

(Reported for Haszard's Gazette.) SUPREME COURT. SAINT ELEANOR'S, OCTOBER TERM, 1853. NICHOLAS CONROY, Esq., Plaintiff, vs. JOHN J. PIPPY, Defendant.

Hon. Edward Palmer opened the case on the part of the Plaintiff, which he stated to be for a libel contained in two papers of the Weekly Advertiser and Colonial Times, of the 10th and 17th of February, in this present year. The Plaintiff is a gentleman of good connections and moving in a respectable circle of society. He had served in General Assembly as a Representative of the people among whom he resided, was in the commission of the Peace, and held a character among those by whom he was known, for uprightness and integrity. The Defendant was a Printer, residing in Charlotetown, and was the proprietor and publisher of a weekly paper called the Weekly Advertiser and Colonial Times. The action which the jury were empanelled to try, was not, said the learned Counsel, one of frequent occurrence, he was happy to say. In the early stage, of society injuries of character were not frequent occurrences. It had, however, now occurred, and it was fortunate for the Plaintiff and for all, that the law of the land prescribed remedies for injuries, civil or criminal, among the rest, for injuries such as that now complained of.

The libel was contained in two letters purporting to be from one James Fitzgibbon, to the Editor of the Weekly Advertiser, and charged the Plaintiff with having acted, in his capacity of a Broker, in the most illegal manner, and was couched in language, and contained accusations, which, if true, would render the Plaintiff infamous and unfit for society. The letters in question, after some preliminary remarks on the loss of the Ship Recovery, at the North Cape, in the month of October, 1846, stating that the writer had learned from one Coghlin, the particulars of the manner how the Ship Recovery was condemned, and that he had been one of the surveyors, contained the following passages.

"Mr. Coghlin produced the copy of the survey bill furnished by Conroy in condemning the Recovery as a proof of his statement to me, and it appears by the copy, that Mr. Conroy had caused a vessel to be condemned on a former occasion in the same fraudulent manner as the Recovery.—as one of the parties called upon to hold the survey was a butcher, and the worthy son of the lady was dubbed 'Merchant,' as such in the survey Bill; the other I am informed, was a Gaspe fisherman, who was dubbed ship master and inserted as such, and the third person was the aforesaid Thomas O'Brian, who was inserted as ship builder, and from this man I learned that Mr. Coghlin told me was correct respecting the condemnation of the ship Recovery, and further, that he, O'Brian, had been called upon to act as a surveyor on other ships, which had been conducted in a similar manner, that he had never sworn, that for his part, he did not care, that if Conroy as a Magistrate, thought proper to pursue such a line of conduct it was nothing to him, so long as he received his Guinea for his services, but at the same time he, (O'Brian) had often told Conroy by way of giving him when receiving his Guinea, that sooner or later he would be caught, and what would they not give in England for him as a witness, did they but know the correct name in which these ships were condemned. From their statement of facts, with my own observation, I concluded, that Mr. Conroy was a W***er, in every sense of the word, and had caused these ships to be condemned for his own benefit, as a Broker and what profit he could get from the wreck."

O'Brian knew that Mr. Conroy was doing wrong and told him so; he did not care so long as he got his Guinea; but the case was quite different with Coghlin, for when I pointed out to him the duty of surveyors in cases of Shipwreck, he at once saw the error he had committed, by leading his name to a ship in a manner to carry out a fraudulent design by bringing a ship to the hammer for the sake of his commissions, and acknowledged, that it was a disgrace to him, and declared, that he done it through ignorance, that his impression was, at the time of signing the surveyors Bill that it was a matter of form, by Conroy as a Magistrate going after him, and that he would go before a Justice of the Peace and make oath to the same, which he accordingly had done.

[These were other passages in both papers set out, but as they merely went to the same tendency, viz., that of imputing the same disgraceful and illegal conduct to Mr. Conroy, as Justice of the Peace and Broker, and as the libel was not justified, it would be superfluous to insert them.]

These, continued the learned gentleman, are the libels complained of, and could there be a more gross, wanton and malicious attack on the character of a respectable man! The learned gentleman then went on to show that the law made a great difference between verbal and written printed scandal, and quoted various authorities to show that the latter was considered of a more heinous nature than the former. He, at considerable length, anticipated the nature of the defence that would be set up. The liberty of the Press, that great palladium of civil and religious freedom, would, no doubt, be greatly enlarged upon by the learned Counsel, who had come from Nova Scotia to give the benefit of his talents to the Defendant. No man respected more than he (Mr. Palmer) did the liberty of the Press, and no man was more opposed to its licentiousness than he was. Much would be argued in favour of the licence to be given to a public printer; but, in this case, he contended that the Defendant had forfeited all claim to indulgence. He had attacked the private character of a gentleman with a recklessness and want of common caution and common prudence, that exposed to the concurrence with the libeller. Regard for his own character ought to have withheld the defendant from publishing a libel like the present. They might be told that this was to extract money from the pocket of the defendant, but he would show them that the plaintiff acted with a due regard to his own character in bringing the action in its present form. He might have chosen another, with perfect safety to himself and without any exposure. It was in his power to have gone before the Grand Jury, and had the defendant indicted; or he might have moved for leave to file a criminal information; and, in either of these cases, the truth of the libel, even if that were the case, could not be pleaded. No! he preferred to bring the civil action, so that an opportunity might be afforded to the defendant of justifying the publication, by proving, if he could, the truth of it. "Why then, if done, would he file the defendant's counsel to inform them? The learned gentleman of whose speech the above is but a meagre outline continued to address the jury in an energetic, but, at the same time temperate manner, on the subject of the damages that they ought to award; and concluded by trusting that they would be such as should show their disapprobation of the conduct of the defendant, as well as be a compensation to the plaintiff for the trouble, expense and annoyance he had been put to.

