Continued from fifth page.

THE INFORMER CASE.

McNAMEE-"THE POST" LIBEL SUIT.

said: "All I have published of you is true, and "it was for the public interest that it should "be published." He (Mr. Carter) contended that the defendant by this plea of justification had reversed the relative positions of himself and the prosecutor, and that instead of the *onus* being upon the prosecutor to prove knowledge on the part of Whelan of the falsity of the libel, the *onus* was thrown upon the defendant to prove that the accusations made against the prosecutor were true.

Mr. Justice RAMSAY remarked that the point taken by Mr. Kerr was that there were two misdemeanors, two different sorts of libel created by law,—one where a party libelling another has a guilty knowledge of its being false,—not that guilty knowledge which results from his non-justification, but some knowledge of its falsity, notwithstanding which he makes the publication; and the other misdemeanor is where a party libelling another is not charged specially with having a guilty knowledge of its falsity.

Mr. CARTER contended that these two sections of the Libel Act merely had reference to varieties of the same offence, but did not divide libel into two different offences; and he went on to contend that guilty knowledge must, as in the case of many other offences, be presumed from the acts of the defendant, without special proof of knowledge; and moreover he pointed out that there was evidence of Whelan knowing the untruth of his charges, and this, therefore, was a matter for the Jury to decide.

Mr. KERR thought it absurd to contend that because the defendant had justified there should therefore be a presumption that he knew the libel to be false. If the defendant justified the libel it was clear that he could not have known the libel to be false, because in order to justify he must show the charges made in the libel to be true and published for the public benefit. The defendant moreover by the ninth section of the statute is permitted to plead along with his plea of justification, the plea of not guilty, and that section declares that a defendant pleading justification shall have the same rights under his plea of not guilty as if he had put in a plea of not guilty alone.

Mr. JUSTICE RAMSAY after some further discussion decided that he could not withdrew the case from the jury on the legal point now raised, but that the case MUST *go to the jury*.

Mr. KERR then addressed the jury for the defence. He said:—Resuming the arguments made by Mr. Doherty I have no intention to keep you any great length of time. I would, however, call your attention gentlemen to the question whether Mr. Whelan was convinced at the time he made these charges that they were false. Have you had a tittle of proof of that? Have you not had most conclusive evidence in the world that he *really believed that these charges were true?* Can you swear, on the oath you have taken, to give a verdict according to the evidence, that he was fully aware of their falsity? If you could it would be your duty to bring in a verdict of guilty upon this indictment. But if you are not convinced of this by the evidence you have had laid before you—if you are satisfied clearly beyond the shadow of a doubt that Whelan knew these charges to be false, you cannot bring in a verdict of guilty; it is utterly impossible for you to do it with any regard for your oath. There is no possibility of your finding him guilty on an indictment of this kind, charging him with publishing this libel, *knowing it to be false.* You cannot do it on the evidence before you; and you are bound to acquit him. I think, and I believe you will be of the same opinion, that the whole of the circumstances of this case show that the defendant acted in the most perfect good faith that could possibly be imagined.

Now, gentlemen, what proof is there of the publication having been made by the defendant? A publication by THE POST Printing & Publishing Company is not a publication by Mr. Whelan. Who were the printers and publishers of that POST newspaper? THE POST Printing & Publishing Company. Who sold that newspaper? THE POST Printing and Publishing Company, at their office in Montreal, Mr. Whelan is relieved from the responsibility entirely. Now, take another point. I lay it down, and the learned Judge, I fancy, will lay it down also, as a matter of law that where a party incites another to make a statement or asks for a statement, he cannot then claim that he is injured by that statement, inasmuch as he himself drew it out. [Mr. Kerr here cited to the Court authorities to support the principle of law he was explaining to the jury.]

Now, gentlemen, in dissecting the heads of the libel, we come first to the charge that Mr. McNamee was one of the first to introduce Fenianism in Canada and that he organized a branch society; and I think you can have no difficulty in coming to the conclusion that the private prosecutor had a great deal to do with the introduction of Fenianism here. He went and saw O'Mahoney, the head of the Fenian organization in New York; he called a meeting on his return and according to McGrath's evidence produced a warrant for establishing a Fenian branch society, and that, being necessary to cloak the proceedings, such a branch was inaugurated under the name of the Hibernian Society. Can you, gentlemen, say that my client, in making this particular charge against McNamee, *said what he knew to be false.* I fancy that my client has on the contrary proved the truth of that most conclusively.

