THE STAR,

AND CONCEPTION BAY JOURNAL.

Vol. IV. WEDNESDAY NOVEMBER 21, 1838. *No.* 229.

HARBOUR GRACE, Conception Bay, Newfoundland:—Printed and Published by *JOHN THOMAS BURTON*, at his Office, opposite Mr. W DIXON's.

(From the Times, Nov. 14.)

CENTRAL CIRCUIT COURT.

NOVEMBER 10, 1838.

RICHARD PERCHARD *vs.* ROBERT JOHN PARSONS.

Action on the case for the following Libel published of and concerning the Plaintiff, in the *Newfoundland Patriot* of the 20th October—of which Paper the Defendant is Printer and Publisher.

"LOYALTY OF THE NEWFOUNDLAND TORIES."

"It is related as a fact, indeed we can vouch for the correctness of it, that an individual of the Tory party, on his passage from Liverpool to this Port, drank the following Toast:—

"HERE'S DEATH TO QUEEN VICTORIA! THE GALLOWS TO LORD MELBOURNE! THE GIBBET TO EARL GREY! AND THE CROWN OF ENGLAND TO THE DUKE OF CUMBERLAND!!!'

"Now, to save our readers the trouble of much guessing as to who the fellow is that drank this infamous and treasonable Toast, we will hint that though he is one from whom something better might have been expected, seeing that at this very moment his father is a servant of that same Queen whose death he would compass, and as such received many of her *Crowns*, he has been familiar with 'gibbets,' and the 'gallows,' from his infancy."

To this the Defendant pleaded the following special plea of justification:—"And the said Defendant by HUGH W. HOYLES, his Attorney, comes and defends the wrong and injury when, &c., and says that the said Plaintiff ought not further to have or maintain his aforesaid action thereof against him, because he says that the said several supposed libels, in the said declaration mentioned, *were and are in substance and effect true*,—to wit St. John's aforesaid; wherefore he the said Defendant at the said several times in the said declaration mentioned, to wit St. John's aforesaid, did publish of and concerning the said Plaintiff the said several supposed libels, in the said Declaration mentioned, as he lawfully might for the cause aforesaid; and this he the said Defendant is ready to verify; wherefore he prays judgment if the said Plaintiff ought further to have or maintain his aforesaid action thereof against him." To this the Plaintiff demurred, and assigned for cause, "that the said plea does not state the particular facts which evince the truth of the imputations charged as libellous in the Declaration, nor the place where, or the time when the alleged facts set forth in the said libels took place: and does not shew in what particular instance and in what exact manner and words the said Plaintiff misconducted himself; and that the said plea *merely states that the said several supposed libels in the said Declaration mentioned, were and are true in substance and effect*; and that in the said plea it is not averred that the publication confessed by the said Defendant are the publications charged in the said Declaration; and also that the said plea is in other respects uncertain informal and insufficient," Upon which there was a joinder in demurrer.

