

*Trial in Chancery
in the Things Bench*

The SAINT JOHN GAZETTE.

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LAW INTELLIGENCE.

COURT OF KING'S BENCH, MARCH 6.

LIBEL.—CLAYTON V. ATKINSON.

Mr. GARROW opened this case with great force and effect. He said that the Plaintiff was a very respectable professor of the law, a Solicitor, resident at Newcastle-upon-Tyne, and he was most reluctantly obliged to come before a Jury, and submit his case for their consideration, which indeed he could not avoid without a surrender of that which was most dear to him, his character. It would appear, that there never was a more respectable Plaintiff before the Court, for he had exercised his profession for 30 years with unimpaired purity, and had met the gratifying approbation of all who knew him—not was there ever a man who had been more unworthily and shamefully insulted. He had married the sister of the Defendant, who was a man of very large fortune, which he had made in India, and returned to England in 1804. The Defendant and his relatives, among whom was his sister, the Plaintiff's wife, were interested in the estate and effects of the late Mr. Richard Atkinson, who had very extensive, but very complicated concerns in the West-Indies, and the late Mr. Benfield had a large claim and incumbrance on that property.—Mr. Clayton took an active share in disentangling the estate of Mr. Atkinson from its embarrassments, and had the aid of one of the most intelligent as well as the most honourable of English merchants, one who was much too well known to render it necessary to do more than pronounce his name, to carry with it every idea of perfect respectability—he spoke of Sir Francis Baring. This Honourable Baronet was well acquainted with the affairs of the late Mr. Atkinson, and with the conduct of Mr. Clayton, the present Plaintiff, in the share he had taken in arranging some of them; who had the good fortune to have the entire approbation of Sir Francis Baring on that occasion, and higher praise nobody could have than the approbation of so distinguished and esteemed a person. The Defendant, Mr. Atkinson, however, had conceived a malicious dislike towards Mr. Clayton, the husband of his sister, and the father of 11 children by her; he had most shamefully and scandalously abused him, in a letter written to his own brother in Jamaica, for which he had now evidence. His name was not to go through the disgusting detail of the libel, but should read a few extracts from it, for it was quite sufficient that the Jury should hear it once read, which the rules of the Court rendered necessary.—The first part of the letter was an infamous falsehood, that Mr. Clayton had misrepresented the Defendant's conduct in India with a view to prevent him from ever having the power of returning to England. The reverse was the case precisely; for Mr. Clayton had done every thing in his power to represent the Defendant most favourably, having esteem for him on account of the affection of his sister. Accordingly, Mrs. Clayton, on the arrival of her brother, the Defendant, in England, wrote him one of the kindest letters that could possibly be penned, congratulating him upon his return home, and wishing to know when he should do herself the pleasure of paying him a visit, together with her children and her mother, at the age of 70, eager to see her son in his native land, after so long an absence; but, strange to tell, this letter was treated with sullen and silent contempt, and afterwards followed up with an impudent falsehood by the Defendant, that his relations had shewn a solicitude for his death. He had written to his brother in the West-Indies, inviting him to take part against the Plaintiff, and to adhere to him, the Defendant. He said to the Plaintiff, "My great bane has been a competition with that unparalleled villain, whom I shall hereafter name, *Murphy*,* the Newcastle Attorney." *Murphy* was a name of reproach applicable to a will which the Defendant had insinuated most foully, that Mr. Clayton had a dishonest share in making. His bane he called Mr. Clayton, although the Defendant's sister was perfectly happy with her husband, and all the family under great obligations to Mr. Clayton, for the diligence and ability with which he conducted several of their concerns. The letter thus went on:—"This detestable miscreant has long ago placed himself at the head of my family, and literally converted my father's house into a den of thieves." We are told that the Father of Lies, from the beginning, could quote Scripture for his purpose, of which we had a memorable record. This Defendant (Mr. Garrow said) had no scruple in calling the Plaintiff the pupil of the Arch Fiend, the apostle of Satan, and imitator of the Devil, for certainly nothing could be more diabolical than this letter. The letter went on—"Now, Matthew (he said to his brother) I put you to the test. I admit of no medium between me and this miscreant attorney, whose name is infamy, and whose touch is pollution. You must either adhere to me or to him. I leave you fairly to choose; and unless I receive from you an intimation to the contrary after this letter reaches you, I shall consider you as *Murphy*'s man. If you follow me, you will make me a true brother; but I am not so easily deceived as you seem to believe." Then the letter proceeded to state matters concerning a bill in Chancery—"he will tell you there is nothing to fear from him; the rascal knows better." And what one ought to be ashamed

