Editor's Department.

MIRAMICHI:
CHATHAM, MONDAY, SEPTEMBER 30, 1850.

NORTHUMBERLAND ASSIZES, 1850.

J. T. WILLISTON *vs.* JAS. A PIERCE.

SECOND DAY, Sept. 12, 2 o'clock, P. M.

Mr JOHNSON now addressed the Jury on behalf of the Defendant, and we give below the substance of his speech:

He said—The evidence on both sides of the case had at length closed, and he had no doubt they were already tired of the legal objections and arguments of counsel on either side. He knew it would be no easy task so to address them that the remaining part of his duty might not prove irksome to a Jury who had already sat for the better part of two days. He felt, however, that he had a duty to perform, and while a serious sense of that duty compelled him to refer to every point in the cause which had a tendency to guide their judgment to its proper determination, he had no doubt but a corresponding feeling would induce them to pardon him, should he occupy more of their time than was really necessary.

He had told them in the opening that this was the first action for libel ever tried in the county; and it was, if possible, more important on that account, and called for a more serious deliberation on the part of the Jury, ere they set an example which might cause the time of the country to be occupied upon questions of this nature, during a part of each succeeding circuit.

This was not one of those cases, which, by its decision, would simply affect the parties whose names appeared upon the record—or determine merely whether the weight of the Plaintiff's purse should or should not be increased. No! it was one of those few causes which, for good or evil, must materially affect the well-being of the community. The real interests of the Jury, and the whole country, were somewhat involved in the issue, because the Liberty of the Press was the real question to be tried.

The learned counsel, Mr Street, who was so much his senior in the profession, and his superior in legal skill, would, in consequence of witnesses having been called for the Defence, have the right to reply in this case; and as he knew that in such hands that right was no small advantage, it behoved him to take care that he advanced nothing which was not sound in law, and incontrovertible in fact. It became necessary, also, in order to prevent their being misled by the ingenuity or subtlety of his learned friend, that he should endeavor to imagine all sorts of arguments which might be adduced on the other side, and reply to, or expose them.

They would be told, for instance, that the Liberty of the Press had nothing to do with the question here. Now, he did not mean to assert that the Liberty of the Press gave any right to enter the private dwelling of any man, and drag before the world those domestic discontents and secrets which existed more or less in all families the exposing of which could afford no public interest, and correct no public abuse. No man could be justified in thus destroying the peace of families, and violating the privacy of the domestic circle; nor was it necessary for him to contend that the Liberty of the Press could justify an attack upon the private character of a private individual, except so far, at least, as the conduct of that individual had a tendency to corrupt the public morals, or destroy the public peace. No! it was not in a free country, where the liberty of the subject was held more sacred, if possible, than the security of the Crown,—it was not to a Jury of free men, that he would advocate a system of espionage upon private character. But he did contend that the public conduct of public men was, and should be open to public discussion—that the censorship of the Press was in such cases one of the surest safeguards against public abuses—one of the most powerful stimulants to public virtue, and one of the greatest checks to immoral example, or public vice.

It would be admitted that the soundness, as well as the safety of the Government in any country, depended in a great measure upon the general intelligence and political integrity of the people, and upon the freedom with which that people could express their opinions on the conduct of statesmen, and he would ask by what means other than the Press could political intelligence be diffused through a country; by what other means could the people be so well informed of the public conduct of public men; or how other wise could they convey to their rulers the general opinion of approbation or discontent. By this means the people were forewarned of approaching danger in time to resist or avoid it. The Press, as the barometer of the political atmosphere, gave to the helmsman of public affairs those certain indications of the coming storm, which enabled him to provide for the ship's security; and not only did the Press thus afford a warning of danger to the Government or the people, from whatever source it threatened, but as a safety valve to public feelings, it often prevented those sudden ebullitions of collective excitement, which must otherwise have proved destructive tothe whole machinery of society. Thus, when by the melting of snows, or by the mountain torrents of Alpine countries, rivers became surcharged and swollen, no mischief need be dreaded while these outlets to the sea were unimpeded, because the waters were quietly carried off as produced. But when the accumulation of glacier obstructions checked the natural flow of the waters—when those flood gates were closed, 'twas then that danger was impending, and 'twas then, perhaps, that the inhabitants of the lower countries were most in ignorance of it. The waters which had silently gathered strength among the mountains, would ultimately burst these barriers, to rush with resistless and devastating force through the fertile vales beneath. Thus, too, while the channels of the Press were open, the popular discontent found vent and outlet, producing but the effect of pointing to existing evils, or carrying them off, one by one, as they arose; but let the channels of this at once purifying and irrigating stream be closed—let the Press be shackled by the power of an arbitrary government, or destroyed by the corruption of venal juries, and woe be to that government or people, who, resting secure in the lull of unexpressed discontent, should vainly imagine all was well. Dreadful, indeed, was such a security and such a silence. 'Twas but the collecting of the waters among the mountains; 'twas but the lull before the hurricane; 'twas but that breathless, suffocating stillness, which precedes the earthquake. Public and private wrongs lay rankling in the breasts of the populace—one by one they accumulated, adding to that common tide of discontent, which, denied escape through the proper channels, and within the proper banks of political liberty, would assuredly burst upon the country in some unlooked for way, and carry destruction at once to the slave and his oppressor.

