their opinion that the thing was impossible. Then again, as to its being a "new way to pay old debts," why, surely it would be evident that did a Bill pass to enforce cash payments, it would, in this *part of the world*, be a new way to pay old debts, or any debts; *it would be quite a new thing in this County*. So far, then, the Card of the Plaintiff must itself prove the truth of the "*libel*." They were "pretty promises and half promises;" *they were impossible promises*, and therefore could not be believed, if sworn to. But the 3rd, of all others, would be considered a half promise by Mr Hea, because it only promised cash to the mechanic and laborer. Had the Plaintiff gone further, and promised that the Bill should compel him, who made use of another man's flour and pork, to feed his own voters, and of horses, hay and oats at an election. To pay for these in cash, or to pay for them at all. He would have no doubt that the writer of that article would have joyfully proclaimed it a whole promise on the part of the Plaintiff, "*no matter to what extent he himself should suffer by its operation.*"

Mr Johnson, after remarking on other promises in Plaintiff's card, next read the remainder of Mr Hea's letter, and contended that by the evidence of Hea, its truth had been sustained.

The letter accused the Plaintiff of being a dishonorable, dishonest and tricky man, and not to be trusted, and alleged the reasons for so stating, that the Plaintiff had incurred Bills to the amount of two hundred pounds for the election, which he promised to pay, and that he subsequently denied those promises. Now, did he not mean to contend that promising to pay a debt, and not doing so, would amount to dishonesty. He knew well that there were many cases where the inability to pay, would cause the debtor more annoyance than it could the creditor; but he did contend that denying the debt was dishonorable and dishonest. Had the Plaintiff said, "Mr Hea, I owe you, but am unable to pay," he might well hold up his head in the community, and assert that poverty was no crime, but the intention of the Plaintiff in denying the claim was clearly shown by the course pursued on the trial. By his counsel he had said, "I will not permit you to give evidence of meat and drink furnished to my voters by directions, because you, in supplying, and I, in contracting for those supplies, were violating the laws of the Province. For the purpose of preserving the freedom of election, the law has shut up that avenue to the hearts of the freeholders, which lies thro' the stomach. And I, a magistrate of the county, whose duty it was to enforce the observance of the laws upon others, and of course to observe them myself, was guilty of a gross violation of those laws when I induced you to furnish meat and drink to the freeholders; and now I will take advantage of my own wrong. I will make one wrong save me from the consequences of, or justify another, and will basely tell you that when I made those promises, I knew they were illegal, and in no way binding upon me." In the name of Heaven, could the man who thus acted, and thus by his conduct on the trial took advantage of those acts—could such a man contend that it was libellous to call him "dishonorable, dishonest, and tricky, and not to be trusted." There was a time when debts of honour were considered more binding upon conscience than debts of law, and there was much force in thus reasoning. If, for instance, a man owed two sums, one a debt of honor, which could not be enforced at law, and another a legal debt, which subjected him to an action, and his body to imprisonment, if there were no means of paying it; a man of high and honorable feelings might well reason thus —"If I pay the legal debt, I escape all danger to my person or property, the other creditor cannot sue me; but would not this be dishonorable cowardice on my part? No! I will first pay the debt of honor, and take in the loss of my property or liberty the consequences of my own improvidence or misfortune, in incurring debts which I am unable to liquidate. It shall never be said that I shrunk from the consequences of my own act." This was the old mode of reasoning, but the refinement of latter days had produced another code of conscience, which submitted everything to be governed by the new rule of expediency and self-preservation. Was it less dishonorable for a man to deny a just debt, because he could screen himself under the strict letter of the law? Was it less tricky for a magistrate, knowing the law, to make a bargain which he knew could not be enforced against him, but of which he knew he would have the sole advantage? He denied the power of the Legislature, omnipotent though they were called, to make any rules to restrict those feelings of honor or honesty which had been written on the heart of every man by the finger of his God. Conscience, 'twas true, might for a time be silenced by evil habits, and the force of pernicious example, but never entirely erased from the soul; sooner or later it would assert its power. In the day of adversity, in the hour of sickness, or on the bed of death, it would be heard; and the longer it had been silenced, or the more its dictates had been despised, the more dreadful would be its reckoning. At such a time as this, how altered would be the position of the persecutor and his victim, when all the terrors of an evil conscience, and all the miseries of a dreaded eternity, were then condensed and centered in one dark and dismal hour of horror and dismay. In such an hour as this, would it not be a mockery to offer the balm of an Act of Assembly, or seek to appease the troubled conscience by the blasphemous consolation of Legislative absolution.