ed to read in the hand writing of a gentleman to a gentleman, of and concerning a gentleman, followed.—But as the law proceeding will swell his bill of costs, I know he will advise standing a suit, even though he knows defeat would be the result." &c. Now Mr. Garrow asked if any thing was ever half so bad as this, or so scandalous? He then went on to say, that the uncle's will was a rank forgery. He would ask, was it possible that any thing could be more diabolical than this, of so truly worthy a man as Mr. Clayton was? He had, indeed, been abundantly moderate in the damages he had stated in the declaration, and much below what the Jury would have advised, had he consulted them. Mr. Clayton's object was not damages, but protection to his character. He wanted nothing more; "he waged not war with Bedlam or the Mint." If this Defendant were confined so that he should scatter no more of his poisoned arrows on the highway, Mr. Clayton would be content; for which reason he had restrained the special pleader from concluding the declaration with damages beyond the sum of 1000l.: a sum which he was confident the jury would not hesitate to give.

Mr. Matthew Atkinson, the Defendant's brother, examined by Sir V. GIBBS, proved the letter, of which Mr. GARROW had read the above extracts, to be his brother's hand-writing. The letter was read; it contained the above passages, and many others injurious to the Plaintiff's character, and others of the Defendant's family; it was sent by the Defendant from London to his brother, Mr. Matthew Atkinson, at Kingston, in Jamaica, in July 1804, of which he sent a duplicate and triplicate, lest it might miscarry.—To this letter Mr. M. Atkinson returned an answer full of good sense, bearing ample testimony to the honor of Mr. Clayton, and assuring the Defendant of the interest he took in the welfare of the family, gently assuring the Defendant his mind had been poisoned by some misrepresentation, and that he saw the conduct of Mr. Clayton through the medium of prejudice, &c. To which there was a reply from the Defendant full of anger, and considering his brother as an accomplice in a conspiracy to defraud him of his property, &c.

Sir Francis Baring, Baronet, examined by Mr. GARROW.

Q. I believe Sir Francis, that in consequence of your connexion in West-India matters, which we all know to be most extensive, on the death of the late Mr. Richard Atkinson, you assisted in the management of his affairs?—A. To a certain degree, by advice.

Q. Had you, in consequence of that, frequent communication with Mr. Clayton, the Plaintiff in this cause?—A. Frequently.

Q. Were Mr. Atkinson's concerns in a considerable degree connected with West-India property?—A. Very much, if not entirely.

Q. I believe the affairs of Mr. R. Atkinson had great complexity about them?—A. Very much indeed, they were very complicated.

Q. A great number of persons claimed under his will?—A. A great many.

Q. I believe it became necessary to advance money for the relief of the estate from embarrassment, particularly on account of the claims of Mr. Benfield?—A. Mr. Benfield, had a demand of about 36,000l. on the estate; it was proposed by Mr. Clayton and those who represented the family, to purchase Mr. Benfield's right, for the purpose in the first instance, of liquidating the concerns of the estate, and in the second if any benefit arose from the purchase, that benefit was to be divided among the family, not individually to Mr. Clayton, but to the family at large.

Q. I believe, Sir Francis, that on that occasion you were so good as to make a considerable advance?—A. I advanced 6000l.

Q. Did Mr. Clayton make considerable advances also for the same purpose?—A. He advanced himself 16,000l. for the same purpose.

Q. I will take the liberty of troubling you with only one more question, Sir Francis—From the frequent opportunities of intercourse you had with Mr. Clayton, did he appear to you to conduct himself with zeal and integrity in that case?—A. I have had frequent opportunities of knowing Mr. Clayton for many years, and in all the transactions which I have stated, and others relative to the family.—Here Mr. DALLAS objected, that these transactions were not evidence, and his Lordship ruled accordingly.

Mr. GARROW—Q. Was Mr. Clayton's conduct that which you, Sir Francis, approved of, as being for the benefit of the family?—A. Entirely so.

Here the Plaintiff's case ended.

Mr. DALLAS spoke for the Defendant in his usual elegance of style, and contended that this was exposing unnecessarily the secrets of a family; that the Defendant, whom he did not justify, and who upon reflection was ashamed of this letter had acted under misapprehension, and that therefore this was not a case for serious, but moderate damages.

