instit., et cette règle, quoiqu'elle ne soit pas écrite dans le Code civil, n'est pas moins certaine en droit français. V. Cass. req. 22 janvier 1851 (D. 51.1.89); 18 mai 1852 (D.52.1. 137); 23 février 1863 (D. 63.1.171).—*Adde:* Paris, 26 mars 1862 (D. 62.5.194); Riom 24 mai 1861 (D. 61.2.133).

THE LAW OF LIBEL.

"An English Barrister," writing to the *Times*, in answer to a letter of Mr. Justice Stephen, says:—Our old lawyers fenced the law of libel with some securities, and one was that no action should lie for written or spoken slander, unless it imputed a crime or affected a man in his office or business, etc. (the present limitations of actions of slander); and another was that no action would lie unless the slander or libel was, in some way, alleged to be false and malicious, which involved a wilful and conscious publication of what was injurious—for even in the time of Lord Coke it was held that a man could not do an act maliciously unless he did it consciously, and was conscious of its nature—and the notion of holding a proprietor of a paper liable, as for a malicious libel, for a mistake of a servant would have appeared too monstrous to be entertained. In later times, however, these safeguards were undermined and swept away by the judges. Sir James Stephen is aware that almost within his lifetime a Court composed of very learned judges held that, according to the 'old common law,' no action lay for libel (that is, for written or printed slander) unless it would lie for the same words if spoken (that is, mere oral slander), but that, as it had been held otherwise (that is, contrary to law), they were bound to follow the decision (*Thorley* v. *Lord Kerry*, 4 Taunton). The effect of this judgment, in short, was that the old common law had been altered by the judges of former times as against the press, and now the definition of a libel is 'anything which tends to disparage.' So one of the two great securities of the press was swept away, and the press were rendered liable for anything which might be deemed disparaging. Still the other great security remained—that the libel must at least appear to have been published maliciously by the defendant. But this also in course of time was undermined and taken away by the judges. No doubt they rightly directed juries that where a libel was intentional, and intended to injure the plaintiff, and apparently uncalled for, the malice might be inferred as an inference of fact; but still it was left to the jury, in non-political cases, whether under all the circumstances it was or was not so. Unfortunately, however, many of the cases of prosecution for libel were political, and the judges were mere servile tools of Government, and in order to enable themselves to secure convictions they usurped the power of directing the jury that the publication was 'seditious' or 'malicious,' and that the malice was a mere presumption of law from such a publication, so as virtually to direct the jury to convict. Juries resisted this usurped power, and found verdicts of 'guilty of publishing only' or 'not maliciously,' and when these verdicts were refused they found general verdicts of 'not guilty.'

Then arose the great controversy ending in Mr. Fox's Libel Act, which declared the law to be that the 'whole matter'—that is, the whole matter then in issue upon 'not guilty'—namely, whether the libel was published maliciously, and with intent to defame—should be left generally to the jury—that is, whether it was so published, maliciously, with a bad feeling or motive, and with an intent to injure or defame, or without such bad feeling or motive and with no intention to injure. That such was the law Lord Campbell shows conclusively from rulings of Kenyon, even before the Act, in cases not political ('Lives of the Chief Justices,' vol. iii., p. 50); though he also states that for half a century after the Act the judges, first in political cases, and afterwards, for the sake of consistency, in all cases, utterly set the Act at naught, persisting in telling the jury that as a matter of law a publication was libellous. Yet, as Lord Campbell pointed out, the Act says that the judge may deliver his opinion only as 'in other criminal cases'—that is, as the Court of Exchequer in its strongest time held, giving the jury a general definition of libel, leaving them to apply it to the particular