

LAW REPORT.

HOUSE OF LORDS—MONDAY.

(Present: The LORD CHANCELLOR, LORD BROUGHAM, LORD WENSLEYDALE, and LORD DUNGANNON.)

APPEAL.

THE MAYOR OF BEVERLEY, APPELLANT; THE ATTORNEY-GENERAL, RESPONDENT.

This is an appeal from a decree of the Lords Justices. It was an information filed in pursuance of a report of the charity commissioners, dated May, 1851, in which the commissioners state that "there is received by the corporation of Beverley, in Yorkshire, on account of Metcalfe's charity, an annual sum of £180, and that the annual expenditure for the preceding three years has been £59 13s. 4d., leaving a balance to the funds of the corporation of about £115. The payments are £10 to a schoolmaster, £10 to a lecturer, £33 to the poor of Beverley, and £5 13s. 4d. to a student at the University of Cambridge. The report further stated, that in the opinion of the commissioners it was the intention of the testator to devote the whole income of his estate to charitable purposes, and that the retention of the surplus by the corporation is a breach of trust. They, therefore, recommend that the case be referred to the Attorney-General that proceedings may be taken to secure the whole of the income to works of charity and education." Proceedings were accordingly taken, and the matter was argued before the Master of the Rolls in March, 1852. The testator, Richard Metcalfe, was a fellow of Trinity College, Cambridge, and a native of Beverley, and he had in October, 1652, bequeathed the whole of his property to the corporation of that town in trust that they should pay £10 to a preacher, £10 to a schoolmaster, £20 to Prudence Metcalfe, the testator's sister, during her life, and at her decease to pay £20 yearly for ever to three poor scholars of the town for their better maintenance at Cambridge, and if there were not always three poor scholars ready to go to the university, then the money applicable to the use of such scholars was to be distributed, together with other charities mentioned in his will, among the poorest people of the town. The testator then proceeded in these words—"Moreover, my will and desire is that so long as the taxes or rates to the commonwealth for the maintenance of soldiers shall continue, what the said mayor, aldermen, and burgesses cannot spare out of the overplus of rent (the property then producing £47 annually) shall be deducted equally out of the £20 per annum which they are to pay to the lecturer and schoolmaster, that my sister may have £20 wholly and entirely paid to her." It was contended that the will contained a gift to the corporation of the whole of the property, subject to the payment of the taxes and rates to the commonwealth, and of the bequests, and that they were to apply the surplus to the benefit of the town of Beverley, which was the primary object of the testator. The Master of the Rolls held that the corporation was entitled to a very small portion of the increased rents of the estates, and that the remainder was to be applied in charity under a scheme which he directed. The corporation appealed to the Lords Justices, and they affirmed the order with a slight variation of the amount to be taken by the appellants. It was now argued that the Court had taken an erroneous view of the rights of the corporation; that the testator intended the whole of the surplus to go to the corporation, and that the Attorney-General had established no case for relief under the information.

Mr Lloyd and Mr Karslake, for the appeal, relied on the decisions in the Bristol Charities, the Skinners' Company, and the South Melton.

The Attorney-General and Mr J. H. Terrell for the respondents.

Their lordships, after a brief consultation, said they would dispose of the appeal on Friday morning.

ASSIZE NEWS.

At Yorkshire assizes on Friday, Mr Baron Channell having concluded the criminal trials, sentenced the following prisoners, who had previously pleaded guilty, or been convicted:—Elizabeth Widdowson, concealment of child-birth at Sheffield, three months' imprisonment with hard labour. George Spencer, sheep-stealing at Tickhill, 3 years' penal servitude. John Singleton, cattle-stealing at Huddersfield, 18 months' imprisonment with hard labour. Charles Thompson, robbery at Bawtry, 18 months' imprisonment with hard labour. Edwin Wild, forgery at Sheffield, 15 months' imprisonment with hard labour. Richard Stead, forgery at Beverley, 6 months' imprisonment with hard labour. John Connolly, assault on a young girl at Sheffield, 18 months' imprisonment with hard labour. John Lord, perjury at Bradford, 12 months' imprisonment with hard labour. This concluded the criminal business.

