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LABEL CASE.

SUPREME COURT.

QUEEN vs. WILLIAM DURANT.

Before His Honor Mr. Justice PARKER.

Saturday Morning.

The Solicitor General addressed the Jury in
reply. He said, altho' the cause was one of
importance, yet he did not expect it would have
occupied the time not to any extent on either
side. Still here they were on the third day, al-
though to address the Jury on the part of the pro-
secution; and he was sure they would be glad
to hear the last of it, as they must have be-
come tired of law. That being the case, he
should not trouble them with reading any; for
if they only digested what they had heard and
would mark it well, they would be good law-
yers, with respect to label all the rest of their
days. He was fearful however, that they
would become confused by the quantity which
had been read. He did not come before them
therefore with a library of books, as did his
learned friend on the other side, and should only
trouble them with a few remarks; and leave
it to His Honor to address them.

The case was stated on all sides to be one of
importance; but they differed as to its nature.
Mr. HAZEN who addressed the court yesterday
for the defence, considered it of importance only
as it affected his client; beyond that it was of
trifling consequence either as regarded the public,
or good order of society. But the counsel
for the prosecution did not view it in that light;
and contended that more was involved than the
mere interests of the defendant. It was not
however for his punishment that this prosecution
had been instituted, but to teach him what the
law is, and that people could not vilify without
cause the government and authorities of the
country with impunity; because if such offences
were not punished, no person could be safe
in the community; and the government of the
country being thus brought into disgrace, that
respect for it would be destroyed which ought
always to exist. It was therefore for the public
example and protection that the present trial
was instituted. He was also instructed to say,
that so far as Sir John Harvey was concerned,
His Excellency had no vindictive feeling to
gratify, and would have been satisfied had the
individual charged, come in and showed contri-
tion instead of brazening it out; and the prose-
cution would have been stopped. But he trusted
to make an impression upon the minds of the
Jury, and by creating public feeling in his fa-
vour, that he would obtain a verdict to that
effect, in defiance of law and the claims of public
protection; thus leaving that the Jury would
send themselves to the defence of his conduct.
But as he had before observed, the defendant
had brazened it out; and from what had since
appeared in print and been sent forward to the
world, an impression must have been produced,
that he intended not to evade the charge, but to
justify himself. That was his position, and the
reason why he had been placed in his defence.

Having made these observations, he should
call the attention of the Jury to the nature of the
prosecution, and the ground occupied on the
other side; and would show the fallacy of the
defence that had been set up. In the first place
then, this was a cause brought upon information
filed by the Attorney General, being a
complaint made to the court, charging the defend-
ant with a gross and malicious libel against Sir
John Harvey, the Lieut. Governor of the Province,
charging him with that, of which one of the
guilty of but one half, would make him one of
the most corrupt public men who had ever lived,
and would justify a petition being signed by
every subject in the Province for his removal.
It was because the defendant had made this
charge, broadly and openly against the Queen's
Representative and sent it forth to the world,
that he was then placed upon his trial. And
having done so, would it have been creditable
to the Legislature to have permitted it to pass

unnoticed? or allowed an individual to go on,
and say—"True I did make the charge and
send it forth to the world, yet you dare not pro-
secute me." That would have been the state
of things, if the present action had not been
brought. And it would have been inferred that
either he had spoken the truth, or that the peo-
ple think nothing of themselves or the moral
character of their country; such an action hav-
ing however been brought, the Attorney Gen-
eral comes into court, by direction of the au-
thorities of the Province, charges the defend-
ant with the offence he had committed, and calls
upon him to answer it. He is then put in posses-
sion of the particulars of the allegations brought
against him, and is called upon to answer.
Such was the nature of an information. The
defendant may deny them or confess; or say
they were true, and contend they did not con-
stitute a crime against law. He could there-
fore demur, and take the opinion of the court on
the allegation,—whether being true, he was
guilty of an offence or not. If on the other
hand, he should say he did not commit the of-
fence, he had a right to deny it, and put in his
plea of not guilty; and this he had done. Then
came the issue which the Jury had to try and
determine, whether or not he had been guilty
of the charge alleged against him. In the pre-
sent instance he said, the defendant came be-
fore the court with the same advantages as if
upon an indictment, or any other ground by
which issue might be brought; and had the same
opportunity for a dispassionate trial, as if
his case had been before a Grand Jury, or was
founded upon affidavits upon which information
had been granted. This his learned friend had
kept out of sight; who talked of the present be-
ing an oppressive proceeding, not because their
client laboured under any disadvantage, but
merely to create in the minds of the Jury, a
prejudice against the prosecution.

