

A
REPORT
OF AN
ACTION FOR A LIBEL,
BROUGHT BY
DR. BENJAMIN RUSH,
AGAINST
WILLIAM COBBETT,

In the Supreme Court of Pennsylvania, December term,
1799, for certain defamatory publications in a
newspaper, entitled *Porcupine's Gazette*,

OF WHICH THE SAID
WILLIAM COBBETT WAS EDITOR.

[TAKEN IN SMOTH HAND BY T. CARPENTER.]



Philadelphia :

Printed by W. W. Woodward, No. 17, Chestnut Street.

1800.

REPORT

ACTION FOR A LIBEL

DR. BENJAMIN RUSH

12245

WILLIAM CORBETT WAS EDITOR.

(THIS IS A REPRODUCTION OF A COPY)



Philadelphia:

Printed by W. W. Hockaday, No. 15, Church Alley.

1800.

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The following charge was delivered at the close of the pleadings, by the Hon. Judge Shippen.

GENTLEMEN,

THIS is an action brought by the Plaintiff against the Defendant for writing, printing and publishing divers scandalous libels, to defame and villify him. The defendant has pleaded that he is not guilty;—his counsel, however have acknowledged the publication of the papers, which, otherwise, it would have been incumbent on the plaintiff to prove. The question, therefore, will be, whether they amount in law to defamatory libels or not?

By the law and practice in England, in the case of libels, the only task of the jury is, to judge of the fact of publication, and the truth and fair application of the innuendos. The court, as judges of the law, reserving to themselves the sole power of deciding whether the paper amounts to a libel or not: But in this state, by the special directions of our constitution, the jury possess the power of judging both of the law and fact, under the direction of the court.

A libel is defined by the law, to be the malicious defamation, expressed either in printing or writing, or by signs or pictures, tending to blacken either the memory of one who is dead, or the reputation of one who is alive, or to expose him to public hatred, contempt or ridicule. This offence may be punished, either by indictment at the suit of the commonwealth, or by a civil action at the suit of the party injured. When the prosecution is by indictment, the court only are to direct the punishment; but in a civil suit, the damages are to be assessed solely by the jury.

The charges laid against the defendant in the declaration, are various; but they may be reduced in substance to the following.—That he repeatedly calls the plaintiff a quack, an empyric; charges him with intemperate bleeding, injudiciously administering Mercury in large doses in the yellow-fever; puffing himself off; writing letters and answering them himself, stiling him the Sampson in Medicine; charging him with murdering his patients and slaying his thousands, and tens of thousands.

The counts laid in the declaration is full proved by the publications which are certainly libellous. In what manner do the defendant's counsel repel these proofs? Not by justifying the truth of the matters charged against Dr. Rush, which on the contrary they have repeatedly acknowledged to be false, but by analyzing the several allegations in the newspapers, and from thence drawing a conclusion that no intentional personal malice appears, which they say is the essence of the offence.—Malice rests in the heart, and is only to be judged of by the words and actions of the party; the words themselves import malice, and in that case the proof lies on the defendant to show the innocence of his intentions; if he has done THAT to your satisfaction, you will acquit him; but as this is chiefly founded on the allegation that the attack was meant to be made on Dr. Rush's *System*, and not on the *Man*; it unfortunately appears that not the least attempt is made to combat the Doctor's arguments with regard to the system itself, but the attack is made merely by gross scurrilous abuse of the Doctor him-

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Self: Added to this, one of the witnesses proves a declaration made by the defendant, that if Dr. Rush had not been the *Man* he should never have meddled with the *System*.

Another ground of defence is of a more serious nature, as it leads to an important question on our constitution—it is said that the subject of dispute between the plaintiff and defendant was a matter of public concern, as it related to the health and lives of our fellow citizens, and that by the words of our constitution, every man has a right to discuss such subjects in print. The liberty of the press, gentlemen, is a valuable right in every free country, and ought never to be unduly restrained; but when it is perverted to the purposes of private slander, it then becomes a most destructive engine in the hands of unprincipled men; the utmost purity and integrity of heart, is no shield against the shafts and arrows of malice, conveyed to the world by printed publications. Verbal slander may be frequently very injurious, but slander writing or print being more generally disseminated and more durable in its effects, is consequently infinitely more pernicious and provoking. Our state constitution of 1790, contains certainly very general words with relation to the right of a citizen to print his thoughts and offer them to the consideration of the public, but it at the same time guard against the generality of the privilege, by expressly declaring, that every person availing himself of the liberty of the press, *should be responsible for the abuse of that liberty*; thus securing to our citizens the invaluable right of reputation against every malicious invader of it.

Printed publications attacking private character, is considered with great reason by the law as a very atrocious offence, from its evident tendency to the breach of the public peace—if men find they can have no redress in our courts of justice for such injuries, they will naturally take satisfaction in their own way, involving perhaps their friends and families in the contest, and leading evidently to duels, Murders, and perhaps to Assassinations.

The principal subject of consideration with the jury will be, what damages they are to assess. On this subject you are the almost uncontrollable judges—it is your peculiar province:—The court have indeed the power to order a new trial where damages are excessive; but in cases of torts and injuries of this kind, the law books say the damages must be so outrageously disproportionate to the offence, as at first blush to shock every person who hears of it, before the court will order a new trial.

Every one must know that offences of this kind have for some time past too much abounded in our city; it seems high time to restrain them—that task is with you, Gentlemen. To suppress so great an evil, it will not only be proper to give compensatory, but exemplary damages; thus stopping the growing progress of this daring crime—at the same time, the damages should not be so enormous as absolutely to ruin the offender.

I hope no party considerations will ever have place in this court in the administration of Justice—and I intreat you, Gentlemen, to banish them, in considering this subject, entirely from your breasts.

The Jury, after an absence of two hours, brought in a verdict in favor of the Plaintiff of *Five Thousand Dollars*.

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IN THE SUPREME COURT OF PENNSYLVANIA.

Doctor Benjamin Rush,

versus

William Cobbett.

} December term, 1799.

ACTION on the case for a Libel was brought in the autumn of 1797, by the Plaintiff against the Defendant, for certain defamatory publications which appeared in a newspaper entitled "Porcupine's Gazette," of which COBBETT was the Editor.

The publications stated in the Declaration to be libellous were as follow, viz.

From Porcupine's Gazette, September 19th, 1797.

MEDICAL PUFFING.

"The times are ominous indeed,

"When quack to quack cries purge and bleed."

Those who are in the habit of looking over the Gazettes, which come in from the different parts of the country, must have observed, and with no small degree of indignation, the arts that our remorseless *Bleeder* is making use of to puff off his preposterous practice. He has, unfortunately, his partizans in almost every quarter of the country. To these he writes letters, and in return gets letters from them: he extols their practice, and they extol his; and there is scarcely a page of any newspaper that I see, which has the good fortune to escape the poison of their prescriptions.—Blood, blood! still they cry more blood!—In every sentence they menace our poor veins. Their language is as frightful to the ears of the alarmed multitude, as is the raven's croak to those of the sickly flock.

Among all these puffs, I do not recollect a more shameless one than the following from Dr. TILTON.

Extract of a letter from Dr. Tilton, of Wilmington, to Dr. Rush, dated September 12.

"We have had repeated instances of *your fever* at this place. The infection has generally been taken in Philadelphia, I am not acquainted with any instances where the contagion has been received

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"at Wilmington, but at Newcastle and Newport there are unequivocal examples of the contagion being received from those who brought it from the city.

"In the treatment of the fever we use *copious* blood-letting in the beginning, and active *mercurial purges*. I have conceived however, that mercury is useful, not merely as a cathartic, but as a *specific against all kinds of contagion*.—There is no contagious disease in which its use is not acknowledged: not only small-pox, measles, dysentery, &c. but scarlatina and influenza yield to its specific virtues. You probably remember as well as I, that it was given with advantage in the hospital and camp fever. In short, I have established it as a maxim, to give mercury as soon as I know a disease to be contagious."

This Dr. Tilton is a kind of a puritan; a sour wry-faced incorrigible democrat. He has the pride of Lucifer himself, and, to me, it is astonishing that he should have condescended to become the trumpet, the underling, the mere barber-furgeon of the master-bleeder.

The mercurial purges too, Dr. Tilton must break forth in praise of! Mercury is good for every thing that is contagious! Is good for *sañscullotism* Doctor? If it be, in the name of goodness, take a double dose of it twice a day, 'till it has wrought a cure.—Dr. Rush, in that emphatical style which is peculiar to himself, calls *Mercury* "the *Samson* of medicine." In his hands and in those of his partizans it may indeed be justly compared to *Samson*; for, I verily believe they have slain more Americans with it, than ever *Samson* slew of the *Philistines*. The *Israelite* slew his thousands, but the *Rushites* have slain their tens of thousands.

From Porcupine's Gazette, September 25th, 1797.

MR. PORCUPINE.

SIR,

I find my rascally hostler has forgot the frequent injunctions I have given him, to mind his business, and has deserted his curry comb and brush, for the pen and ink.

John is a very good man in his way, and understands his business well, particularly the art of bleeding horses; when I proposed to my brethren to commence business as physician, I had an eye on John's abilities as a bleeder, and I hinted to him my intention. Would you believe it Mr. P— that the rascal after reading my essay in your paper, purchased "*Dr. Rush on the Yellow Fever*," and has been studying ever since, to my great loss and mortification. And now the wise illiterate thinks he can commence business for himself. But let him remember that "*Ne sutor ultra crepidem*," *The cobbler must not go beyond his last*. I observe he is half a physician already, for he has got the *Cocoe iters scribendi*—and has obliged the public with his first medical essay.

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Not content with deserting my service, he appears desirous to prejudice the public against me, and my brethren, asserting in strong terms, that we are enemies to the *noble science of blood-letting*: This is abominable and contrary to the truth. For I am, and shall be *no-lens volens*, an advocate for the practice, and it is my creed that it will cure all diseases—as our good allies the French have clearly proved in their practice,—I have also another reason for commencing the business of a physician; In fact, the villainous liquors my wine merchant obliges me to supply my guests with, has lately caused in the latter severe and harsh expostulations, and, as I am a conscientious man, I wish to follow a quiet business, and I prefer that of the lancet, because you know Mr. P. *dead men never tell tales*.

As I have now cautioned your readers, and I conceive the public against my rascally hostler, I have to observe to you, that a meeting of our brethren was held at my tavern last evening; when the business I had recommended was very warmly approved; and a college was determined to be held the ensuing week, for the purpose of taking out our diplomas.—And it was unanimously agreed to request, Dr. J. Redman Coxe to favor us with a prefatory oration in praise of the noble science of blood-letting. We also voted a serious expostulation to the public, on their prejudices against the new practice addressed to Dr. Rush, the great patron of the art.

As our resolves will appear in your paper, I think it unnecessary to state more at present, than that we determined not to advertise the particular taverns where compounds may be had; as we believed each of our brethren was well qualified in that respect. The superior merits of some, who sell stale porter, dead cider, &c. will be soon discovered by their respective patients.

I have already got my carriage newly painted, and have engaged a *French* hostler, whose merits and *sang froid* in the use of the lancet are I believe, unrivalled, for I believe he was an *eleve* of Robespierre.

I have also hired a few nurses, whose abilities I am well acquainted with. They will never desert their patients, as I have engaged to supply them constantly with excellent gin and have also promised them the pillage of such of my patients who may be determined to die.

I am, Sir,

Yours, &c.

A TAVERN KEEPER.

N. B. I request your interest with some of your brother printers who appear to me to have, if not the yellow fever, a very irritable billious complaint.

From

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From Porcupine's Gazette, September 26, 1797.

RUSH AND TILTON.

Wilmington, (Del.) September 22, 1797.

FRIEND PORCUPINE,

In reading thy paper of the 19th instant, I took notice of a curious observation made on a certain rye faced incorrigible democrat, one of the medical puffers. To complete the story, I will give thee a short sketch of a curious fact (which happened some time past in this place) concerning this self consequent Mercurial ghost.

There was a woman travelling from the head of Elk to Germantown, and on her way her carriage was turned over, she thrown out, and very much hurt. She has since returned from Germantown through Philadelphia, and made a stop at an inn, in this borough;—the woman overcome with fatigue and a cold she had taken, felt herself a little indisposed.

This crooked faced Quack was called in. As soon as he saw her, he said he must take some BLOOD, and I suppose, if he had not got frightened, a good dose of mercury would have ensued.

But fortunate for the poor woman, he happened to push up her sleeve a little, and discovered a bruise on her arm, which she received in her fall from the carriage. Alarmed at the appearance of her arm, he asked her if she had been to Philadelphia, the reply was, yes: he immediately pronounced her complaints to be the *Yellow Fever*, made his escape and has not seen her since. The good woman has recovered and proceeded on her way home. There now lies a person, a small distance from the town, in a house (built for the reception of persons coming here with the contagion) who he pronounced to have the yellow fever. But, who in fact, has nothing but the common ague.

Thine, &c.

A. B.

ANOTHER PUFF.

In Brown's paper of last evening appeared another of our "potent quack's" brothered puffs.

It was "a letter from Dr. Rush to a correspondent in Newberry-Port," giving his old account of the yellow fever, and concluding with a *dragged-in* compliment to a Mr. Coates.—Upon the very first glance, it is evident that this letter was sent to Newberry Port, on purpose to be published there, and then to be sent back here to make its appearance among us through the channel, or rather through the SINK, of the quack-ridden Philadelphia Gazette!—All this bustle of letters and addresses, and prescriptions, in the name of Dr. Rush, is intended

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intended to make the duped world believe, that he is the Oracle at Philadelphia, and that all the other physicians are mere glister-pipe Dicks under him.—It is a cheap mode of acquiring fame, which he learned from the crafty old hypocrite, Franklin.—I wonder what *Coates* it is that the Doctor has got in tow; Some well meaning man, I dare engage, whom he *makes use of* as a *step in the ladder* of his ambition, at the same time that he expresses his contempt of his intellects, by making his court to him in a strain of vulgar flattery.

From Porcupine's Gazette, September 29, 1797.

A PUFF, Equal to Dr. Rush's.

We congratulate our *fellow creatures*, in having it in their power to get relieved from the most unpleasant complaints incident to human nature, such as the scurvy, gout, rheumatism, evil, ulcers, and other disorders arising from *impurities of the blood*, indigestion, &c. by taking *Spilsbury's Antiscorbutic Drops*, a medicine well known upwards of twenty-six years for having performed more extraordinary cures than any other ever invented, and whose reputation has reached the remotest corners of the universe, every nation bearing grateful testimony of its eminent virtues; how happy therefore is it for the inhabitants of this island that they can supply themselves with a medicine, which, should they travel to any part of the globe, will secure them from the fatal consequences that too often attend the above complaints.

[*There's for you, Master Sangrado! Beat that if you can.—As to the IMPURITIES OF THE BLOOD, I am sure, you have a more effectual remedy than brother SPILSBURY.*]

December 13, 1799, this case was brought to trial before *Shippen, Yates and Smith*, Justices of the Supreme Court, and the following named gentlemen were sworn and affirmed a special Jury:

Isaac Paxson, William Jolly, Thomas W. Armat, Joseph S. Lewis, Isaac Austin, George Thompson, Jacob Sperry, Benjamin F. Garrigues, John Taggart, Jacob Reese, William Roberts and Archibald Bingham.

