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LIBEL CASE.

SUPREME COURT.

QUEEN VS. WILLIAM DURANT.

Before His Honor Mr. Justice PARKER.

This was an action for libel, contained in a publication in the Weekly Chronicle of the 28th February last, printed at St. John by the Defendant, and subsequently published at Fredericton and other parts of the Province; and which the following Jury were sworn to try.—Benjamin Sloat, H. Munro, Moses Pickard, Alexander Ross, James Brown, George Clements, Daniel Duff, James Annand, H. Garcelon, Thomas T. Smith, G. W. Turner and H. S. Miller. The Information having been read, which charged the defendant with publishing a Libel tending to vilify and defame His Excellency Sir JOHN HARVEY, Lieut. Governor of the Province.

The Attorney General addressed the Court and Jury, and stated the nature of the issue which the Jury had to try. The information charged the Defendant, with maliciously and designedly, and in defiance of law, endeavouring to bring the Lieut. Governor of the Province into disgrace, and to cause it to be believed that Sir John Harvey by virtue of his authority, acted corruptly and dishonestly.—That was the object stated to be contained in the libel, and formed the subject of complaint against the Defendant; who comes into Court by his counsel and says he is not guilty; and the issue the Jury had to try was, whether or not he is guilty of that with which he is charged in the information; and of making such publication with intent to vilify and defame His Excellency, to bring him into contempt, to degrade him in the eyes of the people, and to render them dissatisfied with his government. He said it was unnecessary to state that it was a case of much importance, and one that had created much expectation, when the multitude which was assembled proved that fact; and he would add, that it was one in which the vital interests of the country were concerned. It was an issue between the liberty of the press or rather its licentiousness, and the well being of government; and the trial involved the question, whether if a person purchased printing types, and assumed the dignified situation of acting under the sanction of the liberty of the Press, he could publish what he thought proper, upon the principle that such liberty must be supported, or that of the people must fall, under the plea that public men and public measures are public property; and that in pouring forth all kinds of abuse of individuals, a man was only doing that which he had a right to do—to discuss public measures and give his sentiments to the people at large. If this were the just liberty of the press, then it became an injury rather than an advantage. But the point between liberty and licentiousness he said was easily defined; as a man might ride along the road, but he had no right to ride over his neighbour—he had no right to do that which might be injurious to his neighbour. The meaning of the liberty of the press was, that it was free from the restraint of a censor, but that its exercise must be confined within law; and if a man by this means attacks the reputation of another, he does it at his peril. This was not his own view of the question, but he should bring in support of his opinion, the dictum of judges and the most distinguished counsels for the present trial was not new in its nature; and the Jury from those cases that he would cite, and under the direction of the Judge would see, what was the law of the land on questions such as that they were then sworn to try.

Having made these few preliminary observations, he said he would next refer to the mode of proceeding that had been adopted in the present case. In a criminal prosecution like the present, the usual mode of proceeding was by information; and having been instructed to commence it in pursuance of an address of the Legislature, it was his duty to bring it in such manner as he thought most proper. The Jury

would hear much with reference to the Star Chamber, and they would be told that this mode of proceeding should have ended with it, as being destructive of the liberty of the subject; and they would be told that the most proper mode would have been, to have gone before the Grand Jury, and thus have secured a fair trial. The course that had been pursued however, was the most correct and proper; as it would be undignified in the Sovereign to come into Court, and ask permission of its Judges, to go before the Grand Jury, and see if cause of action existed.