Mr. ROBINSON in support of demurrer—"The great principle which regulates all pleadings is that every fact which is necessary to the issue, and incident to the full and just determination of the action should be placed upon the record, with certainty, clearness, and precision, in order that the adversary may be aware of what is intended to be proved against him, and so, being prepared, may not be taken by surprise. In special pleas of justification in libel cases, it is not sufficient to re-affirm in the plea the statements made in the Declaration, nor is it sufficient to state them to be true, much less to aver that they are *in substance and effect* true—but the plea must contain a clear and particular account of the exact offences by virtue of which the charges made in the libel are intended to be justified the time when, the place where, and all circumstances—otherwise the Plaintiff would go to trial not knowing what transaction of his whole life was to be raised up in judgment against him—and so, for want of the evidence which he might eastly have brought forward had he known it would be necessary, a verdict might pass against the Plaintiff, and his character to be irretrievably ruined. In Mr. Chitty's able work on Pleading, it is laid down—"General pleading is not allowed in a plea justifying the truth of a libel or slander" 1 *Ch. on Pleading*, 569. In *J Anson vs. Steward* 1 *T. R.* 748, the defendant pleaded "that the plaintiff was illegallly connected with a gang of swindlers, and had been guilty of defranoing divers persons," *without stating the particular instances of fraud*, the plea was held bad on demurrer. Ashurst J. observing, "When the defendant took upon himself to justify generally the cnarge of swinding he must be prepared with the facts which constitute the charge; in order to maintain his plea *he ought to state those facts specifically, to give the plaintiff an opportunity of denying them, for the plaintiff cannot come to the trial prepared to justify his whole life.*" So also in *Holmes vs. Catesby*, 1 *Taun*, 543, where the libel charged the plaintiff an attorney with general misconduct, gross negligence, falsehood, prevarication, and excessive bills of costs, it was held that a plea in justification, repeating the same general charges *without specifying the particular acts of miscon-duct* was insufficient on special demurrer. although it was urged that the plaintiff was cognizant of all the transactions referred to. In delivering the judgment of the Court, Chief Justice Mansfield says, "*It is probable that the plaintiff knows what transaction is alluded to but the Court does not know that he does, and possibly he may not*; and in this case he must come to the trial with all the clerks he employed, and all the papers in all the causes in which he has ever been engaged for defendant." The case of *Edward vs. Bell* 1 *Bingham*, 403, is in point, where the libel was charging the plaintiff, a elergyman, with having been guilty of personal invective; and the plea was general ana held bad. From all these cases it is clear that if such a plea as this were suffered, the plaintiff would not be safe unless he was prepared at the trial to prove every circumstance connected with every passage he may have made from Liverpool since Queen Victoria came to the throne; for he is not informed as to which passage when made, or in what vessel, the libel alludes.

I have thus endeavoured to shew from general principles and from adjudicated cases, that this document is no plea, on account of what it does *not* contain. I shall now shew that it is equally vicious on account of what it *does*.

In the case *Flint vs. Pike*, 4 *B & C*, 473, the libel purported to be a report of a trial; the defendant pleaded that the supposed libel was in substance a true account, and this was held bad on demurrer. Holroyd J. says. "The plea only states the report was true *in substance*; I think that is not sufficient, it ought to have stated some facts to shew that it was true in substance." In the same case Mr. Justice Littledale says, "I think that this plea which states that the libel was in substance a true and accurate report of the trial is not sufficient. By substance is meant, I apprehend, the inference which the person who published the libel draws from the whole of what passed at the trial; the plea therefore amounts to this that the libel, in *his* judgment is a true account and report of the trial." Such a mode of statement would not be good in a declaration.—*Wright vs. Clement*, 3 *B & A*, 503—neither is it in a plea.

Even a plea stating that a libel *is true* has been held insufficient. In the case *Duncan vs. Thwaites*, 3 *B & C* 556, the third plea stated that the matters in the said libel contained *were true*. Patteson arguendo observes. "The plea is bad because it ought to have been more particular, and the facts ought to have been enumerated, and *time* and *place* ought to have been alleged." And Chief Justice Abbott in giving judgment says, "The third plea alleges very shortly that the several matters and things in the said several supposed libels contained, were and are true. *Now this plea is evidently bad.*"

In a recent case, 11 *Price*, 235, Mr. Baron Wood strongly reprobated general pleas of justification in libel, without disclosing instances of misconduct; and stated that it was the duty of the plaintiff to demur to such.

It is true the plaintiff might, had he thought fit, have replied to this plea by denying its truth, and have gone to a jury; but by so doing he would be pleading inartificially, and be subjecting himself to the risk of having to answer some unexpected and antiquated story, about which the defendant might bring forward some evidence, and for want of its being explained, a suspicion at least might be cast on the plaintiff.

