enough is alleged, but whether, being alleged, it must not be proved. Suppose those inuendoes which give a false and more defamatory character to the libel, had not been included in the Declaration, the Defendant might have allowed judgment to go by default, but this he could not do upon the present Declaration, as he would thereby admit all that was alleged, and damages would be assessed upon such admission.

Judge: That difficulty would arise in almost every action. I think there is sufficient to justify me in sending the case to the Jury, but will note all your objections, and reserve the points.

Mr Johnson opened the Defence. This was the first action for libel brought in this county. It was brought by a person who so loudly called against the abuses and misconduct of men in office, against a man who, as as the editor of a public journal, has for the last 26 years been doing his part to extend the influence of public opinion to the remedy of public evils; and it is brought, too, for the publication of an article, which, with the writer's name attached, accuses him of not having so acted in former elections, wherein he was a candidate, as to entitle him to the support and confidence of the public in the then approaching election.

He would not now take up their time in making remarks which would more properly come in closing the Defence, but briefly state what the nature and grounds of that defence would be. In the first place, the Defendant contends, that as a public journalist, at a time when the Plaintiff was putting himself forward as a public man, and a candidate for the public suffrage, and thus, as it were, challenging controversy as to his fitness for the office he sought, the Defendant could not, consistently with his public duty, refuse to publish the article, provided he gave the name of the author, and offered his columns to Mr Williston as the free and fair means of defending himself, and rebutting the charges, leaving the Freeholders of the County to be the impartial judges between them; that if these charges were true, his duty to the public at such a time, called upon him not to shut up the only medium of public information and enquiry.

Secondly—That in doing this, no malicious libel could be attributed to him, because he did not give the article any support or weight which his character, or that of his journal, could impart, but left it to stand or fall merely upon the authority of the writer. If his standing and character were such as to give weight to the charges, Mr Williston could not object to him as an opponent in public controversy, and as a fellow candidate; and if, on the contrary, the name was not respectable, the article would not prove injurious. The bane and antidote would go abroad together.

Thirdly—He would prove, that although the article appeared in his journal, and although he knew that he was responsible for the manner in which it was conducted, as well during his absence as when printed under his own eye, yet that as malice was an essential ingredient to constitute a libel in law, the Defendant would prove the utter absence of malice on his part, and show that the article was published without his knowledge, and that the first time he saw it, was when circulating in the Gleaner; that it had been inserted by his young man as an advertisement, under the impression that he was bound so to do; and that when called upon by the Plaintiff's attorney, he offered every facility towards fairly contesting the question with the writer, either in the public prints or legal tribunals.

And in the Fourth place—The Defendant, by the course pursued in bringing the action against him, is reluctantly driven to rest upon, and prove the truth of the article, as a defence to the action. He was aware that this course would be called inconsistent by the opposing counsel, and treated as a contradiction of that ground of defence which denied malice, and he would therefore explain himself upon this point at the outset. Had these defences been taken up by the writer of the article, there might be something in an argument of this nature; but Mr Pierce now says—Mr Williston, this article was printed without my knowledge; I had no desire to injure you, or wound those fine feelings which you possess. I have offered you every fair means of redressing any imagined wrongs; I give you, and have given the public, the name of the writer; I will prove that for you in any court; I did not, nor do I now pretend to judge, upon the truth or falsity of the charges, but if you will proceed against me, instead of the writer, I must, in justice to myself and family, take such grounds of defence as I am by law entitled to, and which the witnesses produced by the writer are prepared to prove. The article charges you with dishonesty, &c., and the reasons on which the charges are made are published with them; and if by evidence I can prove these reasons to be true, the charges founded upon those reasons will be supported. The Defendant would therefore go into evidence to prove that at the election of 1842-3 the Plaintiff had incurred liabilities with Mr Hea to a large amount and over £200. That when Mr Hea demurred to making such heavy advances, the Plaintiff begged of him for God's sake to say nothing about it until after the election, as it would prevent many of his strongest supporters from assisting him, but to supply what was required and he should by all means be paid. That these advances were made, and that a subscription list was got up to defray these with other bills. That the Plaintiff collected several sums upon these lists, in hay, butter and other things which he applied to his private use and that of his family, and that shortly after the election, in the very words of the article upon which this action was brought, he repudiated Mr Hea's bills and thanked God he did not owe him one shilling. These, together with other facts, he was instructed, would be proved, and if so, he would confidently ask the Jury to say that the charges were sustained; and this the Defendant was driven to do by the Plaintiff himself, and more in sorrow than in anger, for he yet bore the Plaintiff no malice, and was acting merely in self defence. In this case the evidence would be given under a notice, and not as formerly under a plea, setting out the particular matters upon which the Defendant relied. This was an alteration made in the law last winter, for the alleged purpose of saving expense, but which ere long the country would find to be a great means of increasing expense, by the clouds of witnesses it would keep in constant circulation around the court houses, and the multiplicity of legal questions to be argued at Nisi Prius in the shape of oral demurrers, as also the four-fold increase of motions for new trials. It was the law however, and we were not only authorised but bound to proceed under it.