SEDUCTION.—MIDDLETON v. WHEATCROFT.—At York Assizes, on Saturday (before Mr Baron Watson), Mr Hill, Q.C., and Mr Jones appeared for the plaintiff; Mr Overend, Q.C., for the defendant. The plaintiff, it appeared, is a widow, having three daughters, of whom the subject of the present action was the youngest, and 20 years of age. The two elder supported themselves as milliners, and the youngest, after being educated at St. Phillip's-school, Sheffield, became a teacher in the school at a salary of £20 a-year. The defendant is a butcher and baker, residing opposite the plaintiff's, and at the winter fair of last year he became acquainted with the plaintiff's daughter, and after visiting her for some time proposed marriage to her, and was accepted. The result of their intimacy was the birth of a child in November last. The defendant's attentions had long cooled, and he refused to perform his promise. In consequence the child had been affiliated to him, and the present action had been brought. The young woman had lost her situation of teacher at the school, and her mother had had £3 13s. 6d. to pay to her doctor, and now had her daughter on her hands in delicate health to maintain..... The young woman was called as a witness, and cried very bitterly in giving her evidence..... The learned counsel for the defence would not attempt to excuse his client, and expressed his sorrow for the young woman, but he begged the jury in their estimate of the damages not to take into consideration the breach of promise of marriage to the young woman, for which another action would be brought against his client, who would thus be subjected to the hardship of being made to pay twice for the same error..... His Lordship, in summing up, said it was by no means certain that there would be another action, as that would depend upon whether the plaintiff could prove the promise of marriage by other evidence, as she could not be her own witness; and, as to the hardship, the defendant should not have acted in the manner he had done, and he would not then have had to complain of any hardship. The jury, after a short consultation, found a verdict for the plaintiff—Damages, £120.

THE GOOLE LIBEL CASE.—ELLIS v. SMALL was an action for a libel tried at York Assizes. Mr Overend, Q.C., and Mr Kerr appeared for the plaintiff; and Mr Feronet Thompson and Mr Cross for the defendant. It appeared that in the course of the present year a public subscription was being got up in Goole in favour of a superintendent of police named Burke, in forwarding which the defendant was active, and referring to this a placard had been posted about Goole, stating that subscriptions would be received by the defendant. It appeared that there were persons in Goole with whom Mr Burke was not popular, and a counter placard was posted about the town to the following effect:—

Public subscriptions for the purchase of a rope to hang Burke. Subscriptions will be received by Alfred Little, printer, Goole.

The defendant, suspecting the plaintiff to be the author of the placard, and believing that it referred to him (the defendant), whose name is Alfred Small, and that the plaintiff had posted it, published the libel first complained of in the *Goole and Marshland Gazette*, of which the defendant is the printer and publisher, and which was as follows:—

John Ellis, plumber, glazier, and bill sticker, Ouse-street, Goole. Dirty jobs done at all hours of the night.

Upon which the plaintiff's brother, who is an attorney at Leeds, wrote to the defendant demanding an apology in his newspaper, to which having received no reply he wrote again to the defendant to the same effect, whereto the defendant replied:—

Sir,—Letter writing must be cheap with you. You do not allow time for me to do what you dictate before you send another letter. The advertisement in February is literally true in every particular. Are you sure it is the same party you refer to? This John Ellis was seen going round the town of Goole sticking bills on the walls, on which among other matter was, 'Alfred Little, printer, Goole.' This John Ellis is an open professor of infidelity. His commonest speech is 'a d—,' and he is ready at any time to say that all religion is a 'd—d humbug.' This John Ellis is generally known throughout Goole and district by the cognomen of 'Blackguard Ellis.' Is this your client?

