

Eng. Rep.]

ODGER V. MORTIMER—BOYNTON V. HOUSLER ET AL.

[U. S. Rep.]

arise is rebutted, and it becomes necessary to give proof of actual malice, or of some indirect motive, or of a wish to gratify private spite. Everything has been urged on behalf of Mr. Odger that could possibly be urged, but I see no ground whatever for disturbing the verdict of the jury.

GROVE, J.—I am of the same opinion. If there be a ground of action with which the court should hesitate to interfere with a jury more than any other, that ground of action is libel. It is now the law that libel or no libel is for the jury, and the court should not interfere, unless the ground for interference be overwhelmingly strong. If mere ridicule of a public man were enough to support an action for libel, every public newspaper—especially every comic newspaper—would be perpetually subject to have an action brought against it. The fact is, that public men must put up with laughing, caricaturing, and sneering. Now the question here was this:—was the alleged libel really a malignant attack on Mr. Odger's private character, or was it a holding up of his principles to derision? This question has been put to and answered by a jury, and the court could never say that a second jury is bound to entertain it again. Unless every electioneering squib is to be made the subject of an action, I do not see how we can possibly interfere, the defendant being entitled to the verdict upon the finding of the jury that the plea of justification was proved.

DENMAN, J.—I am of the same opinion, on the ground that the court would be interfering in a very mischievous way with the functions of the jury by granting the rule. Generally speaking, the court can only say of a document, whether it can be a libel, and it is then for the jury to say whether it be so or not; for the jury are guardians of freedom of public comment as well as of private character. The plaintiff here is emphatically a public man, and as such is *prima facie* the proper subject of public comment. It was for the jury to say whether the comment went beyond what was fair and right. If I had been on the jury, I might perhaps have entertained the question whether a verdict in the plaintiff's favour for a small amount would have been right; but, at the same time, I should have been quite disposed to listen to anything my fellow-jurymen might say on the other side. My judgment is founded on the assumption that the jury found their verdict upon the plea of not guilty.

HONYMAN, J.—I am of the same opinion, and only wish to say that I do not wish it in

any way to be understood that a newspaper may make its public comments a vehicle for attack on private character. However, here we have a special jury of the City of London finding, after great deliberation (on what plea it is immaterial), a verdict for the defendant in an action for libel, and I think that we cannot interfere.

Rule refused.

UNITED STATES REPORTS.

SUPREME COURT OF PENNSYLVANIA.

BOYNTON V. HOUSLER ET AL.

Where one having an interest in land is induced to confide in the verbal promise of another that he will purchase for the benefit of the former at a sheriff's sale, and in pursuance of this allows him to become the holder of the legal title, an attempted denial by the latter of the confidence, is such a fraud as will convert the purchaser into a trustee *ex maleficio*.

[May 17th, 1873.]

Error to the Common Pleas of Cameron County.

MERCUR, J. The plaintiff claims to recover this land under the title acquired at a sheriff's sale, when it was sold as the property of the estate of Merrick Housler, deceased. The defendant, who is the widow of the said Housler, made defence to a portion of said land called "The Homestead," containing about eighteen acres. Prior to, and at the time of, the sheriff's sale, the defendant and her minor children were in the actual possession of the whole property. She had entered into a contract to purchase it from Aden Housler, who held a deed for it subject to the payment of the plaintiffs. While thus holding whatever interest passed to her under this contract, as well as her right of dower, she made the arrangement with Simpson, under which he purchased at sheriff's sale.

The evidence given by the defendants, which the jury found to be true, was substantially this, to wit: Prior to the sheriff's sale the defendant had agreed with Aden Housler to bid off the whole land, provided it was not run up higher than \$1,200 or \$1,250, which was the value of the property, and if he became the purchaser he was to deed "The Homestead" to her. Upon the day next preceding the sale Simpson, who was the plaintiff in the execution, was informed of this arrangement between Aden Housler and the defendant. He then said to them if they would not interfere or bid at the sale, and have it bid off as low as possible, that she should have the homestead; she should not get any