there the question was held inadmissible in its general form."

No doubt, *Earl of Leicester* v. *Walter*, 2 Camp. 251, is the chief authority. It was a decision of Sir James Mansfield, and as the plaintiff had a verdict he did not of course, move. In deciding to admit the evidence, Sir James says: "In point of reasoning, I never could answer to my own satisfaction the argument urged by my brother Best" (the objecting counsel) "at the same time, as it seems to have been decided in several cases that, if you do not justify, you may give in evidence anything to mitigate the damages, though not to prove the crime which is charged in the libel, I do not know how to reject these witnesses. Besides, the plaintiff's declaration says, that he had always possessed a good character in society, from which he had been driven by the insinuations in the libel. Now the question for the jury is, whether the plaintiff actually suffered this *gravamen* or not. Evidence to prove that his character was in as bad a situation before as after the libel, must therefore be admitted.

In a case in Ireland, in 1860, *Bell* v. *Parke* (11 Ir. C. L. Rep. 326,) Pigot, C. B., is decidedly of opinion, "that the great preponderance of authority is in favor of reception of the evidence." He cites the passage from Starkie on Slander, (vol. ii, page 88,) relied on by Mr. Robinson in his very able and exhaustive argument on the authorities. Fitzgerald, B., treats it as an unsettled question, Hughes, B. concurring with him. In the last edition of Starkie on Evidence, the point is not touched upon.

In *Bracegirdle* v. *Bailey*, 1 F. & F. 536,—in slander, and not guilty alone pleaded—Byles, J., after consulting Willes, J., held, "that no evidence of bad character, or questions relating to the plaintiff's previous life or habits, tending to discredit him, and to mitigate damages, were admissible, either on cross-examination or examination in chief, and that he could not ask any thing to prove the libel true."

In this court, in *Myers* v. *Currie*, 22 U. C. R. 470, (slander imputing theft), a motion was made for a new trial, because Richards, C. J., rejected evidence of the plaintiff's general bad character previous to the speaking of the words. After consulting the judges of the Common Pleas, the judges of this court refused a rule, for the reasons given in the report.

In this state of the law we think we should discharge the rule for rejection of evidence, and leave the defendant, if he think proper, to endeavour to have the law finally settled by a court of Error.

If it be necessary to decide the point, I should say that I think the fact of defendant pleading specifically the truth of his words and endeavouring to prove them, as a matter of reason, if not of clear authority, should operate to the exclusion of evidence of rumours or of general bad character.

Where a defendant pleads only not guilty, and endeavours to shew that he was not actuated by any malice or actual desire to injure defendant, he stands, in my judgment, in a very different position from one who deliberately places a justification on the record. This at once takes away from his conduct that palliation which he can naturally urge on not guilty.

I am inclined to hold, notwithstanding the doubts expressed in *Thompson* v. *Nye*, that with only not guilty pleaded, a defendant might be allowed to shew, solely in mitigation of damages and to rebut the presumption of malice, that prior to his utterance of a specific charge, it was a common talk or rumour in the neighbourhood that the plaintiff had been generally spoken of as having done the thing charged.

This would tend to shew that defendant may have acted not from malice, but rather from heedlessness. If, on the other hand, he put a justification on record, he deliberately charges the plaintiff with the crime as a fact, and I think he should not be permitted to resort to what could only be a palliation and indication of the absence of malice. The justification suggests a wholly different idea of defendant's conduct, and is always held to aggravate it.

General evidence of the plaintiff's bad character for honesty, &c., seems to me to open a far wider field of enquiry, and should not, I think, be received with or without a justification pleaded. A plaintiff, as has been often said, cannot be expected to be prepared to vindicate every act of his life. The existence of a common fame and rumours that he had done a particular act is a fact, not a mere opinion, and when shewn to be current prior to defendant's utterance of the slander, and wholly unconnected therewith, might, I think, be receivable strictly in mitigation of damages.

The state of the authorities on both points is most unsatisfactory.

We think the rule for a new trial should be discharged.

Rule discharged.

ELECTION CASE.

(*Reported by* R. A. HARRISON, ESQ., *Barrister-at-law.*)

THE QUEEN EX REL. HEENAN v. MURRAY.

Election of Reeve—Procedure—Time—Efficiency of election.

Where four members of a village council, being at least a majority of the whole number of the council when full, met, and at their first meeting a resolution naming one of them as reeve was put and seconded, and no dissent was expressed, whereupon the clerk, in the hearing of all, but while two of the members were retiring from the council chamber, declared the resolution carried, the reeve was held to be duly elected.

Though the statute declares that the members of every municipal council shall hold the first meeting *at noon*, and at such meeting organise themselves as a council by electing one of themselves as reeve, an election at six o'clock, p.m., on the same day, is a sufficient compliance with the statute.

[Common Law Chambers, March 12, 1864.]

The relator complained that Thomas Murray, of the village of Pembroke, merchant, had not been duly elected, and had unjustly usurped the office of reeve of the municipality of the said village of Pembroke, under the pretence of an election, held on Monday, the 18th January, 1864, at the town hall in the said village of Pembroke; and declaring that he the said relator had an interest in the said election as one of the municipal councillors for the said municipality of the village of Pembroke, and a candidate at the said election for the said office of reeve, showed the following causes why the election of the said Thomas Murray to the said office should be declared invalid and void, viz.: first, that there was only two members of the said council, viz.,