

"The doctrine of libel is, in all countries, a doctrine of power. In England the object has been to draw questions of this class from the jurisdiction of the jury to that of the court. The means by which it has been effected are the assumption by the court of three principles ;

1st. That criminality in publications depends upon their general tendency, and not upon the publisher's particular intention.

2d. That the tendency of the publication is a question of law to be decided by the court and not by the jury.

3d. As the general tendency of a publication may be to public mischief, notwithstanding the facts alleged in it be true, that it follows, in such cases, that the truth, or falsity, of those facts is indifferent ; and that therefore the truth shall not be allowed to be given in evidence.

In the course of this argument, it will be attempted to be shewn that the first of these principles is false in nature ; the second, false in fact ; and the third, false in consequence.

The question, however, first to be considered is ; What is the liberty of the press ?"

"It is not becoming a court of justice to deal in popular declamation and flourishes concerning the liberty of the press. Its business is to analyze every subject, and, amongst the depths and mysteries of its nature, to detect those fundamental principles, which, because they inhere in it, and are inseparable from it, constitute its law. The question here raised concerning the liberty of the press, has nothing to do with popular opinion, or popular excitement, it is a naked, abstract, enquiry, instituted for the purpose of satisfying ourselves concerning our own duties.

"First. What is the press ?

It is an instrument ;—an instrument of great moral and intellectual efficacy. The liberty of the press, therefore, is nothing more than the liberty of a moral and intellectual being, (that is, of a moral agent,) to use that particular instrument. The question therefore, concerning what is the liberty of the press resolves itself into two enquiries.

1. What is the liberty of a moral agent to use any instrument ?

2. Is there any thing in the nature of the instrument called the press, which makes the liberty of a moral agent to use it, different from his liberty to use any other instrument ?

As to the first enquiry, there can be but one opinion. As a general rule, the liberty of a moral agent to use any instrument depends upon the motive and end he has in using it. For a good motive, and a justifiable end, he has a right to use

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