The Solicitor General then said, that his learned
friends had read the opinions which had
been given by eminent men, as to ex officio
proceedings; but these were founded upon the
impolicy of keeping up a right, handed down
from time immemorial, not because it was op-
pressive, but because powers might be abused
by the officers of the crown. But that was
more matter of opinion. In England where
Commissions had been appointed composed of
men of integrity, and appointed by those who
look forward to keeping up the present feeling
in the public, as respects the rights and free-
dom of the people; the proceeding by informa-
tion had been returned, as it had been consid-
ered a wholesome power, which a public officer
must be permitted to exercise, in the confidence
that he would only do what is proper. The only
instance in which this power had been sus-
pended, was when the people exclaimed a-
gainst the Star Chamber; but when that was
done away, the right was again resumed and
had continued ever since. The authorities cited
by his learned friends, had no reference to
cases brought by the Attorney General for li-
bels against the authorities of the country. In
this instance that officer had been called upon to
go into court, and complain against a subject
who had committed an outrage on the govern-
ment. If his learned friend had acted from im-
proper motives, or by instigating a prosecution
and then abandoning it, he had put the defend-
ant to unnecessary expence, he would then
have a right to complain of an abuse of authori-
ty. But as the case stood at present he was
merely brought up to stand an impartial trial,
for charges which he denied; and it was in no
worse situation than if he had been brought up
on an indictment which resembled an informa-
tion, and would afford him no advantage that he
did not at present possess. And he could only
look at the objection that had been urged, as
evinced a sinister intention to fly in the face of
the law, and obtain a verdict in defiance of it.

With reference to the second count, there
was some particular road, to which exceptions
had been taken. It had therefore been aban-
doned; and the case would be put to the Jury
on the first count alone, who would look at that
and say, whether the defendant was guilty or
not. The first charge was, that the defendant
being of malicious disposition and desiring to
bring His Excellency into disrepute, published
a foul and malicious libel upon his character,
and which the counsel for the prosecution con-
tended had a tendency to bring him into disre-
pute; and to destroy that respect, which ought
to prevail among the people over whom he was
appointed to govern,—to destroy his authority,
and produce discontent against him as the head
of the government. It also charged him with
composing, printing and publishing the same.
The learned Solicitor said he would here state,
that publishing constituted the offence; a per-
son might think and write what he pleased, pro-
vided he kept it to himself; but if he sends it
forth in any shape, it then becomes prejudicial,
and he commits an act that renders him liable
to punishment. If the Jury therefore were sat-
isfied that the defendant published the article
complained of, he must be found guilty of the
crime. And here he would observe, that if a
man takes up and publishes the writings of an-
other it then becomes his own, though he may
not be the actual writer or party to the com-
position. Now it was known that Editors have
persons who write for their papers, whom they
sometimes pay, but for the consequences of
whose productions they are responsible; and
they employ those individuals for the purpose of
giving circulation to their papers. There are
often anonymous communications sent to the
publisher, by those who make themselves busy
with public affairs, to answer their own private
ends, either giving security or not; and he may
assume them as his own productions or reject
them altogether. In this case the Printer as-
sumes the responsibility and sends it to the
world, in the expectation that it will give cir-
culation to his paper. When the Editor of a pa-
per has the name of his correspondent, he has
that security which every publisher should
have, before he gives insertion to an article,
conveying an improper reflection upon an indi-
vidual; and it then becomes a question, whether
he will make himself a party to an act
which may render him liable to punishment.
But a well disposed man, having proper ideas of
what is due to his fellow-man, would say he
would not make his paper the vehicle of slan-
der; and would tell the applicant that he must
seek some other channel, and not make his
Journal the instrument of improper designs.