Plaintiff's Council, Messrs. Hopkinson, Moses Levy, Ingersol and Lewis.

Defendant's Council, Messrs. Rawle, Harper and Edward Tilghman.

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MR. HOPKINSON,

As Counsel for the Plaintiff opened this cause, in the following
address:

Gentlemen of the Jury,

IT is my duty to open this cause to you on the part of the plaintiff, Dr. Rush. In discharging this duty I shall beg leave to extend it somewhat beyond its usual limits in ordinary cases. I shall not be content with merely reading the declaration to you, and stating the points of evidence by which it will be maintained; but shall also take the liberty of opening to you the views and dispositions with which this action has been brought, and some of the leading principles on which it will be supported.

The action now before you is an action of slander, brought by Dr. Benjamin Rush, who has long been a distinguished ornament of our city, against William Cobbett, the printer and publisher of a newspaper under the name of *Porcupine's Gazette*. It will easily be imagined that no slight cause could bring a man of Dr. Rush's character into this, or any other competition, with a man of William Cobbett's character.—Dr. Rush is as well known for his peaceful habits and his amiable manners, as William Cobbett is for his disocial malignant disposition and inveterate hate—While the one may well be termed the friend of humanity, the other has labored hard to be considered, *hostis humani generis*—It is not then to indulge a fondness for controversy—It is not to gratify unsocial, litigious or revengeful dispositions, for no such find a place in his heart, that Dr. Rush now presents himself before the tribunal of his country, demanding justice for barbarous and unprovoked injuries, and requiring that protection of an honest reputation which the law guarantees to every citizen—He comes here impressed with high duties—**TO THE LAWS OF HIS COUNTRY** he owes a duty, that they shall not be violated;—**TO HIS FELLOW CITIZENS** he owes a duty to bring to punishment, and, if possible, suppress an abandoned and dangerous offender, who tramples over truth, decency and character with a tiger's stride, and assaults with venomous fury the most sacred bands of social order and peace; the most endearing ties of private life and happiness—**TO HIMSELF AND HIS FAMILY**, he owes a duty of *protection*, which should never be disregarded—let the father of a family assert the honor and purity that it descend not as a shame upon his children.—Let the husband preserve the tender feelings of a wife from insult, and her affections from the deep wounds of public reproach.

On this high and dignified ground, Dr. Rush stands before you—He appeals to his country in firm confidence in its justice, and it is your province, Gentlemen, to administer that justice—you are to ascertain the security in which a citizen of Pennsylvania holds his good name, and to sanction or to check the ravages of defamation—This day we are to know whether character is deemed a valuable and sacred possession among us, in which we have a perfect and inviolable right,

or

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or whether it is to be the mere sport and play-thing of malicious ridicule and vulgar wit, the undefended victim of assassinating malevolence; we are now to know if honor and virtue are known and respected here; if a fair and unimpeached life, of above fifty years, spent in important public services, and the constant exercise of private virtues, has a good claim to protection from premeditated ruin, and shall not sue for redress in vain.

The courts of justice are so often harassed with actions of slander, brought for trifling or revengeful causes, originating in passion, and ending in repentance,—founded on the quarrels of children, or the unmeaning intemperance of harmless old women, that they have fallen into some kind of disrepute, and lost much of that importance, which the law and good reason attaches to them, when properly founded.—In fact, it seldom happens, that the kind of slander which the law so seriously contemplates, occurs.—The offence is so enormous, so destitute of palliation or defence, so unworthy, so low and detestable, the penalty so exemplary, that few men are found regardless enough of social order and decency, or sufficiently outrageous and audacious to commit it. But when such a case does occur, it rises in terrible pre-eminence above the multitude of actions for defamation which throng the dockets and disgrace the remedy.—When an offender is found hardy enough to assault the sacred fortrefs of reputation, and strive to pollute it in the dust; hardy enough to brave the vengeance denounced against him by God and man, he should be struck with dreadful and speedy justice, and stand a blighted picture of ruin and infamy, an awful lesson to depravity and vice.—Such an offender, we assert, is William Cobbett; and if such an offender we shew him to be, we trust that such a punishment awaits him.—

[Here Mr. Hopkinson read the declaration.]

You observe, Gentlemen, that the controversy between the plaintiff and defendant in this cause, does not originate in any dispute about property; it is a question of CHARACTER. And, as in its essence, it differs from suits on questions of property, so must it in its mode of treatment, and in its objects of enquiry.—While the defendant be permitted to a certain extent to scrutinize and investigate the character and conduct of the plaintiff (to which investigation Dr. Rush most cheerfully offers himself) we shall also claim a right of examining or observing upon, to a certain extent, the character and conduct of the defendant.—His *character*, as far as relates to his occupation of a printer and publisher; and his *conduct*, as far as relates to the general management of his newspaper, are surely proper objects of observation at least.—Nothing can be more evident; nothing more reasonable. If the general character of his press is that of decency, of tenderness for reputation, of candor, liberality and truth, and he has now, as if by accident, fallen into personal defamation, it will certainly be urged by his counsel, as a powerful extenuation of his offence, as a strong argument to induce you to believe that this single deviation is error, and not crime, is ignorance and not malignity.—The plea would most justly, hold a powerful influence over your judgments: and
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although in the strict eye of the law, the only question in this action is on the specific charge of slander, exhibited in the declaration, yet the construction of those charges—the *quo animo* or disposition with which the offensive paragraphs were written and published, will depend much on the general character and conduct of the defendant as a printer, and will have a strong influence over the verdict of an equitable jury.

Permit me gentlemen one further explanation—Parties have in our country, become wrought up to such illiberal fury, that every action of a man's life, from the most important to the most obscure and trifling is traced to party motives and party principles—His attachments and his enmities—his connexions in business or otherwise, nay almost the color of the cloth he wears, and the species of diet he feeds on, are ascribed to his party and political principles—This is an unhappy state of things—Were I of the party to whom it has *happened* the defendant has opposed himself—I should expect that all I shall now or ever say against this man, would by many of my fellow-citizens, perhaps by you gentlemen, be deemed to be the mere vengeance of party spirit, the unmanly gratification of political hatred—But my opinions of this man have ever, even from the commencement of his extraordinary career, been the same; and are now, as they always have been, honest, consistent, and conscientious—My political character depends not in the slightest degree, upon his recommendation or his censure—I have had both; I have regarded neither—Doubtless his dark and virulent spirit prepares some attack, which his insufferable arrogance informs him will be formidable and destructive to lawyers, court and jury, that shall dare to *do him justice*. For myself I declare, if the declaration be necessary, that there is not in the bounds of creation that thing so feeble or so vile that I should hold it in greater contempt than the resentment of William Cobbett; and, I will answer that you will not be driven from your duty or your oaths, by a fear of being placed on his *black list*. He has indeed, the unquenchable and vindictive spirit of an inquisitor, but wanting all power, it is harmless and contemptible—The ridiculous vanity of this man, and his ignorance of his *true situation* in this country and of the *kind of value or use* that has been put upon him, has lead him into an opinion that his voice is the voice of fate, either with regard to public measures and character, or to private reputation. This however is an error which it lies with the public to correct; and they will find their interest and their honor, deeply concerned in doing it speedily and effectually. God forbid that my country should have sunk so low, that an opposition to such a wretch as this, will be deemed unfriendly to our government. When tempests agitate the ocean to its foundation, and rock it in convulsions, numerous noxious animals are thrown up, which would otherwise never have seen the light; so in a troubled state of things, wretches are cast up from the very dregs and slime of the community, who, in more happy times, would have lived and rotted in obscurity.

The attack made on Dr. Rush is of the most deadly and violent kind that malice could invent, or abandoned depravity execute—He is
accused

accused of murder, or destroying the lives of his fellow citizens, in a time of dreadful calamity—It is then fair and necessary to enquire—

1. What was the conduct of Doctor Rush during that calamity—has it merited reproach or applause—If the former, the offence of W. C. is extenuated, though not justified; if the latter, it is aggravated beyond all example.
2. What inducement or motive had W. C. for this attack—If a desire to inform the public mind on an interesting subject, his offence is extenuated, but not justified—if private and political malice, it is aggravated.

Dr. Rush's reputation is not confined to the narrow circle of his patients, nor his applause to the clamours of old women and nurses. His fame has spread as extensively as our commerce. He has added a fresh and a blooming laurel to the head of American genius—he has done much to rescue the American name from obloquy and contempt, which some of the proud Philosophers of Europe would cast upon us, ranking us as inferior to themselves in the order of beings. From the East Indies and from the West—from almost every part of Europe, he has received honors and compliments; and we are different from all the people on the face of the earth, if these honors reflect not some pride and some pleasure into our breasts.—This participation in the honors and fame of our countrymen is coeval with the existence of the passions of men, and he that does not feel it must want a social temper, and the true spirit of patriotism. Nor, has the private character and deportment of Dr. Rush forfeited that esteem which his public services and fame should command. Where is the man whose dispositions are more mild, whose temper is less virulent, whose affections, more warm and sincere.—From my soul, I believe him to be among the most unoffending and most benevolent of mankind; so that in the wide range of creation you cannot find too beings more unlike each other than Dr. Benjamin Rush and William Cobbett—Even when, day after day, this vile source of falsehood and pollution, vomited forth the blackest venom of slander upon his name, he stood like a suffering martyr, and dipped not his pen in the gall of controversy.—And yet it is known that Dr. Rush can write—his pen has often been drawn in the service of his country, never to blacken the name of his neighbour or wound the feelings of innocence. He did not even wipe away by contradiction the filth with which he was covered; determined that the hands of his country alone shall either cleanse him from these foul aspersions, or sink him deeper in disgrace.

When pestilence and death, walking hand in hand, swept away the people of Athens with the besom of destruction, the immortal Hippocrates threw himself undaunted into the midst of the danger, and endured the extremes of fatigue and distress to assist and deliver his perishing fellow citizens. How like this was the conduct of Dr. Rush in the memorable and dreadful year 1793. He then stood foremost and almost alone to encounter and arrest the ravages of death. Hundreds of our fellow citizens, sinking under the unparalleled calamities of poverty and disease, sought relief as well from the christian charity and benevolence

benevolence of his heart as from the powerful application of his skill. If there be any who sought his attention in vain ; if there be any who were repelled with unfeeling insolence or mortifying neglect, let them declare it. For those who received from him the relief they sought, we ask them not to speak, it is not the applause of men or the tears of the grateful that he requires. The voice of conscience speaks a louder tone of applause, which the approbation of his God will render eternal—but, gentlemen, let us not forget the days of difficulty and distress, they have returned and may again return and utter dreadful reproach to the ungrateful. This flourishing city, where health, business and pleasure gave joy to every heart and ornamented every countenance, became at once silent as a wilderness, the solemn the joyless habitation of disease and death ; no longer the noise of business was heard through our streets, or the sprightly notes of mirth, but the dull sounds of the heavy hearse, and the lamentations of the wretched struck an uneasy terror to the soul “ making night heidous.” The day and the night were now the same. The rising sun brought no comfort, no joy to the afflicted, nor night its usual rest ; all was sadness ruin and despair ; commerce bent her sails for happier ports ; your warehouses no longer received or distributed the wealth of nations ; the temples of God were closed, and it was dangerous to meet together even to implore from divine mercy an issue to our sufferings—WHERE THEN WAS DR. RUSH ? Where was this man, and HOW WAS HE EMPLOYED, who has been treated as a very cut throat, or a worthless and abandoned vagabond, who disgraces the community which tolerates his existence ? Need I tell you where he was—God forbid that you should have forgotten—separated from a large and an amiable family, and exposed daily to a separation from them forever, he seemed at once to have forgotten the husband, the father, and all those tender ties and exquisite sensibilities which form the happiness of such a man, and to have contemplated himself only as a citizen of Philadelphia. He seems to have lost sight of the duties he owes to his family, and to have been devoted to the more godlike duties he owes to his country.

Twice he found himself languishing on the bed of sickness, and gasping at the gates of death, distant from his family, and almost deserted by every friend—Scarcely had he recovered strength to move, when he resumed his dangerous duties ; and often did he totter into the infected chambers of the sick, when he could not ascend to them without stopping to recover his exhausted strength.—It was for the poor and helpless too that he thus exposed himself to destruction. The rich had generally fled—How like is this to the conduct of Hypocrates—I wish I could add how like is Philadelphia to Athens. Athens heaped honors and wealth on her Physician and his posterity ; but contumely and defamation have been the reward of ours. What are the rewards that Dr. Rush is justly entitled to, ought not perhaps to be decided by his friends or enemies ; but nearly all must agree that he has not deserved the treatment he has received from William Cobbett. It has been strangely suggested by some (for this suit has been a subject of pretty general conversation and concern) that Dr. Rush's character is

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too well known and established to be injured by the attacks of Cobbett, who is not worth his serious attention, and therefore he should recover no damages in this action. I am sure I think as highly of Dr. Rush, as any of those who would in this manner palliate the conduct of Cobbett, or weaken the claims of the plaintiff to redress. But, Gentlemen, there are few characters so pure and so impenetrable as to receive the constant, unceasing attack of malicious slander, exerted in every possible form and to every possible point, without stain or injury. Of a physician this is most emphatically nice. His reputation is a fabric delicate as air, the slightest gust of popular prejudice or caprice dissipates it, even suspicion destroys it; if he is distrusted he is ruined. This notion that the purity of the object attacked is to justify or lessen the crime of the assailant, is quite novel in morals and in law. Is the virtue of the injured, to be the defence of the injurer? Should it not rather be the protection of the just? Have you a daughter of spotless virtue and discretion? Is it then no offence to proclaim her a prostitute? are you unquestionably upright and honest? Is it therefore no offence to publish you a swindler and a thief, while the real prostitute and the convicted thief would be entitled to exemplary damages?—Why, gentlemen, doctrines of this sort are so absurd, so repugnant to every sentiment of justice and propriety, that the honest heart shrinks from them as from its bane? Let us see to what they would lead us. To slander a man is simply no offence; to vilify a man pre-eminently wise and useful, is something better than merely an offence; and to blaspheme the all pure and perfect God must be highly meritorious. But to return to Dr. Rush's ability to withstand the blows that have been aimed at him: It is not gentlemen this single paragraph or that one that carries with it the deadly weight, and brings the intended victim to the ground. It is a regular concerted system of defamation, an uninterrupted and persevering attack of calumny and scurrility, in every form which they can assume. Sometimes it is made under some dark, mysterious paragraph, and sometimes in the open language of denunciation. Now fear is alarmed with a bold assurance of danger, and now ridicule is exacted by the point of a jest. Thus a net is thrown out for every weakness, passion or prejudice that is afloat in the community, and few escape the entanglement. This, gentlemen, is what scribblers call, *writing a man down*, and is a most abominable species of assassination.

Besides, although Dr. Rush's actual loss from the defendant's conduct must necessarily have been very important; yet it is not the only consideration in the case that calls for heavy damages. The utility of these actions is not merely to reimburse the pecuniary injury a man may have sustained; to pay for his character, which can have no price, but to correct vice, and give countenance to virtue; to confine the licentious within proper bounds; and give the worthy and good citizen a safe and respectable station; to preserve the peace and purity of society.—The second question then arises:—

From what motive or inducement has William Cobbett made his flagitious attack—was it a desire to inform the public mind?

