gross the accusation, the more likely would such persons be to believe it.

But his learned friend, finding that this defence could not be sustained, and that His Honor would feel it his duty to state the law to the Jury on this point, next took up the ground, that there was no malice on the part of the Defendant, and therefore the Plaintiff had failed to make out a case. Now, malice could only be proved or disproved by the legal effect of the libel, and if the Defendant published an article which he must have known had a direct tendency to injure the Plaintiff, and which, if believed, must utterly ruin his character, the law would not allow him to say there was no malice on his part, for every man must be presumed to intend that which would be the natural consequence of his own act. What benefit could it be to the Plaintiff if, after the Defendant had ruined his character, and caused the public to shun him, and subjected his children to the taunts and jeers of the world, he should say to the Plaintiff, "True, I have published these abominable charges against you; I have circulated them through all parts of the world where my paper was read, but I did not know that they were false. I am sorry, very sorry, that I did not act with more caution, and take care that I was only circulating the truth; but I had no desire to injure you, when I printed it, and therefore you must suffer for my carelessness in thus heedlessly tampering with your character."

But so far from it appearing that there was no malice on the part of the Defendant, or that he would not have published the libel had he seen it before it was printed, the Defendant's own conduct proved the contrary. When he was called upon by the Plaintiff's attorney before the action was commenced, he said he published it as an advertisement, and thought he was bound to do so; and then instead of stating in the next Gleaner that the article had appeared without his knowledge, and that he did not give it his concurrence; he, on the contrary, published an editorial in the Gleaner, of 29th June, which had been read in evidence, wherein he adopted the article, and justified the publication in his paper, and that in such a way as to prove that there was a strong feeling on his mind against the Plaintiff. This editorial completely answered the attempted defence that malice had been disproved.

His learned friend, however, was determined only to be driven back inch inch; and he no sooner had to abandon this ground of defence, than he took up that which, in point of fact admitted that the article was a *libel*, and proved the existence of malice on the part of the Defendant; because in this ground he said, "I did publish this article, and I published it because it was true." Now was not this adding insult to injury. First to print a most outrageous attack upon a man's character, and circulate it through the country, and then when called to account for it to come into Court and say, "I will prove the truth of it.—I will prove that you are a worthless character, that you are a 'dishonorable, dishonest and tricky man, not to be trusted,' that you are not fit to live in a respectable community."—For if that article were true, the Plaintiff would be utterly worthless.

Now he did not mean to say that if the truth were established, the Plaintiff should recover damages, but he did mean to say, that as on the one hand establishing the truth would make the Plaintiff so utterly worthless, that no damages could be given, and the Defendant should have a verdict; so on the other, if the Defendant made an attempt to prove it and failed, this should very much increase the damages, because it was another attempt to destroy the Plaintiff's character, and was a positive proof of the malicious intention of the Defendant. He would first call their attention to the article itself, which his learned friend had endeavored to justify in his speech, and by comparing it with the Plaintiff's election Card (here the learned counsel read and commented on the article). Could any man read that, and not consider it a most malicious and unjustifiable attack upon the Plaintiff's character as a man, and one which, if believed must do him a very serious injury in public estimation? why, the witness, Mr Caie, a Gentleman very capable of judging, considered it a very defamatory article, and the witness Murray, proved that it had the effect of damping his exertions in the Plaintiff's election until he heard that he had brought this action.

His learned friend had remarked upon the promises in the Plaintiff's election Card, and endeavored to turn it into ridicule, but every body knew that it was customary and quite right for a candidate to explain his political views to his constituents before the election. His learned friend and himself had done so, and men would differ more or less. He and his learned friend had differed on some points, and it was not surprising if the Plaintiff's views did not altogether agree with his learned friends or his own. But this could not justify an attack upon the Plaintiff's character. Mr Hea, no doubt would have been better pleased if he had got all those exorbitant charges in his bills paid, but he did not expect when he supplied them that the Plaintiff would have to pay the amount. The Plaintiff he was sure, had lost a great deal of money by those elections, for he (Mr Street) knew too well, he was sorry to say, that elections were expensive things.