Witnesses were then called for the Defence.

John Hea, sworn on his *voire dire*. I have no interest in this suit; I have not indemnified the Defendant.

Sworn in chief. I reside in Chatham; have known the Plaintiff 23 years, and the Defendant 20 years or upwards. Question: Did you supply anything for the elections of 1842-3, and on whose account.

Mr Street objects to any evidence of justification. The notice was not sufficient, merely stating that Defendant will rely upon, and prove the truth of the libel set out in the Declaration. The Defendant is bound to state what particular facts he will prove, as would formerly be required in a plea of justification. Cites Chitty on Pleading, and the Act of Assembly 12 Vic. The reasonable construction of the Act must be, that the notice should be as particular as a plea.

Mr Johnson: This notice is under the Act of Assembly of last winter. The second section provides "that in addition to any matter which may be pleaded in bar, the Defendant may give in evidence on the trial any other matters of defence whatever, provided that notice be given to the Plaintiff or his Attorney in writing," &c.; and the fourth section provides that the notice "shall be in a *general and brief* form, and shall be deemed sufficient, unless the Plaintiff shall make it appear to the Court or Judge, before whom the trial is had, that he has been misled by the defect or generality of such notice."

Judge: Do you think that means that they are to *prove* that they are misled? How are they to prove it? Must they go into evidence.

Mr Johnson: I confess the difficulty of construing the act. Mr Street speaks of a reasonable construction, but I am puzzled to put a reasonable construction upon that or any other part of this Act. The expressed intention of the Legislature was to save the expense arising from prolix and lengthy pleadings. Perhaps the real intention might be to save the trouble, and escape the labor of preparing special pleas, where legal skill was of so much importance. But they have said the notice shall be *brief*, which this is, and *general*, of which the learned counsel complains. The article complained of sets out what our notice offers to prove, and the Plaintiffs cannot mistake what we mean. This is not like a bare accusation of theft, or some other crime, but sets out the facts upon which the charges are founded.

Mr Street: This cannot be evidence under the notice; it cannot be in mitigation of damages. Roscoe 382. Stephens' Nisi Prius 2255. Vesey vs. Pike, 3 Car and Paine 512.

Judge: I am not prepared to reject this evidence. I am not prepared to decide what the Legislature intended. Doubtful if they knew themselves. What facts could they give notice of? The facts are set out in the Declaration, the promise to pay, and non-payment of account. I don't think the Plaintiff could be misled; and if the notice be too general, the judges would have heard an application at Chambers to amend the notice, or make it more particular. It will be a question of fact for the Jury, whether the facts proved amount to a justification.

Mr Street: I object, then, to the Defendant going into any evidence that Williston promised to pay his election bills, because it was unlawful to make such a promise: Act of Assembly 31 Geo. 3rd, cap. 17, sec. 18. To furnish supplies, &c., to voters, would contravene the policy of this Act, and a promise to pay for such would be nugatory.

Mr Johnson: The question here is not whether the Plaintiff made promises legally binding, but whether he induced Hea to make advances, and subsequently denied his promises. The accusation is "dishonorable, dishonest, and tricky." Now, what is honor and honesty? Not something defined by legislative enactment, but something enjoined by higher authority. To induce Hea to make advances contrary to law, and then screen himself behind its letter, is more dishonorable, equally dishonest, and far more tricky, than to make lawful promises, and refuse, at the risk of an action, to perform them. Such would prove the truth of the article, and therefore be good evidence in justification. This is not an action on contract, where the Defendant seeks to off set an account.

Judge: I cannot admit evidence of items which are contrary to the Act of Assembly. You must confine yourself to what is not unlawful.