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The nature of the publications shew this was not the case. They do not consist of any examination of the system and principles of Dr. Rush's practice, but merely of violent and low personal abuse.

But, gentlemen, although the entire want of every thing like a just cause of attack on Dr. Rush would justify us and you in ascribing a base one to it, yet we shall not rely even on this legal and reasonable presumption. We shall be able, by the light of living testimony to trace the low malice of the defendant to its true source. We shall trace it to personal hatred, grounded on political prejudice. You may remember, that some time past, an eulogium was delivered, by the appointment and direction of the Philosophical Society, on the late David Rittenhouse; that this eulogium was delivered by Dr. Rush. Here, then originated the first excitement of resentment in the mind of Cobbett against Dr. Rush. We shall shew you, as I am instructed, that, from that moment he determined on the attack. Long he waited for an opportunity to gratify this groveling resentment, and discharge the venom that rankled in his heart.

From the testimony of a respectable witness we shall also shew you that the defendant did not himself pretend that his attack on Dr. Rush was commenced with a view to give useful information to the public on an interesting question, to correct any errors in Dr. Rush's system or treatment of his patients, or dispense any public benefit whatever; but that he avowed to be *personal against the Dr. and not against his system*, that he avowed his ignorance whether the system was right or wrong, and declared he should have said nothing about it, had any other man than Dr. Rush brought it forward. Where, then, can be the defence, were the justification, where the apology for the infamous slanders he has heaped upon a worthy and honor able citizen? Does he not stand the most barbarous, the most wanton, the most impudent defamer that has ever existed?

Slander is a headlong torrent that rushes over the land—like a mighty water rolling from the mountain's top, it spreads and strengthens as it goes—the palace and the cottage are involved in its common ruin—nothing is so high that it cannot reach it, or so mean that it will not descend to it—let not the great promise themselves security in the unblemished dignity of their characters, nor the humble expect safety in their obscurity—like death it comes to every man's door. What is there so pure, or what so sacred that it has elcaped this cormorant of defamation. From the highest magistrate to the meanest vagabond nothing has been secure; all men and all nations have been called with an equal tone of authority to the bar of his reproach, and every law, liberty and institution has undergone his *modest* animadversions. He has assumed a haughty and tyrannical jurisdiction over every thing public or private; political or domestic; religious or moral, not only within the United States, but in every quarter of the globe. His arrogant vanity is as disgusting as his crimes are detestable. William Cobbett is indeed a phenomenon even in the courts of defamation.

He may look back on the endless list of his predecessors in the offices of scandal who have, at different times, infested society, and, although, he will find many superior in *talents, learning and wit*, he will discover few equal in *boldness and scurrility*. His opinion is the *great law* from whence there must be no appeal; his assertion, the *high authority*

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thority, from whence there must be no enquiry. Despotic dogma usurps the place of just knowledge, and the most loathsome vulgarity is offered as a substitute for wit. The eye of decency can seldom read his pages without offence, and virtue turns from them with indignation and disgust. Is there a species of editorial pollution that has not blackened them? If there be, it is because it has escaped the laborious industry, and acuteness of this *strange man*.

There is, gentlemen, no subject of political enquiry that has excited more anxiety among the people of every free country; there are few subjects that have employed more able pens, or received more frequent discussions in every possible form of argument than the *Liberty of the Press*—and yet perhaps, there is no subject now more remote from a *general understanding* or settled opinion. It is so difficult to draw the just and safe line between the proper use and the insufferable abuse of this liberty; so difficult to fix its legal or its reasonable bound; to say “thus far shalt thou go and no farther;” to say, here flow the wholesome waters of Liberty, and there begins the poisoned torrent of Licentiousness; that all that has been said, and I fear all that will ever be said, on the subject, has but little effect to produce an unity of sentiment, or establish the point sought after. Another reason may be offered for the universal uncertainty and disagreement on this subject.

The discussion is conducted, the inferences are drawn, and the judgment is formed more by the passions and particular interests, than by the just reason of the several advocates and enquirers. While this shall continue to be the case, and while the passions and interests of men shall continue to drive them to different wishes and different objects, no coalition can be hoped for on this subject. But, gentlemen, this mighty uproar about the liberty of the press, and all the violence, declamation and invective that it has excited, touch not the case of *private slander*. By a common principle of self preservation, by a common principle of unquestionable justice, by a common appreciation of the value of character, and by the dictates of honesty and sound policy, all men have agreed that this admits of no defence. No writer, no declaimer, however mad with popular enthusiasm, has yet been wild and absurd enough to claim or defend a right of wanton abuse of his neighbors character. The dispute has been how far, and in what manner, public men in their public capacities, and public measures in their public tendency, are to be investigated and reproached at the bar of the public, through the medium of the press. But no dispute has ever been had upon the sanctity of private reputation and happiness.—No question has arose, whether a vindictive enemy may, with wanton falsehood and ungovernable rage, attack, through the press, the character of the object of his hate; may distort truth and invent falsehood, may set every engine of malice, ingenuity and ridicule to work to render him contemptible and detested; to scatter misery through an unoffending and amiable family, and bring them down from a fair station in society to contumely, wretchedness and want. Yet such have been the views and wishes of William Cobbett in this case, and

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to accomplish them none of his vast resources in this way have been unemployed.

I profess myself, gentlemen, a zealous and devoted friend to the *true liberty of the Press*. I view it as a lofty citadel from whence the people overlook the conduct of their governors; encourage, approve and reward the virtuous, and crush the daring effects of ambitious oppression or unprincipled designs. The wicked stand appalled before it, and the good flourish and rejoice. But, permit me to say that the safety of this citadel in this country at least, is more endangered by the treachery, malignity and arrogance of pretended friends, than from the violence of open foes. Such friends, possessing themselves of this important station, and protected under its sacred walls, use this high privilege for the most abandoned purposes. That which was intended for the public good, is the prostituted instrument of private malice—that which was erected for the salvation of a people, becomes the foul avenger of a villain's wrath. That thunder which stood ready to assert violated rights, and protect the liberties of millions, is pointed with deadly vengeance against the domestic happiness of some virtuous family, the private peace of some deserving citizens. Nay, against the very inclosures of social order and harmony and the ramparts of religion and morality? Is this the Liberty of the Press? Are these the ends for which it was instituted and preserved? You must not, gentlemen, be made to believe that the Liberty of the Press is attacked or endangered, whenever a scurrilous printer is prosecuted and brought to justice for some malicious and profligate attack upon an unoffending neighbor. These are truly the only means of preserving it pure, valuable and undefiled. By these means only will it continue to be a blessing—to be a terror to evil doers, and a praise and protection to those that do well. Let not the fair fabric be defiled; and by becoming the base engine of malignant persecution, become the just object of universal detestation. Preserve it in its exquisite beauty; its elegant proportions, and its impenetrable strength; and let not its foundations be sapped by treacherous guardians, till its high walls totter and fall. These high toned and pretended sons of Liberty, who bawl incessantly about the Rights of the Press, while they blacken it with their detestable crimes; who tell you it is sacred, while they are plunging it in disgrace; who under its name and sanction practice the most abandoned licentiousness, and invade our most important and valuable rights, must be laid low, or they will work a fatal ruin to the liberty they abuse; pretending to be its friends, they are its most deadly foes; pretending to protect, they inevitably destroy it. To preserve the Liberty of the Press from ruin and contempt it is necessary to bring down these wretched impostors. While frequent prosecutions against the Press, are some times the refuge of tyranny shrinking from investigation, it must be remembered, they may also be the symptoms of approaching extreme depravity and licentiousness among a people. When the latter is the case, the evil is to be corrected by exposing every atrocious offender, to severe and exemplary punishment, and not by shielding him under the Liberty of the Press. To make defamation dangerous and detestable, is the only mode of preserving the press from detestati-

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on. Let this liberty and defamation never be classed together! Ask me, what are the evidences of the decay of religion and morals among a people, of the approaching disregard of every social law and duty, of the entire prostration of truth, honor and honesty, of the tottering state of government, of the bursting of the social compact and of the consequent scenes of blood-shed, revolutions and warring chaos, and I will tell you, it is a boundless multiplication of licentious libels, a public encouragement of malicious defamation, and unpunished ravage upon reputation.

When good character loses its value and protection in society, when it is fallen into ridicule and contempt, why should any man labor to obtain it? It is *excess* that is the great destroyer of all things: human excess of health sometimes shatters the human frame, and bursts the strong ligaments of life. Excess of despotism has humbled the most powerful monarchs; and excess of liberty has subverted the firmest republics. Seldom has a tyranny been overthrown by the mere spirit of liberty among the people, unless first roused, assisted and goaded to action by the insolent and insufferable oppression of overgrown power, and never has the freedom of a republic been destroyed by the bare strength of the arm of the usurper, unless favored by those disorders, distractions and consequent weakness and disunion, which the corruption and licentiousness of liberty never fail to produce. Permit me, gentlemen, to make a few more observations on this liberty of the press. Is not this at once absurd and insulting to an intolerable degree? a printer will spend months and years in unprovoked, unceasing exertions to destroy the character and fortune of a fellow-citizen, to bring him into public hatred and contempt, to overturn every fair prospect in life, and reduce him and his family to poverty and disgrace; but *this* is not *persecution*; it is *liberty, the sacred liberty of the press*. If the oppressed individual seeks redress for his insufferable injuries, and endeavors to avert the threatening ruin; if he calls upon his slanderer in the most decent and dignified manner to support his charges; if conscious of innocence, and martyrs under injuries, he determines even to put his character in issue against his vile and lurking defamer; this indeed is *persecution*, the whole country is alarmed and inflamed; the liberty of the press is attacked; the great palladium of our rights, the sacred and unalienable pledge of freedom is threatened with immediate destruction; and the poor innocent, unoffending printer, loudly demands universal sympathy, and public protection from *persecution*. Can we listen a moment to such impudent absurdity and nonsense, to such a horrid perversion of the eternal dictates of truth and justice? If Dr. Rush is guilty of persecution in applying to the tribunal of his country for the justification of his character, and the redress of his wrongs; if he is guilty of persecution when he calls his assassin to open, fair and dignified ground, to the courts of justice of his country, making the great issue between them TRUTH, and consenting to stand or fall, to be justified or disgraced by this infallible arbiter; when he puts this issue on trial before a jury of his fellow-citizens, just and impartial—I say, if this is *persecution*, what term, what language is vile, is base, is indignant enough to express a just sentiment

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of the conduct of a printer who attacks his neighbor with deadly weapons, condemns and destroys him, unheard, undefended; who, without remorse, will plant thorns in the hearts of unoffending children, and a tender wife, and tear down, with ruthless hands, the peace and prospects of an extensive, respectable and amiable family.

It is equally astonishing and absurd in this man, so loudly and so frequently to assert, that the American press is the most tame, humble and abject in the world, while his own daily publications, and those of his competitor, the *AURORA*, give so flat a contradiction to the assertion; while, from those presses there incessantly issues a pestilential deadly vapor of the most low and vile defamation; and these things are not only winked at by the law, but too much applauded by the people.—But the press of Great Britain, he says, is more free and unshackled. If it be so, so much the greater the curse. But the fact is not so. Their restraints on this most abominable species of licentiousness are wholesome and severe. I say, it is false, that the just and desirable liberty of the press is more cherished or protected in England, or any where else, than here. I say this to defend the constitution and laws of my country from the groundless assertion. We know what the constitutional liberty of the press is here, and do not our books inform us what it is in England? Is not page after page and volume after volume loaded with private actions and public prosecutions for libels and slanders? Do not we see the most exemplary punishments inflicted for them, and very properly too: and are not the rights of reputation a special object of protection with English law. Is not defamation resisted and depressed, as a most dangerous foe to the order and existence of society, tending to the introduction of the most enormous crimes, the fatal excesses of revenge. Indeed, does not Mr. Cobbett himself applaud the severity and vigilance⁹ of the English courts of jurisprudence in punishing the publisher of Paine's infamous libel on religion and morality; and in the same book boast of the licentious latitude which printers enjoy in England—Do we not know that men have there expiated on the pillory, exposed to the ferocity and insult of a mob, the offence of libelling; and most justly and deservedly too: Have we not seen a member of the House of Commons, driven from his seat and not only so, but declared ever after ineligible for the offence of libelling. And I rejoice that he was so. To discountenance and punish even to excess, indecent obscene and defamatory publications is the best proof of the virtue and purity of a people, and of the energy and stability of their government.

I shall not, Gentlemen, detain you much longer! I feel that I have already trespassed too much on your patience. But suffer me to turn your attention for a moment to the situation of the plaintiff in this cause. He has a tender and affectionate wife, who fully participates in all his misfortunes, injuries, and mortifications. The blow that pierces his character and happiness, opens a deep wound in her heart, tearing with remorseless rage all the fine fibres and delicate sympathies of conjugal love. Have these no value, that they shall be the wanton sport of base malignity? He has an amiable and valuable young family

inly just rising into that age of nice feeling and generous sensibility, when the reputation of a parent, they have ever deemed immaculate (if this be weakness, where is the virtuous child that is not weak?) is peculiarly dear and interesting! and when every attempt to blacken or degrade it, corrodes their feelings with poisonous rancor, shocks with new horror, and excites a boundless indignation. Are these things of no importance, that they shall be done with impunity? What a scene for a husband and a father? By what crimes has he merited these things? But manlier passions swell, agitate and enflame the breasts of his sons.—They burn, they burst with indignation, rage, revenge, drive them headlong to desperate deeds, accumulating woe on woe. With difficulty the prudential advice, the parental command of the father restrain their fury—With difficulty they are prevented from taking immediate vengeance on their cruel oppressor—Be patient my children, said he, I am deeply injured, but the laws of my country offer me justice, and point out the road to redress. It is tardy, but it is certain and ample. Delay may be painful to you, but the duties of a good citizen require it. This suit then, Gentlemen, and the hope of the justice that you will administer, may have been the guardian angels of the defendant.

To conclude—Volumes need not be unfolded to inform you, Gentlemen, what slander is. It is unnecessary to disgorge our libraries upon you to shew what forms of words have or have not been deemed actionable by other courts. Ask the honesty of your own hearts, consult the light of your own understandings, and let it be answered whether in a state of civilized society, where the actions of men are amenable to government and to law; where protection is pledged to the unoffending, and redress to the injured, an outrageous member of that society, in the mere sport of wanton wickedness, may attack with malignant and unprovoked virulence, the peace of another; may destroy that good reputation, which the unceasing merit of many years, and the labors of countless hours of toil, which, indeed, a whole life spent in public service and unblemished private virtue, had accumulated; may diffuse mortification and pain through an amiable family; may snatch from the father the bread with which he would feed his children; may be guilty of these enormities, may pursue and glory in them, and owe no redress to the bleeding victim of his malice, no expiation to the insulted justice of the country.—The honesty of your hearts will swell with virtuous indignation against a wretch so lost and vile; the light of your understandings will readily inform you, that the government and law where such things are tolerated, must very soon fall into merited contempt; that the society where they prevail, hangs but loosely together, and must speedily dissolve into anarchy and misery. If the injured seek in vain, for redress; if the promised protection to our lives, property and reputation, is but a dead letter, a cruel jest; if the triumphant despoiler is to go laughing from your courts, and the prayer of the injured be rejected, what is the inevitable consequence? An immediate, nay, a justifiable resort to private vengeance for private wrongs; an immediate and a necessary introduction of murder and assassination. I feel and you feel that no man has a right from

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God, from Nature, or from Law, to injure us without just retribution. I discover that that retribution is not to be expected from the justice of my country; that he that injures is borne off in triumph, and he that complains is laughed to scorn.