It was true that Hea had sworn that he had no interest in the suit, and that he had not indemnified the Defendant, but it was very clear that his feelings must be enlisted in the matter, though not legally bound. He had written the article, and got the Defendant into the difficulty, and he felt anxious no doubt to get him out of it if he could, and felt interested to justify himself for having written the libel, by proving the bills, and that the Plaintiff promised to pay them. But if Hea had any good claim against the Plaintiff, and he refused to pay him in 1843, it was remarkable that he should continue to deal with him and settle his accounts every year since, and that the balances of these accounts were sometimes in his favor and sometimes in favor of the Plaintiff. All this had been shown by the Plaintiff in rebutting the Defendant's evidence; and this, together with the fact that the Plaintiff had paid election accounts to an amount far exceeding anything he had received on the subscription lists, completely overturned the defence of justification. He was sure, therefore, the Jury would say that this was a most malicious and libellous attack upon his client, and that so far from being justified by the evidence, or anything advanced by his learned friend, it was only made more culpable by the attempt to justify it.

The Defendant complained that the action should be brought against Hea, and not against him. But had this been done, his learned friend would then have said. "Oh! you brought this action against Hea, because you knew if you sued the editor, Hea would have proved that it was true." But the Plaintiff has given them the benefit of Hea's testimony: and brought the action, as he had a right to do, against the man who gave publicity to the libel.

He had no doubt the jury would do justice between the parties, and in doing justice, give him a verdict for such damages as would recompense him for the injury he had sustained, and be a useful lesson to the Defendant and make him more cautious of what he published in his paper for the future.

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His Honor Judge PARKER next addressed the Jury. He said—This was not an action of frequent occurrence, but one which any person who considered himself aggrieved by written or printed slander had a right to bring. There was a distinction between verbal and written slander. Verbal slander, to be actionable, must charge a man with some crime for which he might be indicted, or o something which tended to injure him in his trade or business, and then the law made it actionable without showing any pecuniary damage, or it must be something which had caused him a pecuniary loss, which he must allege and prove on the trial. But this was not the case in libel. Anything written or printed which would bring a person into public scandal, infamy, or disgrace, would be a libel in law, from which a right of action would arise.

Now a good deal had been said by the counsel about the Liberty of the Press, and it was true that the Press was an important and powerful instrument of doing good, but it might also do much harm; and perhaps the best mode of securing the liberty of the press, and making it useful, would be to prevent its licentiousness. They had been told, too, by the counsel for the Plaintiff, that he was a magistrate, and a representative of the county, and felt bound to bring this action. All this might be very true, but the question for the Jury was mainly whether he had a right of action.

Now, the Plaintiff complained that the Defendant, who was the printer and publisher of a paper in this county, printed and published this article reflecting upon his character (here his Honor read the article). The declaration contained four counts, but the Plaintiff could only go on one of them and he had chosen the first count. The Defendant first denied the allegations in the Declaration which compelled the Plaintiff to prove them, and then he gave notice under the Act of the Assembly that he would prove the truth of it; and next, that it was published without malice and as an advertisement, with the name of the writer. This last part of the notice offered no defence. There is no law yet which exempts the editor from liability in case of an advertisement. Some steps were being taken, he believed, to make a provision of this nature in Great Britain and the United States, but nothing of that kind had been done here; nor could the Defendant justify himself because it was published without his knowledge. This might affect damages, but was no defence. He was not compelled to publish an advertisement; if he had been, it would be a difference.

The points for their consideration were—

1st—Did the Defendant print and publish this article.

Next—Is it libellous.

This was a question for the Jury as the Defendant's counsel had argued; but the Jury were to be governed by the rules of law, and determine whether the article be of that character which the law made a libel.

The next question was whether it was a privileged communication, and if not whether it was true, for if true, the Plaintiff must fail in his action; but this lay upon the defendant to prove. He did not think it was privileged. He did not wonder if the Defendant's Counsel felt embarrassed in the cause. He had manifested a great deal of ingenuity in conducting the defence. He put it to them if the article could allude to the Card published in the same paper. Now it did appear a little singular that both should appear in the same paper, but Candidates generally put out Cards, and it was fair to presume that this was the one, no other having been proved. The Plaintiff had proved the publication. Had they any doubt of the character of the article. He did not think there were any doubts. It certainly brought grave charges, it did not support the innuendo of false swearing nor did he think that necessary. They could only give damages for what the article really did mean. It had been argued that malice had been disproved, but if a person published a libel, the law made it malicions; friendship could be no answer. If a friend published a defamatory letter of him, would that be any answer if done intentionally. He thought the Editorial in the Gleaner of 29th June, prevented the Defendant from saying there was no malice. Had he expressed sorrow in that, and stated that it was without his knowledge, it might have been different, but he did not see how it was possible to disprove malice, it was a question of intention, and this was not a privileged publication.