The Attorney General here referred to several authorities, from Chitty on Criminal Law and Starkey on Slander, in support of the practice of filing information in all cases below the dignity of felony, and in those of libels on government, and relative to the powers of the Attorney General in such cases, to prove to the Jury that such was the legal and constitutional mode of proceeding; and he adduced authorities explanatory of the liberty of the press, from Roscoe's Evidence on criminal cases, where it was laid down, that a person has a right to publish his opinion, so long as he does it candidly and sincerely, and without injury to society.—But if private character were assailed under pretence of public good, or if the publication went to obstruct a public officer in the discharge of his duty or to pave the way for sedition, in those cases it became noxious; and the test to be applied was simply,—Has a publication a tendency to produce mischief, or to introduce general dissatisfaction among the people. The extent to which the proceedings of government might be canvassed, was he said also laid down in Russell on Crime, where it was stated that if a man attacked the measures of government, in a fair and candid manner, or any grievance of which the public complained, then he could not be prosecuted; and the answer to any question which might arise on such publication would be the test.—Has it a tendency to pervade the public mind or to create dissatisfaction. Libels on public persons were always considered an aggravation of the offence, because they have a tendency to produce a dislike of the government and lead to faction and sedition. And in Holt on Libel it was declared, that where such attacks on public persons produced anxiety, whether by obloquy or ridicule, they became criminal; no government could exist where they were permitted. If individual feeling therefore were violated, it became a criminal offence. The learned Attorney General here read from the State Trials, the case of the King vs. Franklin, where the conduct of ministers with reference to foreign powers was censured; and of which the party was found guilty after a long and impartial trial, altho' the letter which formed the libel contained nothing like the offensive matter, that was set forth in the present publication. He said it was eloquently remarked by the King's Attorney on that trial, that if to hold the letter alluded to to be a libel, was affecting the liberty of the press, he was at a loss to know what that liberty implied. He hoped it did not mean, that a man had a right to libel whom he thought proper.—It could not be supposed that a Printer alone was at liberty to publish libellous papers; he might legally publish any thing in the way of trade, but not attacks on government. If therefore he violated the law and exceeded the just liberty of the press, he was liable to be punished; and such offence was made punishable by law, before the institution of the Star Chamber. The Jury therefore would see that the law he was then laying down was not new, having been at least 500 years in existence. The learned Attorney General here referred to the case of the King vs. Cobblett, and again endeavoured to impress upon the minds of the Jury, that in making remarks on government if individual feelings were violated, the act became criminal, and the publisher could only be relieved by giving up the author. This he said had been offered in the present instance; and the defendant had been told if he would give up the author, he should not be interfered with. This he had refused to do, and now stood between justice and the libeller; and came forward with a story of persecution for shielding another from the punishment due to his crime.

The Attorney General then said, that with reference to the law generally, it was not the same now as when the cases already referred to were decided. All the jury then had to try, was the fact of the publication and the truth of the innuendos; the question of libel became a legal question and was decided by the Court. If the Jury found that the offence charged was substantiated, then the party was pronounced guilty, if the court were of opinion that it constituted a libel. After a struggle of several years, and much uncertainty, as judges would sometimes differ, an Act of Parliament was passed declaratory of the law; by which it was enacted that the Jury may deliver a verdict generally as to words used, and if they constitute a libel. The Judges however may give an opinion as to the law, and if it should be done in the present instance it would in a great degree relieve the minds of the Jury. The question of law however, he said still remained the same as before the passing of the Act alluded to—it only gave the Juries more power, but they must still receive the law from the Court; and as a libel and the liberty of the press became legal questions, which the jury might not feel competent to determine, they were therefore at liberty to deliver a verdict generally, reserving the opinion of the Court as to the law. If under the directions of the Court therefore, the present publication should appear to the Jury, to be nothing more than a fair commentary upon public affairs; altho' it was deemed a crime to vilify and defame public character;—and if they should determine, that because Sir John Harvey is a public character, a Printer of a paper has a right to screen himself from the effects of such an attack, under the shelter of the liberty of the Press; it would be placing His Excellency beyond the protection of law: an individual might say of him what he pleased—he might charge him with swindling or any other offence; and the party could say he did so with reference to him in his public capacity. This would be placing the Governor of the Province out of the pale of civil society; and instead of being the liberty of the press, could only be considered as its licentiousness.

