in that respect was bad, which the learned Chief Justice rejected, on the ground that there was a plea of justification on the record.

The jury found for the plaintiff, $150 damages.

Christopher Robinson, Q.C., obtained a rule *nisi* for a new trial, on the ground that the justification pleaded in the second plea was clearly proved; or on the ground that the learned Chief Justice improperly rejected evidence tendered by the defendant of the plaintiff's general reputation for dishonesty, and bad character as regards that particular trait or quality.

Robert Smith shewed cause. He contended that the plaintiff having been in effect placed upon his trial on a charge of felony, it would be contrary to the established practice in such cases to interfere with the finding of the jury in his favour, even though it might seem to be against the weight of evidence—*Symons* v. *Blake*, 2 C. M. & R. 416: that the defendant having failed to prove his second plea of justification, the verdict on that issue was clearly right, and a new trial, which would disturb it, should not be granted—*Baxter* v. *Nurse*, 6 M. & G. 935: that the jury might have been properly influenced in their view of the whole case by the fact of such plea having been pleaded without sufficient ground; and that the evidence as to character was properly rejected—*Jones* v. *Stevens*, 11 Price 235; *Thompson* v. *Nye*, 16 Q. B. 175.

Robinson, Q.C., in support of the rule, cited, as to the motion for new trial on the evidence, *Mellin* v. *Taylor*, 3 Bing. N. C. 109; *Regina* v. *Johnson*, 1 L. T. N. S. 513, Q. B.; *Peters* v. *Wallace*, 5 U. C. C. P. 238; *Swan* v. *Cleland*, 13 U. C. Q. B. 335: As to the admissibility of the evidence of character, *Richards* v. *Richards*, 2 Moo. & Rob. 557; *Knobell* v. *Fuller*, Pea. Add. Cas. 139; *Earl of Leicester* v. *Walter*, 2. Camp. 251; *Inman* v. *Foster*, 8 Wend. 602; *Bell* v. *Parke*, 11 Ir. C L. Rep. 424; ——— v. *Moor*, 1 M. & S. 284; *Bennett* v. *Hyde*, 6 Conn. 24; *Bracegirdle* v. *Bailey*, 1. F. & F. 535; *Myers* v. *Currie*, 22 U. C. Q. B. 470; *Jones* v. *Stevens*, 11 Price, 235; *Foot* v. *Tracy*, 1 Johns. 46; *Wyatt* v. *Gore*, Holt N. P. C. 299; *Newsam* v. *Carr*, 2 Stark. N. P. C. 70; *Douglass* v. *Tousey*, 2 Wend. 352; *Wolcott* v. *Hall*, 6 Mass. 514; *Ross* v. *Lapham*, 14 Mass. 275; *Sawyer* v. *Eifert*, 2 Nott. & McCord 511; *Root* v. *King*, 7 Cowen 618; Taylor on Evidence, 4th Ed., 855-6; Rosc. N. P. 576; Add. on Torts 730. As to the effect of a justification being pleaded, Starkie Ev., 3rd Ed., vol ii, 306 note *k*, 641-2; *Cornwall* v. *Richardson*, R. & M. 305; *Snowden* v. *Smith*, 1 M. & S. 286, note *a*; *Root* v. *King*, 7 Cowen, 618.

HAGARTY, J., delivered the judgment of the court.

As to the merits. This is one of the many cases in which the court is asked to set aside a verdict of which it cannot approve on a calm consideration of the evidence. The testimony certainly was very strong. It would have sufficed most likely to convict the plaintiff, had he ever been put upon his trial for the offence; and had any right, estate or franchise, or large sum of money been at stake, we think it would be only right to submit the case to another jury. But we hardly see our way to interfere in a case like the present. The charge was made long after the alleged offence had been committed. No person had thought proper to prosecute the plaintiff for it, and the defendant, having no especial interest in the matter, charges the plaintiff generally with being a thief. He does this at his peril, and when sued for damages tries to prove the charge, and fails to convince the jury.

It does not follow, because a man has once committed an offence, that a jury will always regard with favour a person who persists in casting it up against him at any period, however remote. A person may make the charge relying on his being able to prove it to the satisfaction of a jury. We think he must always run this risk. But we do not think a court is bound to set aside, as a matter of right, a verdict rendered against the weight of evidence, but may leave the defendant to the consequence of his own rashness. It is not usual to put a plaintiff, deliberately charged with fraud or felony in a civil action, twice, as it were, upon his trial; at all events, an action for slander is not one in which the ordinary wholesome rule should be set aside.

We think we cannot properly interfere on the merits.

The rejection of the evidence tendered as to character opens a wide field for discussion.

1. Should it be permitted under any circumstances?

2. If admissible in mitigation of damages, can it be received after evidence offered in bar on a plea of justification?

It seems to me that the doubt suggested as to this evidence, is felt more by the text writers than the judges.

Mr. Taylor, in his last edition, page 355, after giving the different views, says, "Such being the arguments on either side of this vexed question, it remains only to observe that the weight of authority inclines slightly in favour of the admissibility of the evidence, even though the defendant has pleaded truth as a justification and has failed in establishing his plea."

He cites a great number of cases. I have examined them. The American authorities certainly support his view. I doubt if the English cases go so far. Most of the cases are *nisi prius* decisions. I am not aware of any express decision of the court in Banc except *Jones* v. *Stevens*, 11 Price, 235, which is directly against its reception.

In *Thompson* v. *Nye*, 16 Q. B. 175, the question rejected was whether the witness had not heard from other persons that the plaintiff was addicted to certain practices, the subject of the slander. The court refused to decide the general point, but held the question rightly rejected, as it should have been confined to rumours existing before the utterance of the slander. Patterson and Wightman, J. J., say they give no opinion on the general question. Coleridge, J., says, "I will only go so far as to say, that I do not wish it to be supposed that I am in favor of allowing the question to be put even in its most limited form. My present impression is against doing so." Erle, J., says, "It is not necessary to give any opinion as to the admissibility of the question in a qualified form. Many learned judges have admitted it, but they all acted on a decision at *Nisi Prius* (*Earl of Leicester* v. *Walter*), which it was not worth the plaintiff's while to question. But in *Jones* v. *Stevens* the point was brought before the full Court of Exchequer; and