Then as to the case before the court, it was
impossible to know whether the defendant wrote
the article himself,—whether it was sent to him
anonymously by a person who backs him. He
may be in either of these situations, resting
secure in a promise of indemnity. There might
be some person who encouraged him to stand
out, with a promise of remuneration for any ex-

pence or inconvenience he might suffer. There
might also be another inducement to act in this
manner; and a Printer might fancy that a re-
action if he were punished, would take place in
the public mind, and ultimately benefit him.—
In point of fact such was the perversion of the
human mind, that people might thereby be in-
duced to take his paper; and therefore he might
not hesitate to pursue an improper course. In
whatever situation the defendant appeared be-
fore the court,—whether as principal or instru-
ment, he must be treated as the only person
of whom they had information; and had he given
up the author, there would have been no
prosecution against himself; but he had chosen
to refuse doing so, and must take the consequence
of an offence, that rendered him amenable to
justice.

Such was the case, and the nature of the
complaint which the Jury had to try. And
here had they been met? As he had said be-
fore, he thought the cause would have taken up
but a short time; for from what he had heard
of doors, he expected it would have been
met broadly,—that the defendant would say he
was an innocent man, that he meant no of-
fence; and thought he had a right to put for-
ward such an animadversion upon public men.
He, the Solicitor General therefore expected,
that his learned friends on the other side, would
have said they did not intend to deny the publi-
cation, but considered it justifiable. Had they
come into court that way, the learned gentle-
man said he should have considered that the
party had committed a crime, and subjected him-
self to punishment, without knowing it. On
the contrary, he comes into court conscious of
guilt, but not meeting the charge openly; and
denies that he published the paper in question,
denying that it was ever in his possession; and
by the aid of the ingenuity of his counsel, en-
deavours to defeat the cause of justice, and pre-
tends that he was not the publisher of the libel
with which he stands charged. Such was the
conduct of a guilty man, who felt his guilt, and
did not wish his case to go before a Jury; and
who thus endeavoured to evade that punish-
ment, which was the consequence of his own
illegal act. He came into court as one trem-
blingly alive to the consequences of his crime;
and not as one conscious of his integrity and in-
nocence. Thus it was, the case had been lin-
gered out, and a considerable time elapsed, e-
ven before the paper itself could be introduced
as evidence. But having been foiled in his ob-
ject, he then makes a merit of necessity; and
his counsel say now we will meet the case on its
merits, that we committed no offence, that the
plaintiff had been unjustly dealt with, in conse-
quence of the extraordinary manner in which
the case originated, and that the counsel for the
prosecution are parties to it. As well might
they say the leading counsel for the defence
was a party to the prosecution; that others in
court were parties. Nay, he would go farther,
and agree that the Jury and the public at large
were parties; because the public were interest-
ed in the result of that day's proceedings. But
as to any personal interest on the part of either,
none existed. It should be recollected however,
that his learned brother on the other side,
(Mr. STREET) also held a prominent situation
in the Legislature; and as far as the Legislature
was concerned he was a party. He would
broadly admit that the prosecution originated in
the House of Assembly; but no part of the publi-
cation contained a libel on that House. And
were not its members the representatives of the
people of the Province—were they not standing
in their place—and was it not the constitutional
mode of conveying the sentiments of the people,
through the popular branch? Yet they were
the first to come forward, and request that a pro-
secution should be instituted against the author
of so abominable a publication; and could it be
supposed they would be the first to take a step,
which was to put into operation proceedings that
were at variance with public rights. But need
it be asked why the Legislature interfered?—
When the publication made its appearance, it
was said at once, the public prints have gone
great lengths, but this is beyond bearing. They
felt it was an outrage against the Province, and
the feelings of an excellent Lieut. Governor;
and at the same time expressed the public dis-
gust at the foulness of the charge, and a desire
that its authors should meet with merited pun-
ishment. His Excellency might himself have
directed the present prosecution to be instituted;
and feeling that his character stood too
high in the world,—that he was too well known
to suffer from the treatment that had been
heaped upon him, he treated it with the scorn it
deserved. But as he had already said, the Re-
presentatives of the people took it up; and cal-
culated upon His Excellency to order a public pro-
secution for the outrage which had thus been
committed; and he yielded to the desire of the
Legislature. Allusion was made by the
opposite counsel, to the Attorney General and
himself, as wishing to withdraw from the Leg-
islative Council when the address was propo-
sed. It was not necessary as public officers; not
defending a private client, but as the Attorney
and Solicitor General, carrying into effect the
orders they had received. But knowing they
would be called upon in that capacity, they did
wish to withdraw; not because they thought
the subject ought not to have been brought for-
ward, but because they thought they would be
called in subsequent proceedings; and would be
called upon officially to give an opinion, and altho'
they did not retire, yet they did not take part in
the discussion by vote or otherwise. And altho'
the other counsel for the prosecution might have
taken part in the Legislative proceedings, yet
they did not know that they would be called
upon to assist in carrying on the action. But
after all, it was of little moment, as only two
could address the Jury, the others merely ex-
amining witnesses, and addressing the court upon
points of law. On the other side, his brother
the leading counsel was a member of the House
of Assembly, and he abused other professional
gentlemen belonging to the House, who might
also have been retained. But the defendant
had been ably defended, and he had no reason
to complain of his cause being injured, thro'
want of the exercise of talent and ingenuity in
his behalf. He would also state, that had there
been any desire to injure the defendant; in con-
sequence of Mr. Street holding an official situa-
tion, His Excellency could have prevented him
from appearing as counsel on the other side;
but the moment application was made for a spe-
cial licence, it was granted; and he came be-
fore the court free and untrammelled, to adopt
that course which he might deem best for the
defendant; and the other side having selected
him having confidence in his integrity, he would
leave it to the Jury to decide, if the defendant
had cause to regret having employed him. So