After having made these observations, the Attorney General said it became his duty to prove the publication of the libel.—This he should do by James Doak, who would swear that the Defendant was the Printer and Publisher of the paper in which it was contained. He should also prove by James S. Beek, that he received the paper as a subscriber from the Editor, in whose hand-writing it was addressed, and that it came through the Office of Mr. Gale, who is agent for the Chronicle.—Thus proving its publication in the County of York. He should also prove by Seth Wood, Gale's apprentice, that the papers were sent to him from the Office of the Defendant, and that he had authority to act in his behalf; and he should also prove the delivery of a letter written by himself, in which he called upon the Defendant to give up the author of the libel; in which case he should not be proceeded against.

These witnesses were then called, and proved what had been stated; except that Mr. Beek would not swear positively as to the hand-writing of the Defendant, but that he thought the direction was such. The payment of the year's subscription to Durant, and the receipt of the paper through Mr. Gale however he fully proved.

Various objections were taken by the Counsel on the other side, against the reception of this testimony; who also contended against the reading of the paper, on the ground that it had not been distinctly traced into the hands of the defendant or his agent. These exceptions were overruled by the Court; which decided that there was sufficient evidence to send the case to the Jury.

The High Sheriff was also called, and asked if Sir John Harvey was Lieut. Governor of the Province; who was Lieut. Governor in 1838; and who was Lieut. Governor at the time of publishing the libel. All of which questions were objected to by Mr. Street, who contended that the proof must agree with the averments; and they stated His Excellency was Lieut. Governor at the time of the filing of the information. The Judge however overruled the objection, as being bound judicially to know who is the Lieut. Governor of the Province. The Sheriff was then examined as to Captain Tryon being the son-in-law of Sir John, and Ensigns Frank and Warwick Harvey, his sons.

The case on behalf of the prosecution here closed. Mr. J. A. STREET called the attention of the Court to the information. There were two grounds he said upon which a libel might be considered as actionable;—the one, where it creates confusion and sedition, and leads to public difficulty, and next where it injures the feelings or reputation of private individuals. It was necessary that the former of these causes should be made out to enable an information to lie; and it should state the alleged mischief as respects the government of the country. He contended therefore that those averments had not been made, by which it could be ascertained whether the prosecution was commenced for a libel directed against the government of the country or an individual. The test of criminality was,—Would the publication create dissatisfaction in the country. He here wished to ask the opposite counsel, if they meant to rely on both counts.

With reference to the first count, the learned gentleman said, he would call the attention of the Court to the law upon the subject.—It was only for offences of a public nature, against which an information would lie; and it should therefore specify the nature of the public mischief complained of. Unless it did that it must necessarily fail to the ground. He therefore brought this objection under the notice of the Court, before the defence was commenced. The Attorney General had stated, that the Jury must be satisfied that mischief of a public nature must result from the publication complained of, before they could convict the Defendant; and he would now ask if there was any averment, in the information of any such public injury. If however it merely went to affect private character; then according to the admission of the Attorney General, the information could not lie. It had also been laid down fully in Russell on Crime, that the proper test by which to judge of the criminality of a case was,—Had it a tendency to produce public mischief, or create dissatisfaction towards the Government.