The declaration set out this as the second libel complained of, and the defendant pleaded "Not Guilty;" and, secondly, a justification that "the said John Ellis did post the placard, and that the said posting was a dirty job, and that the plaintiff was a person ready to lend himself to the doing of discreditable acts at a time when he might escape detection. That he was an open professor of infidelity; that his commonest speech was 'a d—'; and that he was ready to say, and frequently had said, that all religion was a d—d humbug, and he was generally known in Goole and district by the cognomen of 'Blackguard Ellis.'" Witnesses were called for the plaintiff who stated they did not know him to be irreligious; that he did use the word "d—" sometimes, but only "like other people;" and one witness had heard him called "Blackguard Ellis." The plaintiff himself admitted that he never went to church at Goole, but that was because he did not like the clergyman. The learned counsel for the defence designated the action as a most trumpety one, and which would never have been heard of but that the plaintiff's brother was an attorney, who sought to get costs out of the action. His Lordship, in summing up, said the conduct of the plaintiff was only equalled in want of wisdom by that of the defendant. For if he and his brother had put the defendant's letter in the fire the whole matter would have passed off as a silly joke, but now he had published to the world the imputations the defendant's letter cast upon him. That letter of the defendant was wholly unjustifiable, and but for that it was difficult to say what damage the plaintiff had received. That letter was clearly actionable, and the jury would say what damages they would award in respect of each of the libels. The jury expressed a wish to retire, and during their absence his Lordship said he would grant a certificate to carry costs. The jury, after being absent an hour, returned with a verdict for the plaintiff, damages 1s., on each count of the declaration.

"CHAW BACON," THE EXECUTIONER OF PALMER.—At York assizes a case, *Davis v. Priest*, was tried before Baron Chammell. The plaintiff, it appeared, is the widow of Mr Thomas Davis, who was an auctioneer at Halifax, and the action had been brought on the ground of certain false representations which were alleged to have been made to induce her to become the tenant of the Griffin Inn, in that town. These representations were made by the defendant's son-in-law, John Priest, jun., but the defendant admitted that he was responsible for them. In January last the house was occupied by John Priest, jun., and in that month he represented to Mrs Davis that the regular receipts were

£24 a-week, and that the house had a good connexion, the goodwill, but the average receipts per week since she became the tenant had been something less than £7, and that, as it was stated, from no fault on her part in the management of the house. It was proved by the plaintiff that some time before the house was transferred to the plaintiff its business had been falling off, and the defendant, in order to get custom among a certain class had hired as a waiter a man from Rugeley who had, it was said, acted as the executioner of Palmer the murderer. This was publicly made known, and special trains crowded with passengers came from Rochdale to Griffin Inn. This "chawbacon," as he was described, waited on the customers in a smockfrock; but so far from restoring the custom of the house, the proceeding, after the first novelty was over, appeared to disgust and drive away the regular customers. Witnesses were called for the defence, and the case having occupied until noon of the following day, the jury retired, and, after an absence of two hours, returned with a verdict for plaintiff—damages £80.

SLANDER.—THE MANCHESTER AND LONDON LIFE ASSURANCE AND LOAN ASSOCIATION v. PICKLES.—At York assizes, on the 17th instant, the declaration charged the defendant with having said, the declaration tiffs, in their trade of life assurance, were, at best, a set of scamps and scoundrels, and that the company was unsafe. The defendant pleaded not guilty..... Mr Atherton stated the case. The plaintiff's company was formed in 1853, and had its chief office at Manchester, and a branch office at Leeds. The defendant was the Leeds agent of the British Protector Life Assurance Company, and the action was brought against him to recover damages for very calumnious expressions which it was said he had used. The agent of the plaintiffs which Leeds is Mr John Hill, and he heard that the defendant had been disparaging the reputation of the defendant in July, 1856, Mr Stanton, a provision dealer in Leeds, effected a policy with the plaintiffs for £500. The defendant called upon Mr Stanton, and during the interview the defendant said—"I am prepared to prove that the Manchester and London Life Assurance and Loan Association are nothing else than a set of rogues and vagabonds." In February last Mr Asquith, butcher, Leeds, applied to the plaintiffs for a policy on his life, and that of his wife for £200, and on the defendant being informed that he (Mr Asquith) had insured with the plaintiffs, he said—"I am very sorry to hear it, for they are nothing else than a set of scamps and scoundrels." In the course of the same conversation he told Mr Asquith that the plaintiffs' company was anything but safe." It was under these circumstances that the present action was brought..... Mr Overend, in addressing the jury for the defendant, admitted that the words complained of were uttered by him, but without any malice on his part, and under circumstances of considerable excuse. It was not intended for a moment to be said that the plaintiffs were a dishonest company, neither did the defendant come here to justify the words he had uttered. The defendant had acted *bona fide* and not as a common slanderer. He had not used this language from any sordid motives, as was imputed to him, and although what he had said and done might be unadvised, rash, and improper, still he was not actuated by any malice, and the plaintiffs had suffered no damage whatever..... Mr Baron Channell told the jury that the plaintiffs were clearly entitled to a verdict, and the question was, what damages they were entitled to..... The jury, after a few minutes' deliberation, returned a verdict for the plaintiffs—damages £5.

