

# THE



# STAR,

## AND CONCEPTION BAY JOURNAL.

Vol. IV.

WEDNESDAY DECEMBER 5, 1838.

No. 231.

HARBOUR GRACE, Conception Bay, Newfoundland.—Printed and Published by JOHN THOMAS BURTON, at his Office, opposite Mr. W. Dixon's.

From the Public Ledger, November 27.

### CENTRAL CIRCUIT COURT.

22d NOVEMBER, 1838

BENJAMIN G. GARRETT, Esq.

vs.

ROBERT JOHN PARSONS.

Action on the case for a libel published in the *Newfoundland Patriot* of the 20th October, 1838, (the defendant being Printer and Publisher of the same) concerning the Plaintiff, the High Sheriff of the Colony, and charging him with impropriety in the discharge of his duties as such Sheriff.

Mr. ROBINSON stated the case to the Jury and read the libel, which purported to be part of the Report of a Committee of the House of Assembly of this Island, appointed to examine into the Administration of Justice.

The learned Counsel stated that the Plaintiff was compelled to keep protection from the laws of his country, against a system of defamation and persecution by which he has been assailed since his assumption of office in 1835. It was of no avail that he was at all times ready to meet any charges which might be preferred against him;—that those charges were proved, by the most unquestionable testimony, to be utterly untrue; it signified nothing that the total falsehood was known to the Defendant himself—the same accusations were reiterated, and the same unrelenting persecution was followed, as if the statements had never been contradicted—as if they had not been proved and known to be untrue.

In this respect the High Sheriff shared the fate of all those public functionaries in this Island who, of late years, have been conspicuous for honesty of purpose and conduct, from the Judge to the constable—from the juror to the witness. Every man who manifested a fearless regard for the performance of his duty—who had honesty and courage enough to discharge his conscience by acting in a more straight forward manner, was marked for ruin—and no species of calumny, misrepresentation, and intimidation was left untried through the columns of this *Patriot* newspaper, to blacken his character, and depreciate his worth in the community. By way of giving colour and plausibility to their statements, the Defendant, and the few who are banded together with him, generally professed their ability, and indeed anxiety, to be allowed to prove the truth of the imputation of the High Sheriff; yet upon every occasion on which any of them have been challenged to do so before a fair and competent tribunal, they have backed out of the task and manifested themselves to the world in their true colours,—as the conscience-stricken, cowardly slanders.

For a series of years has the High Sheriff sought to forget the mean, low slanders which weekly appeared against him in the *Patriot*, thinking that contemptuous silence was all that such deserved, and that no individual possessing the honourable sentiments and cultivated feelings of a gentleman, would look upon them in any other light than as the effusions of personal malice and vulgar invective. But when he saw that the most irreproachable conduct did not shield public officers from injury from the tongue of Slander—when he found that a degree of incorruptible purity which evoked from his very Judges expressions of their approbation, was insufficient to save harmless public functionaries whom the columns of a profligate Paper slandered and abused—the Sheriff thought it high time to put a stop to such a system of injustice, and to compel the defamer either to prove the truth of his accusations, or let it appear how vindictive and groundless they had been.

The spirit by which the Defendant was actuated was manifested by the unceasing attacks with which, for several years, the Sheriff had been assailed by him. [The learned Counsel here read extracts from files of *Patriot* newspapers for the years 1836, 1837, and 1838, containing gross libels upon the Plaintiff,—and called upon the Jury to vindicate the reputation of a gentleman and a high public functionary—against whom the combined malice and activity of his enemies have never been able, or even attempted, to establish ought to his prejudice.] The learned Counsel dwelt upon the unfairness of publishing such libels against the Plaintiff—known as they were to the Defendant to be groundless, and incapable of obtaining credence here, where the high and gentlemanly character of the Plaintiff was thoroughly appreciated; but rather for other countries, where Mr. GARRETT's name might be known, but where the falseness of the accusations against him was not equally well understood.—He urged upon the Jury the fact of the Defendant not attempting a justification of the truth of any single one of the libels charged in the present case—much as he had boasted of his ability to prove them all; and called upon the Jury for such a measure of damages as would serve to mark their reprobation of the baseness and malice of the slander, and prove to the world the untarnished reputation of the Plaintiff.

The Plaintiff then called the Colonial Secretary—produced a *Patriot* newspaper, containing the libel, which was furnished to him in the usual manner on the day of its publication, and had the name of the Defendant written on it in his own handwriting.

P. W. CARTER, Esq., J. P., proved an affidavit made by the Defendant in February, in which he deposed to his being the Printer and Publisher of the Paper, and Mr. JOHN VALENTINE NUGENT the owner of the Types and Press. (This latter gentleman is a member of our House of Assembly, and one of the Delegates lately sent to England by that body—Ed.)