The first witness examined was the Plaintiff, Nicholas Conroy, Esq., who proved that he had been in the Commission of the Peace since May, 1849; was once a Member of the House of

Assembly. Cross examined by Wilkins—never heard of suspicions or rumours with respect to his character as Justice of the Peace or Broker. Knows Fitzgibbon; is a Justice of the Peace; does not know his occupation; has heard he is a shipwright.

Jas. E. Scherman—was a subscriber to the Weekly Advertiser, but ordered it to be stopped; there were several in the Office; Dr. Conroy wanted them and undertook to pay the amount due to Pippy; it was paid through Mr. Fraser, the Post Master; gave Dr. Conroy an order to receive the papers.

Nicholas Brown—takes the Weekly Advertiser; suffered his name to be put in an advertisement in the Advertiser of the 10th and 17th of February, and the 2d of March and after a good deal of difficulty, admitted that he had read the libel complained of, in papers published by the defendant, and similar to those produced. He was a very unwilling witness.

James Fraser—keeps the Post Office in St. Eleanor's. Letters and papers came from Charlotetown to his care. Identifies the three papers shown to Brown, as having been sent to J. E. Scherman. The defendant, Pippy; was in the Office when Scherman paid for the papers. Knows of no other paper of the same title. A great many came; some of the same date as those produced were taken out by the persons they were addressed to. They all came from the General Post Office in Charlotetown; they must have been mailed there. Cross examined by Wilkins—will undertake to swear that those papers were the same that came from Charlotetown; knows them that came from Charlotetown; knows them that came from the Post Office; caused a paper of the 10th of February to be purchased at Pippy's Office; it is similar to the one in his hand; knows the defendant to be the printer of the Advertiser; was a subscriber to the paper; has a paper of the 17th; got it from Mr. John Coll McDonald a few days after it was published. Files of the Colonial papers are kept in the Legislative Library; the Weekly Advertiser among the rest. Cross examined by Wilkins—The papers produced were taken out of the Post Office, for the purpose of being read in evidence upon this trial. They were sealed and pasted up in his presence and locked up by Mr. Fraser. There was a great deal of examination and cross examination as to the papers purchased in Charlotetown, which is omitted, as the learned Judge was of opinion it could not go to the Jury.

Gilbert Bior. Resided in Charlotetown, on 2d March last, got a paper of that date from Mr. Pippy at his own Office; bought it and paid for it; it is similar to the one in his hand; saw papers of the 10th and 17th February; with the publication complained of in them. Cross examined—made the memorandum upon the paper at Dr. Conroy's request, and put his name on it.

J. J. Pippy is a printer in Charlotetown, Publishes the Advertiser Newspaper, cannot say whether the papers produced are his, any printer in Charlotetown might have printed them; they look like his paper. Has no doubt but that they came from his office. Has 400 subscribers. Sends them to the different Counties. Mails them to go to the Post Office, kept by Fraser in St. Eleanor's. Believes that the papers produced were sent from his office. Cross examined, will not swear, but believes that they came from his office.

T. J. Kane—Resided at Tignish, has known the Plaintiff upwards of 10 years; is the Commission of the Peace. Recollects the Don of Waterford being wrecked about 1848. Plaintiff acting as Broker. Master was present.

Michael Gavin and Cornelius McArthur testified to the same effect, and with respect to the Recovery being wrecked, and Plaintiff acting as Broker, the master of the vessel being present.

Edwin Palmer—Is a subscriber to the Weekly Advertiser. It comes to him every week, and through the Post Office. The copies produced are copies of those he received; got them every week; knows they were from defendant's office, for he has paid him for them. Cross examined—Does not know whether he took them out with his own hand or not, but is certain that they are the same papers received through the Post Office.

Martin Walker—Is keeper of the Post Office, at Tignish. Identifies the papers produced, as written and printed, and dated and purport, which passed through the Post Office at Tignish.

