, and few opportunities have presented themselves of awakening the serious attention of the public to that law, which in reality, as has been remarked, has its foundation in moral sense, which no rightly constituted mind need have any difficulty in understanding; but upon which, nevertheless, it is the parent, from the want of such attention, the most incorrect opinions are often expressed. Among the sources of such incorrect opinions is probably a misapprehension of malice as a constituent ingredient of the crime of Libel—but this, it has been decided, implies no more than wilfulness. The crime of libel (according to the unanimous opinion of the judges, upon questions put to them by the house of Lords) consists in publishing a libel. A criminal intention in the writer is no part of the definition of the common law. He who scatters firebrands and death around (which if not an accurate definition, is a very intelligent description of a libel) is reckoned criminal; it is not incumbent on the prosecutor to prove his intent, and on this part he shall not be heard to say—"am I not in sport?" It is a principle of law, indeed, recognised in numberless cases that the malicious intent is inferred from the act.

In some respects, a printer may be at times less excusable than the writer or composer of a libel. The latter may, in the haste of composition, in a period of much public excitement, be betrayed into the use of expressions other circumstances he would have avoided, but a printer receives a paper for publication, more in the way of business, and undisturbed by such emotions, has an opportunity of quietly perusing its contents before committing them to the press. The most cursory perusal

however of the presented publication was calculated to impress you with a sense of its very exceptionable character. Against yourself no complaint has heretofore been preferred in this court; nor have I heard that the paper conducted by you has been the subject of previous animadversion. The court takes this circumstance into consideration, and also makes allowance for your youth, and it takes also into consideration the statement made in your affidavit that upon your success in the conduct of your paper depends the support of your family, but it cannot but regret that a knowledge of this had not made you more cautious how you admitted into its columns a production so obviously calculated to render you amenable to the Law.

You are the only person appearing before this Court as connected with this Libel, and were you not to be suitably punished, the House of Assembly, instead of having its dignity vindicated, would become the subject of ridicule, not only generally throughout these islands, but in every place to which your paper may have found its way, and few indeed are the countries to which, now that time and space are almost annihilated by steam communication, to which it may not already have been conveyed. The Court, however, has no disposition to visit your offence with a degree of severity beyond what may be necessary to prevent a repetition of it. To this end, however, it feels itself called upon, in discharge of its own, and, it must add, its truly painful duty, to sentence you both to fine and imprisonment, and also to require you to give security for your good behaviour.

The sentence of the Court then is, that you be imprisoned in the gaol at Hamilton for 20 days—that you pay a fine to the Queen of £50, and the costs of prosecution—and at the expiration of the 20 days, that you give security for your good behaviour for one year from that date—yourself in the sum of £100, and two securities each in the sum of £50—and that you remain in prison until such fine and costs be paid and security be given. Such imprisonment not exceeding six calendar months.

Colonial News.

New Brunswick.

Fredericton Head Quarters, Jan. 10.

Small Pox.—We regret to learn that this virulent disease is rapidly increasing in this City, and would caution the inhabitants generally, to adopt every precaution in their power to check the rapid progress it is now making. Common prudence should dictate the propriety of avoiding contact with anything likely to communicate the disease, and unless those connected with the patient, and the attendants necessary for his comfort, no one should be permitted to visit those afflicted with Small Pox. Our readers will be surprised when we inform them, that we have the authority of His Worship the Mayor for stating that the deaths in the Hospital, by the returns which were made to the Court of Quarter Session, at its last sitting, were in the proportion of one out of every three admitted. This shows that the disease is of the very worst type.

Fast Travelling.—We understand that on Monday last, the driver of the Express Line between this city and St. John, brought through Moses H. Perlov, Esq., in the short space of 6 hours and 50 minutes, including stoppages, and that, had the teams on the line been properly arranged, they could have performed the journey in 6 hours.

Canada.

Quebec Gazette, Jan. 5.

Prayers for the Pope.—The Archbishops of Quebec and Baltimore, following the example of the Archbishop of Paris, and the Bishops of Montreal, New York, Albany, &c., have addressed circulars to their clergy, enjoining public prayers to be offered for the head of the Catholic Church under his present affliction.

Quebec Morning Chronicle, Jan. 8.

