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The Growth of the Freedom of the Press.

NEARLY two hundred years have passed since the press escaped from the trammels of the licensing act. Prior to the final abandonment of that statute there was a period of six years (during the reign of Charles II) throughout which the act remained in abeyance, and 'the surveyor of imprimery and printing presses' was restrained from making claim to the right of censorship. In 1693 the act was renewed for the period of two years, but in 1695 the house of commons, without a division, refused to continue the enactment. The controversy of that day—between the lower house and the upper house—upon this burning question is matter of history. In the end the lords gave way, and since then newspapers in common with other publications have been issued without *imprimatur*. Nowadays, to adopt Lord Kenyon's pithy phrase, 'a man may publish anything which twelve of his countrymen think is not blamable,' subject, of course (as explained by Lord Ellenborough), to the penal consequences of inserting anything illegal in the publication. But, in the usual and reasonable acceptance of the term, the 'liberty of the press' means a great deal more than the abolition of any preliminary license or act of censorship. Such freedom as the newspaper of to-day enjoys has grown with the law, and developed with social needs and customs. It is, in truth, a liberty which has its foundation outside the statutes of the realm, and only the first stone of which was laid when the speaker put the memorable question, 'that the house do agree with the committee in the resolution that the act entitled An Act for preventing Abuses in printing seditious, treasonable, and unlicensed Pamphlets, and for regulating of Printing and Printing Presses, be continued.' 'The speaker,' wrote Lord Macaulay, 'pronounced that the "noes" had it, and the

"ayes" did not think fit to divide.' Thus was a vote taken which at the time attracted little attention and produced no excitement, but which, in the language of the same historian, has done more for liberty and for civilisation than the great charter or the bill of rights.

'By liberty of the press,' said a modern judge,¹ 'I mean complete freedom to write and publish, without censorship and without restriction, save such as is absolutely necessary for the preservation of society.' To contrast this opinion with the hard and fast *dicta* of many departed sages of the judicial bench is to obtain ample evidence that law, and in particular the law of libel, grows.

The liberty which the press now exercises in the interests of society has matured, then, by slow degrees. There have been no leaps and bounds. For, even when the licensing act was shelved, venal judges did their best to keep all journalists in stern subjection. In this way much could be, and was, done by such men as Chief Justice Scroggs and his successor Jeffreys. Odious in the eyes of such judges as these was that thirst for the news which men dared to manifest even in the days of the Stuarts. Nevertheless the demand asserted itself with growing force, and, in spite of the terrors of prison and pillory, the supply was forthcoming, in ever increasing abundance. After a while the newsletters of the early period of press history gave place to newspapers proper; but still the recognised functions of the reporter were of a limited character, and, in one most important branch of newspaper work, he ministered to the public at his peril. Not until the year 1781 was a regular system of reporting parliamentary debates introduced for the information of the public. In 1722 the house of commons expressly resolved, 'That no printer or publisher of any printed newspapers do presume to insert in any such papers any debates or other proceedings of this house or any committee thereof.' Six years later there was another resolution to the like effect, with the addition, 'that upon discovery of the authors, printers, or publishers of any such written or printed newspapers, this house will proceed against the offenders with the utmost severity.' Such was the condition of things when the *Gentleman's Magazine* appeared in January 1781. At that time newspapers had become numerous, and were regarded as 'the chief channels of amusement and intelligence.' Nevertheless they contained no parliamentary reports, and it was in order to supply the want that Edward Cave, the promoter of the *Gentleman's Magazine*, gradually organised a special system of his own. In 1786 his reports became more expanded and more regular, and Dr. Johnson's share in compiling them is, of course, well known. The *London Magazine*, a rival periodical, followed suit, and through these channels the public soon obtained a vast amount of information as

¹ Fitzgerald, J., in *R. v. Sullivan* (11 Cox C.C. 49).

