

The National Intelligencer,

WASHINGTON ADVERTISER.

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Vol. I. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, NEW-JERSEY AVENUE, NEAR THE CAPITOL. No. 1111.
FIVE DOLLARS PER ANNO. WEDNESDAY, OCTOBER 21, 1861. PAID IN ADVANCE.

FROM THE AURORA.

CIRCUIT COURT OF PENNSYLVANIA.

LEVI HOLLINGSWORTH v. WM. DUANE.
This was an action at law, laid to recover damages to the amount of \$3000 dollars, upon a matter of libel charged in the following article which was published in the Aurora of the 9th January, 1860, as follows:—

Mr. Brown's Federalism reminds us of Levi Hollingsworth, who was so much distinguished in the late election at the head of the Federal committee—Levi had a ship trading contrary to law, (not in the free-trade) he went and informed against himself, and to save half to a certainty that being the reward to the informer, the vessel and cargo were then sold by the market, but a friend of Levi's threatened to throw a man who bid for her into the river, if he bid against Levi, and so he bought her in cheap alms—and this was good Federalism!
The cargo was laid cheap likewise! It is surprising that Levi did not use his interest to have the late marshal retained in office—the services of both entailed them to the good will of each other.

It is proper to observe, here, that this was the action which, being laid in the Federal Court, brought on the question of citizenship, which was argued at a former court, and decided upon against the birth-right of the Editor, and which produced the situation, in consequence of which the court implored the Editor for a month, on the ground of contempt. The cause was appointed for trial on Thursday, and Mr. Hollingsworth appeared with Messrs. Ingersoll, E. Tighman, and Lewis, as his counsel.

The defendant employed no counsel, for the reasons stated in his arguments, below.
Mr. E. Tighman disclaimed briefly on the publication, which he stated to be profane, malicious and false, and called to witness the reputation of Mr. Hollingsworth, whose character he stated, to be distinguished for exemplary piety and attachment to the government and laws of his country.

That he had no doubt the jury would consider it was their duty to do justice to the character of his client, by exemplary damages.
The defendant added the court. He accordingly, and counsel, and testified to the liberality of the court to believe that it was not from any want of respect to them, nor from any want of confidence in the gentlemen who had hitherto afforded him their aid and lawyers; neither was it from any confidence in his own ability to lay the matter before the court and jury, as it might be done, by professional men, but from motives particularly associated to the case, and his own situation.

This profession he considered as being wholly from its own commencement, to the present moment a business of party—not commenced at a time of party man, and not this movement, carried on in the inventory of party spirit. Had any other man, in a less conspicuous situation, fallen into the same error which produced the article charged as a libel, there is no reason to believe a prosecution would ever have been commenced, and even in moderate times of party it would form the immediate correction of the mistake—for it was wholly the mistake of a name, and not a falsehood in fact—such correction of the mistake would have been done by any man otherwise circumscribed. For the successive prosecutions which have been carried on at a time of party man, and the nature of the matter being wholly of party nature, and perjured that it was conducted, he had thought it more consistent to appear without counsel, especially as the expenses attendant on so many prosecutions would be naturally heavy; but particularly as he did not wish to injure any gentleman to such unworthy treatment, as had been shown by one of the opponents to the government, and he therefore bestowed him with their profane aid.

Considering it therefore in a wholly a matter of party the would occupy as little of the time of the court and jury as possible. He would call on the jury to recollect the time when this matter of protection originated, when party passions ran high, when the vibration of public opinion was such as to excite alarm on one side, and hope on the other; when the conduct of men in power was investigated with a bold hand, and the characters of their competitors subjected to every species of ignominy and reproach; then it was that this course of action occurred. But let any honest man look back for a moment to the agitation which marked that unhappy period—and let him compare that time with the present, the violence, the intolerance, the contumaciousness of that time, with the peace, tranquility, and fequity of the present. How are men to eliminate the character of this prosecution as a matter of party, or of fact—see the passions of that day to be called up in judgment now—and is an error in information rectified without solicitation, and wholly from a sense of right, to be treated in this manner as a faithful and innocent man?