With regard to the second charge, namely, that McNamee, having introduced Fenianism and induced persons to join the organization, betrayed them and revealed their plans in order to enrich himself, you are urged to consider carefully the manner in which he gave his evidence. The establishment of Fenianism here by McNamee is proved, that is shown to be true; consequently that portion is well justified, and with regard to the betrayal of his dupes to the Canadian Government, you can easily understand that the distribution of the secret service money is so managed as to keep parties receiving it carefully veiled from public view, and even if any officers could be found with a knowledge of these things they would shelter themselves under the privilege given them by law.

With reference to the charge that McNamee is a crimp and bounty broker, it has been shewn that he took away to the States some 2,000 men, ostensibly for the purpose of working on a railroad. The evidence of one of these men, who was fortunate enough to return to Canada, shows that the railroad was only a deception, and that a majority of his comrades, who were sent out there with him by Mr. McNamee, were left in a foreign country without work and without money, and were compelled to go into the American army. People who do this sort of thing do not go publicly and openly about it. We know that this procuring of troops here for the American army was in full blast here at that time; and that the Government were obliged to take measures to stop the carrying off of men to the United States in order to be offered as a sacrifice to the god of war. I think, gentlemen, under the circumstances and in view of the evidence actually placed before you of what Mr. McNamee did and Mr. McNamee said about this wholesale exportation of men across the line, I think you will hardly fail to come to the conclusion that the $100 a head he himself mentioned in connection with a batch of these men was the price of his part of the work in sending the men over and placing them in a position in a foreign state, where they should have the two alternatives of starvation or enlistment; and certainly, in the face of the evidence before you, you cannot come to the conclusion, as you must in order to find a verdict of guilty, that the defendant *knew this accusation to be false.*

So far as the charge made against the prosecutor of having offered a bribe to induce the assassination of a prominent citizen, I think that the evidence of Michael O'Reilly proves most conclusively that he did this. O'Reilly says that at a time when he (O'Reilly) had been discharged by or through Mr. Brydges, the then General Manager of the Grand Trunk Railway, and when he (O'Reilly) was smarting under a real or supposed injustice at the hands of Mr Brydges he was intercepted and spoken to by the prosecutor on the subject of this grievance, and was then and there offered by the prosecutor, who is his wife's brother, $500 to put daylight through Mr. Brydges. Now, it is pretended that this may have been a joke on the part of Mr McNamee, or it may have been in earnest; but, gentlemen, any man who chooses to make an offer of this sort to a man whom he knew to be excited and smarting under the influence of a supposed injury at the hands of the person upon whose life this price of $500 was put cannot expect to have such a mild construction put upon his language. People are not in the habit of joking in this manner; and surely, gentlemen, you cannot for a moment, in the face of this evidence of O'Reilly's, entertain the idea that Mr Whelan *knew this accusation against Mr McNamee to be false.* In fact, gentlemen, I think you must come to the conclusion, as Mr Whelan did, that it was perfectly true. Now, gentlemen, these are the accusations contained in the alleged libel, and I cannot see, for the life of me, how you can find that my client published them, *and knew them to be false* And if you cannot do that, you must certainly find a verdict of not guilty. I say that the prosecution have not proved this indictment. But even suppose, gentlemen, that you were to consider it necessary to go further than the plea of not guilty I think you will be of opinion that my client has fully substantiated his plea of justification. This part of the case has been so thoroughly and so ably put before you by my associate Mr. Doherty that I will not detain you further than to remark that so far as the public interest in this matter is concerned, I lay down the principle that where a man comes forward, aims at public offices, obtains the position of representative Irishman as Mr. McNamee did as President of the St. Patrick's Society, he courts public criticism, and so long as that public criticism is in good faith, as I contend it was in this instance, under such circumstances, statements publicly made in such fair criticism are privileged. I say that if remarks are made *bona fide*, and in good faith on the conduct of a public man, they are privileged, and the party cannot be brought up for libel and cannot be convicted of libel, unless it be proved that he made the statements *knowing them to be false.* Gentlemen, we merely ask justice at your hands, and I feel confident that after the careful and impartial consideration which will be given by you to this case, you will come to the conclusion that we are entitled to a verdict of not guilty.

Mr. MACMASTER, Q.C., cited authorities to show that notwithstanding the fact that THE POST Printing and Publishing Company were the publishers, Mr. Whelan was personally responsible, as according to law all persons concerned in publishing a libel are equally guilty of a misdemeanour. He also held that it was competent for Mr. Whelan, in his plea, to state that he had no knowledge of the publication, and that not having done this it was an admission of his knowledge. He referred to the serious charges that had been made against the prosecutor, and denied that it was in the public interest that these statements should have been published. He also held that the defence had failed to prove every one of their allegations, and that not having done this the prosecution were entitled to a verdict at their hands. Every allegation had to be proven, and also that it was in the public interest that they should be published. He then reviewed the different charges in detail, contending that not one of them had been proven, that Mr. Whelan had failed in his case, and that the prosecution was entitled to a verdict of "Guilty." The address was a very forcible and eloquent one.