to the sayings and doings of their parliamentary representatives. The people were gratified; but members of parliament, or most of them, were furiously indignant. 'Why, sir!' exclaimed Sir Thomas Winnington, addressing the speaker, 'you will have every word that is spoken here by gentlemen misrepresented by fellows who thrust themselves into our gallery. You will have the speeches of the house printed every day, and we shall be looked upon as the most contemptible assembly on the face of the earth.' Then followed a resolution sternly warning all offenders. But, regardless of threatened results, Cave continued to publish his parliamentary reports, under the thin disguise of 'Debates in the Senate of Great Lilliput,' whilst the *London Magazine* steadily furnished them in the form of reports of the 'Proceedings of a Debating Society.' This practice continued until 1743, when a somewhat bolder style was adopted, and the speakers were identified by the first and final letters of their names. That the speeches as made and the speeches as reported were sometimes widely different must be accepted as a fact. 'That speech,' said Dr. Johnson, referring to one which was attributed to Pitt, 'I wrote in a garret in Exeter Street. Sir!' he added, in reply to an exclamation of surprise, 'I wrote it in Exeter Street. I never was in the house of commons but once. Cave had interest with the doorkeeper. He and the persons under him got admittance. They brought away the subject of discussion, the names of the speakers, the side they took, and the order in which they rose, together with notes of the various arguments adduced in the course of the debate. The whole was afterwards communicated to me, and I composed the speeches in the form they now have in parliamentary debates; for the speeches of that period are all printed from Cave's magazine.'

In 1771 complaint was made to the house of commons with respect to this alleged misrepresentation of the speeches of members, and it was moved that certain printers should be brought to justice. The debates were angry and prolonged, and the order for the arrest of the printers led to great excitement and popular tumult. Constitutional history records the final result. The house abandoned the contest, and the reports of proceedings in parliament, though continuing to be technically a breach of privilege, acquired for all time practical freedom and immunity.

It was not, however, until the case of *Wason v. Walter*² called forth a decision of the court of queen's bench, that it was expressly laid down that newspapers might publish a full and fair report of parliamentary debates without giving rise to civil liability or criminal proceedings, even if the report included defamatory matter. The decision of the court in that important case was delivered by Cockburn, C.J., who drew a distinction between the

² *Law Reports*, 4 Q.B. 73; 19 *Law Times Reports*, N.S. 409.

theory of the obsolete standing orders and the notorious practice of parliament in sanctioning and encouraging the publication of its proceedings, and in affording facilities to those who report them. 'Practically, therefore,' said the lord chief justice, 'it is untrue to say that the publication of parliamentary proceedings is prohibited by parliament; . . . it is essential to the working of our parliamentary system and to the welfare of the nation. . . . For the present purpose we must treat such publications as in every respect lawful, and . . . those who publish them will be free from legal responsibility though the character of individuals, incidentally, be affected.'

Such was the final result of the long and fitful struggle between parliament and those who sought to serve the public through the medium of the press. In the present day we take it all for granted; but surely something is due to the memory of the pioneers of newspaper reporting, and of those men of deeds and daring who unflinchingly supported them in the face of very inconvenient consequences.

It is enough to glance at the customs of the day in order to see in what a remarkable manner the newspaper reporter has at last obtained not only public but also official recognition. We know how, in the early period of newspaper history, the 'base news-monger' picked up coffee-house gossip, squeezed himself into the sessions house of the Old Bailey, perhaps obtained admission to the gallery of Whitehall, and thus gathered materials for modest but not always accurate weekly epistles destined to enlighten some country town or bench of rustic magistrates. Such were the sources from which the great body of the gentry and clergy learned almost all they knew of the history of their own times. At the present day, however, not only country towns and benches of rustic magistrates, not only the gentry and clergy, but all sorts and conditions of men, expect little less than a fresh chapter of the history of the world regularly as one day succeeds another.

The newsmonger has become a necessary minister in our social and political system. Judged by strict law, he still possesses few, if any, privileges beyond those enjoyed by every subject of the queen; yet by common consent he is allowed a special footing both in and out of the houses of parliament. Even the police are called upon to accord him special recognition. It will be remembered that in November 1887 Mr. G. Benet Burleigh of the *Daily Telegraph* appeared before Mr. Vaughan at the Bow Street police court, charged 'with being an idle, loose, and disorderly person, and causing a crowd to assemble for the purpose of committing a felony.' Mr. Poland appeared to prosecute for the Government, and the proceedings were watched by counsel on behalf of the National Association of Journalists, whose presence was pointedly welcomed by the

magistrate. After expressing himself in terms of ample apology for the unfounded charge which had been preferred against the defendant, Mr. Poland went on to say: 'An unfortunate mistake has been made. Mr. Burleigh is a very distinguished man, with a brilliant career, and to many of the police officials is well known as a representative of the *Daily Telegraph*. Unfortunately, he does not appear to have been known, as he well might expect that he would be, by the police who happened to be on duty on 8 Nov. at the particular spot where the arrest took place. It is necessary, of course, that a newspaper reporter, who is bound to give a full and fair account of what takes place at any meeting he is deputed to attend, should mix with the people in order to hear what is said, and to see what is going on.' The learned counsel, after again alluding to the fact that Mr. Burleigh when in Trafalgar Square was carrying on the lawful calling of a newspaper reporter, expressed regret for the inconvenience that had been caused him, and once more apologised on behalf of 'the public authorities.'³

