

SLANDER—CRIMINAL TRIALS WITHOUT JURIES.

inflicted a penalty on the offender, and the Romans added to the fine the mulcting of the defendant in damages. Until very recently, the Ecclesiastical Court had jurisdiction in cases of defamation, and we find in the *London Chronicle* of 1790, that a lady was publicly excommunicated in that year—

"For defaming the character of another lady acquaintance. She was put in the Spiritual Court some time since, but refused to make any concession, although repeatedly applied to by the friends of the other lady. The consequence of excommunication is she cannot enjoy any legacy, inherit an estate, or receive benefit by law except in criminal cases."

By the 18 & 19 Vict. c. 41, the jurisdiction of the Ecclesiastical Court in cases of slander has been abolished, and the only remedy now left is by action of damages.

It has been said by a learned writer:—

"It would be highly inexpedient and mischievous to subject the utterer of every expression which might possibly provoke offence and retaliation, and ultimate violence, to a penal prosecution; it would be attended with fearful evils, legal as well as moral, if men's mouths were to be closed to all communications in which the character or reputation of others might possibly be involved. What, then, is to be done if the evil cannot wholly be excluded, and cannot be tolerated without some restraints?"

We think that the same necessity of proving legal malice as now would exist should slander be made punishable in a Criminal Court, and it would certainly have as strict proof. We respectfully differ from the great authority we have quoted in thinking that men's mouths would then be closed in any fair or just communications respecting the character of others; and we think that the present law places the poorer classes, to whom not unfrequently their character is their one chance of livelihood, in an unequal position before the law. A working man who has been foully slandered, and who has sustained special damage, must bring his action, and must give security for costs. This with many is an impossibility; and so the slanderer may reiterate his falsehoods, and ruin his victim without the latter having any means of redress. What wonder, then, that the experience of Criminal Courts will show a long array of crimes of violence, arising from unchecked slander. Libel is in law worse than slander, because (it is said) of the more durable publicity, and the deliberation of the slanderer in reducing the statements to writing; and therefore it has been made penal, while slander is comparatively free. We do not urge that the same punishment should be awarded to the slanderer as the libeller, but we can see no reason why the utterer of a false and malicious falsehood, tending to the damage of another, should not be compellable before magistrates to enter into recognizances for his good behaviour for the future, and that words which if written would be libels, should for the purposes of binding over be considered slanders if spoken.

In the consideration of this subject, we have derived considerable advantage from the perusal of the recent edition of "Starkie's Law of Slander and Libel," edited by Mr. Folkard.—*Law Magazine.*

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The Canadian Parliament last year passed a very remarkable Act, making a radical change in the constitution of criminal courts by dispensing with juries. A writer in the *Canada Law Journal* for November says, "It is one of those gigantic strides in legislation, the full bearing and extent of which is not at first fully perceived, but when brought into use, and its value seen, we all are apt to wonder why it was not long before placed on the Statute Book."

This is certainly an accurate description; it is a gigantic stride in legislation, and one which requires strong evidence of its beneficial operation to induce approval in this country. A correspondent, in a position which gives him an opportunity of learning the general feeling of the country, tells us that the statute was introduced by the head of the Government of Ontario, the Hon. Mr. Attorney-General Macdonald, and "that the measure has been most favourably received by the Judges, the Bar, and the general public."

From the article in the journal before mentioned we find the scope of the statute to be this. Each local judge in Ontario sitting under the provisions of the statute, and for every purpose connected with or relating to the trial of offenders, is created a court of record. No regular sittings are appointed, but the court sits from time to time as occasion may require. The Clerk of the Peace is appointed to act as clerk of the court, and the sheriff acts in the same way as in other criminal courts.

The jurisdiction of the court, as respects the nature of the charge, extends to "all offences for which a prisoner may be tried at a general session of the peace," in other words, to nearly every crime, short of a capital felony, known to the law; and if convicted, "such sentence as the law allows and the judge thinks right" may be passed upon the convicted persons. The jurisdiction, however, is limited to persons committed to gaol on such charges and consenting to be tried by the Judge.

The procedure is this: Within twenty-four hours after a prisoner is committed to gaol for trial upon any such charge, the sheriff notifies the Judge of the fact, and when the local prosecutor is ready to proceed (having received and examined the depositions and papers which the law requires to be laid before him for the purpose) he informs the Judge, and an order is at once issued, and under it the prisoner is brought before the Judge in open court. A formal accusation in the nature of an indictment describing the offence (prepared in the mean time by the public prosecutor from the