This was no silly dream, or picture of the imagination. 'Twas but the reflection of the past, supported by the proofs of history, to warn us of the future. Look back, for instance, upon the history of ill-fated France. There had the Liberty of the Press been trampled upon—again and again had it been trammelled for a time, and as a natural consequence it had again and again gone beyond the bounds of its proper liberty, till at length by the hand of power it was altogether silenced, and oppression (ever the parent of anarchy) was in this case followed by that outbreak of popular frenzy, which deluged the country with its noblest blood, and placed in power a band of the vilest and most abandoned wretches that the world ever beheld. But it was not to France alone we might look, but to every country or nation under the sun. That the liberty of the Press was essential to public liberty, was instanced in the history of every civilized country. This was well known in our parent land centuries ago. Twice, for instance, did the usurper Cromwell prosecute the same printer for daring to speak out, and twice did British Juries save the press by acquitting the printer. Again, when it was desired to destroy the Irish Parliament, or in other words, to accomplish the Legislative Union with Great Britain, the first step taken by the Government was to destroy the Irish Press. In short, there was not on the records of history a solitary exception which could add strength to the general rule, "The destruction of the Press had ever been the death-knell of Liberty."

With this conviction upon their minds, many of the best and wisest of our countrymen had bent their noblest energies to preserve the Press. The patriotism of Fox, the eloquence of Erskine, Curran, Macintosh, and others, had been manifested in this cause, and a material change had by such efforts been made in the mode of determining cases like the present. Formerly, in cases of libel, the Jury only determined the question of publication, and the Court assumed the right to say whether or not such publication was a libel. This power was assumed at a time when it was the desire of the Government to curb the public expression of opinion; at a time, too, when the Judges held their office at the pleasure of the Crown. Such men as Fox and Erskine did not fail to discover and expose an absurdity which went to make that a question of Law, to be decided by the Court, which was really a question of Intention, and therefore a question of fact for the Jury to determine. On one occasion, where Erskine was counsel for the Defendant, the Jury delivered a verdict of "printing and publishing only." The Judge wished the verdict recorded "guilty of printing and publishing, but whether a libel or not the Jury do not say." Erskine, however, insisted that the verdict should be recorded as given, which would in fact amount to an acquittal. The Court at length threatened to commit the Counsel, who in return boldly told the Court that he knew his duty as well as His Lordship knew his, and after much altercation, the verdict of the Jury was recorded, "guilty of printing and publishing only." It was by such efforts, and in the face of such opposition as this, that the rights of the Jury had been maintained, and the power of the Court restrained within its proper bounds. It was by the efforts of such men as he had named, that the Jury, and the Jury alone, had the power of deciding not merely whether the publication in this case had been proved, but whether the publication by the present Defendant, and under all the circumstances, really amounted to a *false and malicious* libel; and in so deciding they would bear in mind, that to be a libel, it must not only be such as would reasonably tend to bring the Plaintiff into public scandal, infamy or disgrace, but it must be *false in fact, and malicious in intention.*

He would therefore address himself more particularly to the case.