These remarks, made by a most experienced advocate and distinguished criminal lawyer, speaking with all the authority of counsel for the crown, constitute a recognition of the position and privileges of the modern newspaper reporter which must render further comment quite superfluous.

The abandonment of the licensing act, followed in course of time by the tacit sanction of parliamentary reporting, left the press still very far from free. Newspapers continued to be dominated by the terrors of the law of libel. Even when Scroggs and Jeffreys had given place to better men upon the judicial bench, the monstrosity of judge-made libel law remained. 'A man had better make his son a tinker than a printer or a bookseller,' said one who had suffered grievously under the law as administered not much more than a hundred years ago. 'The laws of tin,' he added, 'we can understand; but the law of libel is unwritten, uncertain, and undefinable. It is one thing to-day and another to-morrow. No man can tell what it is. It is sometimes what the king or queen pleases, sometimes what the attorney-general pleases.'⁴ Bentham put the case with greater brevity, and no less truth, when he said, 'Anything which any man, for any reason, chooses to be offended with is a libel.'

In the celebrated prosecution of Henry Sampson Woodfall for publishing a seditious libel, Lord Mansfield ruled that it was for the crown, through the government, to decide whether a publication was libellous, and that the functions of the jury began and ended with finding whether the accused was in fact responsible for the

³ Vide *Journalism*, the official organ of the National Association of Journalists, December 1887.

⁴ Fox Bourne's *English Newspapers*, vol. i. p. 238.

publication of the book or paper complained of. Lord Camden afterwards openly declared that this doctrine, though propounded by the lord chief justice, was not the law of England; but it unquestionably prevailed as such for many years. The scandal and hardship of such a ruling ultimately became so great, that in December 1770 a member of the house of commons, Mr. Serjeant Glyn—who had acted as counsel for Lord Mayor Crosby when he was prosecuted for infringing the privilege of parliament—moved for a committee to inquire into the administration of criminal justice, and the proceedings of the judges in Westminster Hall, particularly in cases affecting the liberty of the press and the constitutional power and duty of juries. Fox opposed the motion; Burke supported it. Great speeches were made, and the motion was lost; ⁵ as also was another, having the same object, which was brought forward only a few months later. From that time onward the question remained in abeyance for some twenty years, and libel prosecutions during that period were abundant and successful.

In 1778—just a hundred years ago—Lord Mansfield vacated the office of chief justice. His lordship had characterised Erskine's advocacy of freedom as puerile rant and declamation; but Erskine's theories were destined to triumph within but a very short period. Rejected by Lord Mansfield, they were accepted by Lord Kenyon, a chief justice of a different and more enlightened type. Pitt and Fox alike admitted the force of the reformer's arguments, and it was Fox himself who in 1791 abandoned his previous attitude, and introduced his famous bill to amend the law of libel. Postponed for a time, through the action of Lord Thurlow, it was brought forward again in the following year, and, despite renewed opposition, passed into law.

The passing of this act constituted a most important epoch in newspaper history. It is not too much to say that the practical freedom of English newspapers dates from the time when the royal assent was given to this famous measure in 1792. The act commences with a recital that 'doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants, on the plea of not guilty pleaded it be competent to the jury empanelled to try the same to give their verdict upon the whole matter in issue;' and it goes on to enact that 'the jury may give a general verdict of guilty or not guilty upon the whole matter put in issue, and shall not be required or directed by the court or judge to find the defendant guilty merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to it in the indict-

⁵ *Vide* Woodfall's report of the debate, cited in a note to the preface of *The Letters of Junius*.

ment or information.' Section 2 empowers the court or judge in their or his discretion to give an opinion and directions to the jury in the matter in issue, 'in like manner as in other criminal cases.' Section 3 preserves the right of the jury to find a special verdict, and section 4 gives the defendant the right, if found guilty, to move in arrest of judgment in such manner as by law he might have done before the passing of the act.

