terms which are libellous, he has a remedy the same in all respects as any other subject of Her Majesty.

The Cardinal by his pleadings traversed the publication, and pleaded the general issue. The Lord Chief Justice is reported to have directed the jury that it was for him to say whether the alleged libels were defamatory, thus leaving to the jury to find the bare fact of publication by the defendant—which, he told them, was proved partly by evidence and partly by admissions. The summing up of the learned Judge consequently amounts to this—that if in the opinion of the presiding judge an alleged libel is defamatory, the province of the jury is simply to find the fact of publication and to estimate the damages. This is obviously not the law, nor has it been the practice prevailing amongst the most eminent Judges before and after Mr. Fox's Libel Act. It has been well remarked by Starkie that that Act was declaratory, and when it provided that in the trial of indictments or criminal informations for libel, the jury should find not only the fact of the publication, but also whether the matter charged be or be not a libel, it must be taken as governing the procedure at civil trials. At page 203 of Folkard's edition of Starkie it is said, "whether the libel is the subject of a criminal prosecution, or civil action, it has been the constant practice in recent times for the Judge to define what is a libel, and then to leave it to the jury to say whether the publication in question falls within the definition. . . . It was the practice of Lord Denman in these cases, and also of Lord Abinger, to leave the question to the jury as to whether, under all the circumstances, the publication amounted to libel." The learned author then puts the only case in which the court is justified in withholding the case from the jury—namely, where it is perfectly plain that on the face of the record there is no libel. But most assuredly where, in the opinion of the court the matter complained of is libellous, the question is entirely one for the jury.

The familiar cases of *Parmiter* v. *Coupland*, and *Darley* v. *Ouseley* have decided that it is not misdirection on the part of a Judge to express his opinion as to the libellous nature of the publication in addition to leaving the proper questions to the jury—one of such questions being whether the alleged libellous matter is within the definition of a libel adopted by law. The learned Irish Chief Justice is reported to have said that it has been decided by the English Court of Queen's Bench that it was the duty of the Judge to tell the jury if the publication is actionable and the plaintiff entitled to a verdict. We do not know to what case the learned Judge refers, but it will be found, we think, in every case, where there has been judicial interference with the functions of a jury, that the ground of such interference has been that the matter complained of was not libellous. Such was the case of *Jenner* v. *A'Becket*, 25 L. T. Rep. N. S. 464, where the declaration was demurred to, and the court differed as to there being anything which could go to a jury. We cannot find in any of the cases, and we do not remember to have heard of, a jury being directed to find a verdict for a plaintiff in an action of libel. The only approach to such a position which we can conceive is where there is a justification, the libel being admitted, when under certain circumstances the Judge might direct that as a matter of law the evidence in support of the pleas would be no justification. But this could only occur under very unusual conditions.

The elaborate argument of Erskine in the *Dean of St. Asaph's* case, and the decision which followed, coupled with Fox's Libel Act, may be taken as showing convincingly the tendency of Parliament and the Profession to regard defamation as wholly a question to be disposed of by a jury. And as a matter of practice it is obviously far wiser to let the jury find one way or the other, so that if they find for the plaintiff the damages may be assessed, as in the case of *Laughton* v. *The Bishop of Sodor and Man*; and if the jury has gone wrong on a ground of law a verdict can be entered for the defendant without the ruinous expense and vexation of trying the whole matter over again. In this particular case it had already been attempted to get rid of the Cardinal's pleas by demurrer which the Chief Justice would have allowed. Being overborne by his colleagues in that matter he virtually rode over them and their judgment in directing the jury to find for the plaintiff, inasmuch as thereby he