

“ at any house, shop or office, belonging to or occupied by the defendant and
 “ defendants, or any of them, or by his or their servants or workmen, or where
 “ he or they, by themselves, or their servants or workmen, usually carry on the
 “ business of printing or publishing such newspaper, pamphlet or other such
 “ paper, or where the same is usually sold.”

And Sec. XII directs the Clerk of the Peace to furnish a certified copy of the affidavit, to any person applying for it, “ in order that the same may be
 “ produced in any *civil* or criminal proceeding.”

The Court below, it is respectfully submitted, inadvertently overlooked these sections of the Ordinance, for it would be difficult to state in more clear or comprehensive terms, that, in *all* cases, the publication of a libel shall be considered proved, upon production of the affidavit specified, or of a certified copy, and of a newspaper corresponding with it, containing the same description of person and place of printing.

There is no room left for doubt when it is considered that the Ordinance in question is a transcript of the Imperial Act 38. Geo. III, Cap. 78. (Vide Appendix, B.) and when reference is made to the nature of the evidence given in the English Courts under that act. The authorities are numerous.

2nd Saunders on Pl. and Evid. 810, 811 ;

“ The affidavit, together with the production of a newspaper corresponding in every respect with
 “ the description of it in the affidavit, is not only evidence of the publication of such paper by the parties
 “ named, but is also evidence of its publication in the County where the printing of it is described to be.”

2 Harrison's Digest v. "Defamation," 2384.

2 Chitty's Gen. Practice. 48.

4 Bar. and Cress. 35.—*Rex vs. Amphlett*.

6 Dowl. and Ry. 125.

6 Bing. 409; *Cook vs. Ward*.

9 Bar. and Cress. 382.

— In *Mayor vs. Fletcher*, 9th May A. D. 1829, K. B. Jones, Sergeant, moved for a new trial, and the Court held that the production of *any* newspaper sufficed, under the 11th Section of the Act, without proof of the defendant's publication thereof. 2 Starkie on Slander, 47, 48. 10 East, 94. In the case here cited, that of the King *against* Hart & White, Bailey J. said, speaking of the same Statute of which the Prov. Ord. is a transcript, as above-stated.—“ As to the evidence of publication, the statute was passed
 “ as the title of it states, for the purpose of “ preventing the mischiefs arising from printing and publish-
 “ ing newspapers by persons not known ;” and it was meant to facilitate the proceedings, either civilly or
 “ criminally, against the several persons concerned in such publications.”
 “ And I cannot consider, as the objection supposes, that all these descriptions of persons, namely,
 “ plaintiff, informant, or prosecutor or person seeking, &c., apply to the same person seeking to recover
 “ penalties given by the Act ; but I take those words to apply to a plaintiff seeking to recover damages in
 “ an action for the civil injury sustained by him from the publication of the libel ; to the informant in an
 “ information granted by this Court or exhibited by the Attorney General for the same ; to a prosecutor,
 “ prosecuting by indictment for the libel ; or, lastly, to any person seeking to recover penalties under
 “ the Act.”

The Court below also erred, it is respectfully submitted, in allowing evidence to be given of the existence of *rumors* or *reports* touching the character of the plaintiff. The utmost length that has been hitherto gone by the Courts in this Country has been to permit evidence as to *general character* to be given ; and this on the ground that such evidence a party may be prepared to meet ; but it is impossible for an assailed party to grapple with mere *rumors*, and the Courts in England and in the United States have therefore almost all rejected the doctrine that, under the general issue, in mitigation of damages, the defendant may give evidence of the existence of such reports. The Appellant submits that to the spirit of the law of this Country which does not, except in a few special cases, permit the truth of the libel or slander to be pleaded, such evidence is peculiarly repugnant.