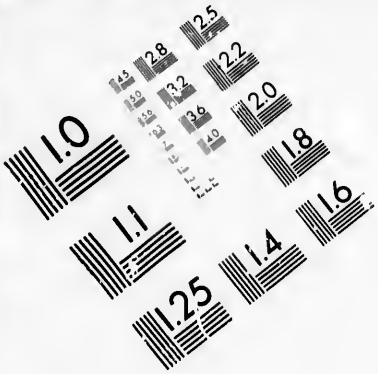

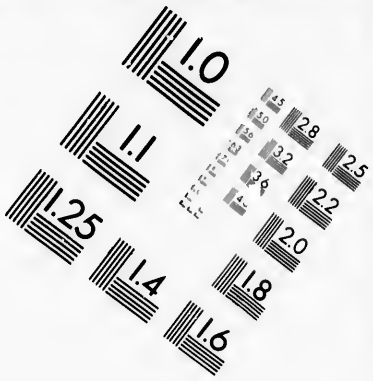

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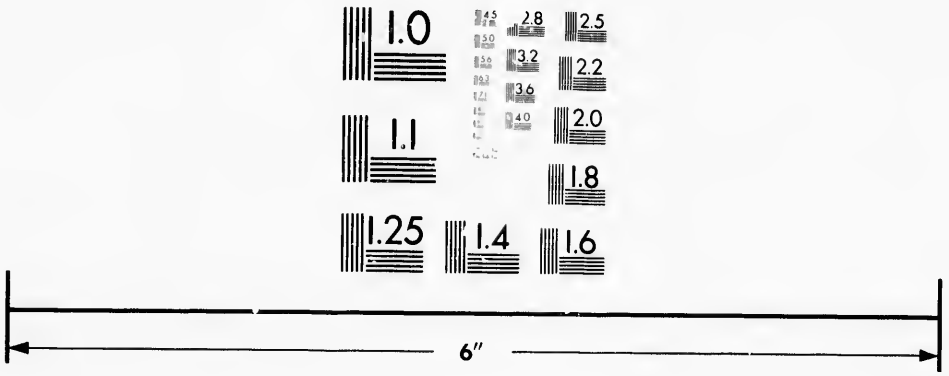

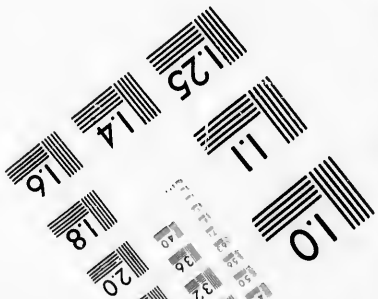

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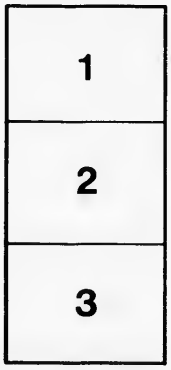

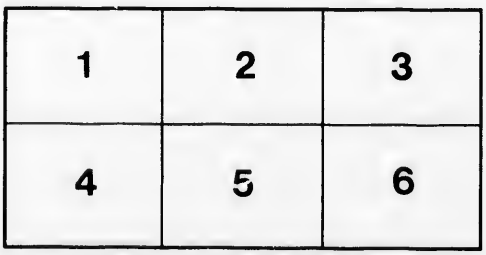

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A DECADE

IN THE

HISTORY OF NEWSPAPER LIBEL

By JOHN KING, Q. C.

A Paper read at the Annual Meeting of the Canadian Press Association held at Ottawa, March 6th-7th, 1892, and published by the Association for general circulation.

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1892.

INTRODUCTORY.

It has been well said that "the law of libel, being a case-made law, is the outgrowth of public opinion. Every legislative modification attempted has been to cure some admitted grievance, or to formulate the principle of a decision. It is thus the product of the age evolved from the wants of society, and the shape and form it has taken are due to the varying phases of popular feeling." By case-made law is meant that state of the law which is the growth and outcome of judicial decisions—"the problem ever suggesting itself and calling for solution being to find the quantity of liberty and the species of restraint which will secure to the press the greatest amount of free discussion consistent with the tranquillity of the community and the safety of private character." The process by which the law has been modified in a very long series of years has been very gradual. Many of the changes have been the result of changes in public sentiment with respect to matters to which it relates, and with scarcely any legislative interference. Other changes, however, there have been—and the remark applies particularly to Canada and its Provinces, Ontario especially—which have been due to the direct intervention of the Legislatures, Dominion or Provincial. These last amendments have been brought about mainly by the newspaper press itself, ably represented, we are bound to say, by the members of this Association, who, having found their duties and functions hampered and harassed by mischievous or unscrupulous persons, have at different times secured such changes in the law as they believed would better safeguard the rights and liberties of journalism.

A DECADE

IN THE

HISTORY OF NEWSPAPER LIBEL.

A MEMORABLE DECADE.

Up to the year 1882 the law of newspaper libel remained as it had been for a long period of years. In that year the first notable amendments were made. It will be exactly ten years on the tenth day of the present month of March since "The Newspaper Libel Act, 1882," of Ontario, was passed. Five years later, on the twenty-third day of April, 1887, another "Act respecting the Law of Libel" was passed, slightly amending the previous Act and applying mainly to newspapers. These two Acts have been incorporated in the general Act relating to libel in the Revised Statutes of Ontario, 1887. On the twenty-second day of May of the following year, 1888, an Act was passed by the Dominion Parliament amending the law of criminal libel in some important particulars. During the last session of the Dominion Parliament a bill relating to the criminal law of Canada, and embodying the law of criminal libel, was introduced by the Minister of Justice, and laid over to the present session. This measure, of which the sections relating to defamatory libel form but a small part, is one of great and far-reaching importance. It aims at codifying the whole criminal law of the Dominion, and is in this respect a new and interesting departure in legislation. It is founded upon, and adapted from, the draft criminal code proposed by the Royal Commission in England in 1879, the criminal law bill introduced into the British Parliament in 1880, and the Revised Statutes of Canada, 1886. The sections of the draft bill which codify the law of libel are eighteen in number. There are, of course, other sections which bear directly or indirectly upon libel as a criminal offence. They are all of vital moment to journalists, whether newspaper publishers or newspaper writers; they are of supreme consequence also to the commonwealth, because they affect the liberty of the subject, and, what journalists as a body will prize even more, the liberty of the press as an organ of public opinion.

From this brief statement it will be seen that the past decade has been a memorable one in the history of newspaper libel. We are quite safe in saying that, since the passage of Lord Campbell's Act, in the early part of the present reign (6 and 7 Vict., c. 96), which materially extended the benefits of Fox's Libel Act (32 Geo. 3, c. 60)—the *magna charta* of the press—there has been no period more fruitful in amendments, and on the whole salutary amendments, of the law, than that which, commencing in 1882, will close with the present year. It will be impossible to discuss all these amendments in the present thesis. In a paper which the writer had the honour of reading at the winter meeting of the Association held at Toronto in 1889, and which was afterwards published amongst the transactions of the Association, the amendments of the criminal law of libel, then just passed, were fully reviewed. Some suggestions contained in that paper for a further improvement of the law, along the lines of recent legislation in England, may be worth considering at the present meeting, especially in view of the revised criminal code which the Minister will again bring before Parliament. The provisions of the Ontario Act of 1887, in regard to security for costs in libel actions against newspapers, were also discussed by the writer in a paper which was published in The Globe of 19th July, 1890. It is proposed now to review, as briefly as the importance of the subject will permit, the other amendments of the law contained in the Ontario Acts of 1882 and 1887. The Association will then have, in something like a permanent form, a concise commentary, which it is hoped may be of some practical service, on the past decade of legislation affecting the newspaper press.

DEFINITION OF "NEWSPAPER."

The first amendments of the law are embodied in "The Ontario Newspaper Libel Act, 1882." This contains the first definition by a Canadian statute of the word "Newspaper." It declares that "the word 'Newspaper,' or other periodical publication, as used in the Act, shall be held to include any paper containing public news, intelligence, or occurrences, or any remarks or observations *therein*, printed for sale and published periodically, or in parts or numbers, at intervals *not exceeding twenty-six days* between the publication of any two such papers, parts or numbers, and also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals *not exceeding twenty-six days*, and containing only or principally advertisements."

The term, it will be seen, has a much wider signification than is popularly supposed, and covers most ordinary publications. Still it does not

cover magazines or monthly trade papers. These are not entitled to privilege for the publication of defamatory matter contained in reports of public meetings, or in reports of proceedings of courts of justice ; and the oversight is worth noticing by all who are interested in that class of publications. The word "therein," in the expression "any remarks or observations therein" in this definition, is obviously a mistake. It should be "thereon," because the sense of the passage is that the "remarks or observations" referred to are such as are made *on* the "news, intelligence or occurrences," contained in the paper. A similar definition of a "newspaper," except that the words "or other periodical publication" are omitted, is given in the Dominion Act of 1888, amending the criminal law of libel, and the same error appears in that statute. In the draft criminal code, submitted to the Dominion Parliament last session, there is no definition of a newspaper. This omission may, however, be supplied in the bill which will be introduced during the present session. The definition already given first appeared in Schedule A of 6 and 7 William IV., c. 76, which was repealed by 33-34 Vict., c. 99. It was revived in a statute passed ten years later in England (44-45 Vict., c. 60), and has since found its way into our own law. A decision—apparently the only one reported—on this definition of a "newspaper" was given in the English court of Exchequer many years ago, on an information against the publishers of *Punch*, the clever illustrated satirist and humourist of the English press. The court held that a paper or pamphlet, though printed for sale, and containing public news, was not a "newspaper" if published periodically at intervals exceeding twenty-six days (Atty. Gen. v. Bradbury & Evans, 7 Excheq. 97).

REPORTS OF PUBLIC MEETINGS.

The most important provision of the Ontario Act of 1882 was that which made newspaper reports of certain public meetings privileged. This was supplemented by the Ontario Act of 1887. The enactment on that point, as it now appears in the Revised Statutes, is divided into two sub-sections, taken from those two Acts respectively. These must be read together in interpreting the section as a whole. By the first sub-section this privilege is extended to "any report published in any public newspaper or other periodical publication of the proceedings of a public meeting," "lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit." The privilege "shall not be available as a defence in any proceedings if the plaintiff can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement of explanation, or contradiction, by or on behalf of such plaintiff."

This first sub-section, which also appears in the draft criminal code introduced last session, is taken from the English Newspaper Libel and Registration Act, 1881, (44-45 Vict., c. 60, s. 2). An eminent English lawyer Sir Frederick Pollock, in his work on the Law of Torts (Ed. 1887), describes this statute as "curiously framed," and says its interpretation clause (e. g. its definition of "Newspaper") is almost a *reductio ad absurdum* of modern abuses of parliamentary drafting. The statute has since been materially amended and improved by "The (Imperial) Law of Libel Amendment Act," 1888, (51-52 Vict., c. 64). A similar amending Act failed to pass in 1887.

The first part of the section in our own Act relating to reports of public meetings enlarges the number of privileged occasions upon which a newspaper may publish defamatory mattter. Prior to its enactment the privilege was not extended to reports of public meetings generally. Nor, as will be seen, is it extended even by the section as a whole to reports of *all* public meetings, but only to those which are within the qualified protection of the Act. Before the Act of 1882 it was no defence to an action for a libel contained in a report of a public meeting to plead that the report was a true, correct and faithful report of the proceedings at such a meeting.

THE OLD STATE OF THE LAW.

In the leading case of Davison v. Duncan (7 E. & B. 229), which has been followed in a number of other important decisions since that time, the facts were, that at a meeting of the West Hartlepool improvement commissioners, one of the commissioners made some defamatory remarks on the conduct of the former secretary of the bishop of Durham in procuring from the bishop a license for the chaplain of the West Hartlepool cemetery. These remarks were reported in the local newspaper; and the secretary brought an action against the owner of the newspaper for libel. A plea of justification, alleging that such remarks were in fact made at a public meeting of the commissioners, and that the alleged libel was an impartial and accurate report of what took place at such a meeting, was held bad on demurrer. Lord Campbell said: "I am of opinion that, as the law now stands, the plea is bad. A fair account of what takes place in a court of justice is privileged. The reason is that the balance of public benefit from the publicity is great. It is of great consequence that the public should know what takes place in court, and the proceedings are under the control of the judges. The inconvenience, therefore, arising from the chance of the injury to private character is infinitesimally small as compared to the convenience of publicity. But it has never yet been contended that such a privilege extends to a report of what takes place at all public meetings. Even if confined to a report of what was relevant to the object of the meeting, it would extend the privilege to an alarming extent. If this plea is good, a fair account of what takes

place may be published whatever harm the publication may do to private character, provided it takes place at a meeting of a public nature—a wide description embracing all kinds of meetings, from a county meeting to a parish meeting. At such meetings things may well be said very relevant to the subject in hand, yet very calumnious. In what an unhappy situation the calumniated person would be if the calumny might be published, and yet he could not bring an action and challenge the publishers to prove its truth? The Legislature may think fit to extend the privilege of publication beyond the limits to which it now goes. If it does it can impose such restrictions on the extension as it thinks fit. We in a court of law can only say how the law now stands; and according to that, it is clear the action lies and the plea is bad."