THE JUDGE'S CHARGE.

Hon. Justice RAMSAY then commenced his charge to the members of the jury:—

The present case, commenced the Judge, was, as had truly been remarked, one of very great importance, in fact, all cases of libel at the present time were important in themselves, because libel is one of the most annoying of the minor offences, and because it is becoming in this country so widespread. It is, therefore, of the greatest importance that the true principles governing the liberty of the press so-called and the protection of private individuals should be rightly understood. The liberty of the press doubtless was of great importance, but much nonsense was abroad concerning the subject. The only right meaning of the liberty of the press was that it should not be subjected to any particular censure and nothing more. But under this impression it was thought that any man with a pen in his hand, an inkstand at his elbow and some paper could do anything he pleased, which he held was a grave mistake. What they had first to decide in this case was whether the defendant had published a false and malicious libel against Mr. McNamee. A libel, he explained to them, was a writing injurious to the character and reputation of an individual, and in its fundamental sense had no connection with the intention or falsity of the report. There was no doubt, he thought, that the article complained of was a libel. The accusation made against the defendant was met in two ways by the defendant, first by him pleading simply "not guilty," that is to say that he did not write or publish it, and that it was not a libel under the statute. The defendant had also availed himself of the privilege granted by the statute, of saying that the libel was true and that he had published the statements in the public interest. The law said that if the accused establishes this he should be entitled to a verdict of "Not Guilty." The defendant in this case, Mr. Whelan, had in consequence of the privilege alleged that every word contained in the article complained of, was true, and that in writing it he was doing so in the public interest. If they thought that Mr. Whelan had proven this then he was entitled to a verdict of "Not Guilty" at their hands. But the defendant had also claimed that he should have the same verdict under the simple plea of "Not Guilty," because he held that the prosecution had not proved that he was responsible for the publication of the article in question. This claim, he considered, was unfounded in law, and unsupported by the facts of the case, as the record of proprietorship was signed by Mr Whelan, and that rendered him responsible. Besides this, Mr O'Neill, one of the witnesses for the prosecution, had testified that Mr. Whelan had the immediate control and regulation of all the issues of the paper, and as the article complained of had appeared in one of the issues, Mr Whelan was responsible for it. The defendant had also claimed that he could not be charged with libel, as he held that he was simply complying with Mr McNamee's request in publishing the article. But the letter of Mr McNamee to Mr Whelan had not requested him to publish the article, but dared him to do so in order that he might take out an action for libel. He did not see how Mr. McNamee's words could be turned into an idea that the article was published at his request. As to whether Mr. Whelan, when he published the article, was aware that the statements were false, all he had to say was that if they did not believe his justification, his guilty knowledge would be fully established. The question next arose, had the defendant proved his plea of justification. By this plea the responsibility of proving the charges was shifted from the shoulders of the prosecutor to those of the defendant. It was for them to examine and decide whether the article had been proven to be true or not. The Hon. Justice then proceeded to review the charges and the evidence bearing on them in detail. In regard to the first charge, namely, that Mr. McNamee had introduced Fenianism into Canada, he said Fenianism was a crime and that accusing a man falsely of such an act was a libel for you were accusing him of a crime for which, if found guilty, he might be severely punished. The next charge made against the prosecutor was even a more infamous one than the first, for it charged him with selling his dupes to the Government of Canada. Then there was another charge equally as heinous, that of sending men from Canada to a foreign country, and selling them to fight the battles of that country. This was a very serious charge, for it meant in reality that the prosecutor had sold these men to become murderers. The learned Judge remarked that he himself as Crown Prosecutor had much to do during the American war with crimps, and could say that the horror and disgust with which these people were regarded at that time was great, and that there had never been any difficulty experienced in discovering them and bringing them to justice. Notwithstanding this, they were now asked to believe that Mr. McNamee had sent two thousand people to the States to be enlisted in the army, and still nobody knew anything about it, and not one person had been produced who could prove it. The theory of the defence seemed to him to be that Mr. McNamee had sent a number of men to work on the railroad in the United States; that while there these men had enlisted in the American army, and that necessarily Mr McNamee was to blame for their so enlisting. There would be no justification for such a proposition. In regard to the charge that Mr McNamee had offered $500 to a man named O'Reilly to shoot a prominent citizen, there was a little more evidence produced on this point, as O'Rielly had sworn positively that Mr McNamee had made such an offer. This was a most serious charge. But he would ask the jury whether, if they were now trying Mr. McNamee on this charge, they would believe O'Reilly's statement uncorroborated by any other evidence. If not, then Mr. Whelan had no justification in publishing it. The last charge against Mr. McNamee, to the effect that he had pushed himself forward in Irish affairs and proved an incubus to the Irish people, was, he considered, worthless, as when a man is charged with a public wrong he should be charged with some specific act of wrong. Referring again to the charge of Fenianism, the learned Judge said that there could be little doubt after the evidence that the Hibernian Society at its commencement or shortly afterwards worked in connection with the Fenian Brotherhood, an illegal association. The defence had succeeded somewhat on this allegation, and if this allegation had stood alone then the defence might have had some claim to a verdict. What he considered another very unfair proposition against Mr McNamee was, that because he left the Hibernian Society he intended to betray his countrymen. This proposition, he considered, was not only very irrational but very unfair. There is no difficulty as to the cause of Mr. McNamee leaving the society; he had simply done so at the request of those who were not satisfied with him as President. The hon. Justice concluded by again remarking that people got themselves into all kinds of difficulties on the question of libel, and a great deal of nonsense was spoken on what was called the sacred duties of the journalist. The journalist, in his opinion, stood in the same position as any other man in the community. He had no privileges whatsoever, or sacred duties of any kind to fulfill. The journalist has no more right, nor was it his duty to denounce his neighbour more than any other man. The journalist had, doubtless, greater facilities for harm, but on this account his responsibility was greater. They had, however, nothing to do with this; all they had to decide was whether or not the article was a libel, about which he considered there could be no doubt. Next they had to decide whether the statements made by the defendant had been proven to be true and whether it was in the public interest that they should have been published. It was, however, necessary that every one of the allegations should have been proven to be true. If one was proven and the others were not, it was their duty to find the defendant guilty.