The Defendant being a public Journalist, was no excuse. The paper appeared to be conducted in a creditable manner, had a considerable circulation; but this would make it more injurious, because it would give the charges more weight. Then, editors frequently published personal attacks, to increase their circulation, and they might make more in this way than they would suffer by actions. He thought the Plaintiff had made out a case, unless the Defendant had made out the Justification. Now, Hea attempted to prove that the matters were true. He told them broadly that they were true; and if they believed thet they were, then the Defendant had made out his Defence; but they must take the evidence which he gave, and see if it was proved by that. Did they believe that election bills were incurred with Hea; and next, did the Plaintiff make himself liable? There was nothing in his mere character as a candidate which of itself could make him liable, unless he promised, or they were given by his request. He had felt bound to shut out evidence of articles which were contrary to law. But Hea had proved others to the amount of £56, and said they were furnished by Plaintiff's directions and that he promised to see him paid. Now it was a question whether they were not furnished under expectation that it would be paid by subscription, and not by the Plaintiff. And the circumstance of accounts between Hea and Plaintiff for several years after, and the large amounts settled between them, was strong to shew that Hea did not look to Plaintiff. But Hea told them also that Plaintiff promised to see him paid and afterwards denied, and that he received some of the subscription. And Plaintiff had proved that he paid more election bills then Defendant had proved that he received. 1st then, did the Jury think that there was a legal liability on the part of Plaintiff to pay Hea, and if not, did Plaintiff receive subscriptions for this purpose and apply them to his private use. If they were satisfied that notwithstanding promises, he did not make any effort to pay Hea it would prove the truth so far. And then did they consider that such would justify the allegations contained in the article. This question was for them to determine. If they did not believe these things, then there was no justification. If they did believe it, and that such would justify the whole of the libel in making the other charges the Defendant was entitled to a verdict. Should they come to a conclusion that the article was not justified, the question of damages was for them, and there were many circumstances which should weigh with them—the Defendant's ignorance of the publication—the fact of its being an advertisement—and the considering himself bound to publish it—and other circumstances. But the main question to be considered, he thought was whether the publication was justified.

The Jury retired, and after an absence of two hours returned, and by Daniel Witherall, the foreman, delivered their verdict for the Plaintiff, with TEN POUNDS damages.

The Damages were laid at ONE THOUSAND POUNDS.

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We conclude the report of our trial for Libel. Every care has been taken to render it as faithful as possible. If, however, anything of consequence has been omitted in the evidence, speeches, or charge of the Judge, we shall cheerfully correct it.

## OUR LIBEL CASE.

The Press, as we anticipated, has taken up the subject of our late prosecution, and well they may. Mr. Williston has of his own free will, thrust his head into a hornet's nest, and he will discover—if he possess any feeling—that his position as a public man, will not be a very enviable one. This attack on the Liberty of the Press, (for such it is, let interested parties say whatever they please to the contrary) will make our contemporaries look on him with suspicion. He will be watched, carefully watched; and as he has *promised* to correct so many abuses, and perform so many wonderful things, opportunities will not be wanting in his career as a Representative, to show him up, and make him feel their sting.

The last number of the Morning News has the following remarks:

"*Trial for Libel.—A thin skin Member.*—Our cotemporary of the Miramichi Gleaner has been sued for Libel by Mr. John Williston, of Chatham, and the damages laid at *One Thousand Pounds*—because Mr. Pierce published an advertisement from Mr. Hea, at the late election, reflecting on Williston's conduct in sundry particulars. The trial came up last week—Judge Parker on the Bench—which lasted two days, when a verdict of *Ten Pounds* was returned by the Jury. If the people of Northumberland wish to sustain the Freedom of Expression through the Press, *they will pay the amount and also the costs*—otherwise they cannot expect Mr. Pierce to use his paper with any thing like freedom. As to Mr. Williston, he will have to get a new cuticle upon him, when he goes to Fredericton—for he will find enough opposition in his public life, whether in the House or out of it, to drive him into hysterics. The idea of a public man blanching from the remarks of an advertisement with a person's name to it, and then coming down upon the Editor instead of the advertiser, is supremely ridiculous. We pity him. Northumberland—sustain your Press!