This being the state of the law prior to the Act of 1882, the defendant had then to rely upon the defamatory matter contained in the report being strictly true, or upon its being a fair and *bona fide* comment upon a matter of public interest. This is still the law in respect of the published reports of the proceedings of all public meetings which are not within the Act. As to the reports of such meetings the defendant has the same defence open to him now that he had before the passing of the Act. Where, therefore, by the decisions of the courts under the old law, such reports were privileged, they will be privileged still; and the defendant may plead the privilege as an answer to the action. Take, for example, the provisions of the clause as to privilege in our own Act of 1882. Although by that clause the reports of the proceedings of certain public meetings, as therein defined, are privileged, the privilege is conditional on the defendant inserting in his newspaper a reasonable letter or statement of explanation, or contradiction, by or on behalf of the plaintiff. Should he refuse to do this in respect of any publication which was privileged before the Act, he could still have a good defence if the publication was *bona fide*, i. e., a publication made with honesty of purpose. His refusal to publish the reasonable letter or statement of explanation or contradiction might evince improper feeling on his part, or a want of *bona fides*; but his defence would be established, notwithstanding the refusal, if the jury considered the publication was made *bona fide*. In any case, however, within the clause in question, his position would be very different. He would then have to rely upon the strict provisions of the section for his defence of privilege, and, however honest his conduct might have been, in publishing the report complained of, his refusal to insert the reasonable letter or statement of explanation or contradiction, required by the section, would be fatal to his defence under that section of the Act. The refusal mentioned in the Act implies a request by the plaintiff, to insert such a letter or statement as well as authority by the defendant to procure its insertion. If proceedings were taken against the defendant without such a request being made, the privilege extended by the section would of course be available as a defence to the action.

The wording of this sub-section is not as lucid as it might be. It seems to imply that there may be public meetings that are not open to the public, and that meetings may be lawfully convened for unlawful purposes. This is certainly not what the Legislature intended. Generally speaking, all meetings for the discussion of matters of general interest, and to which the public are freely admitted, are public meetings. It is impossible to define what is a public meeting within the meaning of this particular clause of the Act. The second sub-section of section 7 chapter 57 of the Revised Statutes of Ontario, which was first passed in the Ontario Act of 1887, makes an attempt to do this, but, as we shall see, the attempt is not altogether successful. We have no decision in our courts on the point ; in fact, there is no reported decision, either in England or Canada, on the phrase "a public meeting" "open to the public." Each case that may arise, therefore, will have to be determined with reference to its own particular circumstances ; and these are so varied that any general definition would be necessarily imperfect. The words "open to the public" imply at least the privilege of freedom of admission ; and this privilege may be either unconditional, in the sense of free to the public, or conditional, as, for example, on payment of a small fee. A meeting to which *all* the ratepayers of a municipality are invited, to consider and discuss a subject of common interest and importance, would clearly be within the Act. So would a meeting of all the electors of an electoral district called to hear an address by their parliamentary representative. But a meeting, to which only those belonging to one political party are invited, would appear not to be a public meeting within this clause, or in the clause which follows it in the revised statute. A political meeting, for example, of Liberals, and to which Conservatives were refused admission, would not be "a public meeting" "open to the public ;" and the publication of defamatory statements made at such a meeting would not be privileged. The same may be said of any meeting of persons of the same religious denomination or holding the same religious opinions. The report, for example, of the proceedings of a meeting composed exclusively of Protestants, and which contained matter defamatory of individual Roman Catholics, would not be protected.

There is a class of public meetings such as lectures and concerts that are also "open to the public," although usually on payment of an admission fee. How far these are within this first sub-section of section 7 of the revised statute must depend on the circumstances under which they are given. If they are free in the popular sense of the term, they are plainly within the section,and the payment of a small admission fee, not sufficient to exclude the general public, would appear to give reports of their proceedings the same protection. But a high-priced concert or lecture, or, in fact, any meeting, the conditions of admission to which, by reason of the charge or otherwise, would be

to a large extent exclusive, could hardly be called a public meeting. If, however, the public were invited by an announcement as directed in sub-section 2 of section 7 of the revised statute, this class of meetings would be clearly within the protection of the Act.

Langrish v. Archer (10 Q. B. D. 44) was a case under the English Vagrant Act Amendment Act, 1873 (36-37 Vict., c. 38, s. 3) which imposes a penalty upon "every person playing or betting by way of wagering or gaming in any street, road, highway or other open and public place, or in any open place, to which the public have or are permitted to have, access, at or with any coin, card, etc., used as an instrument or means of such wagering or gaming at any game or pretended game of chance." The court held that a railway carriage, while travelling on its journey, is within the definition in the section of "an open and public place to which the public have or are permitted to have access."

MEETINGS OF REPRESENTATIVE BODIES.

A question of greater difficulty arises as to how far the meetings of municipal councils, school boards and other representative bodies of a like character, are "public meetings" within this sub-section, or that which follows it in the revised statute. Lord Chief Justice Coleridge expressed an opinion in 1886, that a meeting of a local board of guardians was not such a meeting although reporters were admitted. If so, the decision of the English Court of Appeal on that point in Purcell v. Sowler, (C. A. 2 C. P. D. 215), and which was the immediate cause of the English law being amended, would still be good law, in a similar case in Ontario, unless the public were invited by a public announcement as already mentioned, and the hardship, which that amendment was intended to relieve, would still remain. Meetings of the representative bodies just referred to, although usually open to the public in this country, and their proceedings as a rule fully reported in the press, are nevertheless within the control of their conveners. They may be open or closed at the will and pleasure of the conveners, although public opinion would never tolerate anything like a Star Chamber exclusiveness in that respect. Still the public have not, strictly speaking, the right of admission; they have not the right, in any way, to take part in the proceedings; and they may be excluded at any moment. Admission of people generally to such meetings, therefore, is rather a privilege than a right, the exercise of which rests with these representative bodies themselves. If the public on any occasion were excluded, the meeting would not be "open to the public;" the report of its proceedings would not be privileged; and the publisher of defamatory matter in such a report would have to rely upon the law as it was prior to the passing of the Act. If the public were freely admitted,

there is scarcely a doubt that the meeting would be regarded as "a public meeting" "open to the public," and that the published report of its proceedings, albeit libellous, would be protected, assuming—as we must always assume in such cases—that the publisher was not actuated by malice. Malice, it may be observed, is of two kinds—malice in law, or legal malice; and malice in fact, or actual or express malice. "Malice in law is that wrongful intention which the law always presumes as accompanying a wrongful act, without any proof of malice in fact. This of course may be rebutted by the circumstances of the case." (Bailey J. in Bromage v. Prosser, 4 B. and C. 255.) Malice in fact is a wrong feeling in the mind, ill will, hatred, anger, indeed malice in the popular acceptation of the term.

MEETINGS OF CREDITORS, ETC.

There is another class of meetings the reports of whose proceedings would clearly appear not to be privileged. These are meetings of creditors held under the authority of an Insolvent Act, meetings of shareholders or stockholders of companies, and the like. Meetings of this class are usually advertised, but the invitation to attend them is, as a rule, limited to those immediately interested. We have at present no Insolvent Act applicable to the whole Dominion, but in Ontario there are the Act respecting assignments and preferences by insolvent persons and the Creditors' Relief Act, which are intended to effect the same purpose, as far as possible, and in some of the other Provinces there are Acts of a similar nature. Newspaper reports of the proceedings of meetings, held under any of these Acts, would of course come within the class just mentioned; and the reports would not be privileged. And for very good reason. At meetings of this description discussions constantly arise affecting the character, reputation or credit of different persons, and statements are made the publication of which would be most pernicious to the individuals concerned. Parsons v. Surgey (4 F. and F. 247), and Lawless v. The Anglo-Egyptian Cotton and Oil Company (38 L. J. Q. B. 130), are leading cases on these points.

THE TERMS "PRIVILEGED" AND "PUBLIC BENEFIT."

The term "privileged" in this section of the Act in regard to public meetings has reference to the occasion of the publication, or the circumstances under which it takes place. A privileged occasion has been defined as "an occasion upon which one person might do something with impunity which no other person could do." There are two kinds of privilege, absolute and qualified. Some publications are so much in the public interest that all actions in respect of them are absolutely forbidden. They are, as a rule, confined to cases in which the public service, or the due administration of

justice, requires complete immunity. Where, however, the interests of the public do not demand that the publisher should be freed from *all* responsibility, but merely that he should be protected, in so far as his publication is an honest one for the common good, the privilege is not absolute but qualified only. It is this last kind of privilege that is given by the Act to reports of public meetings. Any person, defamed in a newspaper report of a public meeting, could recover damages in spite of the publisher's privilege, if he could prove that the publisher was actuated by express malice in availing himself of the privileged occasion to defame him. No other reports, however fair or accurate, are privileged, except such as are covered by this section. Their fairness and accuracy could only be urged in mitigation of damages. By printing and publishing the statements of the various speakers, the publisher has made them his own ; and he must either justify and prove them strictly true, or rely upon their being fair and *bona fide* comments on a matter of public interest.

This question of privilege is one for the judge alone, where there is no dispute as to the circumstances under which the publication was made. If the judge decides that question in favor of the defendant, the plaintiff can only succeed by giving evidence of actual malice. If no such evidence is given the plaintiff is non-suited, or a verdict is directed for the defendant. If there be any evidence of malice sufficient to go to the jury, then the jury must decide whether the defendant was actuated by malicious motives in writing or publishing the defamatory matter complained of.

This sub-section one, of section 7, of the revised statute affecting libel, was passed because it was considered that the common or unwritten law pressed too severely on newspaper editors and publishers who, in the ordinary course of their business, and from a sense of duty, had given the public a full, true and impartial account of what really took place at a public meeting, but who then found that the law deemed them guilty of libel. In England, the law in this respect was amended in August, 1881. The immediate cause of the change there was a decision of the Court of Appeal (Purcell v. Sowler before referred to) which held that a fair and accurate report, in a local newspaper, of the proceedings at a meeting of a board of guardians, was not privileged. It will be observed that there is no protection to the publisher, unless the report is for the public benefit. This is a very reasonable provision, because unless there be some advantage to the public countervailing the injury done to the individual defamed in the report, there can be no reason why damages should not be recovered. Many a person is often grossly calumniated by the utterances at a public meeting. There may be circumstances connected with the meeting itself which make what is said there of small moment, but the consequences are most serious when the calumnies are printed and published to the world. They are then not fleet-

ing and transient, like the speaker's words, but are in a permanent form and circulated in that form broadcast in the community. It is hard to say into whose hands the printed page may come. What may have been originally an unfounded slander acquires far greater weight and importance when it appears in the columns of a respectable newspaper ; many people will believe it simply and solely for that reason, and a great wrong may thereby be done a perfectly innocent person.

THE MANCHESTER "COURIER" CASE.

It is not sufficient, however, under this Act, that the report as a whole of the public meeting should be for the public benefit ; it must be shown that the publication of *the very words complained of* in the report conferred such a benefit. This, as will be seen, narrows very considerably the protection supposed to be afforded by this change in the law. A case in point may be cited. In 1886 a full report appeared in an English newspaper, the Manchester *Courier*, of a speech at a public election meeting in the course of which the speaker made a personal attack on a gentleman who was standing for another constituency two hundred miles distant. The publisher of the *Courier* was sued for libel, and at the trial the judge directed the jury as if the main question for them was this: Is it for the public benefit that reports of election meetings should be published in newspapers? The verdict was for the defendant on this direction, but the full court, in December, 1886, granted a new trial on the ground that the trial judge did not make it clear to the jury that the Act only protected the newspaper when it was for the public benefit that the actual libel complained of should be published to the English people. In that case the defendant made what would appear to most people to be a common sense and reasonable contention. He alleged that, in the hurry of setting up the type for a daily paper, it is practically impossible for the editor to read through the copy; that he ought not to be expected to edit the report; and so long as the meeting is one that ought to be reported, and the report is fairly accurate, nothing more should be required. But this is a view which our courts of law are apparently not prepared to adopt. The truth is that even with this change in the law, which has made reports of public meetings privileged to a very large extent, the newspaper is still not safe unless the editor discharges his whole duty. He must edit the whole paper or his employers must take the consequences. The decision in the Manchester *Courier* case caused great dissatisfaction among newspaper men in England, so much so that an agitation arose for a repeal of the section of the Act referred to which corresponds verbatim with that in our own Act. The agitation was successful and resulted in the repeal of this obnoxious section and the enactment of a new section in the Libel Act of 1888 (51-52 Vict., c. 64) which much extends the privilege of newspaper reports. By this new section a public

meeting is defined as "any meeting *bona fide* and lawfully held for a lawful purpose, *and for the furtherance or discussion of any matter of public concern whether the admission thereto be general or restricted.*" The privilege is also extended to the reports of various other meetings which are not technically "public." These English amendments of the law are fair and just ; they are in the public interest ; and we may well commend them to the law-makers of the Dominion and of all the Provinces. The Manchester *Courier* case decided under the repealed section of the English Act, is important. It is cited because it is a recent case on that point ; because the decision that was given upon it would be upheld as sound law by our own courts ; and because, where so much is occasionally being made over the efficacy of the law as amended in this country, it is important to know how far its real merits extend.