The alternative is obvious and inevitable. To myself and my own exertions I must apply for that justice which my country idly promises and shamefully denies. If such damages are not given, then, in this case, as will check such offences, as will convince your fellow-citizens, that this is the place where justice is fully administered, and the injured satisfied, you take upon yourselves all the dreadful consequences that may follow. Will I give credit to my government; will I call myself protected by it, because I can recover a debt of 20 shillings by its authority, or obtain possession of an acre of land, while I am denied the peaceable pursuit of an honorable and useful profession, and the enjoyment of an honest and well-earned reputation; while the feelings of myself and my family are given up as a sacrifice to wanton and malignant defamation. Let me call upon you, then, gentlemen, by the just heavens, to consider this as no common case. Let me call upon you to feel yourselves entrusted with one of the most important decisions that has ever yet been submitted to any court in any country. By your decision we stand or fall. By your decision is every man to know on what tenure he holds his character and happiness. By your decision the base and lawless are to be taught subordination, and the good citizen to hold his just rank and safety in society. By your decision, the honor and dignity of this your highest tribunal of justice, the respectability of your government, and the character of your country are to be vindicated or lost. The injured father of an amiable family, the worthy citizen, the useful philosopher now sues before you—Professional science implores that countenance and protection without which she must wither and die—Virtue, bleeding at every pore, calls for justice on her despoiler, and the anxious heart of every honest man pants with impatience to meet in you, **THE DEFENDERS OF VIRTUE, AND THE SCOURGERS OF VICE.**

{Omission in Mr. Hopkinson's speech:—in page 12, line 15, after the word *things*—read, “and the defendant has done much to produce them.”

TESTIMONY.

DR. JAMES MEASE,

WAS then called, who deposed upon his oath, that about the middle of April, 1798, while he resided at the Marine Hospital, Mr. Cobbett came down to the Hospital with a Capt. Young Husbards, who came to see a man that was landed from on board his ship, with a chronic disease. While the Captain went to see the man, Mr. Cobbett remained in the parlor with the witness; conversation being introduced

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produced about Dr. Rush's dispute with Cobbett, the defendant rose upon his feet, and with much warmth said "*Damn him, he had better withdraw his cause,*" the witness believed clinching his fist, and he appeared much agitated. He continued—"or *I will persecute him while living, and his memory after his death.*" On which the witness told the defendant he was very wrong in his attacks upon Dr. Rush's method of treatment, for he (Dr. Mease) was a living witness of its efficacy, and in his practice he had found it, under Providence, the means of saving hundreds, and he believed thousands had been saved by the mode of treatment recommended by Dr. Rush.

Mr. Levy—Did he repeat these words more than once?

Witness—Upon my telling him he was wrong, he repeated, "damn him, let him withdraw his cause."

— Did Mr. Cobbett go into any discussion of the propriety, or impropriety of the practice?

Witness—No.

DR. WILLIAM DEWEES being sworn,

Deposed, that a few days after Dr. Rush had delivered his eulogium to the memory of Dr. Rittenhouse, he happened to be at the house of Mr. Cobbett, whom he asked if he had heard the eulogium. The defendant answered no, but he had read it. I asked him how he liked it? He answered that the doctor had better have confined himself to medicine, and have let politics alone. I asked him what displeased him in it? On which he went up stairs and brought down the book, showing me the passage he disliked, but I cannot now recollect what it was. Having read it, he said, *Damn him, I will attack him for it.*— He did not say in what view, or to what effect he would attack him.

Mr. Harper.—Did you not understand him to mean that Dr. Rush had advanced some political opinions which he would attack, and endeavor to overthrow?

Witness.—I thought he meant he would attack him on account of his principles. He gave me to understand that the complexion of it was "*too republican*" for him—this was his own phrase.

Mr. Ingersol—In the division of opinions among Gentlemen of your profession in this city, is Dr. Rush one of those who are for the free use of the *Lancet*?

Witness.—Yes.

— Of which class have you yourself been?

— With that of Dr. Rush.

— Who was William Cobbett's family physician?

— I cannot tell; I attended his family myself, though never in the yellow fever.

Mr. Hopkinson—Did you use Dr. Rush's practice in Mr. Cobbett's family?

Witness.—Yes.

Mr. Ingersol.—Is that practice or system confined to the disease called the yellow fever?

Witness. By no means.

Mr. Rawle. How long did you attend Mr. Cobbett's family?

Witness.—From the return of the citizens in 1798.

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Mr. Ingersol. Have you been ever recommended by Mr. Cobbett to any other families since that period?

Witness. Yes frequently.

Some conversation here occurred about what was the meaning of "the free use of the lancet."

Mr. Dewees explained it to be *wherever the use of the lancet was necessary: as inflammatory cases.*

Mr. Ingersol. You adopted Dr. Rush's system generally?

Witness. Yes.

DR. COX, was sworn.

He deposed that on the 2d of October, 1797, a gentleman who had just arrived from the West Indies called upon him, and after some conversation told him he was soon going to sail for England; but wished before he went, to see Peter Porcupine, (the defendant) who had rendered himself so celebrated. He asked the witness to inform him where he lived; upon which he, (the witness) accompanied him to his house, having occasionally been in the habit of stepping into his shop.—After some general conversation had passed, the witness expressed to the defendant his disapprobation of his publications respecting the use of the lancet, and respecting Dr. Rush in particular, as this remedy had been recommended by him in certain cases.—He replied to my observation, said the witness, that his writing could be of very little consequence, or have no effect upon the public mind; I replied that I thought it was impossible he should imagine what he said, for he must know that all he wrote must have a very considerable effect, particularly at the time the mind of the public was so distracted. He returned the same reply adding that as he was not a physician, people would naturally suppose that he knew nothing of the subject. I observed to him then, that the effect was certainly produced; he replied that he did not believe he should ever have said so much on bleeding or mercurials, if Dr. Rush had not been the author of it.

An article entitled THE POTENT QUACK, was then read in evidence of the design, and persistence of the defendant, from *Porcupines Gazette*, of October 5, 1797, which he introduces in these words:

[*The following are Mr. Fenno, junior's remarks on Dr. Rush's letter to Brown, announcing that he had entered actions against Fenno and me.*]

Here follows the letter from Fenno's paper.

After which the defendant introduces his remarks in these words:

[*I defy the Grand Empiric, aided by all his legion of subaltern quacks, to compose a paragraph like this that closes young Fenno's remarks.—These are cutting truths for the Doctor.—They leave the mark.*]

The words referred to in the latter part of Fenno's remarks are as follow:

"The fact is, and I have before glanced at it, that a loved scheme of the Doctor's ambition met a rough blow in 1793, and in 1797 a repetition, which threatens in progress to cast the scheme and its author into the shades of obscurity. This has been effected through the
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medium of the press, and the press, therefore, is the first object whereon his vengeance is to be wreaked.—Conscious as I am, of the purest motives, and most upright intentions, I shall wait with entire composure the issue of a trial, which I have no doubt will complete the downfall of quackery and empiricism: and will at least be valuable in one point of view, as it will serve to shew on what ground stands the liberty of the press, whether it is in America an empty name, or a valuable reality—whether that to which the country owes every possession of which it can boast, aye! even its liberty and independence, shall be trampled under foot by groundless prosecutions; and all those barriers erected by the spirit of freedom, as entrenchments round poverty and obscurity, against the pride of wealth and the insolence of power, are to be rudely thrust down, and a liberticide medical tribunal established on the ruins of reason and the wrecks of common sense."

A letter inserted in Porcupine's Gazette of October 6, 1797, was also read in evidence which related a cure of the Yellow Fever by a soldier's accidental immersion in Tar. The editor, William Cobbett, makes the following inference:

[This seems an odd kind of a remedy; but I would rather Tar with the addition of Feathers, than venture my life against the lancet of Dr. Rush.]

An extract was also read in evidence from Porcupine's Gazette of October 20, 1797.

The prosecution being opened and the evidence to substantiate it read,

MR. RAWLE

Addressed the Jury to the following effect:

With submission to your Honors,

I stand up, Gentlemen of the Jury, much more impressed with difficulty on account of the extraordinary and unusual manner with which the gentleman who preceded me has thought proper to open his cause, than of any danger in which my client stands from the accusations on which this prosecution is grounded.

It has not fallen to my lot, since I have had the honour of appearing in the character of an advocate, or since I began my endeavors to obtain a knowledge of the law, to hear such serious animadversions made, or such strong stigma used on the character of any man, as that gentleman has used in reference to my client, the defendant. I could not help being struck with the comparison of that address and the publications which it was meant to implicate.—In that comparison I declare I can perceive none which deals in so strong epithets—none bordering so much on abuse, as those are with which the gentleman

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has amused you. If it were possible to commit this opening address to paper, there would be no difficulty in discriminating which was most deserving the appellation of *slander*.—Gentlemen, if you believe the declarations of my opponent, you must be brought to believe William Cobbett to be the most *insignificant* and *worthless reptile in creation*, and that under the shape of a man, he has stalked abroad *a very monster*—that for him, no justice ought to be had—that he is to be expunged from all ranks of society, that he is to remain an eternal mark for hatred, and courts of Justice are never to consider him as even the object of mercy!—Mercy, that which we all claim, that which we think we are all entitled to, seems not to be his due! Gentlemen, even your opinions and your passions too have been assaulted, and called forth in a manner, which to me, has hitherto been perfectly unknown. This human monster—this most unheard of being—every thing that is entitled to the terms of *vile* and *base*, has been represented as the destroyer of the public peace and happiness; as the disturber of the harmony of society.

But permit me to say, that this is not the way to appeal to the justice of a Jury. Justice is what even *this man* has a right to demand of you, base as he has been made to appear. You have a right to stand indifferent to the common received, or represented state of any man's character, who shall be brought before you. You are to possess no prejudices no opinions—no prepossessions. I trust justice will be your only impression in the present case. But although every effort has been used to endeavor to excite your prepossession against the defendant, every other sensation than that of strict equity, ought to be left at the door, the moment you enter this court.

On the contrary, you have heard the Gentleman amusing himself, and no doubt, agreeably entertaining his audience with representing the *highly superior* character of the Plaintiff;—he is superior to men in general—nay any man—he is an angel from God, clothed with every virtue—with every qualification, while Mr. Cobbett is nothing but a *dæmon* from the infernal regions. With you it is not left to judge of the distinction, but to you they stand on equal grounds.

Dr. Rush stands before you as a respectable citizen, who has done much to increase the good of society; but permit me say, *society have rewarded him for it*. This is his happiness, and I am not inclined to say it is not his desert. While we are entertained with such a striking and affecting picture of the calamity which has distressed our city, and the general distress experienced thereon, we are told that this good angel went from door to door, communicating his assistance freely, but no doubt, every man who so exposed himself, whatever general good he might administer, received an adequate compensation. If he has bravely faced death, he has met the lot of his profession. The common sailor, who has shipped himself on board a vessel of war, might, in the hands of my eloquent opponent, be represented as a man who has faced the cannon ball, injured himself to the dangers and hardships of the boisterous ocean, and met danger at every avenue of his calling; but what would his oratory amount to more, than that others did so, and it was their profession. Dr. Rush ought to have every
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merit which he deserves : but let it not be forgotten that William Cobbett ought to have every merit *he* deserves, and every privilege to which he is entitled—let him have every censure he deserves, and yet, I repeat, both stand upon equal ground before you. Cobbett puts himself upon the issue, and you are to decide according to evidence, and thus only.

Gentlemen, to the declaration filed, we have pleaded not guilty. We are charged with having *maliciously* written such and such things, in order to destroy the good name that Dr. Rush has heretofore borne among his fellow-citizens. We deny the malicious part of the accusation, and to obtain our right, we put ourselves upon a jury of our country, and unless it can be proved that the publications laid to our charge are of the nature designated, to wit, malicious, we are entitled to your acquittal in the action.

The malice of a libel is collected, in general, either from its necessary construction, plainly apparent on the face of a publication, or from some circumstances easily deducible from the nature of the case.

We have heard, upon the present occasion, the testimony of some medical gentlemen brought forward, alleging, that at periods subsequent to this prosecution being entered, the defendant used words, tending to show that these publications proceeded from personal malice. To me, the whole of the publications and charges appear to be free from personal, private or domestic malice. How could they issue from personal malevolence? I ask whether it has been proved, in any case, that Cobbett has endeavored to intermeddle with the family concerns of Dr. Rush? or whether, on the other hand, the whole of the publications have not been so far justifiable, in as much as they treated only on a subject of public enquiry? Most true it is that every man has a property in his own reputation—most true it is that the law has spread about the reputation of every man all the assistance possible; but there is another thing *demands* your consideration : he who exists in community, hath a property and interest equally valuable in the happiness, safety and peace of that community. To every man, these are important considerations : every man is bound by them, and his own welfare is in them—every man is punishable for a neglect of them. It is of consequence to a man, that in the society he has selected for his residence, he should see prosperity about him, otherwise he can have but little hope of prosecuting his own means for his own benefit. In order to procure this object, he will exhort all the citizens of the same system, who enjoy a common cause with him, to adopt what is good, and leave what is evil. Where such have been the efforts of a man, he is undoubtedly entitled to respect. This principle is consistent with the constitution of Pennsylvania, Sect. 3. Art. 9. And there exists no law of the state or general governments that restrains a full and free investigation of the merits of any question in which the public are interested. If in the course of this investigation expressions are used, and observations made which may fall heavy on the concerns of the person about whom he is writing, it is sufficient for the person accused, if he can show that he has not been guilty of untruths, nor entered
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into the family or moral connections of his accuser ; but that he has only thrown his mite into the public stock of information.

Gentlemen, there are few offices in society of more public importance than that of a physician, few on whom so much depends the happiness of the community. A good, skilful, laborious, honest physician, is a very valuable member of society. But, on the contrary, an unskilful, avaricious, indolent physician deserves, not only public disapprobation, but, public contempt. Private compensation, and public confidence is the sure reward of the meritorious practitioner ; but you have heard this man's character even exalted above humanity ; superior to humanity indeed must he be, if in the whole of his *extensive practice* he never committed some error ; if he never for a moment adopted some mistaken principle, and perhaps tenaciously, not to say obstinately adhered to it ! Such instances in every profession, in men the most celebrated we have known, and I presume shall continue to know. If on the *public* labors of any man in society, animadversion is admissible, on which can it be so properly exercised as on the man in whose hands, in some sense, is life and death ? Who so fit an object on whom to exercise the liberty of the press ? I sincerely trust we never shall see the day when any public character, how especial soever the qualifications of his head or heart, or how bad soever, as to exclude him from enjoying the common advantages of his good character, or secure him from just odium for his reprehensible conduct, and I trust we never shall see the time when any man, however base his character may be, should be denied that justice which our constitution and laws make the common right of all men.