Plaintiff rests his case. MARTIN J. WILKINS Esq. moves for a nonsuit on the ground that there had not been sufficient evidence of publication adduced to have the libel read. The only proof is that two papers were received at the Post Office in St. Eleanor's, marked sealed up and then put on one side, and all this after the action brought. Court I think so too, I think that the Plaintiff has gone too far. He has proved that the papers were duly mailed and if he had gone no further, I should have left it to the jury to presume that they had reached their destination, but he has negatived that himself, for he has proved that before they reached the person to whom they were addressed, Dr. Conroy had them sealed up and they lay so remained. (To Mr. Palmer who had quoted some authorities and was about to quote more.) But I will allow the cause to go to the jury, and give the defendant leave, to move, to set aside the verdict and enter a nonsuit. Wilkins then addressed the jury on the part of the defendant. He did not conceive that there was any necessity for him to make an elaborate defence. The action was between a highly respectable man, a magistrate, and one who they all knew, the defendant was a printer in Charlotetown. For the purpose of economising time, and saving trouble he will make one or two admissions. In the first place he will admit that under the direction of the learned judge that the publication of the libel is fully proved, and that when this is once made manifest to a jury it is the duty of the defendant to prove the truth of it, this however had its motion made, he would show them. The publication in question he also admitted was a very serious attempt to outrage the character of the Plaintiff, he agreed with the learned Counsel for the Plaintiff that if it were true that no gentleman could or ought to associate with him. It had been proved that Plaintiff was a man of excellent character and it was proved also that the publication of this libel had injured him; these were circumstances entirely favourable to the defendant. There could be in this case but nominal damages. While he admitted that the libel had been proved, he did not concede that any malice on the part of the Defendant had been shown, on the contrary the letters from Fitzgibbon had been published in the usual course of business. One of the great benefits of a free and unobscured press, was that it was a terror to evil doers, while he would support the press by every means in his power. In this case, he does not stand here for the pur-

pose of branding the Plaintiff with the character of a wrecker, the contrary he believed the Defendant to be all that was said of him, two words of a word to the prejudice of his character. But he would not, was it prudent in the Defendant to bring this action? Had he shown that he had sustained any damage? Has any gentleman been brought here to show that he had sustained any injury? If he had suffered any injury he would have had no difficulty in proving it, but it was impossible to prove what did not exist. In his opinion Dr. Conroy the Plaintiff's brother was the biggest, at all events the heaviest libeller, (a laugh through the Court) he is, was, that he would have lain in the post office, he it was determined that they should be published. It was no easy matter to wound the character of a really honest man. It was like chain-sawing, the more it was trampled upon, the more vigorously it grew. It had been proved that Mr. Conroy had lost no friend, had made no enemy by the publication. In fact the very violence of his enemies had been his protection. The severity of the libel was such that it carried its own antidote along with it. He would ask then whether taking £100 out of Pippy's pocket would be of any service to the plaintiff, would £50 taken from Pippy add one shilling to the value of Conroy's character? The libel had been published in a public journal. Had it been under an anonymous signature. Had the Defendant when applied to refused to give up the author, then indeed he would have incurred the scandal, would have made it his own, but what was the case? There was no doubt as to who composed the libel, and there it was where the Plaintiff had been wrong, he should have prosecuted Fitzgibbon who wrote the letters and sent them to the defendant. He the counsel must not be told that Fitzgibbon was not a respectable man, he was a brother magistrate of the Plaintiff, their names stood side by side, upon the Commission of the Peace that had this day been read in court. He should have been the Defendant then if a justification had been put in and had failed there would have been scarcely any limit to the amount of damages. The Defendant, had published the letter in the ordinary line of his duty. Had thought it would tend to the public good. He did not know whether they were true or false. He might have been in error, but will you, amid the learned counsel, will you because he had committed an error ruin him. Give the Plaintiff a shilling and let him sue Fitzgibbon.

The fact was that all this had arisen out of frivolous party politics, responsible government and all that kind of humbug, about which he differed totally from his client Mr. Pippy in opinion. They must give the lowest amount of damages there was a total absence of malice on the part of the defendant, as a proof of it, he had offered the defendant a place in his columns, if he chose to rebut the accusations. They would recollect that the lowest damages they could give, would carry costs and these would be immense (alas no witnesses). The learned judge Peter told the jury that there was no difficulty in the case it was a mere question of damages no doubt as to its being a libel. He could not suffer the remarks made by the counsel for the defendant to pass uncontradicted. In these cases (said the learned judge) the law makes no difference between the writer and the printer and publisher, both are equally guilty and the plaintiff had a right to sue either—after a variety of extremely pertinent remarks which we regret we have no room for, the judge charged the jury to find such reasonable damages as under all the circumstances there was a total absence of malice on the part of the defendant, as a proof of it, he had offered the defendant a place in his columns, if he chose to rebut the accusations. They would recollect that the lowest damages they could give, would carry costs and these would be immense (alas no witnesses). The learned judge Peter told the jury that there was no difficulty in the case it was a mere question of damages no doubt as to its being a libel. He could not suffer the remarks made by the counsel for the defendant to pass uncontradicted. 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