THE PRIVILEGE GRANTED BY THE ACT OF 1887.

But in whatever way our judges may interpret the laws, we must remember that it is our legislators who make them. The section of the Act of 1882, which first conferred this privilege upon reports of public meetings, is incorporated in the Act respecting the law of libel in our Revised Statutes. Appended to it there is another section, to which reference has already been made, and which first appeared in the last amending Act passed in April, 1887. It has no place in any English statute. This last section, or rather sub-section, defines what is meant by "a public meeting." It declares that these words "shall extend to any lawful meeting to which the public are *invited*, and of which the announcement has been made by printed or written notice thereof being posted up in at least six conspicuous places in the municipality where the meeting is held, or by advertisement in a public newspaper published in such municipality, or, if there be none published therein, then in the one published nearest to the place of meeting."

This sub-section is intended to enlarge the privilege given by the preceding sub-section so as to include such a meeting as has been announced in the manner described. In that view of the matter no report of any public meeting within that sub-section would be privileged unless the meeting came within the precise requisites of the Act. These requisites are, (1) a lawful meeting ; (2) an invitation to the public ; (3) an announcement *(a)* by notices, written or printed, posted in six conspicuous places where the meeting is held, or *(b)* by advertisement in a public newspaper as provided. When we consider the immense influence of public meetings on our municipal and national life, and the great number and variety of meetings held that do not, or, perhaps cannot, comply with these several requisites of the statute, it is evident that the privilege thus vouchsafed to publishers is exceedingly

narrow. If the opinion of Lord Chief Justice Coleridge is sound—that a meeting of a board of guardians, to which reporters are admitted, is not a public meeting, it would follow that no meeting of a municipal council to which the public are not invited by announcement, as provided by our Act, is a public meeting within this section as a whole, nor in fact any other meeting in which the public are present merely as spectators, and in the proceedings of which they could not legitimately take part. The true remedy is in the adoption by our Legislatures, Dominion and Provincial, of an amendment of the law embodying the virtues of the English Act of 1888 on this subject, and adapted, as far as possible, to the requirements of our own case. The law as it stands in the Revised Statutes of Ontario, and in the draft criminal code laid before Parliament last session, is not altogether satisfactory, and is capable of improvement both in the interest of newspapers and the general public.

As to the form and body of the report of any such public meeting as is covered by the whole section, all that is required is that it be substantially correct. A few incidental errors would not destroy the privilege, provided the report as a whole produced materially the same effect on the reader's mind as an absolutely correct report would have done. The courts have held that it is not to be expected that, in the discharge of this duty by a public journalist, he will always be infallible. The privilege is lost, however, if the publisher refuses to insert in his paper a reasonable letter or statement of explanation, or contradiction, on the part of the complainant. Such a refusal would be cogent evidence of malice ; the case would then be considered outside the section, and no question could be left to the jury as to malice or no malice.

A nice question may also arise as to what is a "reasonable letter." The letter, such as it is, usually provokes a reply from the calumniator, or, perhaps, from some of his friends, and this reply the editor can hardly in fairness refuse to insert. And thus there arises a newspaper controversy which not unfrequently prolongs and aggravates the mischief caused by the original report. The letter or statement of explanation, or contradiction, need not apparently be written by the complainant himself. In considering its reasonableness regard should be had to its matter and style and also to its length. In a recent action for libel against the *Punch* newspaper the lady plaintiff sent an explanatory letter to the defendants that would have filled more than two columns of the paper. This was not regarded as "reasonable" even on the part of so fair a suitor.

The phrase "matter * * * for the public benefit" in this section is one that has given rise to a good deal of doubt in the courts. In the case of Ryalls v. Leander (1 L. R. Excheq. 296) Lord Bramwell expressed his doubts about its meaning. This decision overruled Mr. Justice Grantham who held, very sensibly, that reporters should not be expected to discriminate in these matters, and so this section was rendered practically useless. The case of Pankhurst v. Sowler (3 T. L. R. 193) was a glaring instance of its defects. The defendant was sued for the report of a speech in which blasphemy was imputed to the plaintiff. It was *not* left to the jury to say whether the matter complained of was for the public benefit. On appeal it was held that this was "not a proper and complete direction" under the rules of the Judicature Act, and a new trial was ordered. One of the judges, Baron Huddleston, remarked that the Act of 1881 was passed for the purpose of remedying what was considered to be a defect in the law arising out of Purcell v. Sowler, and it provided a protection for true reports of public meetings published without malice, and the publication of which was for the public benefit. It was admitted in the case that the meeting was for a lawful purpose, that the report was fair, and that it had been published without malice, but it was denied that such a report was for the public benefit. Venables *et al.* v. Fish *et al.* was a similar case, and the same question arose. Mr. Justice Denman, who tried it, referred to the previous case of Pankhurst v. Sowler as the only reported one on the point. He left it to the jury to say whether the report was for the public benefit, and, they holding that it was, he directed judgment for the defendants. In the case of Weldon v. Johnson, reported in the *Times* Law Reports, 27th May, 1884, Chief Justice Coleridge also held that the question, whether the publication of defamatory matter was for the public benefit, is a question for the jury. In another action that came before him the same judge decided that it is a question for the judge, and not for the jury, whether a particular topic was or was not a matter of public interest. These two decisions are apparently inconsistent ; but it is clear that a matter may be of public interest and yet not for the public benefit.

In the United States, although the publication of defamatory matter is privileged when it appears in a true and impartial report of judicial or legislative proceedings, it is not yet settled whether the immunity extends to reports of political or other public meetings. In a celebrated case in New York it was held that a report of proceedings at a public meeting, for the purpose of nominating a candidate for governor, was not privileged (Lewis v. Few, 5 Johnson, 1); but in a similar case in Pennsylvania, decided in 1886, the contrary doctrine was successfully maintained (Briggs v. Garrett, 3 Pa. Rep., 404). The American statutes and decisions appear to be behind the English and Canadian law in this respect.

This whole matter of making the reports of public meetings privileged gave rise to a great deal of controversy in England when the law was amended by the Imperial Parliament in 1881. The principle objections to it were that it would be liable to great abuse ; that the public meeting might not be worthy of the name ; and that factitious importance might be given by the report to what would otherwise be mere hole-and-corner slander. Sir James Stephen, an eminent English judge, described the amendment as "most objectionable though not likely to be repealed," and said that it was "in keeping with that indifference to personal dignity, and paltry curiosity about private affairs, which is one of the contemptible points of the habits of life of our day." There is little doubt that at common law, without the statutory provision at all, a report, which complied with all the conditions contained in the amendment, would be held to be no libel. In fact the amendment is so very cautiously guarded that it can hardly be said to afford much additional protection to newspapers. Some amendments are needed, and if these were granted, the law as a whole would afford newspaper publishers ample protection. To relax any real safeguard of personal reputation, which, of all rights, is most precious to a generous spirit, no journalist worthy of his calling would desire. An honourable profession cannot wish to harbour under its immunities caitiffs and cowards of whom the personal libeller is about the vilest.

THE ACT OF 1887—NOTICE OF COMPLAINT.

So much for the Act of 1882. Let us now consider the amendments contained in the Act of 1887. The first section of that Act provided for notice to defendants in actions for libel. It enacted that no action shall lie for a libel contained in a newspaper "unless and until the plaintiff has given to the defendant notice in writing specifying the statements complained of, such notice to be served in the same manner as the plaintiff's statement of claim is served, or by delivering the notice to some grown-up person at the place of business of the defendant." This provision is analogous to a somewhat similar one in the Act for the protection of justices of the peace and other public officers. Any of these officers may be sued for any alleged wrong which he has committed in the discharge of his public duty, but before an action can be commenced against him he is entitled to one month's notice setting forth particularly the cause of action, and the party complaining must thereafter commence his action within six months from the time when the alleged wrong was done him. In other words, the one month of notice required must first expire before the law can be actively set in motion, but six months is the full time given for both notice and commencement of the action in such cases. If both time limits are not complied with, the action will fail.

This is a much more complete protection than is afforded an alleged libeller in a newspaper, although the latter may also have acted from a strong sense of duty. He is not entitled by the statute to notice of an intended action, but simply to notice of "the statements complained of" upon which a suit may or may not be founded. There is, too, in his case, no time limit of the notice to be given which, if not complied with, would, as in the case of justices of the peace, be fatal to the validity of the action. The time within which an action for libel may be brought is governed, like other actions for damages, by the statute of limitations, and is two years. If the defendant, in such an action, received the notice mentioned in the Act any time within that period, and the writ of summons were issued within the same period, the plaintiff would be within his legal rights as to time. A plaintiff, however, should not sleep on his rights; delays in asserting these, or in seeking a remedy, in courts of justice, are always more or less prejudicial, unless they can be satisfactorily explained. Where damages for injured character and reputation are sought, the person aggrieved should be if anything more prompt than in other cases in formulating his complaint. Dillydallying would be dangerous, and might affect the real merits of his case, and certainly the damages. He might, perhaps, be also seriously prejudiced as to his costs.

One object of the notice to be given public officers is to enable them to make amends to the complainant by pecuniary compensation, or otherwise, before any further costs are incurred. The statute in that behalf expressly provides for this species of satisfaction, and the result is that actions against public officers are of rare occurrence. The intention is to protect persons who *bona fide* mean to discharge a public duty, and the court will consequently so interpret the statute as to save harmless all persons who act illegally, under the reasonable belief that they are authorized in what they do by Act of Parliament. If a public officer believes, with some colour of reason and *bona fide*, that he is acting in due execution of the authority vested in him, he is entitled to notice, although he may have proceeded illegally, or exceeded his jurisdiction. He is even entitled to notice although it turns out that he had not reasonable grounds for such belief, or even if he *bona fide* believed he was acting under some law, though he did not in fact know of the particular enactment.

The notice, we may assume, ought to be given within a reasonable time, having regard to all the facts and circumstances of the case. Failure to do so would be attended with risks to the plaintiff of one kind or another, and whatever tells against him, in that particular, can not fail to tell in favor of the newspaper. The old adage, that "it is an ill wind that blows nobody good" fitly applies, if the notice really bodes ill to the prospective defendant.

This section of the Act serves one really good purpose. It makes notice of the alleged libel indispensable. Under any circumstances it is usual for a solicitor, who is not afflicted with professional inertia, to notify a person by letter before instituting proceedings againt him, on behalf of a client, whether for libel or anything else. The letter, if properly framed, should give the party fair notice of the cause of action. But such a letter would not of itself satisfy the statute respecting libel, although the practice of sending a letter will no doubt be adhered to in libel actions despite the other formality. In any event, written notice must now be given of "the statements complained of" in an alleged libel contained in a newspaper. Such notice is a condition precedent to an action being brought, and if it is not given, the action itself would be premature, and, however malicious or damaging the libel might be, the plaintiff would "take nothing."

If the requisite statement be given, and proceedings are taken thereon, it would seem that these proceedings should be limited to the matter set forth in the statement, and to the damages arising therefrom. In other words, the libellous matter specified in the statement should form the sole cause of action in any suit for damages which followed. In such a suit the plaintiff could not recover damages for any other defamatory matter except that stated in the notice, the object of which is to inform the defendant of the real subject of complaint. Evidence, however, could be given at the trial of previous libels by the defendant upon the plaintiff. This is always admitted to prove malice. When it is admitted, the jury, if properly charged, is always cautioned against giving damages in respect of such other libels, because these may have formed, or may yet form, the subject of other proceedings, civil or criminal.

Although the defamatory matter set forth in the notice would be the only matter upon which the defendant could be sued in the action taken thereon, the defendant would not be restricted exclusively to such matter in his defence, and to fighting it out on that line alone. He would be entitled to have read the whole article containing the offensive passage, especially if the sense of the passage was in any way varied in his favor by the rest of the article. Sometimes a word or two, either before or after the passage selected by the plaintiff as embodying the cause of his action, might materially modify the meaning of the alleged defamation by qualifying or explaining the passage sued on ; they might in fact extract the sting altogether, or at least let him off, as the saying is, "by the skin of his teeth."

The Act for the protection of justices of the peace also provides that, in case an action is brought where, under the circumstances, it should not have been, as *e. g.* when no notice of action was given, the proceedings may, upon the application of the defendant, be set aside with or without costs, as to the

judge seems meet. Where, in such a case, there is not time to correct the error by giving notice and bringing a fresh action, within the statutory period, it is generally advisable to make such an application promptly. It has the merit at least of summarily terminating the proceedings. There is no provision for an interim application of this sort in libel actions, although there is nothing against it. A defendant, in such an action, might resort to this remedy if he pleased, and a judge, on general principles, and under the elastic rules of the Judicature Act, could perhaps, in a proper case, afford the relief asked. But a step of this kind would be inexpedient, unless there was no time to give notice and bring a fresh action. If there was time, it would be better to let the suit run its fatal course as the defendant must win in the end.