It might next be contended that Mr Hea knew, when he furnished these supplies, that the Plaintiff was unable to pay for them; for it would not be denied that such had been furnished, nor could the Plaintiff seek to impugn the evidence of Hea, whose son had been placed upon the stand in ignorance of the testimony which had been given by his father; yet the Plaintiff's counsel declined to examine him upon the accounts, and thereby admitted what he had proved. No! it would rather be attempted to evade than deny such evidence, by seeking an excuse for the non-payment of these bills. The Jury would see, however, that evasion could not help the Plaintiff; it was not the non-payment of the bills, but the denial of his promises, upon which the charges had been founded. Unable to pay them! would it be said. Why, his own witness, and his brother, had sworn that the Plaintiff had always paid his honest debts. Poverty could be no excuse for a dishonest denial of a claim. Why did not the Plaintiff admit the deb', and stand prepared to meet the consequences of non-payment? It was adversity which tried the man. While in the sunshine of prosperity, and all went smoothly on, it was easy to keep up the appearances of integrity. There were many men who would pay their debts for the sake of popularity, and to shun the scoffs of their fellow men, and who yet possessed no spark of real integrity. But it was he who, in the dark hour of poverty, when the clouds of adversity closed around him, and who yet stood firm in the integrity of a well grounded principle, prepared to yield the last shilling to his creditors, or if need be, to give up that dearest of all earthly blessings, his personal liberty. 'Twas such, and such alone, who were really honest.

If, then, by the evidence of Hea, it had been shown that these promises had been made, and subsequently denied by the Plaintiff, had not the Defendant proved the truth of this article? and if any injury had arisen to the Plaintiff from the publication, it must in such case be attributed to his own conduct.

He would next enquire into the motives which had induced this action. Was it for the purpose of vindicating character? If the charges had really been false, why was the action not brought against the writer instead of the present Defendant. One witness had said that Hea was a man of straw. Was the action then brought as a pecuniary speculation. Was there a Bill of costs to be looked for by the Attorney on one hand? and an amount of damages to be sought as a balm to the wounded feelings of the Plaintiff on the other. Had the Plaintiff really made use of the subscriptions to the former elections, for his private purposes, and thus profited by his defeat, and was he now, when 'twas said that his return had only cost him 1s. 6d—expecting to make a pecuniary profit out of this election? If not, why did he not proceed against the writer? If the Plaintiff had always paid his honest debts had not Hea always paid the costs and damages in suits against him? He not only objected to the manner of bringing, but the mode of conducting this suit. Was it fair in the attorney to call upon the Defendant before the action, and get from him all the information he could, without saying one word of his intention to prosecute him. To leave him with a promise that he would see him again, and on the same day, without calling or giving the slightest notice, to send the sheriff with a writ in this cause; and was it fair that his counsel should now seek to make the Defendant suffer not only for his own act in publishing the article, but for all the odium which they could manage to cast upon its author. He knew by the manner of cross-examining Hea, that such was intended; and that the violence practised in former elections, would, if possible, be brought forward to injure the Defendant, who had no part in it. He did not stand there to excuse violence. He had ever discountenanced it by his conduct, and opposed in his person, at the risk of life and property; and he would do so again should occasion require.

He was not there as the advocate of Mr Hea; but as counsel for the Defendant, he begged the Jury would not allow any remarks which might come from his learned friend, respecting Hea's feelings towards the Plaintiff, to affect the interests of his client; and if it should be argued that Hea had acted improperly in former elections, let them not forget what the Plaintiff's own brother, William Williston, had proved, that in all those acts the Plaintiff was himself a party. That Hea and the Plaintiff had been, during the whole of those elections, in constant consultation. That those acts, if improper, were for the Plaintiff's benefit, and with his express concurrence, and that the Defendant had nothing to do with them. If it should be offered as a reason for prosecuting his client, that Hea was a man of straw, he would ask, who had made him so? Had the Plaintiff paid his bills to the amount of £200, who would then be the man of straw? It was really cruel, first to deprive a man of his just claims, and then to taunt him with the poverty they had themselves created. Another ground would probably be taken by the Plaintiff's counsel, in answer to the evidence given in the notice of Justification. It would be said perhaps, that the Plaintiff had paid bills to more than the amount proved to have been received on the election subscription; and this he admitted had appeared by the rebutting testimony of the Plaintiff; but he contended that such could not justify his denial of Hea's claim. It could only go to shew that he had not the means to pay them, while it, at the same time, proved that he had acted unfairly in not paying a proportion to all. Many of the claims paid were for meat and drink to voters, and equally unlawful with that portion of Hea's bills which the Defendant had not been allowed to prove. And if the Plaintiff had really paid more than he had collected, why were not the lists produced to prove it. They had been called upon by notice to produce them, and the lists had been traced into their possession. The fact was then solely in their power to prove, their not having done so, was a strong argument that they could not; and he was justified in asserting that the truth of the libel had been clearly made out in the Defence.