E. M. ARCHIBALD, Esq., proved the other documents necessary to be given in evidence on behalf of the Plaintiff.

The Defendant conducted his defence in person, and moved the Court to nonsuit the Plaintiff, the publication of the newspaper not having been, as he contended, sufficiently proved, and referred to his own affidavit as not being in accordance with the Act, not agreeing to the place at which the Paper purported to be published.

The Court overruled the objection—stated there was ample evidence of publication, and that no one should be allowed to avail himself of his own wrong.

The Defendant then addressed the Jury, and stated that he would not attempt to prove any of the libels charged in the declaration—that he published them by order of the House of Assembly—of which he was the Printer—and did so without comment. He then proceeded to vindicate the politics advocated by the *Patriot*, which were, he stated, the opinions of the universal people of Newfoundland stated this was not the first time he was tried of libels—expressed his conviction that although he differed from the Jury in sentiments, and he could not expect no sympathy from them, he would experience, he had no doubt, justice at their hands.

The Defendant indulged in a good deal of invective against the Sheriff, and affirmed that the Grand Inquest of the country—the House of Assembly—having come to the conclusion that the charges preferred by them against the Plaintiff were true, no further evidence on that point could be desired.

The Defendant then deprecated heavy damages on the plea of his poverty, and stated that he should be obliged to pay the amount in his person. He then cited *Rex vs. Wright*, and some other authorities, to show that being ordered by the Assembly to print the report, he was justified as their servant; and called.

R. R. WALKMAN—examined—stated he was Clerk of the House of Assembly—recalled a Committee of Justice having been formed by the House of Assembly—it consisted of five members. The report published in the *Patriot* is almost a correct copy of that handed into the House of Assembly by the Committee. Defendant is Printer and Reporter of the House of Assembly. Witness gave Report to Defendant to publish.

Cross-examined.—The Report was adopted by the House without examining evidence, or inquiring into the truth of the charges. The address to his Excellency the Governor transmitting the report, and praying his Excellency to remove Mr. Garrett from the office of Sheriff, was presented, and the Governor's reply was, that when he was furnished with evidence of the truth of the charges against Mr. Garrett, he would take the matter into his consideration.—This reply was not published.

Mr. ROBINSON, in reply, drew the attention of the Jury to the aggravation which the manner in which the Defendant conducted his defence caused; his uncalled for, unprovoked misrepresentations now made, respecting the Plaintiff, furnished additional evidence of the malicious motives with which he published the libels in question. On a former occasion wherein the Plaintiff, was compelled to bring an action for slanderous words used against him, the ample, unreserved apology and retraction which the Defendant made, was properly given in mitigation of damages; here, the contrary course had been adopted by the defendant, and it would no doubt, be followed by the contrary result.

The learned Counsel strongly reprobated that system of personal slander which has so long been indulged through the *Patriot*, which had no reference to measures, but was altogether confined to the individuals sought to be injured.—The way in which the report of this select committee was adopted, afford a striking elucidation of the manner in which charges were got up and forwarded, in this country, against individuals. Two or three persons fabricate a charge—it is blindly adopted by the House, without evidence, without enquiry—and is forthwith forwarded to the parent Government, and published to the world, as the deliberate opinions of the universal people of Newfoundland! In answer to the authorities cited by the Defendant, the learned Counsel quoted the case *Stockdale vs. Hansard*, 7, c. & p. 731, which was an action brought against the Printer of the House of Commons for printing a report given to the House and by the House ordered to be printed.—The words of Lord Denham were too striking and admirable not to be heard without gratification. In allusion to the justification pleaded, his Lordship says:

"I cannot understand how the authority of the House of Commons can be well urged in justification for printing and publishing a libel upon any person. If the printing were for the use of the Members of the House of Commons only, it might be different, but in this case the printed reports have been bought in a public shop.

"With respect to the third ground, namely, that this is a privilege communication, I am bound to say, as it comes before as a question for my direction, that I entirely disagree with the law as laid down by the Attorney General. I am not aware of the existence in this country of any body of men whatever, who can privilege any servant of theirs to publish a libel upon any individual.—Whatever arrangements may be made by the House of Commons with the Defendants as their subjects, I am of opinion that the publisher who publishes in a public shop, and especially for money, that which may be injurious, and possibly ruinous to any one of the King's subjects, must answer that subject in a Court of Justice, if challenged for the publication of a libel; and I wish to say so now most emphatically and distinctly, because I think that if on the first opportunity that arises in a Court of Justice on a point of this kind being stated, the point were left unsatis, factually explained, the Judge who sat in that Court might become an accomplice to the destruction of the liberties of the country, and expose every individual in it to a tyranny to which no man ought to be called upon to submit. The case of *Rex vs. Wright* is not applicable to the present, and it seems to me that it is not in any respect capable of being urged as an authority to prevent my stating the law to be as I have already stated it. My direction to you therefore is (subject to any question hereafter) that the fact of the House of Commons having directed Messrs. Hansard to publish all the Parliamentary Reports, is in itself no justification to them, or to any other bookseller, if such publication contains a libel upon any man."