Although nothing is stated in the statute as to the form and particulars of the notice, beyond the statement of the libellous matter complained of, some further particulars would appear to be reasonable. It is not altogether clear who should give the notice, namely, whether a notice by an agent, *e. g.*, the party's solicitor, would be sufficient, or whether the Act does not require that it should be given by the party himself. The latter mode of procedure would appear to be the safer of the two. A notice properly prepared by the party, or his solicitor, and signed by the party himself, would, at any rate, be sufficient. It would also be advisable to give the full names, places of residence and additions of both plaintiff and defendant, as well as the date of the publication, the heading of the article containing the defamatory matter and such further particulars as would clearly identify it. The passage or passages complained of in the article should be particularly mentioned. In general a notice of action, when required by statute, ought not to be construed with great strictness ; it ought to be construed liberally. So long as it informs the party substantially of the ground of complaint, it will suffice. And so, we presume, will the particular notice required by the libel Act. It ought to make clear the real subject of grievance, especially if an innuendo be necessary.

THE OFFICE OF THE INNUENDO.

That an innuendo may be necessary, in a notice of the statements complained of, will be evident if we consider the important office which it often serves in actions of this nature. The innuendo is the meaning assigned by the complainant himself to the offensive words of the writer, as well as the sense in which they are understood by the reader. It is the construction which he puts upon the words, and which he says was put upon them by the reader, and that should be adopted by the jury at the trial. It is immaterial what meaning the writer intended to convey. He may have had no thought

of injuring the party's reputation, but if he has in fact done so he is liable to compensate him. He may have meant one thing and written another ; if so he is answerable for the inadequate expression of his meaning. If he jests, and the jest conveys a serious imputation, he does so at his peril. In the well-known case of Laflamme against the *Mail* newspaper the defendants contended, and with some show of reason, that the imputations against the plaintiff were of a humorous character, and were made jestingly. But the court and jury, especially the latter, were of a very different opinion. Ambiguous language in a newspaper article, harmless enough in the writer's mind, but to which the reader attributed an injurious meaning, is just as hazardous. The unfortunate scribe, or his employer, will be liable for the injudicious phraseology. In short, the defamation and the damage consist, not in the secret intent of the writer, but in the apprehension of the reader.

The whole question, therefore, always is : what meaning did the printed words convey to the unbiassed minds of those to whom they were published ? This is clearly a question for the jury rather than the judge. Under Fox's Libel Act (32 Geo. III., c. 60) which forms part of our own law, the jury are to decide the question of libel or no libel, subject to the direction of the judge. In civil proceedings the judge may non-suit the plaintiff and stop the case, if he thinks that the words cannot possibly bear a defamatory meaning. In criminal proceedings he may decline to let the case go to the jury. If, however, he thinks that the words are capable of a defamatory as well as an innocent meaning, it will then be for the jury to say what meaning the words would convey to a person of ordinary intelligence who read them, without any previous knowledge of the circumstances to which they relate. In any case where there is any doubt as to the true construction of the publication, the jury should be allowed to pass upon it. The judge is not bound to state his own opinion upon the subject ; it would in fact be wrong for him to do so, and to lay down, as a matter of law, that the publication was or was not a libel. His proper course is to define what is a libel in point of law, and to leave it to the jury to determine whether the publication falls within that definition. The question is pre-eminently one for the twelve men in the box who are sworn to try the issue between the parties ; and the full court will not, except for very strong reasons, disturb their verdict, if the question was properly left to them.

Formerly the practice was very different. Verdicts were constantly set aside on the ground that the printed words were capable of an innocent as well as a libellous meaning. This was done in accordance with the old maxim that the words were to be taken *in mitiori sensu*, *i. e.* in a milder sense, whenever there were two senses in which they could be taken. But this somewhat casuistical doctrine has been long since exploded. The courts will no longer be ingenious to find an innocent meaning for printed and published

words that are *prima facie* defamatory, any more than they will be to put a forced and unnatural construction on words which may fairly be deemed harmless. The words are construed in the plain and popular sense in which the rest of the world naturally understood them. The only question for the judge or court is whether the words are capable of the defamatory meaning alleged by the plaintiff ; if they are, the jury must then decide what is in fact the true construction.

WHEN IS AN INNUENDO NECESSARY ?

In what cases, then, is an innuendo necessary in "the statements complained of" which the notice mentioned in the statute must set forth ?

According to the best authorities the statements may be (1) manifestly defamatory ; (2) ambiguous ; *i. e.* statements which though *prima facie* defamatory are capable of an innocent meaning ; (3) neutral ; *i. e.*, statements which are meaningless without explanation ; (4) *prima facie* innocent, but capable of a defamatory meaning ; (5) manifestly innocent.

(1). Statements manifestly defamatory. Here no innuendo is required because the language used is plain and unmistakable. Notwithstanding this the defendant may set out in his statement of defence and may prove at the trial, facts and circumstances which show that the statements were not used in their ordinary signification, but in one that is innocent. This is allowable in order to place the jury, who may never have seen the publication until it was produced at the trial, in the same position as the readers of the publication, and thereby to enable them to judge fairly of its signification. But it should appear that the facts and circumstances were known to the reader at the time of the publication, and that the statements are capable of the innocent meaning assigned to them by the defendant.

(2) Ambiguous statements ; *i. e.*, those *prima facie* defamatory but capable of an innocent meaning. No innuendo is necessary as to these, although it is usually added. The defendant may make the same use of facts and circumstances, as in the first case, to show the harmlessness of the statements. But in neither case, be it observed, can facts and circumstances be given in evidence that were unknown to the reader at the time of the publication. These, at the most, could only show the secret intent of the writer which is immaterial and is inadmissible in evidence. Another thing to be noticed is this : that the defendant's formal statement of defence, prepared by his solicitor, is always the foundation of his case at the trial. He must be careful, therefore, to lay a ground for the facts and circumstances just mentioned by setting these out in his statement of defence, otherwise he cannot offer them as evidence at the trial. But although evidence of all the surrounding circumstances may thus be given by a defendant, to show the

innocent meaning of the statements complained of, he is, in the absence of such evidence, not allowed to show merely that they did not bear their ordinary signification. For example, if no evidence of such extrinsic facts were given, a witness would not be allowed to say that he did not understand the statements to convey any imputation against the plaintiff, because the jury does not require to be told what ordinary English means. But when evidence has been given of facts which lead to the inference that the statements were used in the innocent sense alleged by the defendant, a foundation will have been laid for the question.—"What did you understand by those statements?" Without such a foundation the question cannot be asked. In any case where the alleged libel is ambiguous, or the intention of the writer is equivocal, the statements may be explained, or the innuendoes proved, by evidence of subsequent libels by the defendant on the plaintiff. And this may be done although the subsequent libels be published. In this connection we should also remember the old legal maxim, *Injuria non praesumitur*—"Wrong is not presumed." Every person is presumed to act rightly not wrongly. Innocence is presumed, and guilt must be established. Matter alleged to be libellous, and that is capable, with a reasonably fair interpretation, of an innocent meaning, would not be a very safe foundation on which to found an action for damages in a court of justice.

(3) Neutral statements, *i. e.* those which are meaningless without explanation. In this case an innuendo is clearly necessary. Ordinary English words present no difficulty because their meaning is obvious. But the alleged libel may be in a foreign language. It may be concealed in a foreign quotation in an English newspaper, which, by the way, is a species of libel almost unheard of, although not impossible, or it may be contained in a newspaper wholly French or German. We have such newspapers in the Canadian press, some of them very ably conducted. In such a case, a correct translation is indispensable, and very frequently an innuendo also. There are many foreign words that have various English meanings, and that are open, with perfect propriety, and consistently with the sense of the passage, to an interpretation that may be either libellous or the opposite. In such a case the notice of complaint should leave no room for doubt as to the meaning ascribed to the statements specified. Then again some of the words or terms used may be local, technical, provincial, or obsolete; they may be slang or cant terms: or they may be ordinary English words used in some local or peculiar sense, and not in their ordinary English signification. In any of these cases the notice should be at least ingenious enough to show by an innuendo where the sting lies, and thereby disclose the acuteness of the injury. At the trial, as has already been observed, evidence may be given to show that the meaning assigned was the true one, and the one which was conveyed to the mind of the reader at the time of publication. But, to do this, the meaning thus put upon the statements and sought to be established

by the witnesses as defamatory, must have been set out by the plaintiff in his statement of claim. Otherwise no such evidence is admissible.

(4) Statements *prima facie* innocent, but capable of a defamatory meaning. Here an innuendo is essential to disclose the latent injury which the statements on their face do not bear. If there is no innuendo, the notice "specifying the statements complained of" is comparatively worthless, because it shows nothing to which any reasonable person can object. It may be said, however, that an innuendo in the species of notice required by the statute, is unnecessary in any case, and why, therefore, in this any more than in any of the cases already mentioned? The answer is, that the primary object of notice is to inform the defendant of what is "complained of," and that it will not do this if the statements specified, which are on their face harmless, are not shown to be worthy of complaint. This can only be done by an innuendo defining the defamatory meaning put upon the statements by the plaintiff; showing how they came to have that meaning; and showing also how they relate to the plaintiff, whenever that is not clear on the face of them.

(5) Statements manifestly innocent. As only one meaning can be attached to these, and that a harmless one, no innuendo, properly so called, is required in the notice served. If, however, there be special circumstances which may show that the statements do not bear their ordinary signification, but one that is libellous, it would be proper to disclose these in the notice in order to show that the statements are capable of being "complained of." The recital of these circumstances would be in the nature of an innuendo, and would bring this fifth class of statements practically into the same category as the preceding fourth class. The real difference between them is, that in the fourth class, the latent libellous meaning is explained by a verbal interpretation of words or expressions, and in the fifth class by a recital of extrinsic facts and circumstances. This species of explanation by facts and circumstances is open, as we have seen, to both plaintiff and defendant, at different stages of the proceedings, for their respective purposes of attack and defence. It is open to a plaintiff in his notice, his statement of claim, and subsequently at the trial, in order to show that he has a cause of action founded on statements which appear to disclose no cause of action. It is open to a defendant in his statement of defence, and afterwards at the trial, in order to show that he has a defence to an action based on statements which seem to admit of no defence.

Before leaving this question it may be remarked that the innuendo must be specific; it must distinctly aver a meaning which shows that the statements, which it defines and explains, are capable of supporting an action for libel. When *e. g.* the statements are on the face of them innocent, but capable of a libellous meaning, an innuendo that the publication was intended to create an unfavorable impression of the plaintiff would be insufficient. It

should allege distinctly what was meant by the statements, and should show that, with such a meaning, the statements are libellous. But it must not enlarge the natural meaning of the statements, or introduce new matter. The statements, moreover, must be fairly susceptible of the innuendo. If they are not, ten chances to one the case will be summarily stopped by the trial judge. When an innuendo is necessary and is given, the plaintiff is not allowed to change it in the course of the trial if he finds it untenable. He may fall back on the obvious meaning of the words, in any case in which such a move will help him, but where it will not, and an innuendo is required, he must take his stand on that at the trial. He is not allowed to frame a new innuendo. If he were, it would be an unfair surprise to the party attacked, who has come into court to defend himself against the weapon previously agreed upon by his antagonist, not against a new and, perhaps, more effective one for which he is not prepared. If the trial judge allowed an advantage in this respect in the very crisis of the attack, and the defendant were thereby worsted, the full court would permit the defendant to reopen the contest by ordering a new trial.

HOW NOTICE OF COMPLAINT IS TO BE GIVEN.

The section of the Act requiring written notice by the plaintiff to the defendant "specifying the statements complained of," also directs how the notice shall reach the defendant, or come to his knowledge. It says that the notice is "to be served in the same manner as a plaintiff's statement of claim is served," or "by delivering the notice to some grown-up person, at the place of business of the defendant." The statement of claim is the formal statement by a plaintiff of the material facts relied upon by him to support his action. It is one of the pleadings, as they are called, and is the first of these that is filed in court and served on the opposite party, in the regular course of the proceedings. A plaintiff's statement of claim may be served on the defendant personally, or on his solicitor in the action. If the defendant has no solicitor, or personal service cannot for any reason be effected, the statement of claim may, by an order of a judge, be served upon some other person substitutionally for the defendant. This is the practice now required by the Libel Act as to service of notice of action for a libel contained in a newspaper, unless the notice can be delivered to some grown-up person, at the defendant's place of business, which would also be a sufficient compliance with the law.

THE RESTRICTION AS TO DAMAGES.

