were to wear the one, or to wield the other.* Except the star-chamber decisions then, and the *nisi prius* opinion of lord Raymond, there seems to be the whole weight of the English authorities for the doctrine for which we contend. It may be added that all indictments formerly contained the word *false* as well as *malicious*, and that too at times when the doctrine of right pleading had not grown into such disrepute, but that it was necessary to prove what it was necessary to allege. The present indictment does so. The doctrine is supported by the dictates of common sense, by the writers on common law, the civil law, and those laws of morals which are the same every where, at Rome and at Athens, in the New World and the Old.†

This doctrine is that which I wish to advocate; namely, that reason, sound sense, and natural justice, are law, and are not to be subverted by pre-

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*"The licensing act of Charles II. provides that no book on politics should be printed without the authority of the secretary of state; none on common law, without the license of the chancellor: no novels, romances, fairy tales, nor any work on science, physic, divinity, or LOVE, without the license of the archbishop of Canterbury! supposing him, no doubt, the most conversant on all those subjects, particularly the last!" See, *Senator*, Vol. 3d. In the case of the seven bishops, 4 State Trials, "the counsel for the defendants, under the permission of the court, went at large into arguments and proofs to shew that the allegation in the petition was *true*, and Mr. Justice Powell told the jury, that to make it a libel, it must be *false*, it must be *malicious* and it must tend to *sedition*. The jury were of his opinion, and acquitted the defendants." In the next case, that of Fuller, 5 State Trials, who was tried for a libel on government, before Holt, perhaps the greatest lawyer that ever sate in Westminster-hall, he said "*Can you make it appear that these books are true? If you can offer any matter to prove what you have written, let us hear it.*" In Franklin's case, 9 State Trials, 269, at *nisi prius*, it was indeed decided the other way, but the counsel for the defendants urged the attorney-general in vain to shew any case, except the star-chamber, where the defendant was not allowed to shew that his publication was true. *He could not shew any.* In 1792, lord Camden declared "that it ought to be left to the jury to decide, whether what was called *calumny* was well or ill founded."

†The writers on the civil law declare that the truth shall excuse the libeller, if what he relates interests the public to know. *Veritas convitii excusat injuriantem si id quid objicitur, tale est ut publice intersit illud sciri.*—Vinn. lib. 4. 3. 5. The poet also, of the Augustan age, says

——————*Si quis*
Opprobriis dignum latraverit integer ipse?
Solventur risu tabulæ tu missus abibis HORACE.

There is indeed a case in the State Court of Massachusetts, 4th vol. Mass. Rep. *Commonwealth vs. Clap*, where the right to give the truth in evidence seems to be restricted to public *elective* officers, on what principle it is not easy to see. If the report be correct, the question was not fully considered. Even there, however, judge Parsons appears to agree with the civil law that the truth may be published on subjects, *respecting which the public are interested*.