THE KIDDERMINSTER RIOTS.—True bills have been found, at Oxford Assizes, in the Kidderminster election riot cases, but they are to be tried at the next assizes.

A TRUMPERY LAW-SUIT.—At Oxford assizes, on the 17th inst., a case, *Hopkins v. Yardley* and others, was tried before Baron Bramwell and a common jury. It was an action of trespass, for breaking and entering a close of land at Oldswinford. It appeared that the action was brought to try the right to a small triangular piece of land, situate in the middle of four ways, near Oldswinford, and which was only valuable to the parties as a place for a dung-heap. The trial occupied a large portion of one day, and several hours the next.—Mr Baron Bramwell, in summing up, said it was to be regretted that the present action had been brought respecting such a trumpety piece of land; but still it was the duty of the jury to decide the question, though it was a very entangled one.—His lordship having summed up the evidence with great minuteness, the jury eventually found a verdict for the defendants.

COUNSEL FOR PRISONERS.—At Bedford assizes, on the 17th inst. (before Mr Justice Williams) John Thang Harradine was indicted for forgery.—Mr Metcalfe conducted the case for the prosecution. The prisoner was undefended, and requested the learned judge to assign him counsel, pleading his poverty.—His lordship, however, declined to accede to the request of the prisoner, on the ground that such a course was unusual except in cases of murder.—The prisoner was a farmer, but falling into bad circumstances, resorted to bill transactions to retrieve himself, and in the course of this career committed several forgeries. The present case was clearly established against him, and he was sentenced to 14 years' penal servitude.

A THEATRICAL CANDIDATE FOR PARLIAMENTARY HONOURS.—Before Lord Campbell, at Bedford Assizes, on the 17th inst., the court was occupied until four o'clock in trying an action brought by Mr N. F. Edwards against Mr E. Tyrrel Smith, the lessee of Drury-lane Theatre, to recover the sum of £67 15s 10d, being the balance of a claim for services rendered as election agent at the late election for the borough of Bedford. It appeared that the claim in the first instance amounted to £107, but £40 had been advanced by defendant, who refused to pay any more, alleging that the plaintiff did not render any service to him in reference to the election..... Mr Serjeant Wells, in opening the case for the plaintiff, stated that the defendant was a gentleman who had acquired for himself considerable notoriety as the lessee of Drury-lane Theatre. He was also the owner of the *Sunday Times* and *Bedfordshire Independent* papers, and a member of the Licensed Victuallers' Society. In addition to these occupations, by which he had accumulated a large fortune, he was desirous of attaining to the dignity of legislation, and at the last general election it was very well known that he was ambitious of the honour of a seat in the House of Commons. He accordingly went down to Bridport, and while there engaged in the canvass of that borough, the plaintiff, who had considerable experience as an election agent, placed himself in communication with him by letter. The consequence of the correspondence which ensued was the retainer of the plaintiff by the defendant as his sole agent at Bedford, and the plaintiff having procured a requisition from the Radical interest of that borough, Mr Smith consented to stand, and dispatched the plaintiff to the borough, where he remained for 12 days, engaged in conducting the canvass and contest on behalf of the defendant. Although the result was a defeat, yet the position occupied by the defendant on the poll shewed that great exertions had been made by the plaintiff. The learned serjeant, in the course of an exceedingly humorous speech, read to the jury several huge yellow placards, advocating the claims of Mr Smith to the suffrages of the constituency in highly eulogistic, not to say bombastic terms, which he put forward as the composition of his client, and then proceeded to call the witnesses in support of his case. It was then attempted to be shewn that no actual appointment of agent took place, so far as the plaintiff was concerned, but the judge was of opinion that defendant's letters previous to and his actions subsequent to plaintiff's going down to Bedford shewed the existence of a contract, and he left it to the jury to say whether the amount claimed or what portion should be paid to the plaintiff. After a short consultation the jury returned a verdict for the plaintiff for the sum of £62, striking out some small items of expenses charged in the bill.