The same section that contains these provisions as to notice also restricts the damages which can be recovered in certain cases. It provides that *actual damages only* shall be recovered on the following conditions, viz: (1) When

it appears on the trial of the action that the article was published in good faith ; (2) that there was reasonable ground to believe that its publication was for the public benefit ; (3) that it does not involve a criminal charge ; (4) that the publication took place in mistake or misapprehension of the facts ; (5) that a full and fair retractation of any statement alleged to be erroneous was published in the next regular issue of the newspaper, or in any regular issue published within three days after the receipt of the notice specifying the statements complained of ; and (6) that the retractation was published as conspicuously as the article. It is also provided that, in the case of any libel against any candidate for a public office, the retractation must be made editorially and conspicuously, at least five days before the election, otherwise the Act shall not apply to such a case.

The wording of this section as a whole, is, to say the least, very inartificial, and the good intentions of the Legislature might have been much better expressed. Indeed this may be said of nearly all the sections of the Acts of 1882 and 1887, originally drafted for the benefit of the newspaper press. They are crude and cumbrous, and, as experience has proved, are subjects of doubt and difficulty both to lawyers and judges. The proviso just mentioned as to libels against candidates for public office is evidently intended to be a "sop to Cerberus"—a concession to themselves, insisted on by the politicians in Parliament assembled, in consideration of the concessions granted by them to journalists. Commenting on legislation of this character the *Law Quarterly Review* for January last says, that "no part of the English law is so unsatisfactory as that portion which consists of loosely drawn statutory enactments interpreted by judicial subtlety. A vague consciousness of this fact accounts for much of the opposition entertained by sensible lawyers to large proposals for codifying the common law." This remark applies with equal force to much of the legislation we are reviewing. For example, in the section of the Act just referred to, what is meant by the phrase "actual damages only"? Does it mean damages which the plaintiff can show he has actually suffered—substantial damages, or such as the jury as business men may arrive at to fairly compensate the plaintiff for the wrong which he has sustained? Or does it mean merely contemptuous or nominal damages? One thing is certain : the amendment was intended to benefit newspapers, because the whole section applies to them alone. Any libel not contained in a newspaper, or other periodical publication, as defined by the Act, is not within the section. Contemptuous damages, such as a farthing or a shilling, are usually awarded when both parties are to blame, but when the balance of blame is against the defendant. They are less, from a purely legal point of view, than nominal damages which are given when the plaintiff merely desires to clear his character, and not to put money in his pocket, and when eight or ten dollars, and his costs, are regarded as sufficient compensation. If this be the kind of damages that is meant by the

words "actual damages only"—and probably it is—there is a considerable restriction imposed on the powers of the jury in cases within this section. To obtain the benefit of this restriction, however, the defendant is obliged to prove that he has complied with all the conditions of the section, some six or seven in number, and involving the production of a good deal of troublesome evidence, failing which he runs the risk of being mulcted in a substantial money penalty. Whatever the words as to damages may mean, it is quite clear that when the defendant gets into court the task before him is not an enviable one. The benefit of the amendment is, in a word, more apparent than real. Like the amendment as to security for costs, of which it virtually forms part, it is so hedged about with all sorts of safeguards for the protection of the plaintiff that its practical utility is of comparatively small value.

PUBLICATION IN GOOD FAITH.

The article must be published in good faith, or, in other words, with honesty of purpose. In determining this the court will look at the circumstances as they presented themselves to the mind of the defendant at the time of the publication. He must not wilfully shut his eyes to any source of information. If there were means at hand for ascertaining the facts, of which he neglected to avail himself, and chose rather to remain in ignorance when he might have obtained full information, his conduct will be inexcusable. The publisher should remember also that the words "mistake or misapprehension of the facts," as used in the section, mean an honest mistake and misapprehension, and that when his conduct in the publication is in question, and a *prima facie* case is made out against him, the onus is on him to establish his perfect honesty in the matter. Belief in the truthfulness of the alleged libel is not enough; it should appear that his belief was honestly founded; and there must be no imputation of corrupt motives. An article in the *Saturday Review* imputed to a certain person, the editor and part proprietor of another newspaper, that, in advocating the propagation of Christianity amongst the Chinese, his object was merely to increase the circulation of his own paper, and to put money in his own pocket; that he was an impostor; and that he put forth a list of ficititious subscribers in order to delude others into subscribing. The jury found that the writer honestly believed the imputations contained in the article to be well founded, but, notwithstanding this, the court held that the limits of fair criticism had been clearly exceeded. (Campbell v. Spottiswoode, 3 F. & F. 421, a leading case frequently referred to.)

If a case like this were to arise in Ontario, it would probably be held to "involve a criminal charge," because the charge of putting forth a list of fictitious subscribers for the purpose of securing genuine subscriptions, would

amount to a charge of attempting to obtain money under false pretences. In such a case the provisions of the amendment as to "actual damages" would not apply. Notice of action would of course be necessary, but the jury would not be limited to mild damages, and might properly give substantial, or even vindictive, damages. Nor, in such a case, could a defendant obtain security for the costs of the action, no matter how worthless financially the plaintiff might be, or how bad had been his previous character or reputation, unless he could satisfy the court that the action was trivial or frivolous, or that the several conditions restricting the plaintiff to actual damages had been complied with. This, we imagine, would be rather a difficult thing for him to do.

The proviso above mentioned as to libels against candidates for public offices seems to be limited to such candidates as are elected by the people. The wording is the same as that in the Imperial Act from which it is taken. In the case, therefore, of a candidate for any public office who is not so elected, conspicuous retractation by the newspaper of the libellous matter complained of is not requisite. The newspaper would, however, still have the right to apologize, and if the apology were full and fair, and published as prominently as the previous offensive statements, the publisher's conduct in this respect would, unless the libel were of a very gross character, go far to extract the sting and meet the substantial requirements of justice. If an action had been actually commenced against a newspaper, the defendant could in this, as in every other case, plead that the libel was inserted without actual malice and without gross negligence and that he had made a full apology, and, upon filing this defence, he could pay into court a sum of money by way of amends for the injury sustained by the plaintiff. These last mentioned provisions of the law appear to be a sort of act of settlement between newspapers and public men, in which mutual benefits are intended to be conferred, but in which the law has been left pretty much as it was before, the one party gaining quite as much by the compromise as the other.

THE AMENDMENT AS TO VENUE.

The Act of 1887 also contained an amendment as to the venue, or place of trial, in actions for libel against newspapers. It provided that every such action "shall be tried in the county where the chief office of such newspaper is, or in the county wherein the plaintiff resides at the time action is brought," but either party may apply to have the trial in some other county, and the court or judge may grant the application if it appears that the change will be in the interests of justice, or that it will promote a fair trial. If a change is made, terms may be imposed as to payment of witness fees, and otherwise as may seem proper.

This amendment has made a slight change in the law, but the practical effect of it is really not so important as its promoters supposed it would be.

It applies exclusively to newspapers, and is analagous, to a certain extent, to the practice which has prevailed with respect to actions of ejectment. These latter are what are called local actions, and must be tried in the county where the land lies, but either party may, for good cause, have the venue changed to another county, although in practice the occasion for this seldom arises. At common law—that is the unwritten as distinguished from the statutory law—some actions were local and some transitory. In a local action the venue had to be laid in the county where the cause of action arose (and this, in the case of a newspaper, would be where the chief office of publication is), though the trial might be ordered to take place elsewhere. In a transitory action—and before the last change in the law all libel actions were transitory actions—the plaintiff might lay his venue where he pleased, subject to the power of the court or a judge to order it to be changed. In Chancery no actions were local ; all were transitory. Under the rules of the Ontario Judicature Act local venue is abolished, except, as already stated, with respect to actions of ejectment. Under these rules the plaintiff, in his statement of claim, names the county town in which he proposes that the action shall be tried, and the action shall be tried in the place named, unless the judge otherwise orders. One of the ablest of our Ontario judges has repeatedly expressed the opinion that every action should be tried in the county where the cause of action arose. And one of his principal reasons for this is, that as trials of actions are a source of expense to the county in which they are held, each county should be responsible for the maintenance of the litigous offspring to which it has given birth.

The practice as to changing the venue was, and still is, that either party might apply for an order for that purpose. If the plaintiff applied he had to show reasonable ground for the change, and, if the defendant applied, he had to show distinctly a preponderance of convenience in favor of trying where he proposed, instead of where the venue was laid. Under our rule of practice, the matter of changing the venue is left to the discretion of the judge, to be exercised according to the balance of convenience and subject to appeal, and it is for the defendant to show a preponderance of convenience for the place desired by him in order to oust the plaintiff's dominant right to fix the place of trial. If it appear that the interests of justice and a fair trial will be promoted by a change, a change will be ordered in any action whether for libel or anything else. In any case, where the defendant resides, or where the cause of action arose, has little to do with the question. The defendant must show that a trial in the place which he prefers will be less expensive and more convenient for the majority of witnesses on both sides. That it will be more convenient for defendant's witnesses is alone no ground for the application. But a defendant would be entitled to have the venue changed if he could show that there was no probability of a fair trial in the place the plaintiff has selected, *e. g.*, if a local newspaper of extensive circula-

tion has published unfair attacks on the defendant with reference to the subject matter of the action. And under the Libel Act a plaintiff would be equally entitled, under the same circumstances, notwithstanding that he is confined by the Act to two places for the trial of his action. Blackburn v. Cameron, 5 Ont. P. R., 341, in which the London *Free Press* and the London *Advertiser* came into collision, was a decision under the old practice before the amendment we have been discussing was passed. It was there held, that when in an action for libel contained in a newspaper, the plaintiff lays the venue in a county distant from that in which the newspaper is published and the parties reside, so that the trial may be free from local influences, it will not be changed to the county in which the cause of action arose, merely because it would be more convenient and less expensive to try the case in the latter county. The obtaining of a fair trial must overbear every consideration of convenience.

It will be seen, therefore, that this amendment of the law with respect to actions against newspapers is not of great practical consequence. The action must be tried either in the county where the chief office of publication is, or in the county wherein the plaintiff resides at the time the action is brought. To that extent only is the amendment an exception to our rule under the Judicature Act. It limits the former right of the plaintiff to try the action anywhere within the Province, and confines his choice to two places. If his residence at the time of action brought and the publisher's chief office are in the same county, his choice of venue is confined to that one county. As a usual thing, however, a plaintiff sues in his own county because it is more convenient and less expensive for himself, and if he be a respectable man of good standing in the community, his position as a litigant will be stronger there than anywhere else. If he is not a man of that stamp and is financially worthless—and these are the antagonists whom publishers have the greatest reason to dread—he can carry on the warfare all the more effectually from the local stronghold of his impecuniosity.

There is one benefit which newspaper publishers believed would accrue to them by the amendment, although its statement implies a reflection more or less on the judiciary. For some reason or other it was supposed that certain of our judges, who prior to their elevation to the bench had been active and prominent politicians, had imbibed in the arena of public life a prejudice against newspapers which was manifested in actions of libel tried before them. Assuming that such a prejudice existed, or still exists, there is no doubt that, under the old law, opportunities were presented to plaintiffs to use any such prejudice against publishers who were sued for libels contained in their respective newspapers. Considerable complaint was made on this score, a few years ago, when a leading Toronto journal was sued for libel by a resident of one of our northern counties. The venue was laid in one of the midland counties at a considerable distance from the plaintiff's place of resi-

dence, and the action was tried there successfully against the newspaper. It was charged at the time, and the charge was echoed through a section of the press, that the venue was so laid because the learned judge who presided at the assizes was prejudiced against the newspaper as a party organ, and that the plaintiff's chances of success were, for that reason, rendered far more certain than they would have been before some other judge. Under the present law the plaintiff, in such a case, would not be permitted to take a flying leap of that kind in order to ventilate his wrongs, unless he could convince a judge that his doing so would be in the interests of justice and would promote a fair trial. He would be obliged to try his action either in his own county, or, as in the case mentioned, at Toronto. Judges are not infallible, and they do not assume to be. They are men of like passions with ourselves. In Reg. v. Sullivan (11 Cox's C. C. 57) Mr. Justice Fitzgerald remarked that "the judges invite discussion of their acts in the administration of the law." The late Chief Justice Cockburn made a similar observation in Reg. v. Tanfield (42 J. P. 424.) Whether or not there is any ground for believing that a judicial prejudice exists against newspapers, and we prefer to believe there is none, it is at least satisfactory to know that, in fixing the place of trial, any possible bias of that sort has been rendered as harmless as possible, and that the lurking danger, if any there be, is minimized by the amended law.

REPORTS OF LEGAL PROCEEDINGS.