The rules of law thus enacted with respect to criminal prosecutions had already been adopted and are still followed in regard also to civil actions for libel, except that, occasionally, the publication is so clearly not a libel that the judge refuses to let the question go to the jury at all. Where it is doubtful whether the words used are harmless or defamatory, the jury are entitled to decide what meaning is to be attributed to them in the circumstances disclosed by the evidence. The judge tells them what is a libel according to legal interpretation; the jury say whether the language complained of comes within the judge's definition, always bearing in mind that the words used are to be taken in the sense which fairly and naturally belongs to them. 'You,' said Fitzgerald J.,⁶ 'are the sole judges of the guilt or innocence of the defendant. The judges are here to give any help they can; but the jury are the judges of law and fact, and on them rests the whole responsibility.'

Such has been the effect of the celebrated measure with which Fox's name must ever be associated, though, in truth, its benefits are more justly to be attributed to the consistent and persistent efforts of Erskine. Those efforts should not be forgotten, though people are inclined to smile when they recall Lord Thurlow's prophecy of the confusion and destruction of the law of England, which, he assured the house of lords, the libel act would bring to pass.

The advantages of Fox's libel act were not at once to be experienced by the press. Prosecutions were, for a time, more numerous than ever. The act did not avert a verdict of guilty in the notable prosecution of Thomas Paine for publishing the 'Rights of Man,' and in like manner the attacks of the court and the government upon many newspapers for a time continued to be successful. In 1795 Lord Eldon claimed that there had been more prosecutions for libel within the last two years than there had been in twenty years before.

At length criminal prosecutions, having reached full tide, gradually slackened and ebbed, until, in the course of a few years, newspaper proprietors found their liberty of action restricted not so much by the criminal law as by the heavy burden of the stamp duties. The newspaper duty had been raised to twopence, and the advertisement tax had mounted as high as half a crown.

⁶ *R. v. Sullivan* (11 Cox C.C. 52).

But even these imposts were not considered adequate by the government, and in 1804 the duty was fixed at threepence-halfpenny, and the advertisement tax raised to three shillings and sixpence. No wonder that the friends of freedom were not yet content: 'Give me but the liberty of the press,' said Sheridan in a memorable speech in 1810, 'and I will give the minister a venal house of peers, I will give him a corrupt and servile house of commons, I will give him the full swing of the patronage of office, I will give him the whole host of ministerial influence, I will give him all the power that place can confer upon him to purchase submission and overawe resistance, and yet, armed with the liberty of the press, I will go to meet him undismayed.' Notwithstanding the various and vexatious taxes of those times, the press continued to increase in power and boldness, and the newspapers to multiply in numbers. The total number of newspapers sold in 1760, when George III began to reign, was 9,464,790, but in 1811 the numbers were 24,424,713. In 1820 the returns of stamps showed that the numbers had mounted to 29,387,843. Thus the aggregate circulation had more than trebled in the space of sixty years.⁷ It was no longer necessary for want of news, or of safe topics, to adopt the example set by the *Leicester Journal*, whose conductors, in 1752, resorted to the expedient of reprinting by instalments the whole of the book of Genesis.

In 1821 the press had grown bold enough to judge the judges, and criticise the laws of the realm and the whole system of judicature. The *Morning Chronicle* led the way in this respect, and other papers followed suit, publishing with impunity comments and criticisms which a few years before would assuredly have drawn down on the publisher the pains and penalties of the law. Not that prosecutions were altogether abandoned. There were many spasmodic attempts to enforce the law with the old familiar harshness, attempts which drew from the *Examiner* in 1827 the remark that 'the licentiousness of the press is a term of the very widest range, including as it does everything that is offensive to anybody. The liberty of the press, on the other hand, seems to come under the mathematical definition of a point; it has neither length, breadth, nor thickness.'

From the year 1815 the stamp duty had been fourpence, subject, however, to a discount of twenty per cent. for each copy sold, and besides this newspaper proprietors had to meet the advertisement tax and the duty on paper. Under these heads the *Times* alone is said to have paid to the revenue in 1828 the sum of 68,137*l.* 7*s.* 10*d.* The aggregate amount contributed by the proprietor of the *Morning Chronicle*, *The Observer*, *Bell's Life in London*, and *The Englishman* in the same year was 53,519*l.* 0*s.* 6*d.*

⁷ Vide Fox Bourne's *English Newspapers*, vol. i. p. 372.