LORD ELLENBOROUGH—"This is an action for a libel. The letter certainly contains expressions extremely injurious to the character of the Plaintiff, who is represented as one of the basest of mankind. Some men possess a habit of coolness and deliberation, others are given more to the expression of the indignant feeling. Whatever may be the phlegmatic disposition of this Defendant, he seems on

the present occasion to have indulged the malignant passions, and to have sent duplicates and triplicates of a communication that ought never to have appeared, directing also this ebullition of rage against the very mother from whose womb he sprang. The Learned Counsel for the Defendant has endeavoured to shew the extent of the provocation, or rather the degree of disappointment to which his client had been exposed, and on this ground, he contended, that a sort of temporary infamy had been produced, which would furnish an apology, if not a justification of his conduct. I am afraid of giving way to this argument. Here we can know no distinctions but those of a person of sound mind and a madman; those who oscillate between the two extremes would be the most dangerous members of society, if they were permitted to give way to the indulgence of their extravagance with impunity. In a case of this kind, you are not merely to consider the degree of injury received from defamation, any more than in an action for an assault, you are to assign your damages in exact proportion to the corporeal suffering of the Plaintiff. You are to take into account the vexation he has suffered, and the insult he has received. This person appears to hold a respectable situation in his profession, and in a profession in which he is liable to summary punishment if he act wrong; he ought therefore to receive peculiar encouragement if he act right. He is a father of 11 children; his character to him, and to them, is of great importance; and I am not aware, how he could effectually restrain the malignity of the Defendant, but by bringing him to the bar of his country. You have heard the case, and you will give such a measure of damages as befits your good sense and discretion.—Verdict for the Plaintiff 1000l.

COURT OF CHANCERY.

MORSE V. ROY.

In this case, which was one of the highest importance, both from the value of the property at stake, and from the questions involved in it, Counsel, comprehending almost the whole talent of the Chancery Bar, were heard before Lord ERSKINE for the last six days. Friday his Lordship, without any time to deliberate, but after hearing a very able and eloquent reply from Mr. PERCEVAL in support of the Bill pronounced his decree.

The question seemed principally to resolve into this, whether a purchaser of an estate, over which he was trustee, was bound, after a great lapse of time, and without any special fraud on his part being shewn, from which inadequacy, of value or any other improper concealment could be inferred, to prove that he had communicated to his client all the knowledge as to its value that he himself possessed; in other words, if, from the circumstance of his being trustee, the *onus probandi* lay on him; or whether, in consequence of the long time which had elapsed between the purchase and the agitation of the question, and also in consequence of the death of the purchaser, the burden of the proof of inadequacy of value had not reverted on the plaintiff.

Lord ERSKINE said that the case had been argued very ably on both sides, and he had acquired great and valuable knowledge from the six day's argument which had taken place. It might seem to some person that in proceeding at once to give judgment in the case, he did not feel it to be of that importance which he expressed. He, however, was conscious of a contrary feeling. He knew it to be his duty to give judgment, and he felt he would do so with more effect while the luminous arguments, and the valuable information which he had received from the Bar, were fresh in his recollection, than he should after retiring to his own study, where he should only have the assistance of his own ideas and knowledge. His Lordship declared, that it was impossible to look at any of the cases founded on and determined by his Noble and Learned predecessor, without perceiving that the decisions proceeded from a mind deeply learned, and of the highest information on the point he was discussing; that his opinions were expressed with the greatest perspicuity, and that no ambiguous phrase which could occasion doubt as to the real import of the meaning intended to be conveyed on the point then in agitation, was allowed to remain. But it was hardly correct to suppose that that noble Lord's opinion on cases which might be supposed to be analogous, should be collected from the exuberances of his mind, where he, like other Learned Judges, allowed himself to introduce cases having an analogy to that under consideration, as illustrative of his argument in any particular case. In general cases his Lordship had laid it down, that a Trustee might purchase the estate of his client, provided there be a distinct and clear contract. And could any stranger purchase in a different manner? If any person, whether trustee or not, withheld any information which he possessed from a person purchasing an estate from him, he could not maintain his ground in that Court—hardly in a Court of Law. Inadequacy of price went a great way in constituting fraud. If, for instance, a person possessed of a precious stone carried it for sale to a jeweller well acquainted with its value, but who thought proper to give him 30l. instead of 500l. being the sum the diamond was worth, such a man would be dismissed out of Court with infamy. The same would be the case with a person selling a fine piece of Art to an eminent Painter, at an inadequate price. The very mention of the circumstance must carry proof of the deception practised.

His Lordship had only one other prefatory remark which

* *Murphy* is a character of an attorney in Fielding's *Amelia*, who was hung for forging a will.