Another statutory change that was made by the Act of 1887 is that which privileges reports of proceedings in any court of justice. The reports, however, must be "fair and authentic and without comments," and the privilege will be lost if the defendant "has refused or neglected to insert in the newspaper, in which the report complained of appeared, a reasonable letter or statement of explanation or contradiction, by or on behalf of the plaintiff." This enactment is different from any enactment in any other statute. Prior to the English Libel Act of 1888 the privilege was extended to "the publishing in good faith, and for the information of the public, of a fair report * * of the public proceedings of any court of justice, whether preliminary or final, or in the publishing in good faith of any fair comment upon any such proceedings." This is an improvement on our own Act by expressly privileging fair comments in good faith on such proceedings. The English Libel Act of 1888, section 3, privileges "a fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority, if published contemporaneously with such proceedings." The expression "published contemporaneously" in this section may give rise to difficulties, and is objectionable; but the phrase "court exercising judicial authority" is a wider term than "court of justice," and will include certain arbitrations which were

formerly excluded. Both of these English enactments suggest improvements in our own statute.

The Act of 1887 was the first statutory recognition of this species of privilege. Prior to its passage newspapers enjoyed the benefits of the privilege to a large extent under an unwritten law which was developed in a long line of judicial decisions. The statute makes the law more certain, if any greater certainty were required. It gives the weight and authority which come from a distinct and permanent expression of the will of the Legislature, and to that extent, at least, materially improves the position of newspaper publishers. The privilege is confined by the enactment to newspapers, but it is not peculiar to them. It is enjoyed to the same extent by a private individual. If the reported cases, decided before this enactment came into force, are examined, it will be found that in actions for libel contained in such reports, the real question was, whether the report was a fair and honest report of what had taken place, published simply with a view to the information of the public, and innocent of all intention to do injury to the reputation of the party affected. And that, no doubt, would still be the question under the present law of libel in Ontario. The privilege referred to in this connection is, moreover, not an absolute but a qualified privilege only, and the remarks on that point, in regard to privileged reports of public meetings, are in the main applicable here. The reason for this kind of protection to publishers is, that the general advantages to the community, in having these proceedings made public, more than counterbalances the inconvenience to private persons whose conduct may be the subject of such proceedings.

The immunity thus given extends to proceedings before justices of the peace, as well as to those before courts having higher jurisdiction, and to those which are *ex parte*, where only one side is heard, as well as to those where both parties are heard. It is immaterial also whether the court has jurisdiction over the matter brought before it or not, or whether it finally disposes of the case or sends it for trial to a higher tribunal. In England, up to the year 1878, this privilege was not extended by the law to reports of proceedings before police magistrates or justices of the peace, unless the charge against the person accused was dismissed, and he was exonerated by the magistrate. If the accused was sent up for trial the report was unprivileged. The reason for this distinction was, that in the former case the decision was final, while in the latter the inquiry before the magistrate was merely preliminary, and a report of the proceedings might prejudice the accused on his trial before a higher court; but, in 1878, the law was settled by high judicial authority by extending the immunity of privilege to the reports of all proceedings before a magistrate, so long as the reports are *bona fide* and correct.

Under our law the report must be "fair and authentic and without comments." We presume authentic will be taken to mean genuine, or capable of being relied on, as opposed to what is imaginative or fictitious. The report may be abridged or condensed, as in fact most reports are; but it must not be partial or garbled. In an important case the omission of a few material facts would make the report unfair and destroy the privilege. A substantially fair account, or a fair abstract, will be sufficient, and in cases where a good deal of evidence has been summarized, care should be taken to summarize accurately the closing address of the presiding judge to the jury. More than one publisher has escaped the charge of partiality by his prudence in this particular. A recent English decision of high authority has, as we shall see, made the law on this point very unsatisfactory. Then again the reporter must be careful about adding opinions of his own. The judge's opinions are absolutely privileged, but the newspaper reporter is not the judge. Cases are on record where this was forgotten, and in a sorry way for the newspaper. Nearly every newspaper reader has occasionally seen reports of trials in our courts that were glaringly one-sided, in which the evidence was magnified in favor of one litigant, and minimized with respect to his opponent. There was of course a reason for this, on the part of the reporter, and some day or other, when a great wrong has been done by this inexcusable kind of reporting, the publisher will come under the righteous displeasure of the court and jury. Sensational headings are also most objectionable, while the passing of opinions on the conduct of the parties, imputing motives therefor, and above all insinuating perjury against any of the witnesses, is an exceedingly unjust and dangerous practice. It is not a report; it is a comment, and is and ought to be unprivileged.

Two cases, decided in the English courts, will illustrate this point. A newspaper called the *Observer* gave a correct account of some proceedings in the Insolvent Debtors' Court, but it was headed "Shameful Conduct of an Attorney." The rest of the report was held privileged; but the plaintiff recovered damages for the heading. An action for libel was brought by a person named Hunt, on the following heading published in the *True Sun* newspaper: "Riot at Preston—From the Liverpool *Courier*.—It appears "that Hunt pointed out Counsellor Seager to the mob, and said "There is one "of the black sheep." The mob fell upon him and murdered him. In the "affray Hunt had his nose cut off. The coroner's inquest has brought in a "a verdict of wilful murder against Hunt, who is committed to gaol—Fudge." The plaintiff contended that the word "Fudge" was merely introduced with reference to the future, in order that the defendants might afterwards, if the paragraph were complained of, be able to refer to it as showing that they intended to discredit the statement. Lord Lyndhurst, C. B., the trial judge,

told the jury that the question was, with what motive the publication was made. It was not disputed that if the paragraph, which was copied from another paper, stood without the word "Fudge," it would be a libel. If they were of opinion that the object of the paragraph was to vindicate the paintiff's character from an unfounded charge, the action could not be maintained; but if the word "Fudge" was only added for the purpose of making an argument at a future day, and so to afford a loop-hole of escape from a successful action, then it would not take away the effect of the libel. We may add that, on this direction to the jury, the *True Sun* was momentarily eclipsed by the plaintiff, who recovered one farthing damages.

If the practice of making comments in reports of trials in newspapers be defended, in some cases, on the ground that it is really *bona fide* criticism on a matter of public interest, and is, therefore, not libellous, it may well be replied that observations of that character should not be mixed up with a history of the case—which is really all that a report should be. It was once remarked on this point by the author of Campbell's Libel Act, who was a very learned and experienced judge, that "if any comments are made, they should not be made as part of the newspaper report. The report should be confined to what takes place in court, and the two things, report and comment, should be kept separate."

WHAT IS FAIR COMMENT?

What is fair comment in journalism? This is certainly not easy to determine, and no hard-and-fast rule can be formulated. Mr. Justice Stephen, in his Digest of the Criminal Law, has, as far as possible, defined the principle that should regulate this delicate canon of journalistic rights. "A fair comment," he says, "is a comment which is either true, or which, if false, expresses the real opinion of its author (as to the existence of a matter of fact or otherwise), such opinion having been formed with a reasonable degree of care and on reasonable grounds." This definition applies to libels for which either a civil or criminal remedy is sought, and accurately represents the tendency and principle of judicial decisions upon the subject.

SOME ENGLISH CASES.

This whole question of privileged reports, fair criticism and fair comment, is illustrated by some recent cases of special interest to journalists. Merivale v. Carson, (20 Q. B. D. 275, C. A.) decided in 1888, was an action by the author of a stage play and his wife against a newspaper editor for an adverse criticism. The play was entitled *Whiphand*, and the criticism contained an imputation as to the originality and morality of the piece. The question of privilege was not raised. Mr. Justice Field, who tried the

action, held that many circumstances might justify or excuse a writing, which, without such justification, would be libellous. "It might be true, it might be false, and yet excusable, that is where published under privilege; and again, it might be excused by the right of any person in this country, a very just and wholesome right, to express his honest opinion upon the conduct of any other person in his public character. There was no peculiarity in the position of a newspaper writer. He (the judge) and those he was addressing possessed the right equally. It was the function of newspapers to collect information upon matters of public concern, and to comment upon public occurrences, and nothing in his opinion was so conducive to the formation of sound public opinion upon morality and every other question, as the honest expression of opinion by public writers, so long as it was done temperately and honestly. But, if it descended to private malice or unfounded imputation, it was an interference with private rights. The question for the jury to decide was, whether it was a fair, moderate and honest criticism. It need not be sound or correct, or such as they themselves would write, and a mere exaggeration was not libellous." The construction to be put upon the words was thus left to the jury, and a verdict for a shilling damages returned. The Court of Appeal subsequently upheld this plain exposition of the law. There it was held that if the comment were "fair"—and this was the only matter to be left to the jury—it was no libel, while, as regards a report, if it is fairly accurate it is privileged, and express malice must be proved to rebut this privilege. This important case fairly represents the distinction between reports and comments. The deduction to be drawn from it is, that the law will protect fair, open, honest criticism, but will not sanction low, scurrilous, abusive and personal attacks in which the character of the author is assailed for the gratification of some private spleen or jealousy. The case of Devlin v. Moylan, (4 Ont., P. R. 150), was an action against the old *Canadian Freeman* for an alleged libel imputing dishonesty to plaintiff in the use of certain moneys raised for political purposes. One of the pleas sought to be pleaded alleged that the gravamen of the charge was matter of "public notoriety and discussion," and that the words used were "fair comments in a public newspaper of the public acts and conduct of the plaintiff," and were "published by the defendant believing the same to be true and without malice." The plea set forth other statements which, it was alleged, would enable defendant to introduce evidence of irrelevant matter. It was held, that the general plea that the publication was a fair and *bona fide* comment, etc., might be pleaded, but that the plea as framed and set out was inconsistent with the words used in the alleged libel and could not be allowed.

The English case of Dallas v. Ledger, tried in March, 1888, was a case of hardship on a newspaper called the *Era* that tried to discharge a public duty. The *Era* spoke of the conduct of a woman who employed little girls

as a travelling theatrical troupe, and of a sentence passed upon her for assault at Grimsby, and referred to an opinion of the court disapproving of her use of the children. With the exception of an expression about the proceedings at the trial throwing "a lurid light" upon the practices, the article was exceedingly mild. Nothing was imputed to the plaintiff; there was simply a just condemnation of the employment of children in such practices. Chief Justice Coleridge was decidedly of this opinion. He charged in favour of the defendant, and, as he explained on a subsequent application for costs, he would, if he had been asked, have directed a non-suit. Despite all this the jury gave a verdict for the plaintiff of forty shillings which carried costs.

In Dowling v. Tinling, tried at the Liverpool assizes in May, 1889, the plaintiff, a Roman Catholic clergyman, claimed damages from the proprietors of the Liverpool *Courier* for libellous remarks upon him in connection with his presence at a meeting at which some strangely violent language was used by one of the speakers. The defence was that of fair comment and that it was a matter of public interest. The editor proved that he wrote the article upon the faith of the report of the proceedings furnished. The plaintiff's evidence showed that, although present at the meeting, he left before the objectionable remarks were made which were commented on by the newspaper, and that he wrote to the paper correcting the mistake in that respect, but neither explanation nor apology was offered. The jury found for the plaintiff in £50 damages. A simliar action by another clergyman, who made the same sort of a complaint against the newspaper under the same circumstances, was compromised by both parties abiding by the verdict in the former case.

The case of Riordan v. Wilcox *et al.*, (4 *Times* L. R. 475 (1888), raised and determined very clearly the issue as to what is a "matter of public interest." The article complained of, which was clearly libellous, appeared in the Liverpool *Evening Express*. The learned judge (Huddleston B.) remarked that "all libellous matter was not actionable, as, for instance, in a newspaper where matter of public interest was fairly commented on. * * So long as the press did not go beyond the limits of fairness and indulge in malice and personal abuse, it was protected. * * The subject matter of the libel was of public and local interest, and if the article was a fair and *bona fide* comment upon a public matter of public and local interest where defendants' newspaper circulated, and was published *bona fide* and without malice and for the benefit of the public, and without any malicious intent or motive, their verdict must be for the defendants." The jury found for the defendants.

In the case of Harvey v. The *Society Herald* Co. (Limited), tried in June, 1888, the result was very different. The plaintiff, a clown in a pantomime,

complained of certain comments on his performances, "filthy conduct" being spoken of, and the impression being conveyed that his performances were unfit to be seen by children. The defendants pleaded justification, fair comment, absence of malice, that the words did not bear the meaning assigned them, that they were published without gross negligence, and that an apology had been inserted before action brought. The jury considered the apology insufficient and insincere, and found for the plaintiff in £200 damages. This, it will be noticed, was a libel upon a person in his trade, profession, or business, and was, therefore, specially injurious.

As to an apology Lord Bramwell held in Lafone v. Smith, (27 L. J. Ex. 33), that it meant an "effectual apology" likely to counteract the effect of the previous mischievous statement, and accorded the same position and prominence in the paper as the original libel." The time when the apology is published is important. Cotton v. Beatty, (13 U.C.C.P. 243), illustrates this. It was an action for alleged libels published in the *Daily Leader* on the plaintiff as a collector of customs. The first publication appeared on the 29th of October, the second on the 5th of November. The action was commenced on the 15th of December, and the plaintiff's pleading setting out the alleged libels was dated on the 24th of December. On the same day an apology was published in the newspaper. Plaintiff's counsel admitted this was sufficient, if published in time under the statute, which point being left by the judge who tried the case to the jury, they found for the defendant. Upon motion for a new trial it was held, that the question of the publication of the apology within a reasonable time was properly left to the jury to decide. The apology was apparently too late; but the evidence showed neither actual malice nor gross negligence in the publication of the libel, and the court refused to set aside a verdict for the defendant. The publication of an apology "at the earliest opportunity" means within a reasonable time, the circumstances of the case, and the opportunities of the defendant to publish it, being considered.

