

meeting, and the newspaper which publishes them. Cases constantly arise where an editor has to decide, on the spur of the moment, whether charges deliberately made on a public platform are "for the public benefit." This is no easy matter; and, should he decide wrongly, his publication of the charges is unprivileged and exposes his journal to an action. In such a case the primary responsibility should rest on the speaker, but unfortunately it does not. In fact, he is not legally liable at all unless there be proof of special damage. The law on this point is far better than it once was, but it is still capable of improvement—not, we should say, by freeing the newspaper proprietor from liability, but by holding the original speaker responsible also. Under our present law the newspaper, unless the matter published is privileged, must bear the whole brunt of the action. Is there any reason why the original slanderer should not be made at least partially responsible? This might be accomplished by an enactment providing for his being joined in the action either at the outset, or under the procedure, familiar to lawyers, by which a person entitled to an indemnity may join the indemnified person in the action, and be entitled to a remedy over against him. In the case in question this might be done conditionally, namely, upon it being shown to the satisfaction of the court that the person sought to be so joined was aware, when he publicly uttered the defamatory statements, that newspaper reporters were present. Provision might also be made, in the event of the joinder, for enabling the jury to apportion the damages as between the speaker and the newspaper, in the same way as that is now done with respect to the different defendants in consolidated actions for the same libel. The objection that this procedure would make a man who only intends to slander responsible for libel, would scarcely be tenable. The real effect would be to put a man who utters a slander, which he knows will be reported, in the position of one who incites another to report a slander. The latter is, as the law stands, liable to an action for libel. Whatever may be the objection to it in theory, the amendment suggested has at least this merit, that, in every such case, the newspaper would be afforded a remedy, which it has not now, and would at the same time remain responsible to the person defamed.

#### CRIMINAL LIBEL ON THE PACIFIC COAST.

Turning for a moment to some recently developed features of the criminal law of libel, there is one case to which, for obvious reasons, only a brief reference can be made. The prosecution for libel instituted by two members of the British Columbia Government against several gentlemen connected, in various capacities, with The Province newspaper, published at Victoria, B.C., promises to be a cause celebre. The proceedings so far have been of a preliminary character, but the extraordinary feature of them that challenges comment is the fact that none of the defendants were permitted to give evidence of the truth of the alleged libel! The two honorable gentlemen, at whose instance, presumably, the complaint was laid, were called in turn as witnesses for the defence, and were interrogated in support of the plea of justification, but the questions asked were objected to and were disallowed by the presiding magistrate! The stenographic report of the hearing, published in The Province, does not state the reasons for the objection, or why effect was given to it, but, with all due deference to the bench and the bar of the sister province, it may be said, that it will be difficult to find authority in support of such an objection, or such a ruling, in the present state of the law. Justification in the sense that the alleged defamatory matter is true, and was published at the time for the public benefit, is always a good defence to a charge of criminal libel. Prior to the Code, when only the case for the prosecution could be presented at the hearing, a defendant charged with publishing a libel, knowing it to be false, might, on cross-examination of the prosecutor's witnesses, conduct his defence in such a way as to show that the alleged libel was true;

and that course was adopted, as we know, in a number of libel prosecutions in this province. Under the Code a defendant is permitted to make every defence at the preliminary hearing of an indictable offence which he may make at the trial; and libel furnishes no exception to the rule. The rights of a defendant in that regard—and this remark is peculiarly applicable to the case in question—have been extended indirectly by the provision in the Dominion Evidence Act which excuses no person from answering any question tending to criminate him, or to establish his liability to a civil proceeding at the instance of the Crown, or of any other person. So that the defendants in The Province case were quite within their rights in calling the private prosecutors, or any other persons, for the purpose of justifying the alleged libel; and none of them who were so called could lawfully refuse, and should not have been permitted to refuse, to answer any question tending to prove that plea, even were the answer a self-criminating one.

There may have been some subtle or mysterious point in the case, which is not disclosed in the published reports, and which may serve to explain this novel judicial ruling, but, from our present vantage ground, it is inconceivable what this can be. Meanwhile a flagrant wrong has been done the defendants, and the Legislature and the press are constrained into silence. The question of procedure, and the committal of the accused journalists unheard, indefensible as this must appear, are of minor importance compared to the injury to the administration of justice, which has been brought into contempt. The denial of justice is a serious matter in any case, however trivial; its denial to a prominent and respectable public journal, pleading to be heard in its own defence at the bar of a criminal court in a British province, on questions of grave moment to the great body of the people, recalls the evil days of ex-officio informations for libel at Westminster Hall. It raises an issue between the administrators of the law and the liberty of the subject—to say nothing of the liberty of the press—which, we should hope, cannot long remain in abeyance or uncertainty.

#### THE BANE OF THE PRESS AND ITS ANTIDOTE—AN EDITOR'S RESPONSIBILITIES.

There are some actions against newspapers which no amount of editorial care can prevent. Nine out of ten of these are brought by persons who have no real grievance, and no means of paying costs if they lose, simply in the hope of extorting a compromise. There is but one effective remedy for so gross an abuse of the process of the courts, and that is a compulsory indemnity of the publisher before the writ is issued. This remedy is not unprecedented; it has legislative sanction in the United States where personal reputation is as precious as it is here, and where the door is closed against none who have a right to enter the forum of justice. Is it too much to ask a similar measure of relief against professional brigands in this country? Is it unreasonable to entreat the Legislature to recognize the principle that no one may wantonly injure the members of an honorable profession whose interests are identical with those of the people whom they serve? Are not journalists, as the literary police of the nation, fairly entitled to all the protection which the law can give them in the honest and fearless discharge of their public duty?

These are questions which the law-makers of the country, who admit the great public usefulness of newspapers, should be invited seriously to consider. And, in so doing, they should be reminded that the liability to actions of the character just described is immensely increased by the difficulties incident to modern journalism. Some of the cases which have been referred to, and notably the Beaton suits, which were based on an associated press despatch from a foreign country, illustrate the perils which encompass the editor in the discharge of his responsible duties. There was a time when the centre of danger lurked in the leading article—and sometimes it lurks there still—but in these modern days, when the world