

drawn attention to the difference which existed as to the law of libel here and elsewhere in the Dominion, a law rendering the criminal remedy for libel uniform was passed. The new Act was chiefly borrowed from an English Statute, known as Lord Campbell's Act. The object of that law was very good, but its execution is defective. It was evidently intended to extend the principle of privileged communication to certain communications made in good faith to the public. This is almost necessary in carrying out popular institutions, but what was done was to give the person accused the right to plead that what he said was true, and that it was for the public good it should be known. If he could prove both of these things he was absolved. This is evidently very dangerous, for it gives a great scope to malice. However, it is the law, and we must conform to it, but in doing so the defendant should be held to bring himself strictly within the exception the law has created; that is, he should establish the perfectly truthful and necessary character of his accusation. The law also allows him to take advantage of the plea of "not guilty" as well as of his special plea of justification, why, it is difficult to say.

The defendant in this case has taken advantage of both pleas. Before proceeding to examine the evidence of justification, I shall deal with three questions that have been raised by the defence.

First, it is said that the publication by Whelan is not proved. It is proved by Whelan's own signature and affidavit filed of record in the Peace Office, in which he declares himself to be a member of the *Post Printing and Publishing Company*, and its Managing Director. This is conclusive, unless he can establish that the writing complained of was published without his knowledge, consent or fault. This he has not attempted. Again, the whole tenor of the evidence shows he was the author of the article, and O'Neil, a person employed by the Company, positively swore that the *running* of the paper and the *issue of the editions* was all under the control of the defendant.

Second, it was said that the libel had been written at the invitation of the prosecutor, and a letter has been read in support of this proposition. When we come to look at the letter, we find that such a pretension is unsustainable.

The prosecutor, annoyed by slanders and rumours, which he traced to defendant, offered to submit the question of their truth to arbitration, and he concludes by saying, in effect: If you won't do this, I challenge you to formulate your slanders, so that I may indict you for libel. This defendant does, and intimates in so doing that his proof is ready. This is not an authorization to formulate the libel, but a threat of consequences if he does.

The third point is a legal difficulty raised by the defence, with which I shall not trouble you, for though it is well-founded as a criticism of our Act, it has no bearing on this case.

We now come to the merits of the special plea. Curious to say, the defendant has imitated the forms of law in his attack on the prosecutor, and has headed his article "An Indictment." He then goes on to formulate five distinct charges against McNamee. The first is that he was one of the first to introduce Fenianism into Canada. Second, that having done so he betrayed to the Government for money those who had, at his suggestion, broken the law. Third, that before this he had sent a number of men to the States during the civil war there, under pretext of working on a railway, but really to be drafted into the American army, for which he was paid. Fourth, that he had offered a man \$500 to shoot an enemy. And fifth, that having done all these things, he had thrust himself forward as a leading Irishman, and so driven almost all respectable Irishmen from taking part in Irish affairs.

It is evident that the last of these charges depends entirely on what precedes. It amounts to this,—for all these things already mentioned you are a shame to your name and race. I question much whether a general charge of this kind could in any case be justified. The libellous charge should be something precise that can be contradicted. Again, how can this charge be published for the public good? The charge that Mr. McNamee had introduced Fenianism into Canada was not very strongly denied by him, and it seems to be pretty clear, from the testimony of McGrath and O'Meara, that whatever the Hibernian Society was at first, it almost immediately became a Fenian organization, and O'Meara, on discovering that the funds were being secretly employed by O'Mahoney in New York, left the association.