He would next contend that the *absence of malice* had been so clearly shown by the evidence on the part of the Plaintiff, and by that of Robert Thomas on the part of the Defendant that on that ground also he was entitled to a verdict. The Editorial in Gleaner of 29th June, could in no way rebut this defence. It was after this action had been brought, and so far from shewing any existence of ill-feeling on the 18th June, when this article had been published without the Defendant's knowledge, it did not manifest the warmth which might have been expected from a man, who had seven days before been sued, without the slightest notice, and for the acts of another person. He contended, therefore, that instead of the publication by the Defendant being a *false* and *malicious* libel, the evidence had proved it to be *true in fact*, and utterly void of *malice in intention*; and that in either case, the Jury would, under the direction of the court, be bound to find a verdict for the defendant. He contended also, that so far from the Defendant acting improperly in publishing it, he was bound in justice to the public, who had supported him, and whose servant he was, to inform them of the charges, and the grounds upon which those charges had been made.

In closing what no doubt had been a tiresome speech, he would not (as might be expected) ask the forgiveness of the Jury for the time he had taken; but should rather apologise to his client, the Press, and the country, for not having more ably defended their rights. (Here the Plaintiff interrupted the counsel, exclaiming "Vile slander.") Mr Johnson continued:—Slander! did the Plaintiff in this action accuse him of slander? He whose tongue had been famed for vilifying all who came within his reach; not those only who had been guilty of praiseworthy temerity in daring to differ from him—but whose best friends had more than once been taught to repent the sin of advocating his cause? Did he talk of slander, whose language as a Magistrate on that Bench had caused the County to blush for the honor of its rulers? He whose best excuse for what he uttered would be found in his ignorance of its meaning? Verily, the Plaintiff should, of all men, be the last to hint of a *foul tongue!*

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J. A. STREET, Esq., Q. C., then rose to close the case on the part of the Plaintiff, and said:—

They had heard a very long, and no doubt very eloquent speech from his learned friend. He had favored them with a very learned disquisition upon the Liberty of the Press; he had gone back to History, and referred to the Patriots who had fought for that liberty, and he really thought at one time that he would have gone back to the Patriarchs. He had next ascended the pulpit, and given them quite a sermon upon morals, and then again he appeared to fancy himself upon the platform of the Mechanics' Institute, for he gave them quite a lecture on Metaphysics. He really felt very much edified, and no doubt the Jury had been highly delighted with the eloquence, Historical research, and astute reasonings of his learned friend, who was gifted with an excellent memory, and could give them the benefit of his reading. But in fact the speech of his learned friend was something like the law he had read—it was very good indeed, but did not apply to the case. It was however intended to influence the minds of the Jury in favor of his client, and to lead them to believe that he was himself a very moral and religious man—his client an injured saint, or the guardian angel of the press—and the Plaintiff a very wicked person. He was sure however that the Jury would not allow anything which had fallen from his learned friend to influence them in the slightest degree, or prevent them from doing justice to the Plaintiff, who did not profess to be anything more than a man like themselves, but claimed the benefit of those laws which had been made for the protection of all.

The liberty of the press was a very good thing, and should be guarded by the Jury.—But the liberty of the press did not justify attacks upon private character, and if the Defendant had thought proper to publish a false attack upon his client, he must take the consequence.