Fire and Loss of Life.—On Saturday night last, between eleven and twelve o'clock, a fire broke out in a wooden store in St. Paul street, owned by the heirs of the late Dr. Racey, and occupied as a grain store by Messrs. Meunier and Gauthier. The fire companies were promptly on the spot, but unfortunately the supply of water was again deficient, the tide being out at the time. It was however obtained, as on the last occasion, from the Upper Town market, and from Mr. Boswell's Brewery; but it was found impossible to save the premises in which the fire broke out. Between 100 and 200 barrels flour were saved; but the whole of the grain in the store, and some 130 chaldrons coals, in rear, belonging to C. Posten, Esq., were destroyed. The store was insured at the Quebec Office, and £300 on the flour, at the Aona Office. There was no insurance on the grain. A very general opinion prevails that this has been the work of an incendiary.

The most melancholy part of the affair was the death of a young man, named John O'Flaherty, who had gone into the store to assist in saving the property, and it is supposed was suffocated in the attempt. The deceased was by trade a tailor, and was much respected in the neighborhood where he resided. He was about 24 years of age, was unmarried, and lived with his parents in Sault-au-Matelot street. The funeral will take place this afternoon, at half-past three o'clock.

Novascotia.

Halifax Courier, Jan. 9.

The Newfoundland Mail.—The Hon. Samuel Cunard has not only purchased the Unicorn from Mr. Whitney—but he has also bought out the remainder of the contract; by which the latter gentleman is under agreement with the Lords Commissioners of the Admiralty to carry the mails between Halifax, and St. Johns, up to March ensuing. The Unicorn will be laid up for the present—it looks quite natural to see her at Cunard's Wharf; and the Margaret Brig sailing packet is at present fitting for the conveyance of the mails between this port and St. Johns, during the present winter. It cannot fail to give immense satisfaction to the Mercantile communities of the two Cities as well as all those interested in the intercourse between the two ports, to learn that Capt. Meagher is to be continued on the line, as Commander and Mail officer. The vast experience Capt. Meagher has had in this intricate navigation, added to his gentlemanlike deportment and obliging disposition, have indeed made him indispensable on this route.

Shipwreck.—During the late tempestuous weather several vessels have been cast away on the coast—happily in no instance that we have heard with loss of life. Among these the schooner Sylph, long and well known as a packet between this port and Lunenburg—and also as having been for some time employed in the Revenue service of this province. This vessel was lost on the 'Blue Rocks,' at the entrance of Lunenburg harbor, on her return voyage from the West Indies, during the severe snow storm on the last Thursday of the old year. Those on board had just time to escape with their lives, and Nothing more—thus losing every article in clothing money and materials, saving nothing but what they stood in.

A very great desideratum.—We are gratified to hear and sincerely hope we have not been misinformed—that the hon. Samuel Cunard intends placing the Unicorn on the line between this port and Boston immediately. This will be a most important improvement on the old means of conveyance by the sailing packets; and is worthy the enterprise and discernment of our illustrious townsman. As for the old packets, they may now go to California—for most assuredly the golden harvest they have so long been reaping will be at end, if this splendid steamship should take the field.

United States News.

St. John New Brunswicker, Jan. 9.

The great Robbery at Augusta.—On Saturday last we received by telegraph, an account of the robbery of the Bank at Augusta, Maine. We have since received the following particulars from the Age:—

The Augusta Bank was broken open between Saturday night and Monday morning, and the following taken: 13 square boxes of silver, \$500 each; 6 bags of silver, \$200 to \$300 each; a package of silver, \$200; a package of gold, \$3415; a package of sovereigns, \$5000; foreign bills, about \$4000; a package of foreign bills, amount unknown, directed to J. C. Brewer, Ticonderoga Bank. The President of the bank has offered a reward of \$1000. The Augusta Bank is situated in the basement of the new hotel, which forms a part of the brick block recently erected on Water street. The hotel is unfinished and unoccupied. The vault of the bank adjoins one of the lower rooms of the hotel, and is only separated from it by a brick wall one foot thick. The mortar used in the construction of this wall is comparatively green. The burglar first entered the room adjoining the vault, and with a small crowbar knocked away the bricks sufficiently to afford an entrance to the vault. The plundered property was confined in a safe of most approved construction, secured by Holt's celebrated gunpowder lock. It was opened by a key which must have been prepared before the safe was put into the vault. When the plunder had been removed, the safe was coolly locked again. In the hurry in