Gentlemen, the Fever of 1793, it is well remembered, was truly serious and awful, a disease then almost unknown among us, so that the most wise was at a loss how to act. Different modes of treatment, and different experiments were made, but notwithstanding great numbers deserted the city, and notwithstanding the utmost exertions and ingenuity of the Physicians, about one fourth of the people who remained died. Of the number who remained Dr. Rush was one. I need only appeal to your recollections how unlimited were the publications which succeeded that fever, so unaccountable and various were the attacks, and so difficult and various the modes of treatment, that it was considered a justifiable subject of public discussion. To some of these publications I might appeal, and shew you how strong, how acrimonious was the language, used even between the members of that learned profession. The subject continued thus, for a long time a subject of public controversy, and much warmth was used. Finally, by the interposition of divine Providence, more than the united attempts of men, the disorder disappeared, and for four years we happily remained free from its dreadful ravages, conceiving ourselves quite secure from its return. However it again made its appearance in 1797. What was a subject of so much public discussion in 1793, was resumed in the subsequent attack, at that time others, besides the unfortunate defendant, who, it appears to me, is sufficiently paid for his temerity by the accusations brought against him, others took the liberty to declare, as all mankind ought to encourage them to do, what their opinions were
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of the topic. At this period we find issue from the press of Mr. Cobbett what it has been thought proper to ground this prosecution on—not for assailing the private character of Dr. Rush; not tearing open his connections, nor meddling with his family concerns, but for discussing a public question, in such a manner as others had thought proper to do before him, and were then doing. The topics of public discussion were the free use of the lancet, and mercurial purges. And who so natural, so likely to be attacked as the person who was well known to be at the head of this system of treatment, a system peculiarly adopted and recommended by Dr. Rush, and followed by his pupils. Hence the name of Dr. Rush, and the use of bleeding and Mercury in the Yellow Fever came into public notice at one period. We know that the two learned bodies in this city, who were incorporated for the purpose of establishing public confidence, by an unanimity of system, (I refer to the academy of medicine and the college of Physicians)—Those two bodies established different systems in the treatment of this disease. This certainly gave to Mr. Cobbett, allowing that he is a man entitled to the use of his faculty of reason, and the common privilege enjoyed in the United States, this surely gives to him the privilege of expressing his opinion, as applicable, not barely to the principle, but to the practice used: and what might encourage him the more, he thought that whatever he might advance, as appeared in the evidence, could do no injury, not being a medical man himself, and if he was wrong he should only expose his ignorance, which he was willing to hazard, hoping however that he might eventually do good.

Doctor Rush was at that time a very public character, and exercising an important public function: Mr. Cobbett was unquestionably exercising his constitutional right to do at that time, what others did, to examine his public transactions, in which he thought he was on the side of humanity.—Suppose we see an individual, or a number of persons running headlong towards a precipice, down which they must inevitably fall, shall I be blamed if I say to them stop, listen not to the man who advised you to take that road: I will give you solid advice, go the other way. They escape the danger, and I have done my duty. Gentlemen, however the conduct of Mr. Cobbett may appear in the subsequent part, it is plain that the system established by Dr. Rush, has not produced all the good effects he wished.

[Mr. Rawle here read a letter written in August 1798 from Drs. Physic and Cooper at the hospital, requesting advice in cases of the fever, to which Dr. Rush wrote an answer acknowledging the uncertainty of any precise method of treatment in *all* cases, and that bleeding and mercurials were not, in every stage, and every appearance of the fever, a proper mode of treatment. He concludes, acknowledging the difficulties those Physicians had to meet, scarcely ever having an opportunity of commencing their treatment until an advanced state of the disease, much of the success in which, depended on a particular *hour* of application. Some, he said, “in 1797 he occasionally lost, even after the application of bleeding and mercurials.”]—From which it appears that the new system of treatment, was not the infallible cure which

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was supposed. But whether this medicine was found to answer the Doctor's expectation, I know not, my object is to prove that there was more than one method of counteracting that disease, and that it was the business of those who had the misfortune to be exposed to the danger, to make their observations, with freedom on those various modes, as much as experiment was the privilege of the practitioners. I take the principle of the Law to be, that your minds should be well satisfied, either *from an internal evidence of the publication, or from concomitant circumstances, that the writer had a malicious intent.* This principle is well established in the books: see Buller's *Nisi Prius* p. 8. Where it is plain that the *git* of the expression must be MALICE, in order to constitute it a crime in the eye of the law. And again p. 110. same book "the words must be malicious, as well as false, to support an action for slander." If it is justifiable to show that words used with a sincere and liberal intention, in order to prevent mischief, is harmless, is not that man justifiable, who seeing a dangerous system likely to predominate, who prevents, as much as lies in his power, that system being put into action? This I consider as a very essential ground of our defence.

We contend that Mr. Cobbett exercised a right given him by the laws and Constitution of this State; no law required him to publish, but he had liberty so to do, and he is far from deserving that odium with which he is now stigmatized. That men's language, and modes of expression will differ according to their talents and education, I presume you will all allow. When I say this, I hope you will not conceive me to mean that the whole of this man's merit consisted in the scurrility with which he treated his opponent. Here I may justifiably apply the observation of Dr. Johnson, that "those who think profoundly will express themselves differently from the common acceptance." This profundity of thought could not be supposed to be an attribute of my client; no doubt, he spoke from his momentary sensations. But for communicating these observations to the public, is the law to be appealed to in this solemn and expressive manner? Is the strong arm of justice to be called up, because the little forms of society are supposed to be attacked by an individual! No, such is not the fixed principle of the law, nor of common justice. The law will be found to state it as a principle, that in no instance where the party has gone wrong through the impulse of passion—beyond the bounds of strict decency and propriety, that for this cause alone, the plaintiff is to recover damages. Salkeld 693 says, that "to say a justice is a fool, an ass, a blockhead, or a buffhead, is not indictable, unless the words are in themselves such as show an intention to deprive the party getting his livelihood." These are rough expressions, but it appears not indictable.

[Some distinction was here remarked by the court to exist between words that are "indictable," and words that are "actionable."]

Mr. Rawle contended that unless the party could show that he had sustained some injury by the using of the words, no damages could be laid; but he observed that their opponents had not thought proper to prove any special damages, from which it must be deducted by a jury that none were sustained.

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In discussing a matter of public interest, the amount of damages, if the jury should think proper to find for the plaintiff, must depend on the situation and ability of the person who undertook to discuss it. Besides, the powers of men's minds are not always alike. Truth is frequently attacked by ridicule, much less can we expect a public profession to remain exempt. Pope says—

*“ Safe from the Bar, the Pulpit and the Throne,
“ But truth is touch'd by “ ridicule” alone.”*

The enquiry always is in the case of scandal. “ Is it a matter in which the interests of the nation are implicated?” If it is not; if it is a matter of public discussion, as in the present case, it has ever been considered as harmless, though perhaps poignant ridicule. We find nothing in the declaration but words which relate to the public practice and medical system of Dr. Rush. We were told that proofs of the malicious design of our client would be produced; we have heard the evidence of three persons brought here to prove the malice asserted. But neither of them has related an item whereupon to found that accusation. A clear proof to me, and must be to you, Gentlemen, that no malicious design, a temper and disposition absolutely necessary to the conviction of the defendant—no malicious design did exist.

The effort made to support malice from the evidence of Dr. Dewees, respecting the eulogium on Dr. Rittenhouse, to me, is very feeble; for, from the words of the witness and the concomitant circumstances, it is clear the attack was to be of a *political* nature, on account of political principles publicly delivered. Change it, and say it was to be against the man, it must be proved to have been carried into execution.

Another gentleman relates a conversation with Mr. Cobbett in Oct. 1798, about the consequences of his publications. Mr. Cobbett then declared that he did not think his writing could have any effect, and at last he declares that he should not have attacked the practice of Dr. Rush, if the Doctor had not been the author of it. The true meaning of that expression, it will be difficult for you to ascertain: but if you understand it not fully, you are not to receive the least impression from it. Perhaps it was this: if it was an obscure practitioner, a man of no note, it would not be worth my notice. But mark the difference. If a man, such as the Doctor has been held up to you, —not only the first in America, but almost, if not quite, in the whole universe; such a man inculcates principles, and draws others into the adoption of them: a new system in the hands of such a man merited Mr. Cobbett's attention, in his editorial capacity; and I think he was justifiable in thinking him a proper person for attack. Gentlemen, there must be something more than mere suggestion; there must be something to prove the viciousity of the writings; or you must give a verdict for the defendant.

Our client is absent, he has rested his case with you to give your decision upon his rights of publication; we claim that right for him, a right which every free man is entitled to at your hands, and for him, I think we shall not claim of you in vain. The farther exami-

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nation into the publications and the evidences produced, I shall leave to my colleagues, who I have no doubt will be able to prove to you that no such malice as is charged, is intended or is any way included. I will only remind you of one apparent inconsistency in the reasoning of our opponent; If the system and practice of Dr. Rush has been so useful, so infallible, as you have been made to suppose, in order that you may give judgment for large damages, it is natural to suppose that the feeble efforts of Mr. Cobbett could not destroy his celebrity, or injure that system, and therefore it could be but little or no offence for him to express his opinion.

With you I shall leave the weight of my arguments; we have no evidence to produce, but I trust you will see the justice of our defence.

HON. MR. HARPER.

Gentlemen of the Jury,

THE question in this case is not whether the plaintiff is a physician of eminence, a man of worth, a peaceable citizen, a good father, or a tender husband,—was this the point to be discussed, we must shrink from the opposition, and allow the claim to be in his favor, nor is it whether our client has offended against decorum, and every principle of civility and good manners,—or it would be equally difficult to make out a defence. The question is, whether, in these publications, contained in the declaration, which has been read, the defendant was actuated by a design to injure Dr. Rush in his personal character, or to injure him as a physician, or to run down and laugh out of countenance a practice which he considered would have a mischievous tendency. Gentlemen as you must be of one or the other of these opinions, your verdict must be for the plaintiff or for the defendant: If from the whole of the testimony you should be of opinion that the defendant, in making these publications, was induced merely by a desire to overthrow a system of medicine which he thought mischievous, you are bound to give him your verdict. And, why? Because this action is brought for the *malicious* design with which it is said he used those expressions.

What is malice?

Malice in its present application must be an attempt and design to injure the plaintiff in his personal, or in his professional character. When this ingredient is not made out, either from its appearance on the very face of the action, or by direct inference, the action of slander cannot be supported. This is an obvious and incontrovertable fact. No man has a right to attack another in his professional pursuits, so as to rob him of the fruits of his industrious efforts, but every man has a right to attack a ruinous system, and whether a system is ruinous or mischievous, *he* who makes the attack, and *he alone* is to be the judge, because if I lift my hand against a set of opinions or practices which I hold to be evil to society, I must first suppose my liberties or privileges, or those of society to be in danger, before I should exercise my freedom of opinion.

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I will admit that if, in the combat of opinions or practices, I throw any unnecessary personal reflections, and attack the individual holding those opinions, if I go beyond his opinions, and abuse his person; if I go beyond his person, and traduce his character, then indeed the pretence that I meant only to attack his opinions, would not avail me in a court of justice; it would be supposed merely a cloak, merely a fallacious excuse, and therefore would fairly be actionable, and subject me to punishment. The question, then, will recur whether William Cobbett meant to attack Dr. Rush's system, or his personal and professional character? If the latter should appear to be his design, he surely has stepped beyond due bounds. The utmost latitude of admission that I shall grant in this case is, that if attempts are made to bring a physician into general disrepute, then the injured party may claim retribution from the laws of his country. Having gone thus far, let us enquire how far these ingredients exist in the present case. Whether there be, in the paragraphs upon which this action is founded, any thing from which malice can be fairly and properly deducted, or whether the only design of the defendant was to overturn, if he could by argument, that part of the practice of Dr. Rush which consisted in "BLEEDING" and "PURGING" in the yellow fever.

We will read the paragraphs, compare the evidences with them, and see whether this disposition is contained in them.

[Mr. H. here read the paragraph of September 19th, 1797.]

Before I enter into the examination, I will admit that the same studied language which well-bred men ought to use, is omitted, and that the same stile and decorum is not used which, if I were to combat a public system, I should think it right to use.—But are we to wonder at it? Are we to wonder that writers, in a controversy, in which they had excited so much acrimony, even among the members of the faculty themselves, should be led too far? Nay, have we not heard it strikingly exemplified in the conduct of the Gentleman who opened this cause! Gentlemen in the Legislature do not always avoid this unbecoming practice of personal abuse. But although that fact would not justify the man, ought we not to look with some little excuse upon the author of a newspaper? If this consideration ought not to pardon the offence, it ought at least to extenuate it.

Laying aside what is merely indecorous; what is merely harsh language, let us enquire what is the substance and meaning, and the total amount of the charges.

Having read the article entitled "*Medical Puffing*," Mr. H. asked if there was any thing like slander in that piece; if so, hardly a newspaper which was printed in the United States, but might be made a subject of enquiry by a Jury.—I do not, resumed Mr. H. justify the language; but what does it amount to? It calls an eminent physician a remorseless bleeder. What is that? It is that he pursued bleeding too far. But have not some of the most respectable medical men said that it is remorseless and destructive? There are such. The idea conveyed is nothing to you; whether bleeding in his practice, is pushed too far, or whether it is not a subject of your enquiry; but whether this man meant more than to expose that system which was extreme in his view

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is a proper subject for your enquiry. Was it not wrong that a ruinous system should have been persisted in, when human life was so materially connected? This was so considered by him, and he thought it his duty to expose it. I am well convinced that it was not only unbecoming language, but I believe it to be very untrue, but is it a slander? No, it is merely unmeaning ribaldry. Suppose, I say, a man is in the habit of getting himself puffed in the paper: he may be laughed at, but could do nothing in it. He might get himself puffed, and yet be a very able physician.

"Blood, blood, they cry more blood."

To be sure this is very hyperbolic, but strip it of its exaggeration, and is it not true? Was it not common, during that period, for these ideas to be reiterated through the papers and pamphlets of the city day after day? *The free use of the lancet, the free use of the lancet*, was constantly repeated by the medical men in favor of that system.

As to calling a man a shameless silly puff, and in general, the letter of Dr. Tilton, wherein he is called a sour wry-faced democrat, I do not know how it came to be introduced, or what it has to do with an action brought by Dr. Rush! I have heard a very good character of Dr. Tilton, but if he is "a sour wry-faced incorrigible democrat," I am sorry for it. As to the epithet of "Master bleeder," I see no harm in its introduction; it is no slander, but an high eulogium, raising him to a pre-eminence, rather than giving any abuse. The question respecting mercurial purges is then introduced, "Is it good for Sans culottism, Doctor?" I wish it was, gentlemen, for if so, it would be a ready cure for a great number of persons, who, I fear, are now utterly incurable. Comparing mercury to Sampson, and speaking of its ravages, Mr. Harper did not conceive it personally applicable to Dr. Rush, but to the system, which was particularly pointed at in reference to the "Rushites."