John Hea (continued): I recollect the election in December, 1842, and January, 1843. The Candidates were Mr Rankin, Mr Street and the Plaintiff. Mr Rankin and Plaintiff were returned. Plaintiff sat a few days and the election was set aside. The next election was in July. Mr S. and Plaintiff were the candidates for the vacant seat. Mr Street was returned. I have heard the article called a libel read; I am the author. I had an account against the Plaintiff relating to these elections. I had bills against the Plaintiff for the election.

(Judge reminds the witness that he cannot speak of provisions, or board, &c., furnished to voters, but may as to horses, &c. furnished.)

I furnished several horses to Plaintiff, his brothers, and his man of business by his directions, in December 1842, January 1843 and July 1843. I also furnished horses, &c., to take witnesses to Fredericton, on the scrutiny. Before the second election Plaintiff asked me to furnish articles, &c. for it. I stated that the old Bill was not paid. He told me that a subscription would be made, and he would see me paid. There was over £100 due me on the first election. He requested me for God's sake not to say anything about a subscription then as people who were red hot for him would turn their backs upon him at the very name of a subscription, and he mentioned George Johnston and John M'Lean of Napan, but promised that after the election I should be paid. Some of the first items were charged to P. Williston & Brothers, and afterwards posted against the Plaintiff by his directions. He directed me to keep a separate account of the election matters and not mix them with our private dealings. I did so.

Mr Hea then proved item by item to the amount of £56, independent of those things which were contrary to the Act of the Assembly.

I furnished all these and a great deal more by Mr Williston's directions. He said I of course would be paid. He requested me to make out my account for the scrutiny separate. It did not include any of the items spoken of. I did so. It amounted to about £42. He deducted my own subscription, £5, and when he was paying an order I drew on account of the balance he said he 'thanked God he did not owe me one shilling.' This took me by surprise. I asked what he meant; if he did not owe me for the elections. He said he did not owe me a shilling. I asked what he had done with the subscriptions. He would give me no kind of satisfaction. I said where are the lists? Asked him to take my ac'ts with the rest, to see what was right and give me a fair proportion with others. He said he had nothing to do with me. I asked what he had done with the hay he had got from George Johnston; what he did with the hay he put into his barn from J. McLean, and the butter he took into his house. He did not deny that he had received these. I never spoke to him again on the subject, till the night of the burning of Rainnie's mill, this spring. I then spoke in the presence of a number of persons from Newcastle and Douglastown. They were down with the fire engines and came to my house. Mr Peter Mitchell was there and Plaintiff. I said I hoped the candidates this time would be better prepared to pay their bills than some of them were in 1842-3, and said though I had served them with my property and risked my life, I had not received one shilling. He did not deny anything I then said, though I spoke plain.

Cross-examined by Mr Street. This conversation was after the snow went off in the spring. I did expect Plaintiff to pay. I fully expected he would pay me, and get the means by subscription. I knew when I supplied him, that he was embarrassed. I know of the items I have proved. Some of the entries were made by my son, under my directions. I do not speak from this alone, but from my knowledge of the facts. The reason I have never pushed for the amount was, that I knew I was in his power. I did not make out the whole account, because, as he repudiated it, it was not worth making out. I had a conversation with him in 1843. Yes, when he provoked me I spoke rough to him. I take the liberty of judging for myself, and speak to people as I think they deserve. When I spoke about it this spring, I addressed the whole of the people present. I said, whoever offered themselves at this election, I hoped they would be better prepared to pay their bills than some were at the great J. T. Williston election. Some enquiry was made whether my bills had not been paid. I said, not a farthing. I do not believe I led a mob, unless Mr Pierce, Elkin, and other freeholders of the county constitute a mob. (To questions put about mobs by Mr Street, witness said: No, your mob assailed me. Mr Pierce was up on that occasion, when you had your mob armed with bludgeons. I did not lead the party up.) I have no recollection of any committee for Mr Williston's election. A number of meetings of his friends were held. I took part with others. I exerted myself. I did identify myself as much as others did. Question: Did you not know that he was totally unable to bear the expense of a contested election? Answer: Yes, but he had a good deal of influence at the time, and promised to get up a subscription and pay me. The last time I saw the subscription lists, they were in Plaintiff's possession. I did not say I made a bargain with Mr Carman. The bargain was that I was to take Mr Carman to Fredericton on the scrutiny and to allow my subscription out of it. Mr Street: You said you had no legal claim? Witness: Did I say that? Mr Street: I think so. Witness: certainly I did not. I did not commence an action because it was no use. I did not know that Plaintiff paid a large amount. He stated that he wanted to pay Mr Witherall's bill. I objected. I thought it unfair to pay it until they all came in, or at all events to divide the subscription and each party get his just share. He stated the reason he was anxious to pay Witherall was, that his brother Edward had opened the house, and he would be 'in for it,' if it was not paid. I saw Phineas Williston here two or three weeks since. I know there were a great many election bills, and I think many unpaid. I have not indemnified Mr Pierce, nor do I know of any other person having done so. I did not give the article to Defendant, I gave it to his young man, Robert Thomas. I do not expect to stand between Mr Pierce and all harm. Thomas refused to publish it without pay, as he had to remove advertisements to make room.