much for the outcry as to the mode in which
the prosecution had been conducted.

The next argument that had been brought
forward was, that because His Excellency's char-
acter stood so high as not to receive injury from
anonymous slander; it was contended that no
offence had been committed. Were that the
case the result would be, the higher in rank
the individual, the more certainly it could be
attacked with impunity; and they were told it
was no crime against law to make such attacks.
He the Solicitor General looked upon it how-
ever very differently; as the higher and better
was the object, the greater the criminality of
endeavouring to asperse it; and therefore the
admission of greater worth showed the greatness
of the libeller's crime; and so far from the de-
fendant being screened by the elevated standing
and character of Sir John Harvey, it ought to
produce an augmentation of his punishment; as
though he failed in his attack the crime was the
same, and he should suffer for it.—As well might
it be said that it was no crime to attempt murder;
and altho' "the poisonous shaft had missed its mark," that was no extenuation of
the offence that had been committed by the au-
thor and retailer of its venom.

His learned friend Mr. HAZEN, had yester-
day made an allusion at which he was much
surprised. He said the prosecution had been
instituted to prevent Sir John Harvey being in-
jured at the Horse Guards. Where he met
with such an idea it was difficult to imagine;
he had not obtained it from the counsel for the
prosecution. It certainly was most ridiculous,
that Sir John Harvey, who had served with
honour in various parts of the globe, and whose
character was well known and appreciated in
the mother country, should suffer in the estima-
tion of the military authorities at the Horse
Guards, from the unfounded aspersions of a vile
libeller in New Brunswick! And if Juroes were
allowed to take character into consideration in
such a case as the present; it should be the
badness of it in the object of attack, that ought
to be urged in excuse; and altho' the defend-
ant had committed an unlawful act, the criminal-
ity of his conduct might receive some excuse.
But such was denied him in the present instance;
as even the defendant's counsel declares, that
the attack on the Lieut. Governor was not to be
justified, and that he stood so high in public es-
timation that the slander lost its effect.

Another ground that had been urged on the
other side was, that there was a defect in the
information, which did not aver that public mis-
chief and sedition were produced; which it was
contended was essential to make it a libel. In
this also he differed from the opposite counsel.
The information alleged all that was necessary,
and charges the defendant with publishing a li-
bel to the scandal, disgrace and infamy of Sir
John Harvey, then and there being Lieut. Go-
vernor of the Province; in manifest perversion
and violation of the laws, and to the evil exam-
ple of others in like case offending. And he
would ask if a publication, intending to bring
His Excellency into disgrace, or which might
have a tendency to produce that effect; would
not produce a public evil that must affect the
entire Province. To have an officer at the head
of the government, who holds a character such
as had been described, must produce a pernicious
effect upon society at large. There was not
an honest man, who would not perceive and ad-
mit its pernicious effects. Therefore the allega-
tions went to the fullest extent, and called for
the prosecution and punishment of the offender.