Dolly v. Newnes, (3 *Times* L.R. 23), illustrates the risks a publisher runs by inserting the remarks of a speaker not made at a public meeting. The plaintiff complained of humorous but disparaging remarks made upon him in an after-dinner speech, and reported in a society paper called *Tit-Bits*. The defendant pleaded the truth of the statements and their republication from an American paper. In summing up Mr. Justice Stephen said it was not a question of what was said at a dinner party, but what was published in a public newspaper. "The way the press" (and he meant presumably certain society journals) "employed itself in the present day in collecting tit-bits to stimulate the appetites of those who, having very little wit or knowledge themselves, liked to read what was said and done by those who had more, exercised a great restraint upon private life. Whe anything of the kind was published, a man had a right to say, "I do not care what he, A. or B., said, but I do not

choose to be made an object of ridicule, be it good natured or otherwise, merely to amuse a number of people." A libel was a writing which had a tendency to hold a man up to ridicule." The jury in this case evidently thought so because they mulcted the *Tit-Bits* publisher in damages.

The case of Ginnett v. *Pall Mall Gazette*, tried in the early part of 1889, was a significant commentary upon the failure of the Libel Act to protect a journalist in the exercise of his profession. The libel complained of was contained in a severe but not undeserved criticism of the cruel treatment of children employed in acrobatic performances. Although the comments were upon a matter of public interest, the newspaper was heavily hit in £1500 damages. The effect of this verdict was even more significant. The father of a girl acrobat named Curragh subsequently sent a communication to the *Gazette* disclosing similarly harsh treatment of his daughter. The *Gazette* was afraid to publish the communication, and the unfortunate father, driven mad by his inability to procure any publicity for the sufferings of his daughter in the troupe, actually slew the manager of the troupe in cold blood. Commenting upon the homicide the editor said : "But for the verdict in the Ginnett case, he (the father) might have had the satisfaction for which he longed. As it was, the ruinous damages awarded by the jury rendered it little short of suicidal for any newspaper to give publicity to his grievance. We are now face to face with the result. Letine has not been 'libelled' by the publication of the way in which the child was done to death. But he has been killed, and, on the whole, he has not much reason to be satisfied with the result of the protection which the law of libel secures to men in his position."

SOME CANADIAN CASES.

Before leaving these illustrations of the practical working of the law of libel. there are a few decisions in our own courts which are worth noting. One of these, Farmer v. The Hamilton *Tribune* Printing and Publishing Co. *et. al.*, (3 O.R., 538), conveys a warning against sensational local paragraphs in newspapers. The action was for damages for the publication in the defendants' newspapers, the Evening *Tribune* and the Hamilton Evening *Tribune*, of an article imputing immorality to the plaintiff, and alleging that he was a man unfit for the society of respectable people, etc., whereby the plaintiff was injured in his credit, reputation, business, etc. The defendants pleaded, along with other defences, that the article was published *bona fide*, and without malice and for the public benefit, and in the usual course of their duty as public journalists; and was a correct, fair and honest report of proceedings of public interest and concern. It was objected that this plea was no justification and was bad in law, and this objection was sustained. The late Chief Justice Sir Adam Wilson, who decided the points raised, said he had "no kind of doubt" that this defence was "unsustainable. The defendants

had no right to publish the article complained of. It was in no sense for the public benefit, nor in the course of the defendants' duty as journalists, to publish such matters." Judgment was given for the plaintiff with costs, and allowing defendants to amend the plea as they might be advised.

The case of Macdonnell v. Robinson, reported in 8 O.R., 53 and 12 A.R., 270, was an action against the publisher of the *Week* for an alleged libel in that newspaper on the plaintiff with regard to his conduct as a barrister and solicitor. One of the defences set up was that the plaintiff had, for some time prior to the alleged defamatory publication, addressed open letters to the public through the public press, and had invited public attention to his (the plaintiff's) character and position as a solicitor and barrister, and had challenged public criticism upon his conduct in connection with the subject matters referred to in the said article ; and such criticism so invited had been made in various newspaper articles and letters and correspondence, from time to time, immediately prior to the said article; and such article was a moderate expression of opinion thereupon, and in no way damnified the plaintiff ; and the defendant further said that the alleged libel and words were and formed part of an article printed and published in the said newspaper, that said article was a fair and *bona fide* comment upon a matter of public and general interest, and was printed and published *bona fide* and for the benefit of the public, and without any malicious intent or motive. It was objected by plaintiff that these pleas were bad in law, as not shewing any facts warranting the publication complained of. Mr. Justice Rose, however, overruled the demurrer and held the pleas to be good, and his decision was upheld by the Court of Appeal in a characteristically concise judgment by Mr. Justice Osler with whom his three brother judges concurred. The learned judge said that the facts alleged in the pleading were sufficient in law, and covered the whole of the alleged libel. " It will be for the judge at the trial to determine, on the proof adduced in support of it, whether all the matters it refers to had become of general interest in the manner and from the cause alleged, and the jury will then have to determine, as a question of fact, whether the defendant's comments have exceeded the limits of fair and reasonable discussion, or temperate criticism thereon."

In Massie v. The Toronto Printing Company, (11 O. R. 362), the libel consisted of letters published in the defendants' newspaper severely reflecting on the plaintiff as warden of the Central Prison. The defendants refused to give the name of the writer of the letters, and assumed responsibility therefor. The learned judge who tried the case told the jury that "every one has a right to comment on matters of public interest and general concern, provided he does so fairly and with an honest purpose. Such comments are not libellous, however severe in their terms, unless they are written intemperately and maliciously." The jury found for the plaintiff and $8000 damages. On

appeal to the full court it was held that the libel was not privileged or published on a privileged occasion ; that no exception could be taken to the judge's charge ; nor could it be said that the libel was a fair comment upon a public matter in which the public had an interest. The court differed, however, on the question of damages. Two of the judges considered that the damages were excessive, and they directed that the sum awarded should be reduced to $1000, provided that sum was paid by a named date and plaintiff elected to take such sum, otherwise there was to be a new trial. The third member of the court held that the damages were not excessive, but as plaintiff's counsel had intimated that a smaller sum would be accepted if paid within a reasonable time, he (the judge) would accede to the reduction on plaintiff accepting such amount, otherwise the motion for a new trial should be dismissed.

The case of Livingston v. Trout, (9 O. R. 488), was an action brought by an insurance inspector and adjuster, and, at the time of action brought, the liquidator of an insurance company, for alleged libellous comments in the *Monetary Times* on the trial of a previous action for libel brought by plaintiff against defendant in which plaintiff had recovered one shilling damages. The complaint was that the newspaper had published an unfair and false report of the trial, the innuendo or meaning alleged by plaintiff as to a certain portion of the article being that he had been dishonest in adjusting claims, and had accepted bribes, etc. In his statement of defence defendant admitted the publication of the article, but denied the innuendo, and also any malice, etc. He also alleged that there was an inaccuracy in the article on a certain point by which a wrong impression might have been conveyed, but that this was corrected at the earliest opportunity in a subsequent article in the newspaper. This part of the defence was demurred to as not being a legal defence, but the demurrer was overruled. It was held that the difference between the first and second articles was material, for if it was proved that the first article was on the point in question false to the knowledge of the defendant, and that he made no correction, this would be evidence of malice, and would probably materially affect the damages, but even if immaterial the plaintiff was not prejudiced: that it was only offered as a defence to a portion of the damages claimed in the action. On this latter point it may be stated that, in a subsequent case which came before the courts, Wilson v. Woods, (9 O.R. 687), it was held, that if a defendant entitled to plead certain facts as a justification chose to restrict their effect to the mitigation of damages he might do so, and the plaintiff could not complain.

The case of Colvin v. McKay, (17 O. R. 212), was an action for an alleged libel contained in a letter published in the Teeswater *News*. Plaintiff had been treasurer of the township of Culross, and had been removed from office owing to discrepancies found in his accounts by certain auditors. A

commission appointed by the Lieutenant-Governor examined into the matter, and the commissioner's reports found that, as to a certain large item, the auditors were mistaken, and that all the township moneys had been accounted for by plaintiff except a comparatively small sum. Further investigation by the commissioner satisfied him that this sum should be still further reduced, and he so stated at a meeting of the council at which defendant, who was a councillor, was present. A month or so afterwards plaintiff wrote to the *News* that he was ready to pay the township any moneys that the council, auditors or commissioner could show he owed, whereupon defendant wrote to the paper stating that the commissioner, apart from the mixing of moneys, had found plaintiff indebted in $125, and that plaintiff had made several thousand dollars out of the township, and could well afford to pay his shortage and still have some thousands to the good. This was the libel complained of. It was held, that the matter discussed in defendant's letter being one in which defendant was interested as a ratepayer and member of the council, there might be a qualified privilege, still it was for the jury to say whether under the circumstances the language employed was within the privilege, or was in excess of what the occasion justified; and, if in excess, they could properly draw inference of malice. The jury having found in favour of the plaintiff the court refused to interfere with the verdict.

Wills v. Carman is a somewhat celebrated case which was fought out on both sides with great pertinacity. It came before the courts at different times and for various reasons, and decided a number of questions of interest to journalists, only one or two of which can be referred to here. The reports of the decisions, in 14 A. R. 656 and 17 O. R. 223, contain full particulars of the facts and the law. The action was for alleged defamatory matter published by the defendant in the Belleville *Ontario* newspaper reflecting on the conduct of the plaintiff as treasurer of the county of Hastings. The defendant pleaded not guilty, and that the alleged libel was a fair and *bona fide* comment upon matters of public and general interest respecting the conduct of a public officer, and was published *bona fide*, without malice and for the public benefit. It was held that he was entitled under this defence to show that the matters upon which he commented were true. The action was tried twice. At the first trial the jury found the defendant guilty of libelling the plaintiff, but also found that the plaintiff sustained no damage. The learned judge who presided at the trial thereupon directed that the plaintiff's action be dismissed, but that the defendant pay the plaintiff's costs, and that the plaintiff have judgment to recover the costs. This judgment as to costs was moved against before the Divisional Court, which ordered that the action should be dismissed without costs of the action, or of the motion, to either party. The case was then appealed to the Court of Appeal which directed a new trial. On the second trial a verdict was found for the defendant. This was moved against on various grounds, but the Divisional Court sustained the verdict. It was

upon this last argument before the court that the decision was given that a defendant might, under the plea of fair comment, show that the matters commented on were true.

The latest Canadian decision on this question of fair comment was rendered only a fortnight ago, by the court of Queen's Bench in Manitoba, in the case of Martin v. the Winnipeg *Free Press*. The court held that where a defence of fair comment is set up, what is commented on must be facts admitted or proved to be true; that publication of defamatory matter in the belief that it is true is no justification; and that an alleged libel which contains imputations on private character exceeds the limits of fair criticism. This part of the decision was based mainly on Davis v. Shepstone, 11 English Appeal Reports, 187. The *Free Press* pleaded justification as well as fair comment, and a question arose as to how the plaintiff should meet such a plea with his evidence. It was held that the plaintiff may, if he chooses, in the first instance meet the defendant's justification, or leave such proof until the defence is closed and then bring it forward in reply; but that he cannot divide his proof by calling evidence to meet the justification in the first instance, and afterwards, when the defence has closed, give additional evidence in reply. The same rule was held to apply to evidence adduced against a plea of fair comment. The court appears to have doubted whether, under such a plea, a defendant is entitled to prove that a direct charge against the plaintiff's private character is true. In this case it was clear, from the verdict of the jury, that they did not understand the judge's charge, or that they disregarded it and did not consider the question it was essential for them to consider and pass judgment upon, and a new trial was directed, the costs to be costs to the successful party.

A DISASTROUS DECISION.