Re-examined by Mr Johnson: I had reference to the winter election when I said Mr Pierce came up with me. The proof of the article was cut out and sent to me. I sent it in on Tuesday morning, and it was not in the first edition. It was not possible for me to see Mr Williston's card in the Gleaner of the 18th before I wrote this, I had one of his handbills.

SECOND DAY, Sept. 12, 10 o'clock, A. M.

Robert L. Thomas, sworn. I am in the employment of the Defendant, foreman of the Gleaner Office. The original of the article complained of was given to me by John Hea. The Defendant was not present, and he never saw it till after it was published. I received it about nine o'clock on Tuesday morning, 18th June, about two hours before the Gleaner was struck off. I refused to publish it as a communication, because it came so late. I put it in as an advertisement, when called upon so to do, because I thought I had no right to refuse. The proof of this article was cut out and sent to Mr Hea, and the remaining proof given to Mr Pierce when he came in. Mr Hea returned the proof, corrected; I attended to it, and went to press immediately. I cut the manuscript into three pieces, gave one to each of the boys, and took one myself, in order to expedite the work. That piece you have is the last part, and all that I could find of the original.

Cross examined by Mr Street. It is inserted among all the election advertisements. That is a half sheet of the Gleaner; it was issued on the Saturday previous to the regular publication day, to publish the speeches of the candidates. Defendant is editor, printer, and publisher, and writes the leading articles. The editorial in this paper is his; it came out on the 29th of June. The paper has a general circulation; two or three copies are sent to Canada and P. E. Island, and some to the United States. (Some accounts produced.) I know John Hea's handwriting. These accounts are in his handwriting.

George Johnston, sworn. I reside in Napan. I recollect the elections of 1842-3. I voted for Mr Williston and Mr Rankin at the first, and for Mr Williston at the second. There was a subscription list; several subscribed. I gave two loads, a ton of hay, to pay mine, of £4. I delivered it to two men in Plaintiff's employment. The reason I subscribed was because I thought the Plaintiff was led into more expense than he expected, and I thought it my duty to do something towards paying the expenses. (Here the Defendant's counsel demanded the production of the subscription lists called for by the notice. The service of the notice was admitted by the Plaintiff's counsel, but the lists were not produced.

Cross-examined by Mr Street. It was good hay. I thought there would be a good deal of expense about the scrutiny, and I subscribed to pay the election expenses.

Daniel Elkin, sworn. I reside in Napan. Recollect the elections of 1842-3; I voted for Williston. I paid £4 towards the election expenses. I paid it to the Plaintiff.

Cross-examined by Mr Street. I subscribed some time after the first election, but whether for the scrutiny or election I do not know. It was for election expenses.

John McLean, sworn. I reside in Napan also. I am a little deaf, thank you! I recollect the elections of 1842-3; I voted for Plaintiff. I paid toward the election expenses 35s. I paid it in hay and butter. The hay was put into Plaintiff's barn, and the butter I delivered to himself, I think at his own house.

Cross-examined by Mr Street. Question: Was it good English hay? No, it was American hay! It was good butter. It was for the election we agreed to help. I don't recollect hearing Plaintiff say that he was unable to bear the whole expense.

John Hea, Jun., sworn: I reside in the county of York. Am son of John Hea of this place. I arrived about an hour ago. I was check clerk for the Plaintiff in the Election of 1842-3. I was living with my father on a salary at the time. I kept his books together with himself. This is the book of my original entries. There were several charges made against the Plaintiff for the election. I can refer to them. My father used to examine the books every night when home. Plaintiff's account for the election was kept separate from their other dealings.

Mr Johnson here stated to the court that this witness was produced to give evidence of the same items proved by his father.

Judge: I don't think it necessary to go into that. You give the Plaintiff's counsel an opportunity of cross-examining him if they mean to dispute the former evidence.

John Hea, Jun., cross-examined by Mr