The jury retired at 5.10 o'clock, and not having agreed upon a verdict at six o'clock the court was suspended unil eight o'clock in the evening.

THE CLOSING SCENE IN COURT.

At eight o'clock in the evening a large crowd had gathered in the Court Room and sat conversing in whispers. A few bets were made on the probable result, but there seemed to be a majority who were of the opinion that the jury would disagree. The private prosecutor, strange to say, was absent, and as some merry-faced individual remarked, "was probably sending telegrams to his friends." It was also whispered about that a brass band had been engaged to escort his friends to his residence after the verdict had been rendered, and certainly four members of a well known band were seen returning from the direction of the Court House some time afterwards with muffled instruments.

Hon. Justice RAMSAY took his seat on the bench at a few minutes after eight, when the clerk of the Court was sent to the jury room to ascertain if the jury had agreed. The answer was that they had not, one of the jury wishing to ask a question. Whether the question was answered or not is a mystery, but a delay of about half an hour occurred when there was a light knock on the inside of the jury room door, and all conversation ceased as if by magic. There was a dead silence as the jury took their places in the box and faced the Court. Mr. Sicotte, the Clerk of the Court, then arose and asked the usual formal question, "Gentlemen of the jury, have you agreed upon your verdict?" To this there was a general assent. "What say you, gentlemen?" he continued, "Do you find the defendant, John Patrick Whelan, guilty, in manner and form, as laid in the indictment, or not guilty?', There was a momentary pause, when one voice, for all, answered, "not guilty." There was a burst of approbation, which, however, was nipped in the bud by the court officials. The defendant was then discharged, and the Court of Queen's Bench adjourned.

Messrs. Doherty and Whelan were immediately surrounded by numerous friends, when a great deal of handshaking and congratulations were indulged in. To describe the expression on some of the faces on the other side would require the pen of a Dickens.

It is universally admitted on all sides that the eloquent effort made by the brilliant young barrister, Mr. C. J. Doherty, had the desired effect on the jury; in fact, in a private conversation which ensued after its delivery, the Hon. Judge Ramsay paid that young gentleman a very high compliment.

MR. WHELAN RECEIVES THE CONGRATULATIONS OF HIS FRIENDS.

Since the close of the great libel suit on Thursday night, Mr. Whelan has received the hearty congratulations of his friends from all parts of the Dominion, and even the United States, on the result of the trial, as the following telegrams, among many others, will fully testify:—

OTTAWA, Sept. 29—Everybody here delighted at the verdict. All friends send congratulations. Informer crowd, insignificant at that, crestfallen. Rumored that every influence was brought to bear on the Government here to prevent witnesses from appearing, and most strenuous efforts made by aforesaid crowd to block proceedings.