One other case, illustrating what the law is in a very important matter, will close these references to recent decisions of the courts. It is the case of Macdougall v. Knight *et al.*, decided in 1889 by the House of Lords, the highest court in the Empire. It came before the Lords from the Court of Appeal which affirmed a judgment of the Divisional Court deciding, in effect, that the publication of a judge's judgment or summing up in an action was privileged. The Court of Appeal held—what every lawyer at the bar in England and Canada supposed was the law—that a report of a judge's summing up was such a fairly impartial report of a legal proceeding as to entitle the publisher to immunity for publishing it; but the House of Lords held the contrary damaging doctrine; and, until the law is amended, it may be considered that a separate report of a judge's charge is not necessarily privileged. The most significant words of the Lord Chancellor, in giving judgment, were these: "If," he said, "a judge's judgment or summing up to a jury did not in fact

give reasonable opportunities to the reader to form his own judgment as to what conclusions should be drawn from the evidence given, I think the publication of such partial, and, in that respect, inaccurate representation of the evidence might be the subject of an action for libel to which the supposed privilege in what was said by a judge would be no answer. Nor do I think there is any presumption, one way or the other, as to whether a judge's judgment does or does not give such a complete and substantially accurate account of the matter upon which he is adjudicating as to bring it within the privilege. If it be so, it must be proved to be so by evidence, and certainly not inferred as a presumption of law." This important judgment has destroyed the absolute confidence which was felt in reproducing the judgment of a judge. All newspapers, in so doing, naturally presumed such a pronouncement to be an impartial and substantially accurate reflex of the evidence on both sides, and of the main features of the case. This presumption can be no longer relied on, and the law on the subject, by the disastrous decision referred to, is reduced to a condition of doubt, perplexity and uncertainty that is very harassing. Newspapers will be obliged to exercise the greatest caution in this respect. They will have to sit in judgment on the very judges themselves, and exclude from their columns judicial charges or judgments which are not sufficiently exhaustive, impartial and complete. This is surely a state of things which, in the public interest, cannot very long be tolerated.

LIBELS AFFECTING PUBLIC MEN.

The time and place of our present meeting are suggestive of some remarks, of a general character, upon the law of libel as it affects public men. The late Lord Chief Justice Cockburn, a hard-headed Scotch lawyer whose conduct was more than once made the subject of severe criticism by the press, has laid down the law in a leading case that is frequently cited in our courts. "A line must be drawn" he says, "between criticism upon public conduct, and the imputation of motives by which that conduct may be supposed to be actuated; one man has no right to impute to another, whose conduct may be fairly open to ridicule or disapprobation, base, sordid and wicked motives, unless there is so much ground for the imputation that a jury shall find, not only that he had an honest belief in the truth of his statements, but that his belief was not without foundation. * * * I think the fair position in which the law may be settled is this: that where the public conduct of a public man is open to animadversion, and the writer who is commenting upon it makes imputations on his motives, which arise fairly and legitimately out of his conduct, so that a jury shall say that the criticism was not only honest but also well-founded, an action is not maintainable. But it is not because a public writer fancies that the conduct of a public man is open to the suspicion

of dishonesty, he is, therefore, justified in assailing his character as dishonest." In another leading case the same eminent judge makes the following significant remarks: "Those who fill a public position must not be too thin-skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they knew, from the bottom of their hearts, were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time, because all knew that the criticism of the press was the best security for the proper discharge of public duties."

POLITICAL AND PARTY JOURNALISM.

The truth of these last utterances of one who adorned for many years one of the highest seats of justice is universally recognized. Although, in this country, newspapers are extremely unsparing in their criticisms of the governments of the day, and individual ministers of the Crown, it is very rarely that either the one or the other stands forward among the complainants against journalists. This is due, in a large measure, to the general acceptance with which our system of government is administered by men of all parties in the State, the general acquaintance of the people with the principles of constitutional rule, and the uniform forbearance shown all statesmanly efforts by those who, through the press, are the vigilant guardians of the commonwealth. The circumstances would indeed be most extraordinary which would warrant, in Canada, any prosecution, on the part of a government, of a newspaper, or any newspaper writer. Public opinion has been so thoroughly settled on this point, that it would not tolerate anything savouring of tyrrany or prosecution of a public journal, no matter how bitter, or determinedly hostile and uncompromising, its utterances might be against those who fill our highest offices of State. The time has long since gone by, and will never come again, when it will be a received doctrine in Osgoode Hall, as it was in Westminster Hall before the Revolution that "no man may publish a writing reflecting on the Government, or upon the character, or even the capacity and fitness, of any one employed in it;" and when we shall have Canadian judges declaring, as the English judges of that day declared, that "to possess the people with an ill opinion of the Government, that is the Ministry, is a libel," and that "there can be no reflection on those who are in office under the Crown, because it must cast some reflection upon the Sovereign who employs them." Such a doctrine would be manifestly irreconcilable with the interests of any political party which, being in power to day, may be summarily ejected to morrow. In the one case, the party wishes to retain the rich prize which it has secured, in the other, to regain what it has lost, and, in either case, its best and only hope is to prepossess the nation with a bad opinion of its adversaries. However far public opinion would sustain them,

no Ministry could, with the leverage afforded by a few indictments for libel, ever hope to stop the torrent of free journalism under the secret guidance of even a weak and impotent, much less of a powerful Opposition. Experience has shown Ministers and Administrations that it is more expedient and agreeable to act upon the *lex talionis*, to select weapons of defence from the same armory which has supplied their opponents, and to retaliate, whenever necessary, with criticisms as keen and trenchant, and denunciations as strong, as those with which they are themselves assailed. Public measures, and the public characters of our statesmen, are now attacked with the greatest severity. There is the widest possible latitude to newspapers in everything concerning these, and, although there are occassional excesses in this way — excesses that, in the interest of journalism itself, are very much to be deplored — yet the mutual check which newspapers hold over each other, and the restraint which enlightened public opinion imposes on them all, will always prevent anything like newspaper despotism. It is doubtful, indeed, whether the average political temper of the Canadian people would be satisfied with anything different in the average political tone of the Canadian press. They are themselves the best judges of their highest interests, and of the conduct of those to whom these are entrusted, and, so long as party feeling is kept at a white heat, so long as party energies have to be rallied and party zeal inflamed, so long will they look for powerful denunciations on the one side, and powerful vindications on the other. All this may be done, and as a matter of fact is done, without preaching or practising sedition. Seditious libels intended to disturb the public peace by vilifying the governments of the day, or exciting the Queen's subjects to revolt, are now practically unknown in the Queen's dominions. They have, as Lord Brougham once observed, "mainly an historic interest in these countries, the Government coming to recognize with Cromwell that 'it is not worth preserving if it cannot stand against paper shot.' No just and lawful State seeks to hamper its press, as it trusts to truth and sense to prevail, as they always do."

THE DRAFT CRIMINAL CODE.—SOME SUGGESTIONS.

Before closing this imperfect review of legislation affecting newspapers, there is a very important matter to which the attention of the Association should be pointedly directed, viz., the libel sections of the draft criminal code now before Parliament. It is, we hope, no presumption to say that some of these are capable of improvement in the interests of the newspaper and periodical press. The bill will no doubt be carefully considered by the select committee to which it will be referred. When that stage is reached the following amendments are respectfully suggested as being fair and reasonable, without relaxing any present safeguard for private character and reputation :

(1). The word "newspaper" should be defined, and the definition should

be comprehensive enough to include magazines, periodicals and monthly trade papers.

As the numbers of the sections of the draft code hereinafter given do not correspond with the numbers in the bill introduced during the present session, the following changes should be noted :—

Section	286	of draft bill	is	section	288	of present bill.	
"	288	"	"	"	290	"	"
"	289	"	"	"	291	"	"
"	291	"	"	"	293	"	"
"	295	"	"	"	297	"	"
"	296	"	"	"	298	"	"

(2). In section 286 of the draft bill the words "court exercising judicial authority" would be preferable to the words "court of justice," and the inquiries made under the authority of any department of government should include the governments of the different provinces as well as of the Dominion.

(3). The reports mentioned in section 288 should include the reports of any royal commission, of the proceedings before any court exercising judicial authority, and of any judge's charge or judgment; and any fair comment thereon, published in good faith, should not be an offence.

(4). The limited benefits of section 289 should be enlarged and extended by a new and comprehensive section which will cover fair and accurate reports of public meetings of various kinds, including some that are not technically public. Meetings of municipal councils, school boards and other local representative bodies, and meetings of creditors, stockholders of companies, etc., might be particularly mentioned, with a saving clause or proviso that they are not to be considered public meetings unless the public and the press are admitted. This section might also extend protection to publications of notices or reports issued by any government office or department, or by any government, municipal, public or peace, officer, when published by their request for the information of the public. Malicious publications in any of these cases should of course not be privileged. It would seem reasonable, however, that the onus of proving malice in every such case should rest, as in most criminal prosecutions where malice is alleged, upon the prosecutor. This could easily be provided for. It might also be provided that the publisher should, on the pain of forfeiting his privilege, give every person affected by any published reports the benefit of a letter or statement of explanation or contradiction. As a further guarantee for private and personal rights and interests, there might be a proviso that there should be no protection for matter which is not of public concern, and not for the public benefit.

(5). "Public meeting" should be defined, and the definition should be comprehensive enough to cover meetings to which the admission is restricted as well as general.

(6). A definition of "fair comment" may fitly form part of section 291 relating to that subject.

(7). Section 295 of the draft bill seems unnecessarily harsh, and should be modified so as to do away with the presumption of criminal responsibility in such cases. The presumption of innocence is universal in criminal prosecutions. Why reverse this old and merciful rule in any prosecution for criminal libel?

(8). The sale of *magazines* should be included in the sale of books, pamphlets and "other things" mentioned in section 296.

(9) Provision should be made for the prosecution for newspaper libel taking place wholly in the Province in which the proprietor, publisher, editor, or other person charged, resides, or in which the newspaper is printed. "Publishing," as defined by the proposed code, would appear not to afford this very necessary protection.

(10). Prosecutions for newspaper libel should be initiated by a judge's order on notice to the person accused, who should be heard on the application. Chief Justice Coleridge recommended this change in the English law, and his recommendation was adopted in the Imperial Act of 1888. Prior to that time the fiat of the Director of Public Prosecutions was required. This was applied for *ex parte*, and was granted so often and so unnecessarily that the law was amended.

(11). There should also be some provision for security for costs being given, at the inception of the proceedings, by worthless or vindictive prosecutors who may be eventually defeated by the newspaper. The judge, in granting an order to prosecute, might have discretion to compel such security in any case, having regard to all the circumstances, and to direct it to be given as in all civil actions where a person residing out of the jurisdiction of the court is suing a person within the jurisdiction. To make this provision effective the order for security should be a stay of proceedings until the security is perfected. Libel is after all only a quasi—crime. Its prosecution is not favored by juries; and so long as the civil remedy is so ample and complete, the criminal remedy should be encouraged as little as possible. Whatever is needlessly oppressive should be eliminated.

(12). The anomaly of a defendant in a libel prosecution not being permitted to testify should be removed. There is no reason why a person so charged, and the husband or wife of the person charged, should not be a competent, and, for that matter, a compellable witness from the beginning to the end of the prosecution. Public opinion appears to favor an amendment of the law of evidence which will permit testimony, on his own behalf, by every person charged with a crime.

A strong argument in favor of nearly all of these suggested amendments is, that they are based on English legislation which was carefully considered and carried through both Houses of Parliament under the auspices of a Conservative administration. Their adoption here will give us the benefit of the English decisions on corresponding sections of the Imperial Acts. Whatever advances we have made in other respects, we have been laggards for years in this species of legislation. In the Mother Country large powers are given justices of the peace in libel prosecutions. They may, under certain circumstances, with the consent of the accused, dispose of libel charges summarily without the vexation and expense of a contest before a higher court. Canadian magistrates have no such jurisdiction. So that if all the suggestions here made were carried out in the draft code now before Parliament, we should still be far behind our great prototype after whose ancient system of jurisprudence our own has been modelled.

A BIT OF HISTORY.

The history of the law of libel, than which none is more interesting, furnishes abundant evidence of the educative influence exerted by the press itself. There is scarcely an amendment that cannot be traced to this source. It is seen in all of those legislative changes which we have been considering, and in a long line of leading cases which have settled the law as it is, and occasionally suggested what it should be. Reform has not always come when urged, or when most needed: it has hastened slowly; but enlightened public opinion has been steadily on its side, and it has never wanted a leader. There is a fact, known to very few, in the life and labours of an old Canadian journalist which the writer may, perhaps, be excused for mentioning. It should interest all who have sympathized with the early struggles for a free press in Canada. A few years ago, in the course of a newspaper controversy which arose in regard to the story of the Upper Canadian Rebellion, and the personages who figured therein, the writer, in looking through the papers of the late William Lyon Mackenzie, came upon a draft parliamentary bill "for more effectually securing the liberty of the press." It was in manuscript, in Mackenzie's plain, bold handwriting, and displayed marks of frequent revision in order apparently to render its phraseology acceptable as a piece of parliamentary drafting. From the date which it bore—and subsequent enquiries verified the fact—the bill had been drawn years in advance of any agitation for those salutory provisions of Lord Campbell's Act which have been of such inestimable service to journalism wherever they have been adopted. The remarkable feature of the Mackenzie bill was this: that it not only contained provisions the same in substance and effect as those embodied in Lord Campbell's Act, with a number of additional clauses that would have rendered

that famous Act more effective, but it also contained the substance of some other reforms which were afterwards engrafted on the Canadian law of libel. The bill had not been laid before the Legislature by reason, as far as we could discover, of the stirring events which drove its author into exile, but there can be no doubt that, had a good instead of an evil star shone upon his path, his libel bill would have been the precursor, in our old Upper Canada House of Assembly, of the great measure which, during his term of expatriation, was placed upon the statute books and became the law of England.