The plaintiff was a respectable man, a Magistrate of the County, and had recently been returned to represent it in the Assembly. A majority of the freeholders, or at least a sufficient number to secure his return, had expressed their confidence in his integrity and fitness for that responsible situation, although the Defendant had thought proper to publish an attack upon him, which was calculated to injure him in public estimation. It had been said that the Defendant had for many years conducted a public Journal in the County, and that he had been called upon to reman in it because another might take his place who would manifest less discretion; but this could furnish no ground of defence in this case, on the contrary, it tended to make the libel more invidious, because the fact of the paper being moderate in its character, and not in the habit of publishing attacks upon private individuals, would make the public more apt to believe that this publication was true, particularly in those places where the Plaintiff was not known. Under these circumstances it was the duty of the Plaintiff to bring this action: he owed it to himself, to his family, and to those freeholders who had honored him with their confidence and suffrage, thus to vindicate his character, and prove to the country that he was not the person which the Defendant had represented him, and if he did not do so, this libel might be cast up to his children, and made the means of ruining their prospects in life. And he owed it to the Country, because, if he did not by this action vindicate his character, it might destroy his utility as a representative, and very much affect his influence in the House of Assembly, by which his constituents would suffer as well as himself. Although his learned friend had endeavored to influence them by telling them that it was their duty to defend the liberty of the Press, and that the whole question was for them to decide, he would tell them that the liberty of the Press had had nothing to do with this question, unless, indeed, they would preserve that liberty by discountenancing the licentiousness of the Press. And although his learned friend had expressed himself so confident that the Jury would give a verdict for the Defendant, yet the course which he adopted in taking all sorts of objections to the evidence, and requiring the Plaintiff to prove that the Defendant was the publisher of the Gleaner, and those facts which every body knew to be true, made him doubt his learned friend's sincerity, and proved that he was not so confident as he would have them believe. Why had he moved for a non-suit, and took up several objections to the Declaration, and argued that the evidence did not make out the Plaintiff's case, which his Honor over-ruled? Of course his learned friend had a right to do so, but if he was satisfied that he had good defence to the action, it was unnecessary for him to take so much trouble to keep the case from the Jury. He had failed in doing this, however, and he then opened his case, and took up four separate grounds of defence, which was another proof that his learned friend was not quite sure that he had a good case; for if one defence was good he would not have thought it necessary to take up the other grounds. Then again, these different defences were inconsistent with, and contradicted each other. First, he said this publication was justified, because the Plaintiff was a public man, and therefore the Defendant could say what he pleased of his conduct and character. But his learned friend knew the law too well to believe that the Court would support him on this ground. The acts of public men, when public acts, were certainly open to be canvassed by the public, and in the public prints; but it was not because a man held a public situation, that his private character was to be assailed, and all sorts of abuse and falsehoods showered upon him, to gratify the vindictive malice, or personal feelings of his enemies. What had the public to do with the private quarrels of the Plaintiff and John Hea? the Defendant well knew that Hea had been a warm supporter and a professed friend of the Plaintiff, so long as it suited his interest to be so, and that he would have appeared so yet, could he gain anything by it. He knew, too, that Hea was a violent man, and he should, therefore have been more cautious in publishing anything from him, which reflected upon the character of another. The time, too, at which this publication had appeared, instead of being any justification, made the Defendant more culpable, and was an aggravation of the offence. It was the very time when it was most calculated to injure him, and to thwart the praiseworthy ambition of his client, to gain the confidence of the constituency, and no doubt had a prejudicial effect in some parts of the County, though it had not succeeded in preventing his return, for which no doubt it had been intended.

The next ground of defence which had been taken by his learned friend, was that the Defendant had published the libel as an advertisement, with the name of the writer, and had been paid for it. Now, his learned friend knew that this was no excuse, but intended to mislead the Jury by the ingenuity of his arguments, for his learned friend was a bit of a phrenologist, and professed to know a good deal of human nature, which no doubt he did. But the law was very plain upon this point, and the Defendant was liable as the publisher for *all* that appeared in his journal, whether he saw it before it was published or not. He published that journal for the purpose of making money by it, and it was his duty to see that no person suffered by his negligence or want of attention. If he chose to put another person in charge, he was liable for the consequences of that person's act; and the very fact of his being paid for publishing it made the case worse, because he had chosen to make himself the means of injuring the Plaintiff for the sake of pay, and in a way which could not have been done, except he had allowed his columns to be bought for the purpose. Why, if this could excuse the Defendant, every man in the community might be falsely accused of the most dreadful acts, by the most worthless characters, and persons who were not worth sueing, provided they could raise a few shillings to pay the printer for an advertisement. It was equally absurd to say that the writer's name was any excuse, because the libel would be circulated where neither the writer nor the Plaintiff were known, and persons who knew nothing of their characters or dealings, would read the article in a respectable journal, and the more