Indeed, this matter will appear from the offensive article itself of an origin in its character, even more remote than the date of the publication, its origin may be traced to the initials of the government, for the non-wealth—the election of governor McKean to which this article makes an express allusion. In that election the plaintiff was a conspicuous character opposed to the government, and the defendant was the medium through whom the public was informed of all subjects relative to politics. The plaintiff was chairman of a committee who were not very far from being called the "Kuffs"—the chairman of that committee was under serious obligations to the government; and it was conceived that he repaid these obligations very badly. The defendant was called of these facts, from the most certain and respectable authority, as to the obligations of a gratuitous. And in that state of knowledge the information was communicated to him, that the brigadier general, the name of Mr. Hollingsworth, had been engaged in an illegal commerce, that he had taken the precaution to inform against his own vessel, and that being condemned, a collusive sale took place of the vessel and cargo, that several persons attended to bid for the vessel, that some were perjured and others deterred by threats from bidding, and that the vessel worth at this time between 3 and 6000 dollars was bought by Mr. Hollingsworth for less than 1500 dollars. The vessel had been advertised, and it was such a transaction as could not but arrest the attention of every man, who had a concern in public transactions. It was the duty of the defendant as the only Editor on the spot, and indeed very few were in the union who dared to defend men assailed on all sides for their politics, and who were charged with anti-federalism; it was a part of his duty to see that the conduct of the rivals of their men, was in many respects developments were made, and when this was the case, he thought it his duty to do this; he considered it his duty to publish the facts—for the facts will appear to be correct, and will be proven by the records of this court, and by other evidence.

With regard to the person, however, the court and jury will perceive that the defendant has not now to acknowledge that there was a mistake. The transactions concerning the vessel were true, there was an error in the name of the person, and that error was, not from malice nor any envy of the condition, as he was sorry to hear, later in the charge of the plaintiff, for there is no malice in the fact, for Mr. Hollingsworth at this time, for which he would change conditions, nor at any other time; but in truth the defendant had no personal knowledge of Mr. Hollingsworth at that time—he had only seen him in the office of Levi Hollingsworth, he knew his political character and his conduct as a very

active politician in this city—as indeed the most active man of his party.—Whether there was or was not another person to whom the vessel belonged was *John Hollingsworth* and not *Levi Hollingsworth*, what was the conduct of the defendant then? The facts were stated in the paper of the 9th of January, in the paper of the 10th the error was rectified, and the name of *John* given in the room of *Levi*.

There are facts that speak for themselves, with the permission of the court he would read the article which corrected the error and leave the considerations arising from it to the jury.

We find it was *John Hollingsworth's* vessel that was gone three days ago sold, by the market, for illicit trade, and not *Levi's* as we before stated.—We are willing, according to an old vulgar saying, "to give to the devil his due."

Upon the facts of this article, this correction of error as to the name, is there any appearance of malice, as charged by the plaintiff? It is not to be supposed that the intentions of party there are little political bull-dozing, which excite a momentary fermentation, and are forgotten as they perish in the breath of their birth; a temper of far more violent and aggressive nature is a gay fever that engages attention but seldom is wound; where party spirit proceeds no farther than the evil consequences are ever remote—the focal temper preferred, tends to the more direct aggression, unless the persons are of a cast of mind much more violent and revengeful than is compatible with the common professions of men. In the spirit of reprobation, on the whole which in the defendant's opinion, do not mind a public exposition, the article which is the foundation of this prosecution was written—when the error of name was discovered, the error was corrected, and the vessel was sold to the man who was innocent of the wrong of the charge, than to sell it with good humor?

A vessel engaged in an illegal trade, the vessel is seized and condemned—the sale of the vessel takes place between the owner, who is guilty of the breach of the law, and he profits by his ill conduct, to the public loss and wrong. The vessel is worth 3000 dollars and the sale of it brings more than 2000, the profit depends of purchasing are deterred, the facts are published, and a mistake is made in the name of one person who name differs from that of another, who name is common to both—the error is discovered the next day, and in three days after the correction of the error, a prosecution is commenced.
The defendant here called for the record of the court, which he read; the fact was an information laid in the name of *John Hollingsworth*, charging the brigadier general with a breach of the law, in trading with the French man, and he made the claim set up by the owners *John Hollingsworth, Shalloson and Latimer*, deny they illicit trade, and as usual, offering reasons why the should not be condemned. The third was not to be found, but afterwards brought) was the decree of the court condemning the ship and cargo for trading contrary to laws.