It is said that Hetherington, a printer who started a cheap daily publication, was the first to strike a blow for the fuller freedom of the press, by openly setting the oppressive stamp act at defiance. He lost his own freedom more than once in the struggle which followed, and many others had to undergo a similar ordeal. But in 1844 Hetherington gained an unexpected success. He was arraigned in the court of exchequer before Lord Lyndhurst and a special jury, and a verdict of not guilty was the result. His acquittal, though inconsistent with the letter of the law, as at that time inscribed in the statute book, appears to have given no dissatisfaction to the distinguished judge who presided at the trial. It was hailed with delight by thousands upon thousands of newspaper readers. The verdict undoubtedly was a grievous wound to restrictive legislation, but by no means a final stroke. The battle between the newspapers and the stamp act continued to be waged with more or less virulence, and the press again was destined to triumph, though not until after many days. In 1836 the duty was lowered, and, to the surprise of many, this was followed by a considerable increase in the revenue. About the same time, too, the duty on paper was reduced. These, however, were only accepted as instalments of necessary reform. Petitions were still presented for a repeal of the taxes on knowledge, as they were then styled, and in 1850 a comprehensive resolution with that object was submitted to the vote of the house of commons. The motion was rejected by a large majority. A like result attended a similar effort in 1852. But the last defeat contained the elements of victory. In the following year the tax on advertisements was abolished. In 1855 further relief was granted with respect to the stamp duty. In 1861 the paper duty was absolutely swept away, and in 1870 the impressed stamp on newspapers, the adoption of which until then was optional for the purpose of postage, was finally dispensed with.

In a fiscal sense newspapers at last were free, but in the meantime many and great changes had been brought about in matters of no less importance. In 1840 an act of parliament (3 & 4 Vict. c. 9) had been passed for the purpose of giving summary protection to persons employed in publishing parliamentary papers. This act, though merely affording a safeguard to persons employed by or acting under the authority of the houses of parliament, implied in the clearest manner a recognition of the propriety of making known outside much that occurred within the walls of the legislative assembly. But in 1843 came a statute of far wider application and value. This was the 6 & 7 Vict. c. 96, known as Lord Campbell's act. It conferred on the defendant in proceedings for a libel contained in a public newspaper the right to plead an apology in mitigation of damages, or to show that the libel was inserted without actual and without gross negligence. The act also provided

that in criminal proceedings the defendant might plead the truth of the matters charged, alleging that the publication was for the public benefit. The act also contained subsidiary provisions, giving to the defendant, in certain events, the right to recover costs from the person who had unsuccessfully set the law in motion against him.

The immense stride made by virtue of Lord Campbell's act can only be appreciated by those who glance at the law of earlier times. Until this enactment found a place among the statutes no man could plead the truth of a libel in answer to an information or indictment, although it was otherwise in regard to civil proceedings. The doctrine embodied in the phrase, 'The greater the truth, the greater the libel,' therefore, ceased to be applicable in prosecutions for defamation on 24 Aug. 1843. But, valuable as was Lord Campbell's libel act, it still left something to be desired for the complete protection of newspapers, and it seems strange that many years should have passed before marked attention was called to the question raised in *Regina v. Carden*.⁶ In that case it was decided that the truth of the libel of which the defendant was accused under sect. 5 of Lord Campbell's act could not be inquired into by the magistrate, with the implied further consequence that questions having that tendency could not be put to the prosecutor in cross-examination at that stage of the proceedings, even though ostensibly for the purpose of testing his credibility.

This defect in the law was remedied as regards the proprietor, publisher, author, and printer of a newspaper by section 4 of the Newspaper Libel and Registration Act 1881, which also conferred on a magistrate or justices the power, in certain events, to deal summarily with a newspaper libel. Another important step was taken by forbidding any such prosecution without the written *fiat* of the director of public prosecutions in England, or her majesty's attorney-general in Ireland, being first obtained.

By section 2 something was done towards protecting newspaper reports of public meetings, subject, however, to certain 'ifs' which have greatly detracted from the practical value of the section. It has been the aim of Sir Algernon Borthwick and other well-known members of the house of commons to remove these inconvenient qualifications, and at the same time to amend the law as regards newspaper liberty in other respects in which it has been shown by experience to be faulty.