"To show what sort of a man this Williston is, we copy the following from the Gleaner:

"'Mr. Williston has exultingly boasted, and on one particular occasion in the public street, to a party whose near connexion to us should have been a protection, and would have been to a gentleman or to a man of any feeling, *that he would ruin us.* Not that we had published Mr. Hea's advertisement, but that we had allowed a correspondent under the signature of Punch, to criticise his acts as a Magistrate. Here was the gist of our offence.'

"If this is the sort of member that Miramichi has returned to the Legislature—a man who seeks to *ruin* another—we think we shall have to watch him next winter, and see whether he is going to ruin himself or not, in the House of Assembly.

"Northumberland—sustain your Press! Pay the damages if you respect your Publisher, and your own Freedom of Expression. If not, then our cotemporary must, in his future writings, act as becomes a *private citizen* and not a PUBLIC JOURNALIST. Mr. Pierce says:

"'One thing we will tell him, and we have no doubt the information will be received with much gratification—that the result of this prosecution will tend materially to destroy our *independence and usefulness* as a Journalist.'

"☞ NORTHUMBERLAND — SUSTAIN YOUR PRESS! £☜"

The Observer thus briefly alludes to it:

"Week before last, an action for Libel, brought by J. T. Williston, Esq. against Mr. Pierce, Editor and Proprietor of the Miramichi Cleaner, was tried at that place, before His Honor Judge Parker. The libel was contained in an advertisement under the signature of John Hea, calling the attention of the Freeholders to an Election Card of Mr. Williston, and making certain charges against him. Mr. Williston laid his damages at £1000 the Jury gave him *Ten Pounds!* The plaintiff's case was conducted by J. A. Street, Esq. Mr Pierce was most ably defended by John M. Johnson, Jun. Esq. one of the newly elected Members for Northumberland County. Surely the people of Northumberland will make up the amount of damages and costs to Mr. Pierce, that he may not be a loser by the transaction."

The following paragraph is taken from the Courier.

"Last week an action for Libel, brought by J. T. Williston, Esq. against Mr. Pierce, Publisher of the Miramichi Gleaner, was tried before His Honor Judge Parker. The damages were laid at £1000—the Jury gave £10. We presume Mr. Pierce will be held harmless in the matter as he ought to be."

The following is taken from the Carleton Sentinel:

"The Editor of the Miramichi Gleaner has been prosecuted by John T. Williston, Esq. for Libel, he having published an advertisement over the signature of "John Hea," containing certain charges against the character of Mr. Williston. The damage was laid at *one thousand pounds*, the verdict of the Jury was *ten pounds*. The verdict has taken us for one, by surprise, we having been of opinion that a party signing his name to an advertisement was alone responsible. It appears, however, by this verdict, that an Editor may be held liable for every article which appears in the columns of his paper. We have more to say on this subject, and shall publish the Gleaner's remarks next week."

We obtained by the mail on Saturday a Letter from a friend in Westmorland. The remarks of the writer in reference to the Jury who sat on our late Libel case, are too pungent, and the picture he draws of our opponent, is rather too "*spicy*" for the columns of the Gleaner. He concludes his communication as follows:

"I am convinced there are still enough men of spirit in the country who will come forward and contribute their quota towards keeping you harmless in the matter, and thus shew that they will not say *amen to the verdict, which must Gag the Press.* To show my sincerity in this belief, I now inclose you *One Pound* for that object; and should there be any need of repeating the thing, you may again hear from one of the men of

WESTMORLAND.

We thank our correspondent for his kindness and sympathy.

ERRATA.—In the report of the trial, page 389, 3rd column, 3rd paragraph, 3rd line, for "*private* character," read *public* character. Fourth column, 3rd line, for "dropped out of his breeches some dark night," read, breeches *pocket* some dark night.

☞ For remainder of Miramichi Head, see page 386.