The Judge stated that in his view of the publication, it went to charge the Lieut. Governor of the Province, with using his public office to his own private advantage; and therefore decided that the case should go to the Jury. Mr. HAZEN for the defence then addressed the Jury. He said it had been stated that the present was a case of great importance. He admitted it was, but upon different grounds from those upon which the opposite counsel made their deductions. They considered it a case affecting the quiet of the country; he looked upon it as one merely affecting the defendant and his liberty. The Attorney General had said that the proceeding by information was the most dignified.—It might be so, but it was not the less oppressive. The situation of the defendant he said, was not like that of parties in ordinary cases: there was no Grand Jury to intervene; but upon the fiat of the Attorney General, he had been dragged forward and compelled to give bail for his appearance before that tribunal.—This was a case of ex officio information, and as he would show from several cases that he would quote, was viewed with jealousy and disapprobation. The learned gentleman then quoted from the State Trials, vol. 20 fol. 678, where it was spoken of as a power that is very alarming and arbitrary and which ought not to be permitted to exist. In another place, it was spoken of as a reproach to a free people; and if taken away the ends of public justice would not be injured. The defendant he said, stood charged with an act involving the peace of the country; and it was upon that charge the Jury were called upon to decide. No evidence however, had been adduced to prove the fact; but it was alleged that the publication complained of, accused Sir John Harvey of acts that were unfounded. The counsel for the prosecution did not pretend to say, that His Excellency had suffered in public estimation; or that he had been lowered from the high position in which he had been previously holding; the distinction being that an officer holding the distinction of which he would most cordially subscribe.—He had told them that since the Act passed establishing the rights of Jurors, it was for them to be satisfied that a publication complained of, was calculated to produce public mischief;—and which must be set forth in the information; they must therefore not only be satisfied of the truth of the averments, but of the pernicious results of the publication, upon which they were called upon to judge. He here referred to the information, and stated that the other side had abandoned the charge of being the author of the paper alluded to, that he was brought into court as the mere publisher; and the Jury must be satisfied of his malicious intentions, and the mischievous results of his publication, before they could convict him of libel. The Attorney General had stated that proceeding by information was the most dignified and correct course; but he would quote authority to show that it was arbitrary, and afforded advantages that others do not. Formerly a party must apply for

the origin of these proceedings. Then let the Jury look at the cause of such interference.—Parties ran high,—the leading members of the Assembly found their conduct severely animadverted upon; and those who first moved in the affair, were those who were smarting under libels that had appeared. Public opinion did not require such interference however, nor was the Queen the prosecutor here. Would the Attorney General say that upon his own mere motion he would have instituted proceedings;—would he not say more libellous productions had appeared, and he had taken no notice of them? Would Sir John Harvey have directed them? He knew his high and honorable character did not require it. The learned gentleman said that in a Province reputed as loyal as this, he should regret if the Representative of the Sovereign should suffer in any way, that would require such interference. The object therefore in instituting this prosecution was to gratify the feeling of parties, who felt themselves aggrieved. Another anomaly in these proceedings was that the learned counsel on the other side, were all parties to the address upon which it was founded, and had all set in judgement upon the defendant. This therefore was a fair subject of remark, and rendered the conclusion inevitable that the action was instituted by parties who felt themselves aggrieved. The Jury he said must be aware, that a great object of public excitement was the repairs of government house; and he should bring documentary evidence to bear upon the subject, and to show their nature and extent. Then with reference to the defendant, it was not pretended he was the author of the publication, but was the mere printer; a quiet and loyal young man as was his father before him; and whom as he stood before the court, it would be an anomaly to find guilty.—He felt it was unnecessary to enter more into detail; the publication under consideration was not libel, because the Attorney General chose to call it such; and even if the Court should decide that it was, when the Jury retired to their room, they could not say upon their oaths that the defendant was guilty. The case was in their hands, and he felt satisfied they would not return a verdict that would be ruinous to the accused party; nor was it a case calling for severity at their hands.

The Despatch of Lord John Russell, was then tendered in evidence; but its reception was objected to; and it being late in the day, the Court adjourned to the following morning.

FRIDAY, OCTOBER 30.

Immediately after the Court was opened, the leading counsel for the prosecution stated, that as there was some technical objection to the second count of the information, it had been determined to abandon it, and proceed upon the first count alone. This was objected to by Mr. Street for the defence, who thought it differed from other cases; and that where an information had been filed, any particular count could not be abandoned. He would not take up the time of the Court however; but if a count had a bad effect upon the others, he felt satisfied it could not be abandoned.

CHAS. WETMORE, Esq. Clerk of the House of Assembly was then sworn; and was examined as to the nature of the publication, and with reference to the accounts relative to the repairs of Government House. The examination of this witness was arrested by a long argument with reference to these subjects; the first of which was more matter of opinion; and the latter the Court decided could not be admitted as evidence.

Mr. STREET then tendered Lord John Russell's despatch and the circular memorandum of the Lieut. Governor; but which were objected to, as opening a door for the admission of other inadmissible evidence.