The bill with which Sir Algernon Borthwick, Mr. John Morley, Mr. Lawson, Dr. Cameron, Mr. Jennings, and Sir Albert Rollit have associated their names was the result of a special conference of the London and provincial press held on March 9, 1887. It was prepared by a committee appointed on that occasion, and large and

⁶ *Law Reports*, 5 Q.B.D. 6, 7; 41 *Law Times Reports*, 504.

influential support was soon given to the proposed measure. Shelved in 1886, it was reintroduced during the last session of parliament, and, although the bill is at present blocked, some at least of its provisions may be expected to pass into law at no distant date. Speculative libel actions are said to be on the increase, and the result of inquiries shows that the law as it was left by the act of 1881 offers direct incitement to unscrupulous and needy adventurers to commence frivolous actions against respectably conducted journals for the obvious purpose of extorting blackmail. The supporters of the bill propose to extend absolute privilege to fair and accurate reports of all meetings which, broadly speaking, it is right and fitting that a newspaper should place before its readers, and to repeal the condition that the publication shall be, strictly speaking, for the public benefit. The bill contains various subsidiary provisions, which, if accepted by the legislature, will confer considerable relief on newspaper proprietors and journalists.

But Sir Algernon Borthwick's bill leaves unchecked an adverse development of the law which is attributable to the jurisdiction now exercised by the chancery judges in cases of libel. A claim is made to a novel and, as it is submitted, dangerous power. In the case of *The Prudential Assurance Co. v. Knott*,⁹ Lord Cairns, L.C., referring to the statements in a pamphlet alleged to be libellous, said: 'If they do not amount to a libel, and are therefore innocuous and justifiable in the eyes of a court of common law, I am at a loss to understand upon what principle the court of chancery could possibly interfere as a *censor morum* or critic to restrain the publication of statements or expressions which would be held justifiable in a court of common law. If, on the other hand, these comments do amount to a libel, then, as I have always understood, it is clearly settled that the court of chancery has no jurisdiction to restrain the publication merely because it is a libel. . . . Not merely is there no authority for this application, but the books afford repeated instances of the refusal to exercise jurisdiction.' Both James, L.J., and Mellish, L.J., emphatically concurred in the judgment from which the foregoing is a brief extract.

The doctrine thus laid down merely reaffirmed what had long been recognised as a rule of law. Lord Langdale, M.R., in an old case¹⁰ declared that a court of equity would not restrain by injunction the publication of a libel; and in another case¹¹ Lord Cottenham expressed the positive opinion that any such interference with the liberty of the press would be contrary to the very principle of English law. Nevertheless the jurisdiction thus disclaimed in the past is now unhesitatingly asserted. It was stated by Sir

⁹ *Law Reports*, 10 Ch. 142; 31 *Law Times Reports*, 886.

¹⁰ *Clark v. Freeman* (17 L. J. Ch. 142).

¹¹ *Fleming v. Norton* (1 H.L.C. 363).

George Jessel, M.R.,¹² that the common law judges had long possessed the power recently exercised in the chancery division. But if so, it may be pointed out with all respect that the authority was systematically ignored as regards interlocutory proceedings even if it was understood to exist. The main support of the new jurisdiction is, however, to be found in sect. 25, subsect. 8 of the judicature act 1873, which declares that an injunction may be granted 'in all cases in which it shall appear to the court to be just or convenient.' In their full sense such words as these are wide enough for anything; but none the less it is difficult to believe that when enacted there was any thought of the purpose to which the section has now repeatedly been applied.

If, however, the judicature act did give these increased powers to the courts, then, in the words of Thesiger, L.J., 'in the matter of injunctions it has done nothing to alter the principles which have been laid down' in a long course of decided cases. Notwithstanding this view of the question, instances are rapidly accumulating to show that judges of the chancery division and members of the court of appeal explicitly claim, in the exercise of their discretion, to restrain the publication of alleged libels before they have reached the point of trial by jury.

On the other hand, since the passing of Fox's act no common law judge has shown himself anxious to interfere with or anticipate the recognised functions of the jury; and it is to be remembered that, although that act deals only with criminal cases, it introduced into them a principle which had already found acceptance in regard to civil actions for defamation of character.

But in the chancery division the new practice has grown and is growing. While, then, we may note the growth of the freedom of the press in some directions, and the relaxation of the criminal law, it is needful to appreciate the retrograde movement to which reference has been made. Law, always on the move, has in this instance made a marked encroachment on newspaper liberty and the invaluable right of trial by jury.

DOUGLAS M. FORD.

¹² In *Quarles Hill Company v. Beall* (*Law Reports*, (20 C.D. 501).