Here the defendant addressed the jury: "This gentleman is the safe before you, this is the transaction upon which you are to determine the amount of damages followed by a person who was chairman of the non-party committee, for endorsing the fact being behind the person concerned for one day. Where or how has this injury been done, where is the malice proven in this publication—it is in justice to you that fact should be known, as you have to know that what will be your judgment of this prosecution, where is the malice most conspicuous—Good God, it is not enough that the malice of this man, I should have known he had this error in his name, but I should have known that he would voluntarily I owe no jurisdiction, I do not enough that I should be deprived of

my birth right—of those rights which by the laws of God and nature I am entitled to—It is not enough that through him and his vindictive party protection I should be imprisoned thirty days, but that he should now at the end of nearly two years when he can have no injury done him, and where he has done me injuries which nothing can compensate—the man comes forward with three of the leading lawyers of this party to purchase me—this is the evidence he gives of his good character, are these the grounds upon which he appears to demand damages of a Jury!

Gentlemen, I shall trust on you no more—I have flitted to the best of my judgment without premeditation, the foundation which presented themselves to me and I beg pardon of the court for laying more than I proposed, I leave the issue to your course.

The defendant then called as witnesses, Mr. Felix Factor and his clerk Mr. Geary, who deposed that they recollect the sale of the vessel; that the former had authorized his clerk to bid for the vessel, but he could not recollect the sum it might be 1000 dollars or one dollar, all he knew was, he did not purchase the vessel.

Mr. Imbert's clerk was also forgetful of the exact sum; he was authorized; if not deterred by threats, but had been informed that the vessel was *John's* for the owner, and requested not to bid therefor did not buy her; he did not recollect her worth—he might have bid, but forgot. He said that he had seen the vessel at the sale; it was a French gentleman bid for the vessel—the belonged to *John Hollingsworth*, not *Levi's*, persons had used reproaches to the French gentleman for bidding—there were several other men bid, but one man bid five or six persons said it was a pity to force the price on the owner.

Mr. Ingersoll called after the evidence had been closed, and announced upon it at large, and he endeavored to show that no colloquial tale had taken place; he argued that even if the facts had been true as it related to *John Hollingsworth*, that still it was not an illegal trade, and he had been informed of the error of name, and he was evidently, and by his own confession acted by malice, and that what he had alleged of his fulfilling the punishment, imprisonment, and discharge on account of this prosecution was not true.

Mr. Ingersoll proceeded to investigate the charge and the evidence, and to discuss on the nature of libel, into which he read several private matters, such as celebrated British authorities, such as Blackstone, Erskine, and among others the celebrated letters of Junius, pages 15, of the preface, as follows:—"If the characters of private men are inflated, a double remedy is opened to them by acting and indictment. It is not indolence, false blame or indifference that we must appeal to the laws of their country, they fall in their duty as society and are unjust to themselves." He also adverted to the case of *John Peter Zenger*, at New-York, in 1735; and he said that he was not aware of any favorable opinion to those of Junius, but to Erskine, Glynn, and other English authorities. Of which we regret the want of notes, and prefer writing the reports of our subscribers, that following a fiction of willful misrepresentation of the speeches of this gentleman and Mr. Lewis who followed him.

Mr. Beecher, then asked permission of the court to address the Jury on behalf of the Defendant, to a single point.

Mr. Lewis objected, but was over-ruled by the Court, he having the right to reply.

Mr. B. observed to the Jury, that the single contention before them was the true measure of Damages for any real injury which the Plaintiff had followed from the Court's finding the wrong of the two publications of the 9th January, 1860, containing the libel, and the other of the next day, containing the Defendant's acknowledgment of a mistake in the name of the man, and that the man was not a party man, but no malice could be fairly imputable in a case where the character