

ery citizen has such a right, then, if called in question for such exercise of right, has he not also consequently, a right to prove the goodness of the motive and the justifiableness of the end? Can the law or constitution, give a right to use an instrument for a particular purpose, or under a specific modification, and deny the right of proving that it was used for that purpose, or under that specific modification?

“If thus he have a right to prove the motive and end, must he not have a right also to prove it according to its nature? That is to say, if, from its nature, the proof to be adduced be a matter of fact, can it be doubted that he has a right to prove it as a matter of fact, before that jurisdiction, which, under our constitution, has the only cognizance of matters of fact—the jury?

“Can it be questioned that motive,—end—intent, are in their nature matters of fact? Are they any thing else than qualities of the act of a moral agent? And if the act of such agent be a fact, can the qualities which inhere in it, and are constituent parts of its nature, be any thing else than facts? If facts, are they not cognizable by a jury, and subject of (to) proof, like other facts?

“In the opinion of this court this right is as inherent in every citizen under our constitution, and a court of justice have no more right to deny to a person charged with a malicious use of the press the liberty to shew that its use was, in the particular case, for a good motive and a justifiable end, than it has a right to deny to a man indicted for murder, the liberty to shew that he gave the blow for a purpose which the law justifies. Both these liberties lie within the same reason, and are founded on that fundamental and universal law of moral nature, according to which, guilt or innocence in a moral agent, is solely qualified by motive or intent.”

After some observations as to the repugnancy of the alleged principles of the English common law in this respect, with the constitution of Massachusetts, in the course of which, it is said:

“The great reason, on which English courts declare the common law excludes the truth in these cases is, that the law punishes publications of a libellous character, on account of their public mischief; that is, of their tendency to produce breaches of the peace;”

Which proposition I have endeavoured, in my