Seeing then that no time is specified in the plea, as to when this treasonable toast was drunk, no place or vessel mentioned in which it took place, no circumstances or particulars set forth concerning it, but it merely states that the libel is true in *substance and effect*—the plea is bad, and judgment must be, I submit for the plaintiff.

Mr. HOYLES, for defendant, urged "that according to the recognised principles in sorce upon arguing demurrers, the judgment of the Court will be given against the party whose pleading is first defective; and in this case submitted whatever may be thought of this plea, and however defective it may be considered, the plaintiff's declaration is bad for the want of an inuendo—that Queen Victoria means the Queen of England, and that Lords Melbourne and Grey were her Ministers. I maintain that every thing necessary to shew the application of the libel must be stated clearly, under an inuendo; for the Queen and the Ministers' named in the Declaration might mean some other persons than tha Queen of England and her Ministers. I submit, observed the learned Counsel, "that this is essentially necessary here since the drinking of the alleged toast Toast would not be seditious unless Victoria meant our Queen; and it is necessary to charge a punishable offence to render the publication libellous; and as there is no inuendo shewing that "queen Victoria," here mentioned, is queen of England, the Declaration is defective. With respect to the plea, I submit that it is perfectly good. Where a charge is singular and specific, as 'he stole two sheep of J. S.,' a plea stating that the Plaintiff did steal the said sheep, was held good."—*Bro. act. suc. case.* 1 *Rol., Abd.* 87.

The learned Counsel commented upon the several authorities cited on behalf of the Plaintiff with reference to the ease "Edward *vs.* Bell." He admitted that it was clearly necessary to, define the time and place in which the Plaintiff, there, had indulged in personal invective, otherwise any one time in his life in which he had been guilty of personal invective might be brought up at the trial against him.

The learned gentlemen concluded a clever and very ingenious argument in support of his plea, by citing the case "Weaver *vs* Loyd," 2 B. & C., in which the Defendant pleaded a plea somewhat similar to the one in question, and it was not demurred to, but had the *replication de injuria* filed to it.

Mr. ROBINSON, in reply, shewed that the common sense meaning of the libel—and indeed its very words, applied to Queen Victoria of England. The charge was publisheed in this country, a dependency of England—in a Newfoundland paper—it imputed disloyalty—treason to the Plaintiff, which could not be except with reference to his own Sovereign; but the words "Crown of England," in the same paragraph, settled the question as to whether it was the Queen of England, or the Queen of Sheba that was referred to. He citeo *Ba. Ab.* to shew that Courts read libels with the same eye that other persons did, and no one could doubt of the application to Queen Victoria of England, in the present instance,

With reference to "Weaver *vs.* Lloyd,," he observed that as, in that case, the Plaintiff had thought fit not to demar to a bad plea, but to reply *de injurid*, Court were not called upon to say—what, if it had been demurred to, they must have done that the plea was bad. He submitted the cases which were cited by him were unanswered and unanswerable. Indeed the observation which his learned friend had made on "Edward *vs.* Bell," admitting that if the plea there pleaded were good, the Plaintiff might have had any instance of personal invective of which he had been guilty in his whole life brought up against him, proved the insufficiency of the present plea, because the Plaintiff here would be equally exposed to the danger of having anything which occurred on any voyage whatever, made by him from Liverpool, at any time since Victoria were Queen brought in array against him on the trial.

The Court reled that the charge in the Declaration was specific, and therefore the plea need not go into particulars. That the plea stating the libel was true in *substance and effect*, was well enough, for it would obviously be absurd to say that if it should b proved that the toast drank was the crown of England to the King of Hanover, the justification would not be good. That if too wide a scope of evidence were admitted on the trial—such as the Defendant might not have expected—it would be ground for a new trial. That Judgment now was only interlocutory.

Plaintiff had liberty to withdraw Demurrer and reply.