The Solicitor General said he now came to the
next ground of defence, the learned counsel on
the other side having been driven from every
other; where they assert that the publication
referred to is not a libel. And to convince the
Jury, his learned friend spent a full hour in
reading, and another in defining the expressions
that had been used; and he never witnessed
such an attempt to pervert reason and common
sense, nor was ever greater ingenuity applied
to effect it. But in preparing his mind for the
purpose, the counsel on the other side had for-
gotten that he was talking to men of common
sense also, and who understood the English
language; who would put their own construc-
tion upon the words that had been used, and
would read them in the sense which the writer
and publisher introduced, and which was the
only sense in which they could be read. For
his own part he did not wish to persuade the
Jury that the publication was a libel; but he
would leave them to read it and decide for them-
selves. He would call their attention however
to certain passages; and they would find the
writer endeavouring to prove by certain events,
that they all arose from a scheme which had
been formed by the Lieut. Governor, to make
use of his office to carry into effect certain
views; and then proceeds to say that "under
the mask of uncommon frankness, he is a man of
deep design and cunning." This was contained
in the first paragraph that alluded to Sir John;
and in other words was charging his Excellency
with being a downright hypocrite. After going
into a detail of a variety of circumstances, the
writer says "It remained for Sir John to do the
job, and it was the dirtiest job that ever govern-
or was called upon to perform." Had he stop-
ped there, altho' the language was coarse and
disrespectful in the extreme, yet it would have
remained unnoticed. But he went on to show
what it meant; for he says Sir John "enlarged
the Executive Council by the introduction
into it of a number of members of Assembly,
and a greater number of members of Council;
and it is worthy of notice, as indicating the deep
labour scheme, that only one individual was added
to the Executive Council, who was not a mem-
ber of one or other of the Houses, and further
that one of the two of the old Council not be-
longing to the Legislature were removed." This
the learned gentleman said, he thought
contained as severe a charge, as was ever bro't
against a public man;—that instead of forming
his councils in that manner which would best
advance the public interests, he did it in such a
way as to promote his own private views and
purposes; and that he was enabled to carry his
own plan into effect, by introducing into those
bodies creatures of his own; thus carrying out
his deep laboured schemes. And in the next pa-
graph, he was charged with laying his plans
before he came to the colony. It stated, that
"Sir John Harvey's residence in Prince Ed-
ward Island was of great advantage to him." It
enabled him to study the character of the lead-
ing men of the Country, and to select those
whom he could make use of." He could ask
his learned friend, if he were serious when he
said these charges were complimentary to Sir
John. It then went on to charge His Excellen-
cy with obtaining a despatch to hold in terror
over the officers of government, that he might
make them act as he wished or forfeit office.
Could there be a greater instance of corruption

than this; and yet it was asserted that this was
no implication of Sir John's character, but it was
intended rather as a compliment; than which
there could not be a greater perversion of com-
mon sense. The Solicitor General here read
from the libel, in which it was asserted that for
the purpose of carrying money votes through
the Legislature intended for his own private
use, he had held out a threat to the Chief Jus-
tice: that not satisfied with putting his tools in-
to the Council, he would remove him from his
seat. Then again, after alluding to the plans of
Sir John, the writer says, the repairs of govern-
ment house will cost £9000 at least. Thus con-
veying a direct imputation that any thing sent
down to promote his Excellency's private ob-
ject, would pass through the House by means
of corrupt members; and would go forth to the
world under the head of repairs. That also he
supposed was intended as a compliment. But
that no doubt should remain, the writer next
says "all this management, was for the purpose
of carrying into effect his own personal views." He
then refers to the Commissioner of Crown
Lands, whom he stated Sir John had induced to
resign upon a pension. This also the Jury had
been told was complimentary to his Excellency,
who was desirous of providing for his family;
and instances the conduct of Earl Grey. That
he certainly would have a right to do; but a
Governor would have no right to say to an offi-
cer, if you will retire and make a vacancy for
one of my family, I will use my influence to
procure you a pension. To attribute such con-
duct to Sir John Harvey, and then say it was
part of a preconceived plan, would constitute an
instance of corruption rarely equalled, and
would amount to a bargain and sale of offices,
which is held by statute to be a high criminal
offence; and would render an individual incom-
petent ever after to serve her Majesty. After
saying this scheme was defeated by Mr. Saun-
ders; the writer went on to state, that "noth-
ing remained but to get an additional £500 to
his salary, besides a sly £1000 a year through
Mr. James Taylor, under the head of repairs." His
learned friend said it was meant that the
money should be expended in repairs; but was
this intended in the publication. It implied that
the money was not intended for repairs, but for
His Excellency's own private use. It went on
to say—"Of course in all such matters, the
fewer persons having a negative voice the bet-
ter, and hence the precious scheme of first
buckling the Legislative Council, and then trans-
ferring their power to himself." Here was the
climax; and here were charges made broadly
and openly; and no one could read the paper
and think otherwise. Yet it had been attempt-
ed to be proved, that it contained only a fair
commentary on public measures and public men.
His learned friend forgot that he had admitted
there was no foundation for the aspersion, and
that Sir John Harvey's character stood too high
to be injured. If such were the fact, were
those charges fair and justifiable, and such as
are permitted by law. Had he ventured to say
they contained a just comment,—could he have
shown any ground or foundation to justify the
imputation, there had been something in his
argument; but he says His Excellency's char-
acter is too unimpeachable to be sullied by the
truth of slander; and at the same instant he
contradicts himself.