Who were the parties? Was the Plaintiff one of those quiet and unassuming persons, who, shrinking from public observation, had been satisfied to pass his life by his own fireside—content in the bosom of his family, and occupied solely in praiseworthy exertions to add to the comforts of his home; and had the Defendant rudely dragged him hence before the public gaze. Or was he, on the contrary, one of those who, in the very Gleaner complained of as libellous, had published an electioneering Card, calling on the public for the expression of their opinion upon his conduct and character, to be given in the most unmistakeable manner. Was he not, in fact, a public man in the strictest sense of the word, and one whose conduct in former elections at least, should be open to public discussion? If any objection to him as a representative did exist even in the honest imagination of a freeholder, should that freeholder bottle it up in his own breast, or was he not bound in justice to the public to mention it; and in justice to the Plaintiff should he not afford him an opportunity of vindicating himself, not by the circumscribed rules of law, or within the walls of the Court Room, but by the very tribunal he had himself chosen—not by the voice of 12, but that of 1200 freeholders.

The learned counsel for the Plaintiff had found fault with this publication, because it appeared at a time when the Plaintiff had put himself forward as a candidate; but surely this of all others was the most justifiable occasion that could possibly offer. If the learned counsel had his own choice as to what period such a publication would be most important to the public, most called for by the Plaintiff, or most the duty of a public journalist, and a freeholder of the county, what time would he have hit upon, if not the present? Would he wait until after the election was over to inform the freeholders of an objection to a candidate? or should he object to the Plaintiff, as a public man, twelve months before he sought to become such?

But it may be said that the charges brought in this article did not affect the Plaintiff's private character, for it would not be denied that there were some objections to character which might fairly be published, for the purpose of inducing public inquiry, and upon the grounds of public policy. Now, what could those objections be, if not such as described in this article? If the Plaintiff had been accustomed to grimacing, or in the habit of pulling wry faces; if he had never been at a dancing school; had never studied Chesterfield, or learned the etiquette of the drawing room, would the Defendant have been justified in publishing these things, on the ground of public policy? would such not be a legal libel, because it became necessary to warn the public that it unfitted the man for the office of a Legislator? Surely it would not be contended that the liberty of the Press had been secured to the subject for the mere purpose of lampooning? or that it behoved the public to be informed of any defect in manners, and yet the Press dare not hint the slightest unsoundness in morals? No! it was not the cut of a man's coat, but the shape of his conduct and character, which concerned the public, and therefore upon this more particularly should the Press convey information and warning.

He would next inquire, who was the Defendant in this action? Was he a man who for the last twenty-six years had been stirring up strife and dissension in the community, and had been enriching himself by the destruction of character? or was he not, on the contrary, one who had so conducted a public journal during that period, that he had been solicited to remain among us, from a sense of his usefulness, and a dread that some editor of an opposite character would fill his place. Like many others among us, he had been performing his duty with more benefit to the public than profit to himself; for instruction, of all other advantages, would appear to be the least thought of, and the worst paid for, in this community. He was advancing in years, with a family to support, and had yet to depend upon his daily exertions to gain a respectable livelihood. He was now for the first time dragged into a law-suit by the professed corrector of public abuses—by the very man who, at the time, was among the loudest in the general cry against men in office, and foremost to expose their misdoings. If the Plaintiff had gained his election, to what was he so much indebted as to the public prints? by what other means had the public mind been prepared and induced to demand a change? Through the Press had the Plaintiff himself plainly told us of those evils, and of his readiness to assist in removing them. Who among us had read with more avidity, and circulated with more eagerness, the most virulent attacks upon men in power, than had this Plaintiff? and while none of those men had stooped to prosecute for libel, the Plaintiff must be the first and only man who would lend himself to shackle the Press; 'twas he who sought to destroy the ladder by which he rose—to sting the hand which raised him—to stop that public breath which alone had given him political vitality.