PROSECUTION OF AN ATTORNEY UNDER THE BISHOP OF OXFORD'S ACT.—At Chelmsford Assizes, on the 17th instant, the case of the Queen in the prosecution of John Hills v. John Cutts and Robert Ezekiel Smith, tried before the Lord Chief Baron, was an indictment which charged the defendants, under the Bishop of Oxford's Act, 12 and 13 Vic., with having conspired together, and, by false pretences, induced one Martha Hills, a girl under 21 years of age, to have illicit and carnal connexion with the defendant, Robert Ezekiel Smith. The plaintiff is a small farmer, and Martha Hills was his daughter. Cutts was a solicitor and a man of wealth, and Smith, a wealthy farmer, under promise of marriage, had induced Martha to live with him at the age of 16. She bore him a child, after which, under a written agreement prepared by Cutts, she returned again to live with him, under a promise of marriage, conditional that the solicitor on the other side should not be informed of the agreement. Her mother, however, got hold of it and shewed it to Shepherd, the attorney, who pronounced it worthless as a promise, and thereupon brought this action, which was postponed from the Spring Assizes, on account of Martha Hills being then within a few hours of her confinement. Smith had since married her; but for the prosecution it was alleged that that was only in consequence of this prosecution, and although Martha, being now the wife of Smith, could not give evidence against him, the case ought to proceed against Cutts as having drawn the agreement for an illegal purpose. The Chief Baron said Cutts could be proceeded with in another way. He ruled that Mrs Smith could not give evidence against Cutts without implicating her husband, and therefore could not be heard. The jury then returned a verdict of not guilty.

LORD HASTINGS AND THE NEWSPAPER PRESS.—In the latter part of last year a dispute occurred at Holt, Norfolk, with regard to the conviction of certain labourers by the local magistrates for taking rabbits from a common near the town. The *Norfolk News* commented rather sharply on the conduct of the magistrates, of whom Lord Hastings was one, and on the day the first article appeared on the subject his lordship proceeded to the residence of the editor, Mr. J. H. Tillet, of Norwich, and had a warm personal altercation with him. Proceedings were commenced against the noble lord for endeavouring to induce Mr Tillet to fight a duel, and it was expected that the matter would have been investigated at the approaching Norfolk assizes. A day or two since, however, Lieutenant-Colonel Astley had an interview with Mr Tillet on the part of Lord Hastings, and the following "minutes" were drawn up of the conversation which took place:— "Colonel Astley stated that Lord Hastings had authorized him to say that his lordship had no intention of sending a threatening or offensive message to Mr Tillet, as mentioned in the article in the *Norfolk News* of the 29th of November last, and that his lordship, having had no such intention, felt that the article of the 29th of November last was an unjustifiable attack upon him, which led to the warmth exhibited by his lordship in his interview with Mr Tillet on that day, for which his lordship expresses regret, and his lordship withdraws the offensive expressions on that occasion applied to Mr Tillet. Mr Tillet, upon his lordship's disavowal, withdraws any remarks offensive to his lordship in the article above alluded to, and expresses his regret that any unpleasantness should have arisen between Lord Hastings and himself." The quarrel is therefore now at an end.