NEW YORK, Sept 29.—Informer case chief topic of conversation. Jury's finding regarded as correct one. We congratulate you.

BUFFALO, Sept 29.—Friends here are highly pleased. We congratulate you on the issue.

TORONTO, Sept. 29.—Opinion divided here. Verdict, however, regarded generally as a righteous one.

CHICAGO, Sept. 29.—No two opinions as to the justness of verdict. Informer business played out.

HAMILTON, Ont., Sept. 29.—Friends here satisfied at result, and congratulate you on justness of verdict.

CORNWALL, Ont., Sept. 29.—Accept congratulations of friends here. Everyone satisfied that verdict is a just one.

QUEBEC, Sept. 29.—Verdict hailed with delight. Your friends here offer most hearty congratulations. Informer crowd mum and dumbfounded.

PRESCOTT, Ont., Sept. 29.—Great excitement over verdict. Accept congratulations of friends.

BOSTON, Mass., Sept. 29.—Verdict was no surprise. Your many friends extend their congratulations.

KINGSTON, Ont., Sept. 29.—Unanimous feeling of satisfaction at verdict. Accept our good wishes.

THE EXHIBITION AT MONTREAL AND ITS MUSICAL RESULTS—THE N. Y. PIANO CO.'S PROPOSAL.

DEAR SIR,—In July last, when it was decided to hold the Provincial Exhibition in Montreal, the above piano house, actuated no doubt by a view to further their own interests, but also with a laudable desire to interest and attract visitors, proposed to give the use of the Queen's Hall, which they control, for a competition between the leading American and Canadian pianos, then catering for our trade. Some of the pianos in which the N. Y. Piano Co. dealt were specially selected for attack by rival dealers in this city, jealous of their success. They boldly met the issue by proposing a new way of settling these disputes; this was none other than a challenge to test the pianos claiming superiority in the Queen's Hall, where the public would be admitted to judge of their quality for themselves. In this proposal it was suggested that the pianos paired in the order of their respective merits, "Weber," vs. Steinway; Decker & Son vs. Decker Bros.; Heintzman & Co. vs. Mason & Risch, and R. S Williams and Son, of Toronto, against any other Canadian manufacturer. The artists named for the proposed contest were those who had recently played in public for the respective houses. Had the challenge been accepted, there is no doubt, great interest would be excited in musical circles by the contest. The beautiful Carreno with her favourite "Weber Piano," pitted against Joseffy on the stage of the Queen's Hall, would produce music worthy of the gods, and would, moreover, inaugurate a decidedly improved method of bringing the merits or demerits of the respective instruments to public notice. The "puffing" indulged in by manufacturers and agents of inferior pianos, would be transferred to the instruments themselves, and "*the survival of the fittest*" would undoubtedly be the result of such contests as was here proposed.

The very parties who declined this contest are now loudest in praise of the pianos they feared to submit to a public trial. One Ontario manufacturer characterized the proposal "sublime impudence," this, I am informed, is the same firm who recently sent one of their partners to Europe to present one of their pianos as a gift to an eminent pianist, begging in return the usual "certificate." The certificate was politely given, but the "piano" was soon after handed over by the artist to a charitable institution. No matter, the "certificates" done the business. Why should he, who knew nothing of piano-making himself, risk a public competition with the pianos of a practical manufacturer like Heintzman?

The certific te business was good so long as it was confined to pianos of undoubted merrit, but its monopoly by third and fourth-rate pianos in the last few years has destroyed its value. The people now desire to hear the instruments and judge for themselves. The house of Weber, which obtained more certificates from eminent artists than any other in this country, never relied wholly upon them, but invited the people in every town and city to hear their pianos and judge for themselves. The wisdom of the founder of this great house is justified by the immense popularity of their instruments to-day. I shall be surprised if the proposal of the N. Y. Piano Co. is not nearer adoption than the old fogys of the trade are willing to admit.

Yours respectfully,

H. J. S.

BIRTH.

DAVITT—At Janesville, P.Q., on the 16th September, the wife of Michael J. Davitt of a daughter. 781

MARRIED.

MULLIGAN—FLANNERY—At St. Alphonse' Allumette Island, P.Q., by the Rev. James C. Lynch, P.P., on the 19th September, 1882, P. A. Mulligan to Julia Kate, daughter of the late William M. Flanuery and step-daughter of P. Lynch, Esq. No cards. 711

DIED.

MCMENAMIN.—At St. Gabriel Village, on the 27th inst., Mary, eldest daughter of Daniel McMenamin, aged 41 years.
Glasgow, Scotland, papers please copy. 762