Not Dr. Rush but his partizans, which amounted to nothing. Is it slander, said Mr. Harper, to say to a gentleman, when we contend in another place, (Congress Hall) that certain political opinions go to the subversion of Government, or in other instances tend to rob the country, &c. No, far otherwise, a great distinction is always held between a man, personally, and his principles. Miserable would be the times, were it not so, and much more miserable would it be if we could not be permitted to call in question the practice of a physician, without being subjected to an expensive action for slander. The only meaning of these words is, that it is a mistaken principle to attach to certain practice the virtue it has not, for that it has occasioned the death of many, rather than recovered them from disease. If the words had been that Doctor Rush killed more than he cured, it would have been actionable on good grounds, but it is only vaguely the "Rushites," &c.

The next paragraph is in 25 September, signed "a tavern keeper." Here we only find Dr. Rush's name mentioned as having published a book on the yellow fever, and his being a great patron of the art of blood-letting. This is known to all America and Europe, it has never been denied, but it is not slander. It might with propriety be called a piece highly ridiculing the practice of blood-letting: I believe it

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was so intended—but shall such a piece of *ridicule* be made the foundation of an action of slander? If so, some of the most admired productions in every age ought to be considered as slanders. In every age ridicule of this sort has been resorted to, and where it does not run into scandal it is approved. But I say this does not, and I know you will say by your verdict, that it does not run to that length.

Mr. Harper then read the article inserted September 26, 1797, which he contended contained nothing injurious to the reputation of Dr. Rush as a physician, nor as a man, nor would it tend in the least to deprive him of a livelihood, one of which must be proved in order to substantiate the action. As to the terms “potent quack,” and “medical puffer”—the words are very indecent, but it is always a principle of observation that such *low, unmeaning ribaldry* always recoils on its projector. Far be it from me to justify, or even extenuate such language, but that it is no offence in a law view is easy to prove. Contempt is the only punishment it can have.

Next Mr. Harper took up the article of September 29, 1797, preface “A PUFF equal to Dr. Rush’s.” Here Mr. H. said was a puff introduced the most ridiculous and absurd which could be conceived, and he called it *EQUAL* to *Dr. Rush’s*. Surely he said it was *EQUAL*, and it could be no slander to say so. It was very indecorous to be sure, to bring in the name of so respectable a character as Dr. Rush, when such an extravagant piece was introduced, but it did not tend to lessen the man in his reputation and fame, and therefore could be no slander. This Spillbury had invented a remedy to cure impurities of the blood, but was it not a more perfect cure to let out that foul blood? Certainly so. The indecent epithet of *master Sangrado* he could not defend; it was very unbecoming to apply it to so respectable a character. But suppose a man was called after in the street by this name, could he support an action for slander upon it? No, actions of slander are not to be brought for *abuse* but *injury*.—This *Sangrado* is mentioned in a novel as a famous quack, who used to take blood and give water to his patients until he brought them to the grave.

Mr. Harper again contended, that from the whole sum of the evidence it was clear that not the man, but the mode of practice, which he considered dangerous, was the object of attack. He then took up the article inserted in Porcupine’s Gazette, Oct. 5, 1797, extracted from Fenno’s Gazette, subsequent to the action being entered, which he said, the greater part of it, was only an extenuation, because it expressly says, that none of the paragraphs made the foundation of the action, were meant more than to combat “an erroneous system.” This printer considered himself to be unjustly assailed by the action, and therefore it is no wonder if the subsequent publications are acrimonious; but is this a proof of his criminality in the first instance? Even those subsequent publications go principally to the system, and say very little about the man himself. If the malice was intended at the time he ushered the publications for which he was sued, he would not have waited to display it in the future ones.—Gentlemen, the subsequent publications cannot support the action, as they took place since the action was commenced, and flow only from the resentment natural to

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a man who considered himself unjustly prosecuted; they cannot therefore be called as a proof of the motive with which the first were written, except the malice had been plainly expressed in them, which is not the case.

Verbal testimony is next produced: three gentlemen of respectability for their age, appear in court, but I am sorry the action could not be supported without resorting to private conversations, perhaps used in confidence, and certainly without a view of its going farther than the spot where it was used. This particularly referred to the two first. But it may be laudable in the gentlemen to come and volunteer themselves in support of a man, their friend and patron, whom they consider assailed. I will admit that the expressions used by the defendant, was proof of his vindictive spirit, and were very improper, but I ask what influence it can have on the action now before you? This strong resentment was in consequence of his being sued by Dr. Rush. If it proves any thing, it is that the defendant was certain of the injustice of the action, he having, legally speaking, done no harm, at which his mind revolted, and being very much agitated at the mention of the suit by Dr. Mease, the ebullition of his inflamed mind burst forth into an unwarrantable expression. Is this the mark of *malice*, settled, cool, deliberate malice? Malice speaks less and does more, than is apparent in any part of the defendant's conduct. You may call him ill tempered, unamiable, harsh, &c. if you please; in so doing you do him justice, but to call an hasty expression, *malice*, is a perversion of terms.

The testimony of Dr. Dewees amounts to less than the last. The defendant was displeased at certain passages in an eulogium spoken by Dr. Rush, and he said the Doctor had better have confined himself to medicine. This to be sure was very impertinent, for he had nothing to do with it; but it was not criminal. What he meant by its being "too republican" does not appear. I have read it, and with pleasure; but he or any man certainly had a right to find fault with it, if they disliked it. He farther said he would attack the Doctor about it. Does this mean that he would commence a vindictive attack upon the Doctor, and endeavor to wound him in his reputation or profession? No, gentlemen, this is not to be inferred. It was a determination to attack the principle advanced, to expose it to ridicule, so that it should not have the effect which it was intended to have. It could not possibly refer to any attack on his business, and therefore cannot stamp a malicious intent upon words used for another purpose so long afterwards. It appears that Mr. Cobbett did afterwards employ Dr. Dewees in his family, and recommended him to some of his friends. I am very glad of it, I believe him to have merited that recommendation, but this is no proof that it was not to the system, but the man that Cobbett aimed at, for although Dr. Dewees was employed by him in other cases, he might not have done it, had the yellow fever come into his family, if he had, it would have changed the question, and proved the scandal.

The evidence of Dr. Cox goes only to prove the opinion of Cobbett that all he could say would do no harm, since the attack upon the bleeding

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bleeding was well known not to have flowed from professional knowledge. This was paying homage to the character of Dr. Rush.—If a man of no note had introduced the system, he would not have said a word about it, but since a man of Dr. Rush's talents, had advocated it, it was an object worth attacking with all his might. But wherein is the coincidence between this testimony, and that related by Dr. Dewees? The circumstance of the eulogium occurred in December, '96, or in January following; but the evidence of Dr. Coxe relates what did not occur until the September following, that if Dr. Rush had not been the promoter of this purging and bleeding system, he should not have thought it worth while to say much about it. There can be no relation or connection between the two, because one refers to expressions which he denominated "too republican" for which he meant to attack him; but the other is wholly bent towards his system of physic. It was the weight of authority, so great a man as Dr. Rush being at the head of that *disapproved* system, which called forth, not his malice, but his animadversions. It does appear to me that there was no appearance of the ingredient which the law calls malice, and which is necessary to vitiate his conduct, through the whole progress of the discussion, and that this man was not injured in his name, fame or reputation: in his name as a man in society, or in his domestic connections; in his fame as a man of skill and profession; or in his reputation as a Physician, and consequently there is no slander to his character.

We have heard much of the family of the plaintiff, and of the keen feelings of his respectable wife, of which not a doubt can be entertained. I should never have thought it my duty to have hazarded my respectability by standing here to advocate a man who should slander so eminently useful a character as Dr. Rush, or his very respectable wife or family: far be it from me, I should rather have consigned him and his cause to the fate it would deserve. My professional name should never have borne the blot such conduct would justly attach to it. But this I conceive not to be the case. That my client has overstepped the bounds of good manners and decorum, I have admitted, but that he had a right to run down what he believed to be a mischievous system, I have contended for, and still wish to impress upon your minds. His conduct must meet with strong disapprobation, but agreeable to the rules of law and justice he merits your verdict, because neither a breach of good manners, nor harsh opprobrious epithets can be construed to mean *slander*. How reprehensible soever his conduct, if he has not slandered the good name, fame or pursuits in life of Dr. Rush, I repeat that William Cobbett has a demand of justice at your hands, and that is to acquit him of the declaration.

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MR.

MR. MOSES LEVY.

BY YOUR HONORS' LEAVE.

Gentlemen of the Jury,

THE enquiry before us is of a nature to demand our most serious consideration. From the attention which has been given to it throughout the discussion, by you and the Court, the utmost candor is evident, and a just conclusion certain. The suit you are now to consider should be perfectly open to your understanding; its nature should be explained, and some of the errors corrected which have too generally escaped from the counsel for the defendant, though, I presume without intention.

This is not legally a special action for slander; it is true the action is to recover damages for grievous and unprovoked slander, but in its nature, this is an action for a libel. An action for *slander* and an action for a *libel* is differently understood in courts of justice.

Words may irritate and rankle; they may even blast the character of a man upon whom they are spoken, but they perish the moment they pass out of the mouth of the speaker, and the shortness of their duration lessens their importance. But what is committed to paper,—what is *printed*, has a lasting impression, and is capable of much, and universal mischief. It exists through ages, and is not confined to the seat of its birth, but may extend even to the remotest parts of the earth. There can be no bounds of its effects. If slander, then, is punishable by the law, with how much more nicety should reputation and private honor, be guarded from attacks by writing. For words, however public, the law has therefore provided no punishment: the law does not consider the public peace so far injured thereby, as to command the public officer to issue prosecution. But words committed to paper demands more attention, because more extensive are its effects. Taking notice, therefore, as the law does by this pointed distinction between words spoken and slander committed to the press, the offence is defined.

In relation to words spoken, see 3 Blackstone 123, "Words which may impair, or hurt a man's trade or livelihood, as to call a tradesman a bankrupt, a *physician* a quack, or a lawyer a knave." These are an exception to the general proposition which I have laid down, that words are harmless. These words are considered as a good ground for action, because they attack in a vulnerable point, and it remains with the defendant to show that there was no malice intended in the use of them. Thus we find that the burden is put on the defendant.

Another way of attacking a man's reputation, and a more serious one is by printing, writing, exhibiting pictures or signs, &c. so as to set any one in an odious and diminutive light, see 3 Black. 125. Every libel has a tendency to breaking the peace, by provoking the person libelled to break it. It is unnecessary to multiply authorities to prove the law is pointedly against the defendant, he having written what

would have been a libel even if spoken. I shall take it for granted then, that this newspaper attacking of Dr. Rush, as "quack," "potent quack," "grand empyric," &c. "who had slain his tens of thousands," is a gross and infamous libel, except it should be made to appear otherwise by extenuating, and giving it a mild aspect.

Gentlemen, the principles of law laid down by my colleague, in his opening address were just, and consistent with the English books of law. If, for a moment, his zeal carried him into a state of effervescence, for which he is blamed by our opponents, it is what the most moderate man, who is warmly attached to reputation and character, who has read what was inserted against the plaintiff, can scarcely refrain from showing. Who could refrain a warmth of expression at seeing a worthy, valuable citizen so lavishly abused without provocation; without ever appearing to have spoken with the defendant, or even glanced at his principles or conduct. Farther, we find this malevolent intention repeatedly pursued in, even after a prosecution was commenced.—It certainly will not be, nor has it been contended, that character is not a sacred thing; no one shall touch it with impunity. Character is the road to private happiness and public confidence and honor. Destroy the characters of men, and it dissolves the union which blends together society, nor wealth, nor real merit can conceal contempt. So careful is the law to preserve character inviolable, that even the memory of the deceased is sacred, and the offence of traducing that memory is punished by law. It is not enough, then, to prove that the slander cannot operate to injury; no, the imputation cast upon the memory of the dead, might lead to acts of violence between the living, and thus the peace be broken. Such a libel as this upon the character of a man, even after he had been dead fifteen years, would be sufficiently atrocious to justify an indictment and punishment.

If the importance of reputation is so expressly acknowledged by the laws of this country, and if these laws are deemed so essential to the public peace, how are they to be carried into effect, but in one of two ways, legally.—First by public prosecution, in which the defendant is not at liberty to give the truth of the libel in evidence, or secondly by an action for slander, in which he is at liberty to prove the truth, which if he can do, exculpates him from legal blame. Of these two, Dr. Rush was not at a loss to know which was most proper for him to adopt: it was reason enough for him to commence a civil action, because it gave the defendant an opportunity to bring forward the truth in justification, if he could do it. This civil action being commenced, you are the organs through whom alone we claim justice. A jury taken from the mass of the people, is a permanent and invaluable institution; they can best estimate the value of private or public character, and dispense justice in proportion to the quality of the offence. The office of a jury is permanent; however the persons composing it, may vary or die, yet the institution ever remains, and they are the judges on whom the law has rested property, personal liberty, and personal character. In cases where a jury estimate damages too high, wherein damages can be easily estimated, the court have a controlling jurisdiction over their verdict, by ordering a new trial, and referring it to another

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ther jury. But in an action which refers to character, to chastity, or to the honor of an individual, you are the uncontrolled judges. Matters of property the court is supposed to be able to estimate, but of the value of character, &c. the jury are supposed to be able to give the best judgment. If therefore the character of a valuable and respectable man is wantonly and wickedly attacked, it lies with you, as the guardians of your fellow citizens, to estimate the damages. You have characters of your own, and you know the importance of preserving them inviolate; all of you follow some business, and you cannot be ignorant of the violence and effects of an attack on the means you use to execute that business. You, who are merchants, must conceive the danger a newspaper publication, declaring you a bankrupt would be to you: it would wound your reputation so as to effectuate your ruin, by stopping your credit and your trade. It would be no excuse to your opponent to say it was but a jest, because the defamation would be effected, and you must suffer. Picture to yourselves, if you can, how you would feel, if precisely situated as is the defendant! of what avail would it be to you to be told that it was only *ridicule*? Suppose an infamous picture was put before your door—suppose a pair of horns, describing the conduct of your wife, and that repeatedly, would you be satisfied at being told it was “*a test of truth*” and that “*ridicule could do you no injury*?”—Suppose it was a label put, that you were guilty of this or that species of swindling, or worse, suppose this to be inserted in the newspapers,—suppose that instead of low, indecent, and ruffian-like vulgarity, you were attacked with a keen satire,—would it be to your benefit that you were cut with a *sharp* knife? No, it must have a direct tendency to ruin, or material injury, and notwithstanding the utmost use of philosophy in calming the mind, to say it is only ridicule will not avail to compensate the injury.