Mr. STREET then addressed the Jury. He said he felt that he had undertaken an important and arduous duty in conducting the defence; as upon the verdict of the Jury would depend, whether the defendant should continue to enjoy his liberty or be incarcerated within the walls of a prison. The case was one also of importance to the public, as involving the question whether they should remain that great bulwark of English liberty,—the freedom of the press. His duty therefore became arduous in the extreme; and he regretted both on account of the defendant and the public, that it had not fallen into abler hands; still he should discharge it fearlessly and conscientiously. The defendant as had been already stated, was brought into court upon information filed by the Attorney General; and could not meet the charges against him in the same manner as if they were brought by a fellow subject; because advantages were given to the crown, doubtless for good purposes, but which were taken away from the subject.—He would next call the attention of the Jury to the array of legal talent, which had been selected for the purpose of conducting the present ridiculous and absurd prosecution; and they would perceive the disadvantages under which he laboured in conducting the present defence, and in supporting the rights of the defendant that day. When he saw this array, he could not help asking himself to what it might lead; and when he reflected upon the power and influence brought forward on the one hand, and the disadvantages under which his client laboured on the other, it reminded him of the contest of David and Goliath.—On the one side was power sufficient to crush the defendant, and on the other he stood alone, with a good conscience for his side, and a good cause for his people; and he hoped the issue would be the same.

The learned gentleman said that the present was a prosecution for a libel on the Lieut. Governor of the Province. He would first call the attention of the Jury to the observations made by the Attorney General;—and to some of which he would most cordially subscribe.—He had told them that since the Act passed establishing the rights of Jurors, it was for them to be satisfied that a publication complained of, was calculated to produce public mischief;—and which must be set forth in the information; they must therefore not only be satisfied of the truth of the averments, but of the pernicious results of the publication, upon which they were called upon to judge. He here referred to the information, and stated that the other side had abandoned the charge of being the author of the paper alluded to, that he was brought into court as the mere publisher; and the Jury must be satisfied of his malicious intentions, and the mischievous results of his publication, before they could convict him of libel. The Attorney General had stated that proceeding by information was the most dignified and correct course; but he would quote authority to show that it was arbitrary, and afforded advantages that others do not. Formerly a party must apply for

leave to file information, and the court would allow opportunity for contradicting the charge; or he might go before the Grand Jury, and they must pronounce it a libel, before he could be called upon to answer. It was only in cases where government were concerned, that the Attorney General was justified in resorting to this arbitrary mode of proceeding; and Blackstone had declared that it was only in cases of great mischief resulting from delay, that that officer could resort to prosecutions of this nature. By a statute of William and Mary subjects were prohibited from filing informations; nor could it be done except in cases of misdemeanour, or below the dignity of felony. The Attorney General under this mode of proceeding could call a defendant into court, or drop the prosecution if he saw proper; and the defendant must pay all his costs. The learned gentleman here read several authorities, to show the injustice and hardship of proceeding by information, which he said was exemplified in the present case; as instead of bringing the defendant to Fredericton, and his being put to great inconvenience, the trial could have taken place at St. John. The Jury would observe the test is great public mischief; and the Attorney General fearful that this would operate on the minds of the Jury, had charged the defendant in the information with endeavouring to bring Sir John Harvey into great contempt and hatred. Now it would be necessary to prove, before the prosecution could be sustained,—first, the publication; secondly, the truth of the introductory averments, then the innuendos; and thirdly malice on the part of the defendant. The learned gentleman here read authorities to prove, that malice was essential to constitute crime,—and of this the Jury were the judges; who must be satisfied it existed before they could convict; and also of the truth of the averments.