His Lordship, in charging the Jury, expressed his entire and thorough concurrence in the law as stated by the Plaintiff's counsel, and begged to adopt the language of Lord Denham, just cited, as his own;—he said that he was in court when that judgment was given, and experienced great satisfaction in having it. His Lordship then proceeded to comment in terms of strong reprobation upon the conduct of the Defendant in casting such imputations upon the Plaintiff's character, without even pretending or attempting to prove the truth of any of them;—that such conduct was not to be tolerated. At the same time, the publication of the Report of the House of Assembly, to which he was the Printer, without any comment by the Defendant, should operate in his favour with the Jury. That although no amount of damages could be any compensation to a gentleman like the Plaintiff, for the pain and anxiety such unfounded and injurious reflections upon, his character must have caused him and his family, still, the Jury should have reference to the situation of the Defendant, and not oppress him by too large a verdict. Certainly, he concurred with the Plaintiff's counsel, that it could not be allowed that the poverty of the Defendant should be taken as an excuse for his misdeeds. If a party will injure another, and has not the means to pay in his purse, why he must pay in his person; and those were not his own words, but the expressions of a very learned Judge in England.—With reference to the observations made by the learned Counsel as to the system of intimidation endeavoured to be brought up to prevent Judges, Jurors, and others from doing that duty which the solemn sanction of an oath, as well as a sense of duty, required them to perform, he concurred with him that nothing could be

more improper; and it was not to be endured that a man should be held up to public odium by a person who happened to have the command of such an engine as the Press, for fearlessly and honestly doing his duty. On the present occasion he was sure he was addressing honest men, who would discharge their consciences without fear of the consequences.

Verdict for the Plaintiff—£80 Sterling. Here, then, by this decision, is the principle sustained,—that whatever rules and regulations the House of Assembly may lay down for its own government, those rules and regulations can in no way affect third parties without the purview of the House. That publication ordered by the House of Assembly affecting third parties are not privileged publications, but that they are altogether within the scope and operation of the law Courts wherever the liberty or property or character of the subject is involved. And what man in the exercise of his rational faculties could doubt it!

Well, then, if libels emanating from the House of Assembly upon third parties are not to be tolerated by our Law Courts, it follows that the numerous slanders in which the several members of that House are wont to indulge, may also become actionable; and we doubt not that from this time out, if ever the House should meet again, actions for slander will be innumerable.

But what will the intelligent British reader say to the evidence in the trial of which an outline is above given—what will he say to the fact that a committee of the House of Assembly report to the House a series of resolutions against a public officer, without the slightest evidence to sustain them—that the Assembly adopt that report, and make it the subject matter of a charge before the Home Government! The villainy of such a course of proceeding against public officers, and the object of it, are too apparent to be misunderstood.

(From the New York Gazette, Oct. 29.)

Theller and Dodge the two scoundrel patriots who made their way out of the "Gibraltar of America," garrisoned by the flower of the British Army, have arrived it seems, in the U. States. We are heartily sorry to hear it. We have plenty of that kind of gentry on hand,—quite enough probably to cost the United States three or four hundred thousand dollars during the ensuing winter. We do not believe there is the least doubt of these frontier brigands intention to continue their onslaught upon the peaceable people of the provinces the moment the water courses to afford them the opportunity of marching over the ice, and of course our government will be obliged to keep up a constant militia vigilance upon the border, or permit such acts as will endanger the peace of the two countries. Thought we must say that it would be very unreasonable in the present British government to make such complaint against that of the United States, even if it were to stand quietly by and let all the vagabonds on this side the lines cross over and commit all the enormities they choose on her Majesty's dominions; for no Government even tried harder to lose her possessions than the British Ministry to lose the Canadas. If they centre and condemn to the gallows the villains who murder, burn, and plunder the well disposed citizens, the miscreants are either pardoned unconditionally, or permitted to escape from the strongest and best guarded fortresses in the country. If the Governor General in the plenitude of his clemency, instead of hanging them or transporting them to Van Dieman's Land, sends them on a pleasure four to the delightful climate of Bermuda, the act is disclaimed, and the Governor General disgraced! What right has the wise ministry of the Queen to find fault with the United States for a little laxness in the premises? It is our opinion that Sir