Let us enquire what was the situation of Dr. Rush at the time this slander was circulated. He resided in Philadelphia, and it was at a period when most had deserted it who possessed property sufficient to make their escape, from a sense of the danger to which they should otherwise expose themselves. He had property to fly, but he chose to remain. Can you suppose, Gentlemen, that he remained here unruffled? His object in staying could not be to enhance his private property, for it could not be profitable for him to stay when most or all of his profitable patients had gone. No, his object in staying was the general good—to mark the steps of the disorder, and the sensible effects of the remedies which he applied, and to lay before the public a series of facts and observations which might in future, either keep the pestilence out of our land, or if invaded again, restrain its progress.—Yes, at this important moment, in the execution of a great service; when every citizen of Philadelphia ought to have acknowledged their obligations to the man who would brave Death for the general good—instead of public thanks, the great points for which he was contending, and the great labors he was executing, were attacked in a public newspaper with the most degrading ridicule, scurrility and vulgar jest. Yes, the defendant then infamously attacked his professional skill, in order

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to bring the man into derision, and depress his name as one of the most dangerous of the human race.—Gentlemen, what does such a man deserve; a man who does not claim the honor of a single *stick* among us; a man who has taken the presumption of degrading the most respectable characters of our country, from the President of the United States to the lowest citizen, whenever their sentiments have happened to come in contact with his. In the course of this cause, he has sworn himself an Alien, and in another cause he has declared his intention of returning to his own country. Yet this man who professedly declares himself of no country, pretended to wish Dr. Rush had stuck to his medical profession, and have let alone politics! This man could not be supposed to be interested in the politics of our country; he no doubt would have taken the part of his own country, when in collusion with this, for he glories that he is not the citizen of a republic. And shall he be permitted to revile a respectable citizen of this country for doing that, which, if he had not done he would have merited censure, or at least not merited that good name now so justly given him. Dr. Rush had uttered some sentiments which were “too republican” for Mr. Cobbett. This furnished a clue to the subsequent attack which he made, not with a view to correct the medical practice; not to prevent the introduction, or stop the ravages of a dreadful disease—no, he stopped, as far as he was able, any examination into the truth; as much as he possibly could, he weakened the force of the mind engaged in those useful researches by clamor and abuse, and the ground was, because he was a *republican*! What could he mean by this declaration, that he would attack him for it? The result will answer. While his republican opinions gave the offence, why did he not attempt to show that those opinions were founded upon wrong ideas of government? But not one word was ever seen upon that head. No, his attack was designed to be on a part more useful to his vicious designs, and more injurious to the man—on his reputable name as a *Physician*. This will account clearly for the distance of time between the threat and its accomplishment. In January 1797 he threatens, and keeping in his mind the offence, he began not to put it in execution until September following. The arrow which was stuck in his side, he did not attempt to draw out at the moment of resentment, but there remaining it grew stronger as it grew older—it must remain until a fit period for making it felt. None so fit as when his practice of Physic was at its height, and the mind of his patients the most weak and susceptible.—Men differ much in opinions; to attack him therefore upon the republican principles, he had laid down would not do; that was an injury not sufficiently extensive, he would not attack him there; he would wound him to effect. Accordingly at the moment of trepidation and confidence he cries out “Dr. Rush has been the death of thousands.” Thus he produced by skill, what argument would never have effected.

It is said Cobbett has the same right to offer his opinions, and to the liberty of the press which others enjoy, and to examine public questions, &c. for which the constitution is appealed to; but permit me to state to you the principle that though a right to examine into the conduct

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dict of public officers and discussing public questions is there given, a right of responsibility for that examination is likewise given, in case of the abuse of that liberty. Admit that he has the right, (though in another case it has been declared that aliens have not similar rights with citizens) there is still much reason for jealousy, because, as he has not the same interest at heart with citizens, not expecting to spend his days here, his discussions of public questions should be carefully looked to. Indeed I think the "cloven foot" is plainly observable in his writings. There is a something appears at the bottom, though it might not comport with his interests to avow it. Suppose this man was investigating a system, or searching after truth, which he had a right to do, are these researches to be made with vulgarity, defamation, and scurrility? Is this the way to come at truth? Are not justifiable researches made by others, and with success, without it? Surely you must all think this the most likely way to defeat his pretended object. The true mode, if I wish to convince of an opinion, is to reason with the understanding, and not traduce the character, and opinions of my pupil or opponent. What would the American people be thought of, if they could not be convinced without low abuse? And what our Courts of Justice, if this slanderous usage was to be permitted with impunity?

The press is of incalculable benefit; it is the great road to information. The nature of man is formed to aspire after truth, but it cannot be expected by initiation, it must come into the minds of men by a series of steps, one leading to another: the press is a very important help to this progress, because by it we discover in one part of the world what has transpired at the most distant part from it. Thus improvements in arts and science are made. It is for its inestimable general use we value it. Do we value it because it furnishes any man, who is able to purchase a set of types, and paper, with means to blacken another man's character, so that old age, virtue nor chastity cannot throw a shield round the victim of his envy?—It is necessary to encourage the press, but shall it be done at the hazard of character—of all that is dear to man, his very means of subsistence? If so, instead of increasing our knowledge and happiness, it would operate as the greatest curse upon frail humanity: There is no principle in government, in Philosophy, or in religion, that is so sacred but the fangs of envy might successfully attack through the licentious use of the press. But if the aim of an individual is to improve the sciences, or the happiness of man in any way, whatever be his mode, he ought to be protected and encouraged. If his reasoning is fair and candid; if his arguments are addressed to the understanding; if he shews a design of increasing the mass of knowledge among mankind,—to him the press ought to be free. It is by this means man is wrested from ignorance, and made as near to angelic as his nature will admit. If the defendant had taken these means to obtain his object—to *destroy what he thought a ruinous system*, as is pretended, far would it have been from the plaintiff even to have blamed him, much less commenced a suit against him. The opinions of Dr. Rush were circulated from an idea that they were just; he submitted them to public search and enquiry. How were they to be

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be answered? who were the people to be convinced of their propriety or impropriety? Do the mass of the people know how to form a just judgment on it? As for myself, my education, habit of life, nor leisure has enabled me to form any judgment upon it; and I presume few of you are able to say whether the system of Dr. Rush is false or true. At the period alluded to, Philadelphia was in a distressed state, and owing to the prevalence of the same disease in several parts of the union, commerce and wealth have been considerably impaired. Did this man endeavor to lessen that affliction? were his efforts directed to promote public happiness, or to satisfy personal animosity? Gentlemen, you must determine these points. Did he accompany his arguments with a single scientific remark, or give a single argument as to the origin or necessary treatment of the disease, as though he wished to alleviate the prevailing distress? Every thing proves that he wished not to improve the system, and why should he? he had no incitements; he declared his design not to spend his life amongst us, and of course had no common interest with us. To him it was not an object whether Philadelphia was desolated or not. Perhaps, indeed, the reduction of trade here would give him pleasure: the diminution of the growing wealth of the principal cities of the United States, might afford him gratification, since his own country must otherwise receive impressions from our prosperity. No, it is evident he did not wish to develope error, to convince men, or increase public happiness, or he would have used arguments to show the fallacy of the practice established. But he knew not, nor cared any thing about it.

I shall now proceed to prove, by the most irrefragable evidence, the *previous, concomitant, and subsequent malice* of William Cobbett, from the testimony you have heard.

There was a previous intention of attack. Before the writings issued, the design was formed. Whenever an act shall appear, that corresponds with a previous declaration, we may justly conclude a coincidence therefrom. Thus, should a man say, "I will raise such an army, and oppose such a law:" if in nine months after, such things are done, the circumstances are blended together, and it is supposed to be treason. As we observed before, the circumstances of January and September, '97 are coupled so as to be impossible to part them. He then really fulfilled his promise, endeavoring to make Dr. Rush appear as odious as possible. I can see no excuse for such epithets under the name of *ridicule*, but I will say, any writing that tends to set a man in a ridiculous light is a *libel*. The words used to ridicule the plaintiff, might excite a laugh, but that is not all it ought to excite, as the honorable Gentleman supposes, who spoke just now. Shall the attack salt, the elegance of language, or the keenness of a satire, excuse a man's abuse? Of what comfort would you think it to be cut with a *sharp* knife, and should the offender be excused, because the weapon was keen? Shall a man dare to bring the President of the United States, or the Congress into contempt, and he be excused under the name of *ridicule* and *ribaldry*? No, the laws of the United States, and of the States, provide that notwithstanding the keenness of the expressions, a libel shall be punished. It is not justifiable merely because

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because it is calculated to excite a laugh. Does not the defendant represent the plaintiff in an odious point of view, and ascribe to him the murder of his fellow creatures, by the use of bleeding and mercury? Can there be a more severe attack upon a medical man, or upon his art than this? What kind of man must he be, who follows a particular system with callous heart and murderous hands, when he sees direful effects attending that system? Who would follow such a system of slaughter as this is represented, but the most abandoned and unfeeling wretch; and who would employ the man that should so embue his hands in blood?—This “potent quack;” this “murderer;” this unfeeling empyric, rejoices at the murder of his fellow-citizens, and has no other way of getting over his misanthropy, than by eulogizing himself, or getting some weak men of his own profession to eulogize him!—Gentlemen, I ask if this does not set the plaintiff in a ridiculous point of view,—a fit object for the detestation of the world?

With respect to Spillbury's antiscorbutic bill, it is an exemplary specimen of quackism—an universal nostrum worthy universal contempt. “There master Sangrado, beat that if you can.” Meaning, by writing letters, and getting eulogistic answers purposely to puff yourself. In my opinion these words, and the words “a puff equal to Dr. Rush's” means no more nor less than that Dr. Rush has equalled it, and therefore is an empyric. On the second of October Dr. Cox called on Cobbett, when he advised him to withhold his publications, as he could not calculate on the injury they did. Notwithstanding this evidence of their ill effects he went on publishing on the 5th, 6th and 20th of October, increasing the aggravation of his crime. He said if any other man than Dr. Rush had done it, he should not have so gone on. Was it that he thought Dr. Rush high in his profession, and therefore the most proper object whereby to attack the system? No, I think it quite otherwise. Could any man hear the gentleman who spoke last, complimenting Dr. Rush on this pre-eminent station to which Mr. Cobbett had exalted him, without laughing? Can any man think him sincere? I agree it was all the honorable gentleman could say, because a case like this must necessarily put ingenuity to its last shift, and leave genius without even a plausible resource. No, we know better. He had called the Doctor “Sangrado” “potent quack, &c. :” he has aspersed him with “killing his tens of thousands by his preposterous practice” and can it be supposed, after all this, that his writings were directed against the Doctor for his eminent skill, and that it was honorable to him? No, we can trace it but to one cause—*private, personal malice*, without the least regard to public duty, or public good. He declared he would attack, but little did he expect that this avowal would ever come against him.

“Let him withdraw his action, or I will persecute him while *living*, and his *memory* after he is *dead*.”

What an heart has this man? My colleague has been blamed for keen expressions, and violence of attack. But what is violence? Gentlemen of the Jury, I wish you to remember that what is violence without evidence, is truth with evidence. To call murder only assault and battery would be a perversion of terms. To call malice, “*fun*”
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is as much so. To say that the defendant had malice at heart when he used these words, I therefore contend is evident without a doubt. Perhaps he used this violence for another purpose. I could name a person who fell a victim to the malice indefatigably thrown at him through this very news paper. A man that should use such threats, could not be supposed to use his weapons but to the most base intentions. And shall a man of this base disposition teach Americans politics? Shall this man deal about the Theorems and Aphorisms of the medical art, and examine systems of practice which he does not even pretend to understand? Can there be any case of malice more express than these words convey, or a better key found whereby to explain his writings? If express declarations are ever admitted as proofs of the meaning of writings, (and certainly they are) there can be no doubt, here, of the existence of the overt act in six or even eight instances: if it was possible to give a more bright coloring to the transaction, it was done by the subsequent publications in which the respect which every man owes to the Law, is highly violated.

We live in a land where the public transactions, and the officers of government are to be regulated by written rules; these are well known; these rules give to the people their duty of obedience to the Laws, and submission to the higher authorities; it limits to every man in society, how far he can go; it punishes transgression in the one class, and violation in the other. If any individual, therefore, shall dare transgress these laws, he subjects himself to the punishment they inflict. Therefore if any action is brought against a man, he is not thereby to be irritated! Upon the doctrine advanced by the honorable gentleman, as imprisonment would undoubtedly irritate any man, he would have a right to break prison, and murder any persons who should stand in his way. An action would be a great irritation if justice was less certain than we happily enjoy. Well, instead of submission to the operation of the law, what does he do? He continues to issue out from his press, new libels, calculated to increase his crime. The suit was commenced in the beginning of October 1797, the whole of the publications of the 5th, 7th and 20th of October were subsequent to the commencement of the suit. Can there be a doubt, then, that the true cause of Mr. Cobbett's publications against Dr. Rush, originated, not with a view to improve the medical practices, but to disgrace and villify the individual? Was Cobbett capable of judging of, or is he acquainted with the structure of the system, or its relative parts? Can he point out how the different treatments operate on that or any other disease? Can he show how a certain mode of administration would relieve one, while it would destroy another? Was he skilled in the science of anatomy or medicine? He does not pretend to be; Nay, he declared that he had no knowledge of it at all! He plainly confessed that his essays were not to inform the public mind, but to ridicule a certain system, for he supposed no-body would take notice of his writings. Gentlemen, his hardihood has left every act and declaration upon which he is called to answer, or which proves the charge, without a single equivocal on which the mind of any man can hesitate.

We do not contend that Dr. Rush has established the true mode of practice

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practice : he thinks so, and has given to the world his reasons for thinking so. But the case does not rest upon that point, it is all one to you whether his practice is right or wrong. Did Cobbett say that he knew a better mode? No. He endeavoured to rife a public laugh upon Dr. Rush, and put him forth in a most degrading point of view, at a moment when drooping humanity found no longer a basis in its own surface ; when the state of the city was enough to appal the stoutest heart ; when the confidence of men in general was placed on the advice of this man ;—at that moment his reputation is pulled down ; his mode of treatment, almost the only one then practised, is destroyed, and no effort is made to put another in its place! Dr. Rush does not pretend to say he is right ; he thinks so : But the superior genius of Cobbett *does* presume to declare that he is wrong, and that he has killed his tens of thousands, though at the same time he declares he does not know whether the mode is right or wrong! The true system is not discovered perhaps, nor ever might be : it might be like the dreadful earthquake that desolates the world, no means ever found to arrest its awful progress. It lies behind a veil through which the human sight cannot, and never might penetrate. But our duty and our interest requires that, though we may never find the cause and cure, we should be indefatigable in our endeavors to do it : perhaps we may only find the mode of avoiding, by keeping out of its way. But is it probable we shall ever be able to discover any means of prevention or cure, if the man who stays making those researches in times of imminent danger, in addition to the natural alarm distracting his mind, which mind at that moment ought to be the most strong and penetrating, to spread all its sails and catch every, even the most minute idea—How, I say can we expect the fever to be subdued, or kept away from our doors, if an individual shall be suffered to vend his malice on such a man at a period so momentous? Suffer that with impunity, and no efforts will ever in future be made to appal this soul destroyer, no man will fortify himself for the illiberal attack. Gentlemen, consider this in a public, or in a private point of view, can there ever be an instance in which a plaintiff can come before you more entitled to your just verdict, or a defendant with less claim to your verdict? Can a case occur in which there is less to plead even for extenuation or excuse of the crime? Gentlemen, reputation is sacred : an injury done to honor can scarcely be redressed. How can youth acquire prosperity or affluence, or age respectability, if that character, which is the foundation of success in every profession, may be attacked with impunity? If upon property there is protection, but there is no protection for character, justice is but partially administered, and it is time now, if for the first time, for an American court of justice to show the world that character is property, and a property most sacred. But I hope our courts of justice have proved this whenever called upon so to do. Who can say when a man is attacked in his reputation how numerous the chinks through which he may sustain injury? When this shaft is directed by malice and ridicule, how are we to depreciate the value of the injury done? How much might it not prevent a young man progressing in business? And does the attack upon age lessen the crime : a time when

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the experience is matured, and studied labors become eminently useful? Who knows but this scandal might have prevented thousands from applying to Dr. Rush for advice? We see the defendant stand upon the high ground of boasting of his income, from the number of persons who bought and read his papers: we may thence conclude that this slander extended very wide, and therefore to attempt at forming an estimate of special damages, would be fruitless. To prove this negative, would be impossible, and therefore cannot be expected from us, for who would come to Dr. Rush and say, "I should have employed you, had not I read such a character of you; you have murdered thousands, and therefore I could not trust my life with you." To estimate damages must be your province agreeable to circumstances.