The next ground of complaint was, that the
defendant had not been permitted to give in evi-
dence the Despatch of Lord John Russell.
That was already before the public, and they
had read it. It had not been kept secret by Sir
John Harvey; and so far from there being any
desire to prevent its contents from going to the
Jury, the learned counsel might have read it as
part of his speech, and no one would have ob-
jected to it; and he would then say to the other
side, that if they wished it, he would read it as
part of his own; and they might have the full
benefit of all it meant. He would tell the Jury
why those documents were objected to.—It was
intended in that way, to introduce evidence of
that which was not at all connected with the
trial; and with reference to the accounts for re-
pairs at government house, he would defy them
to shew any allusion to those accounts through-
out the entire publication. His Honour said at
once if I admit those letters, I must admit any
thing else, and if the accounts alluded to were
produced, the Jury must go into their contents
and examine their correctness. Those accounts
must come before the House of Assembly, as
those of James Taylor & Co. and then the Pro-
vince would know whether improper charges
had been made or not; and that was a question
which it was not for the Jury to try. He would
here remark, that his learned friend pretended
it was not intended to blame His Excellency;
but that James Taylor & Co. had made improper
charges; thus shifting the blame upon the
shoulders of those gentlemen. But was there
anything to warrant such a construction? No;
the fair inference to be deduced was, that Sir
John Harvey would make use of James Taylor's
name to get grants of money; and altho' he
would be the less guilty of the two; yet His
Excellency was alluded to as the prime mover
in the transaction. The object of the writer
therefore was, to create an impression, that
Taylor made charges which his Excellency
sanctioned, for the purpose of putting money
into his own pocket. As to the despatch refer-
red to, there was it is true a commentary on
that document; but the imputation conveyed
was, that His Excellency procured it for corrupt
purposes.

Having disposed of these points, the Solicitor
General said he should take up others, and show
that the defendant had no ground left to stand
upon. His counsel say for him, "True he made
charges, complained of; yet the freedom of
the press calls upon the Jury to acquit;" as if
they were to convict, they would trammel that
organ of which persons can avail themselves,
who may animadvert upon the acts of public
men; because they may thus be called upon to
account for their conduct; a right which cannot
be interfered with, without injury to society.—
They had said that public men are public prop-
erty; and had cited authorities to prove it. In
that he agreed; and so far as candid argument
went, no one would interfere. He would also
say, from his knowledge of Sir John Harvey,
that he was the last man who would shut out
free and fair discussion; but would rather court
it. Yet he says on the other hand, I may err
in judgement as well as others,—or may adopt
what are considered by some as impolitic mea-
sures; and no person has a right however to
attribute to me improper motives, or to say I
act with a view solely to my own private inter-
est, and not to my public good; and an exercis-
ing an authority corruptly for mere personal
ends. He the Solicitor General would go forth
and say, that if a public man openly commits
public acts, which in themselves are dishonest,