This action was disposed of yesterday. Byran Robinson, Esq., in a most eloquent and able manner conducted the case for the plaintiff, assisted by George H. Emerson, Esq. Hugh W. Hoyles, Esq., defended the ation. Verdict—£150 sterling. "*Stick a pin here!*"

From the whole of the evidence in this case, which went to prove anything but "justification," either in "substance" or "effect," we can confidently state, that a more base, wanton, and atrocious libel than the one which we now place upon record as a "huge lie"—as an everlasting disgrace to the abandoned propagators—could not well have been conceived.

WANT OF EDUCATION.

There are few villages in the country which do not present us specimens of the uneducated—we meet him in the gin-shop, in the street:—he is an idler, a drunkard, a quarreller: we hear of him in very riot, he is an aider and abettor in very outrage. His family are slovenly, reckless. debased, wretched. He is a quarreller, because he is idle. But why is he idle? Because he has never felt the value of labour, the pleasure of thinking, the joy of a good conscience. He was never habituated to form judgment of these things. The powers necessary to form such judgments have been neglected. He has never been taught to examine, to enquire, to attend. He has become passive. He feels the pressure of want brought on by his own habits; but how does he try to remedy it? All his life has been taught to spare, as much as possible, his own exertions, and to hang, beggar like, as such as possible, on those of others. He is the slave from laziness, of authority. It is not in a sudden emergency he is likely to throw it off.—All his life he has sacrificed, with the short sighted selfishness of ignorance, the future to the present, and every interest, public and private, to his own. He is turbulent, but not independent; he talks of freedom, and is a slave to every man and thing around. But indolence is not a merely passive vice. Butter to "wear out" than to "rust out" has been truly said; but he who "rusts out" wears out too. No greater burthen than sloth; no greater consumer of the spirits and body of man than doing nothing and having nothing to do. Every day spent in inactivity renders action more difficulty every hour which does not add steals away some instrument of virtue and happiness, and leaves the sluggard more at the mercy of those visitations of sickness or want to which even the industrious are exposed,—Nor is this all. Omissions of duty soon becomes commission of crime, Painful reflections now beset him. They are sought to be extinguished, but not by reform.—Conscience drives him to fresh vice. This goes on for a time; but health, means must at last fail. Then it is that he sees, for the first time, how bootlessly he has squandered away the healthy morning tide, the working hours of life. He has paid down existence, and all that makes existence a glory and a good in advance. Body and soul are spent. He becomes sullen and sour. Disapointments thicken on him, and they are all of his own causing. His farm is covered with weeds, his shop deserted, his children profligates and rebels, his household a hell.—He gradually becomes an enemy to all social ordinance, to law, justice, truth, good faith; to all that makes community to man. He envies and hates the good and happy; he looks on every check as a wrong, on every prosperous man as a foe. Whither is he to rush for rescue from these encompassing evils? The Gospel he never understood, and therefore never practised. His religion is an hypocrisy or a superstition. It affords him no direction in his errors, no consolation in his afflictions. He finds in it neither warmth now light.—The religion he learnt never penetrated to the spirit; it was a tinkling cymbal, a jargot of meaningless and profitless words. But crime, which had long been ripe in thought, is at last on the point of bursting into act. He is at last ready for every desperate attempt. Education has been held up as the great principle of all modern restlessness and disorder. Is this the case? Let facts answer. Here are men uneducated enough, to produce the most perfect quiet, if ignorance and absence of education could produce it. Yet it is from materials, like these, you are to expect the tranquillity and prosperity of a great nation? Is it in the nature of things that out of elements so utterly evil peace and happiness should emanate? Private vice has put to make a few steps and a few poselytes, and it becomes public corruption; individual discontent wants only time and circumstance to spread out into general disorder. Such, indeed, are the real revolutions; men bad and blind—blind because they are bad—a huge Polyphemus, sightless and strong, waiting only some crafty guide to lead the monster on against society. Nor is such want likely to remain long unsupplied.

We are happy to learn from general report that the Marquis of Queensbury, a nobleman personally much respected,