The article in the Gleaner of 18th June was sought to be made a very shocking thing; and indeed when read with all the innuendoes and artificial decorations bestowed upon it in the Declaration, it might appear so. The Jury must not be led away by these professional garnishings; it was the custom of the profession thus to magnify by the magic lantern of the law, but they were in most cases mere dissolving views. A poor man, for instance, brought an action for 20 spruce logs and a milch cow which had been taken from him, and when he heard his Counsel read the Declaration to the Jury, they might first behold him opening his eyes in wonder, and then flush with pride as he learned for the first time what a man of wealth he had been; possessed of 500 spruce logs, 500 pine logs, 500 poplar logs, ten cows, ten heifers, ten steers, ten oxen, and in fact every species of wood, and all sorts of cattle. He would next learn that while so possessed of all this property, he had accidentally dropped it all out of his breeches some dark night, and that the Defendant had picked it up and wickedly walked off with it; till at length, ere the case was ended, the poor man's imagination would be so wrought upon, that he fancied himself the most injured mortal in existence, and unless of strong nerve, he might really be driven to despair by the sudden shock of a verdict in his favor, for the full value of his property. The reality forced upon him by the verdict had reduced him from imagined wealth to comparative poverty. And thus, no doubt, would it be with the present Plaintiff. He had learned to-day by hearing this declaration, that he had ever been a good, honest and worthy subject. Never guilty, or even suspected of the slightest impropriety, until this wicked Defendant, by publishing this abominable article, had so ruined his reputation, that not one of his friends or neighbors would hold any intercourse with him, or condescend to offer him a pinch of snuff. Such he had learned was the frailty of all earthly good. Such the fickleness of earthly friendships, that he of spotless, untarnished reputation, had been sent to Coventry, by a few lines in the public prints, over the signature of John Hea. Let not the Plaintiff take the matter too seriously to heart. Most of these direfully depicted wrongs, like perfections of character described in declaration, had been created by the magnifying powers of the law and the fertile imaginations of the pleader. He could assure him that when read in simple English as it appeared in print, and stripped of those imaginary horrors which it had borrowed from from old law books, it was really not so terrific. He would take the liberty of thus reading it in connection with the printed card, to which the Plaintiff declared it had reference.

The letter began by informing the freeholders that "they had Mr Williston's election card." Now this might be a valuable piece of information, but certainly not a libel. Next it asserted that the Plaintiff "promised and half promised a number of pretty things." Was there anything very shocking in this part of the article. What said the card? Why that "the Plaintiff was prepared to advocate, 1st, a complete revision of and reduction in the salaries of public officers." Now he was sure that the Jury would say with Mr Hea, that this was a *very pretty promise.* "2nd, a thorough reform and reduction in the expenses of all Judicial matters, and the whole proceedings simplified as far as possible." Another very pretty promise, or perhaps *half promise*; for the Plaintiff had certainly taken a strange mthod of performing it, when four days after its publication, he commenced this action. Let the Jury look at the Declaration in this case. *Four* separate counts, with a special inducement or introduction extending over a quire of foolscap, and all this upon one, and the same letter, called a libel; these four counts, in defiance of the last winter's law, which declared that there should be but one count for one cause of action.

Lawyers were paid by the folio; each folio was 100 words—that Declaration would cost one shilling per folio to draft—then there would be a copy for file in the Clerk's office—another copy for the Defendant's Attorney—then it must be copied, and again engrossed on parchment, to make that long record, and then should the Plaintiff succeed, there would be another copy, and again engrossed on the Judgment Roll. This the Jury would at once see was for the purpose of "*reducing expenses and simplifying judicial proceedings*" as promised in the Plaintiff's Card, and for the same patriotic purpose; and in order to fulfil the promise, 30 Jurymen, with all the suitors and witnesses in this and other suits, had been kept in attendance on the court for two long days, during this important trial, while an over-ripe harvert was suffering through the country.

The article complained of next stated "that it only remained for the plaintiff to swear that he would perform his promise, &c., and then the writer would have no dependence in his performing them; and that he would promise anything, even to get a Bill passed entitled a new way to pay old debts." Now, he would take the 3rd promise in Plaintiff's election Card, to explain this part of the "*libel.*"—Plaintiff says, "3rd I am prepared to have a law made whereby all *artificers, mechanics*, and *laborers* shall be at liberty to demand and receive their wages in Cash, notwithstanding the contract may have been made for payment in goods, &c." Now, was not this a half promise.

Suppose a farmer, or a lumberer coming to market with his commodities, seeking cash to pay his men, as by this promised law they would have to do, the merchant would at once say to such farmers—"Mr Williston's Bill was made to bind you but not me. *You must pay your men in Cash*, but the law does not say that *you must be so paid.*" It is but a half bill." Was it not manifest that such a law could never be carried out; and as it was a promise not possible to be performed, was not Mr Hea justified in saying that if the Plaintiff promised to do impossibilities and then swore to that promise, he would have no dependance upon the performance. This was an every day expression.

If a man told them something which their own judgment and common sense taught them to be impossible, how common was the reply, "I would not believe you if you swore to it;" and in saying this it would never be construed that they intended to accuse the person of false swearing, or any intention to swear false, but simply to convey