Then as respects the liberty of the press, the Attorney General had said much and must know a great deal; and he would call his attention to the law on that subject, where the liberty of the press is construed to mean, the right of every man to represent grievances, when he does so on candid and fair grounds; and which cannot be questioned. The law which the learned Attorney General had read was good,—they only differed as to its application. He Mr. S. viewed it as liberty given to mankind upon public measures, so long as a party was not actuated by improper motives; and he quoted Starkie on Libels to prove that it was right to discuss the conduct of government, provided the object was not to gratify private revenge or work public mischief; for if a person is actuated by correct motives, the law says it is no libel. And De Lolme, although a foreigner, in his excellent treatise on the British Constitution, says the people have a right to canvass public measures, with whom rests the censorial power; and to which they are indebted for all the liberties they enjoy. And he would ask if this is the state of public liberty in England, why should it not be enjoyed in this colony, whose inhabitants have the same constitutional rights and privileges as those in the mother country. In calling the attention of the Jury to the liberty of the press, he should not follow the example of the Attorney General, who had gone as far back as 1521, and had only ventured to make one reference to the subject. He preferred more modern authorities, and these which were more in accordance with public sentiment in the present liberal times.—Baron Park says, public men are public property. Mr. Justice Coleman, says the same, and farther that public acts may be discussed without fear, and even in language that is coarse and liable to reprobation. Such is the state of the law in the present day; and so long as a writer is not actuated by public hatred and a desire to create mischief, his conduct is justifiable, notwithstanding the severity of his remarks. The learned gentleman said he would here remind the Jury, that the test by which they were to judge was, Would the publication alluded to, excite disturbance in the country. This was the first instance he said of a prosecution of this nature in the Province; and therefore he trusted he should be excused for occupying so much of the time of the Jury, with observations relative to the liberty of the Press; and to which he had been driven by the remarks of the Attorney General. He had said a man might ride, but he must take care he did not ride over others; and he would say in reply that a man must keep out of the way. And if public men act wrong or take the wrong side, (and here he did not allude to the present case, or wish what he said to apply to the Lieut. Governor,) although from the best of motives, any person actuated by proper feeling, might publish his opinion.

The learned gentleman said he should not take up the time of the Jury, by citing any other law authorities; but would turn their attention to the consideration of the case itself, as it was presented to his mind. And here he would observe, that the alleged libel had been made notorious by the present prosecution; which did not arise at the instance of the Lieut. Governor, who did not trouble himself about it; and conscious of his own integrity, was satisfied to let his conduct give the lie to the assertions of his enemies. But it was not left to him to act as he thought proper. The Assembly took it up; some of whose members felt that the publication hit hard, and were determined to wreak their vengeance on the publisher. They could not venture however to proceed by a civil action and let the opposite party prove the truth of his assertions; but they induced the governor to think the attack was of sufficient importance, to warrant the institution of a criminal prosecution. And as his learned friend said yesterday, the leading members of the Legislature are of counsel for the Crown. He believed the law officers were desirous of retiring from the Upper House when the question came up; but that was not permitted; and in the lower House he thought the majority were satisfied, there should not be a trial; but being fearful of misconception, they spoke against the measure and voted for it. He was therefore satisfied, the publication would not have been heard of by many in court, had it not been for the present trial. So much for the manner in which the prosecution had been instituted;—now for the publication itself.

With reference to that document, which it was not pretended to justify, he would say if the Jury were satisfied that its tendency was to create sedition, they would pronounce it to be a libel. But if they were not of that opinion, they would acquit the defendant. The learned gentleman here took up the publication, which he read, commenting as he went along. The first part he said, had reference to public measures upon which there might and should be a diversity of sentiment. It had been proposed to introduce the same plan with reference to money votes which prevailed in England; and some of

leave to file information, and the court would allow opportunity for contradicting the charge; or he might go before the Grand Jury, and they must pronounce it a libel, before he could be called upon to answer. It was only in cases where government were concerned, that the Attorney General was justified in resorting to this arbitrary mode of proceeding; and Blackstone had declared that it was only in cases of great mischief resulting from delay, that that officer could resort to prosecutions of this nature. By a statute of William and Mary subjects were prohibited from filing informations; nor could it be done except in cases of misdemeanour, or below the dignity of felony. The Attorney General under this mode of proceeding could call a defendant into court, or drop the prosecution if he saw proper; and the defendant must pay all his costs. The learned gentleman here read several authorities, to show the injustice and hardship of proceeding by information, which he said was exemplified in the present case; as instead of bringing the defendant to Fredericton, and his being put to great inconvenience, the trial could have taken place at St. John. The Jury would observe the test is great public mischief; and the Attorney General fearful that this would operate on the minds of the Jury, had charged the defendant in the information with endeavouring to bring Sir John Harvey into great contempt and hatred. Now it would be necessary to prove, before the prosecution could be sustained,—first, the publication; secondly, the truth of the introductory averments, then the innuendos; and thirdly malice on the part of the defendant. The learned gentleman here read authorities to prove, that malice was essential to constitute crime,—and of this the Jury were the judges; who must be satisfied it existed before they could convict; and also of the truth of the averments.

