

it ;—that is, he has a liberty to use it. For a bad motive, and an unjustifiable end, he has no right to use it ;—that is, he has no such liberty ;—in other words, such use of it is licentiousness. Liberty, is, in relation to every other instrument, characterized by, and coextensive with, the nature of its justifiable use. And this depends upon the quality of the motive and the end.

If A. thrust B. through with a sword, and he dies : A. has used an instrument over which he had power ; whether in that, he was guilty of an act of licentiousness, for which he is obnoxious to punishment, or merely exercised an authorized liberty, for which he shall go free, depends not upon the fact, or the effect, but upon the motive and end, which induced the thrust. If A. be indicted for the murder of B., A.'s guilt or innocence depends, not upon the conclusion of law to be declared by the court, resulting from the fact of the blow given, and the effect of death, which followed, but it depends upon the conclusion, concerning the intent or motive of the moral agent, to be declared by the jury. If A. should be indicted for the murder of B. and the counsel for the commonwealth should contend, and the court should decide, that the jury had nothing to do with the intent or motive, which was the occasion of the thrust ; but that their sole province was to decide, 1. the fact that A. made the thrust ; 2. the effect that B. died by it ; and that the intent, motive, and preconceived malice, was a conclusion of law from that fact and that effect, to be declared exclusively by the court ; a doctrine so repugnant to common sense, would not be endured one moment.

Yet this is the precise doctrine of the English courts of common law, in the case of libel. It is that doctrine, on which depends, and solely depends, the other doctrine, that the truth shall not be given in evidence by defendants in public prosecutions for libel. For if the liberty to use the press depended, like the liberty to use every other instrument, upon the quality of the motive and the end, and if the jury, in deciding the guilt or innocence of the accused, had a right in these prosecutions, to take into consideration the intent, motive, or end, as they have in deciding guilt or innocence in every other prosecution, then the right to give the truth in evidence, would follow necessarily and of course. For the truth or falsity of the allegation, is, in all such cases, an inseparable quality of the intent or motive ;* and whatever jurisdiction has the power of deciding concerning the intent or motive, must,

* In like manner, if A. in his defence, upon his trial for the murder of B. with the sword, alleges he killed him in self defence, or in consequence of B.'s premeditated attempt to injure A., the truth or falsity of that allegation which would remove the guilt of murder from A. is a matter of enquiry and decision by the jury, and not by the court, L. L. M.