

any other jury will give ear to it. It is a doctrine neither founded in truth, nor consonant to reason; it is one of the most absurd opinions that ever entered the head of man to suppose, that twelve men are brought together for no other purpose than to enquire if the defendants wrote, printed and published a certain instrument of writing; when it is most manifest that they are assembled for the express purpose of discovering if that instrument is in any degree *malicious, defamatory and mischievous*, so as to stamp a degree of criminality and guilt upon the writer thereof, who is to be punished not for publishing an *innocent, harmless instrument*, but for *publishing a calumnious and defamatory instrument*; and consequently the jury are to judge if *that instrument contains any matter of calumny and defamation*.

Let a case be stated;

A man is tried for a libel, that is, for exhibiting to public view an instrument of writing; the fact of publishing is proved to the satisfaction of the jury, who must in the next place examine what the instrument contains, what is the nature, and what is the subject of it; whether there is any thing in it *malicious, defamatory, or injurious to the person, property, or reputation of the prosecutor*; if they are deprived of the privilege of thus reading and examining if there be any degree of criminality, or malignity in it, they cannot give a verdict, or only a partial one as far as their investigation goes; all they can say, and find for is, that the defendant is guilty of *publishing only*;

Publishing what, asks the judge? A written paper. But do not you find that written paper to be libellous? No: In your charge you told us we were to find only the fact, and that only have we found; for in compliance with your instructions we went not into the discussion of the law, we entered not into it, and consequently give a verdict as we found upon the investigation made, *guilty of publishing only*. \*

\* In the case, *Rex versus Woodfall*, his reasoning is not that of a man of sense, he rings changes on the word *only*, which he wanted the jury to leave out, so that he might make his application of the law, they would not consent.

Then