Then as respects the liberty of the press, the Attorney General had said much and must know a great deal; and he would call his attention to the law on that subject, where the liberty of the press is construed to mean, the right of every man to represent grievances, when he does so on candid and fair grounds; and which cannot be questioned. The law which the learned Attorney General had read was good,—they only differed as to its application. He Mr. S. viewed it as liberty given to mankind upon public measures, so long as a party was not actuated by improper motives; and he quoted Starkie on Libels to prove that it was right to discuss the conduct of government, provided the object was not to gratify private revenge or work public mischief; for if a person is actuated by correct motives, the law says it is no libel. And De Lolme, although a foreigner, in his excellent treatise on the British Constitution, says the people have a right to canvass public measures, with whom rests the censorial power; and to which they are indebted for all the liberties they enjoy. And he would ask if this is the state of public liberty in England, why should it not be enjoyed in this colony, whose inhabitants have the same constitutional rights and privileges as those in the mother country. In calling the attention of the Jury to the liberty of the press, he should not follow the example of the Attorney General, who had gone as far back as 1521, and had only ventured to make one reference to the subject. He preferred more modern authorities, and these which were more in accordance with public sentiment in the present liberal times.—Baron Park says, public men are public property. Mr. Justice Coleman, says the same, and farther that public acts may be discussed without fear, and even in language that is coarse and liable to reprobation. Such is the state of the law in the present day; and so long as a writer is not actuated by public hatred and a desire to create mischief, his conduct is justifiable, notwithstanding the severity of his remarks. The learned gentleman said he would here remind the Jury, that the test by which they were to judge was, Would the publication alluded to, excite disturbance in the country. This was the first instance he said of a prosecution of this nature in the Province; and therefore he trusted he should be excused for occupying so much of the time of the Jury, with observations relative to the liberty of the Press; and to which he had been driven by the remarks of the Attorney General. He had said a man might ride, but he must take care he did not ride over others; and he would say in reply that a man must keep out of the way. And if public men act wrong or take the wrong side, (and here he did not allude to the present case, or wish what he said to apply to the Lieut. Governor,) although from the best of motives, any person actuated by proper feeling, might publish his opinion.

The learned gentleman said he should not take up the time of the Jury, by citing any other law authorities; but would turn their attention to the consideration of the case itself, as it was presented to his mind. And here he would observe, that the alleged libel had been made notorious by the present prosecution; which did not arise at the instance of the Lieut. Governor, who did not trouble himself about it; and conscious of his own integrity, was satisfied to let his conduct give the lie to the assertions of his enemies. But it was not left to him to act as he thought proper. The Assembly took it up; some of whose members felt that the publication hit hard, and were determined to wreak their vengeance on the publisher. They could not venture however to proceed by a civil action and let the opposite party prove the truth of his assertions; but they induced the governor to think the attack was of sufficient importance, to warrant the institution of a criminal prosecution. And as his learned friend said yesterday, the leading members of the Legislature are of counsel for the Crown. He believed the law officers were desirous of retiring from the Upper House when the question came up; but that was not permitted; and in the lower House he thought the majority were satisfied, there should not be a trial; but being fearful of misconception, they spoke against the measure and voted for it. He was therefore satisfied, the publication would not have been heard of by many in court, had it not been for the present trial. So much for the manner in which the prosecution had been instituted;—now for the publication itself.

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