Gentlemen, the question of damages often came before the courts in England, of which we have some accounts in the books, and they are not always guided by pecuniary circumstances, but more to enforce the law, and show example. The law has there estimated the fine for seducing a man's wife at ten thousand pounds sterling. Here is no pecuniary injury sustained, but a very heavy fine laid; for often it may happen that a man has a bad wife, and her loss is a real profit to him, but this is not the measure of the fine. Though less than that sum is usually laid, yet it is always exemplary. We find other cases mentioned in the books. 2 Willson, 206. A journeyman printer, in the office of the North Briton, was seized for publishing No. 45 of that paper. He was seized by an order of the secretary of state, and detained but six hours in custody, and during that time treated with beef stakes and beer. On examining this in a court, to which it was referred, the jury gave 300l. sterling damages. The fact was, not the pecuniary injury sustained by the man was considered, but the political consequences—the liberty of the subject, and therefore the award received the approbation of the court. In 244 same book, 1000l. was awarded for a false imprisonment of six days; also p 252 there is a case of assault and battery. In all these, the consequences were considered. 3 Blackstone 126, notes there was 4000l. damages laid for a reflection on the chastity of a lady. These, gentlemen, are instances of exemplary damages, and that is what we ask for in the present case, by your verdict. Doctor Rush has a wife and children arrived to ages capable of reading newspapers. Can any man set by with patience, when he sees his children crying, or his wife in tears in consequence of the perpetual newspaper abuse lavished upon a tender husband and a loving father?—abuse and reproach the most heart-rending—no less than a murderer and a quack. Suppose yourselves for a moment in his situation, and say whether the measure of this newspaper libelling ought to be confined merely to the damages any individual could sustain from it, or whether it ought not to be made a public example of, on account of the principle. It is high time to rescue the American character from the indifference which has too long prevailed amongst us, while we see the characters of our unoffending fellow-citizens consigned to infamy. If it has hitherto been too much disregarded, let not this be so, for surely it is time to punish crimes so daring. This man has declared, that he would "persecute the defendant while living, and his memory after

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after his death." How can you check this vindictive spirit, but by timely and exemplary punishment? Let him be taught that he has wantonly attacked, and that with cool deliberate malice, an unoffending individual, and though he has removed himself out of the jurisdiction of this court, yet that he is a marked man; and that a respectable jury of Philadelphia have studied only principles of truth and justice with impartiality. Let others be taught by his punishment to avoid his offence.

On the other hand, let not Dr. Rush be a marked man for defamation, and his name be remembered with scorn. Let it not be said to him "your character is so infamous that no slander can defame it." Nor let it be said that the immaculacy of character, against which he drew his shaft, was such as to excuse or protect the insolent offender from damages. If Cobbett has never injured the character of Dr. Rush, it is evident he has attempted to do it, and with his utmost efforts—but I think he has injured it. He certainly has wounded his feelings; he has hurt his health, and he has wounded him in his family. There cannot be a doubt but he has wounded his fame and reputation, and of course his pecuniary interest. As I think you must be of the same opinion with me in these particulars, I shall content myself with confiding this case to you, and as I am sure nothing in the conduct of Dr. Rush has merited such infamous treatment, so sure am I you will do him satisfactory justice.

MR. TILGHMAN

READ a letter written by Dr. Rush to Dr. John Rogers, from the Philadelphia Gazette of October 3, 1793, in which he describes the symptoms of the yellow fever then prevalent, and also the method he conceived the most proper to cure it.

He also read extracts from two pamphlets lately published, containing observations on the origin, &c. of the malignant billious or yellow fever.

MR. LEWIS read extracts from Porcupine's paper of October 19, and 21, 1797, wherein are extracts from Gill Blas, where a conversation occurs between Gil Blas and Sangrado. The latter extract is headed thus: "To Doctors Rush and Caldwell."

MR. TILGHMAN then addressed the jury as follows:

Gentlemen of the Jury,

I AGREE most heartily with the council for the plaintiff that if you came into the bar, previous to being sworn with any prejudice whatever, you ought to lay it perfectly aside, and consider the cause, which you are called to try, fairly between man and man: you should come with minds, in the language of the law "like blank paper," and receive such impressions only as law and evidence must make.

William

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William Cobbett, my client, though an alien, is entitled all the advantages which law and justice can bestow; and if he can satisfy you that damages ought not to be recovered from an *American* standing in his place, no damages are to be given against him.—The plaintiff demands damages of my client for certain publications written by him, said to be libellous, on his professional reputation and character, to support which much has been said, but what deserves particular notice is, that the plaintiff's council are *tremblingly* alive as to the character of Dr. Rush, while Mr. Cobbett is treated in terms utterly destructive of all character and reputation.

This was not what I expected in any case whatever, and especially from the gentlemen whence it came, whom I much respect. Gentlemen, you are not to pay regard to the contemptuous light in which the defendant is held by the plaintiff's council: you are not to measure your verdict by their resentment. One gentleman in order to show the contemptuous light in which he holds Cobbett's opinion, has said he must extend his duty beyond the ordinary limits. There can be no doubt but his zeal for his client induced him to go an extravagant length, or he would not have stiled the defendant an assassin (which he has twice done) and a noxious animal thrown up from the very dregs and slime of obscurity, a being which has no equal in society, taking his tigers strides to do mischief, and guilty of every species of editorial pollution. Farther he condemns him for his *litigious* disposition. Where, I ask is the evidence of this disposition? It is not before the court, nor has it appeared in his conduct, for he has not appealed to the law to redress his wrongs, but has used another weapon, his pen. So far has my friend's zeal carried him, that he declared he could name an individual who was brought to the grave by this man's publications. These are vague and unproved assertions: words which have no tendency but to inflame your minds, but I can only impute it to a zeal, the improprieties of which they know as well as I am able to inform them. May we not suppose, after all this that Mr. Cobbett is a man more sinned against, than sinning? For while abuse and detestation is his lot, Dr. Rush is daubed with praises so lavishly that he must almost have blushed to hear them. He was compared to Hypocrates, at Athens, having done so much as to be entitled to public thanks, and yet the public are much divided as to the efficacy of his means of treatment, but more particularly so as to his opinion of the origin of that fatal disease.

Further. The defendant is said to be an alien, and to owe no allegiance to our government, and that his discussions of public questions show the *cloven-foot*.—With respect to country, it is a principle that every *alien* who comes here, does owe allegiance—a temporary allegiance. So long as he stays to receive the benefit of our laws, so long he is answerable to them, and is bound to respect them. I am far from contending that the defendant is immaculate or infallible, yet I must say that he is not without some merit. He certainly did, (whatever his motive, whatever *cloven-foot* he might have had concealed) at a critical period, give a very seasonable and proper alarm to this country; an alarm which did much towards uniting our citizens in an attachment to preserve the honor of our country, and which tended

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tended much to rescue us from European influences and attachment. As he began, so he persevered, and we are not without experiencing its good effects. Twice were bills of indictments sent to grand juries, who proved his innocence of the charges exhibited against him by his opponents, by returning both of them *ignoramus*. However, all this is foreign to the question at present, but the plaintiff's council having departed to *derogate*, we may be allowed to *extenuate*.

I agree with Mr. Levy in his statement of the law; he certainly has stated it with precision and accuracy, and I must do honor to his talents and candor. It formerly became my duty to state to this court, that every writing is on the face of it independant of collateral matter (which does not appear upon the face) either criminal or innocent.

First, If it appears on the face of it to be innocent, or not libellous, still it becomes criminal and libellous, if written with a particular *intent* of a *criminal nature*—then such intent must be proved.

Secondly. If it appears, from the face of it to be criminal or libellous, there may, from the occasion, be justification or excuse.

In each case, the criminality or innocence depends on collateral matter, not appearing on the face of the paper.

Lawful excuse is justifiable either in legal proceedings;—Representations of an injury, &c. even when the publication is in a newspaper: From a sense of duty, and not with a malicious *intent*:—Or in confidence, or with a view to reform and amend.

Generally. *Publications must include MALICE or a CRIMINAL INTENT either express or implied.*

I agree that if the jury should find the words themselves to be libellous, then the plaintiff can recover damages, to prevent which, it would be his duty to show that the intention was innocent.

A case to exemplify these doctrines, is found in 2 Burrows, 807. “This was an action upon the case for speaking and publishing defamatory, false, malicious and libellous words, of and concerning the plaintiff, Sir John Astley.”

The defendant applied to the plaintiff (a justice of the peace) for a tavern licence, and was refused: on which account, words were used by the defendant, which were supposed libellous.

Lord Mansfield in the case spoke thus, page 810:

“The charge against the defendant is made upon oath, and supported by the affidavit of Sir John Astley, and of the *defendant in answer* to his complaint: he mentioned the charge, and denies it with this conclusion, calling it “what Sir J. A. has so FALSELY sworn against him.”

“Now in every dispute in a court of justice upon oath, where *one by affidavit charges a thing*, and the other *by affidavit denies it*, the case is, ordinarily, *much the same* (in effect) with the present, and each party might bring a civil action against the other; for it TOO often happens that the affidavit and evidence *are* in terms DIRECTLY OPPOSITE each other.

“As to the reason of the thing, there can be no SCANDAL if the allegation is *material*, and if it is not, the court before whom the indignity

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dignity is immaterial scandal, may order satisfaction, and expunge it out of the record, if it be upon the record."

Thus we see that though the defendant was charged with swearing that Sir John Astley had "forsworn himself, and he (the defendant) would not do it for his whole estate," yet, although the expression "falsely" was rather *too rough*, it was not taken notice of.

I must agree with the gentlemen, that had I been engaged in opposing Dr. Rush's opinions, I should have deemed it very improper to have used such *coarse* expressions. This brings me to a more close and immediate view of the subject.

The fever of 1793 you well remember. Dr. Rush staid in the city, no doubt, from a sense of duty : no doubt this operated strongly with him, but it cannot be supposed that he had no sense of the profit : he expected to be paid for his labor, but notwithstanding that, his exertions did him very great honor. I do not pretend to justify such an attack on the system he practised, but I do not think that condemning the *system* was libellous. I am sure that when he came to take even 70 or 80 ounces of blood he was under the most perfect conviction that it was necessary to save the life of his patient, and that in all his practice he was actuated by the most honest motives. But the most sensible, ingenuous and ardent man ; the most indefatigable in his exertions, is most strongly impressed with new systems and ideas, when they come plausibly supported. Inquisitive minds, like that of Dr. Rush, are not of a cast to boggle at adopting strong measures, especially when convinced of their utility. To us it was new : the use of mercurial purges and bleeding, to so vast an amount, was entirely unheard of by us, and therefore it was no wonder that the practice should spread an alarm of nearly as serious a nature as the fever itself.

Doctor Rush was so confident of the success of his system, that in a letter addressed to his fellow-citizens on the 12th of September, 1793, he assures them "there is no more danger from it, when these remedies have been used in the early stage, than there is from the measles or influenza." But with all his success, and though he stood *foremost, and nearly alone*, as his counsel say, there was a destruction in that year of nearly 5000 persons. Notwithstanding so many perished, though he stood almost alone, and notwithstanding the novelty of the remedies, and the great applications of bleeding and mercury, the public mind was extremely agitated and divided as to the efficacy of them. What was still more extraordinary, there is no man whose persuasive softness and tenderness of manners is more likely to attract the confidence and acquiescence of either pupils or patients than those of Doctor Rush. But stories of bleeding and purging were much exaggerated in the relation, so as to harass the public mind extremely. Indeed the physicians themselves were much divided, and even parties were formed to support the different systems. The event of this was a creation of animosity and newspaper contention. Of course this increased the public alarm, and dreadful was our situation. One set of Doctors contended this was the true mode, and the other another. In this state of uncertainty and indecision things remained until the fever again unhappily broke out in 1797, and with it the Doctors' quarrels, on account of
which

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which numerous publications issue forth. Nor even were the respectable learned institutions exempt: the College of Physicians and the Medical Academy. I believe the difference between those bodies still exist.* Doctor Rush said again, and much to his honor. It is said that the great point for which he said was frustrated.

Gentlemen I ask by whom it was frustrated? Can it be believed that it was frustrated by Cobbett? Whose opposition to Dr. Rush was most serious, that of Cobbett, or that of the Doctors? As you are not sure it was by Cobbett, but must have good ground for believing the other more *potent*, there can be no doubt where his disappointment originated. Or, I would ask, was it frustrated at all? No doubt the Doctor did much good by staying, and as the dispute was so undecided, I do not believe that any person would be prevented from applying to Doctor Rush for assistance on account of Cobbett's publications.

In September 1797, out comes Cobbett's first publication. I do not mean to vindicate the manner of the attack, but my client has been charged with calling the defendant a *murderer*. Now, Gentlemen, I appeal to your consciences, can any man who reads the publication look upon it as any thing like a *serious charge* against Dr. Rush as a *murderer*? I am very sure that you will all allow with me that he meant no more than a ludicrous attack upon the system of which he certainly was the head.

What is murder? It is to kill a man by *malice prepense*. It cannot be supposed that the defendant had an idea of so serious a charge. There were numerous skirmishes among the Doctors, and he skirmished among the rest with the only weapon he possessed: *Ridicule*. In this sense "ridicule is surely the test of truth," however the ingenuous gentleman may have used it. I ask, then, did this proceed from *cool deliberate malice*, or was it ridiculing a system which he supposed to be ill founded? If he had meant that Doctor Rush went on murderously rejoicing at the direful effects of his system, it surely would have been a libel of the most egregious nature, but the idea cannot be proved, even by the greatest ingenuity. That William Cobbett had a right to attack that system or any other we contend is indubitable, however small the stake he had among us, or however short his intended stay, if he used no improper words in making that attack. I allow, with Mr. Levy, that it is incumbent on the Defendant, when brought into the court, to prove that he did not use the words with an evil intention; with respect to this, we contend that if he exercised his abilities with a view to the public safety, he exercised them not only innocently but laudably. I submit to you that the publications include no design to render Dr. Rush, in his person odious, or to injure him in his business. However free he has been in his attack upon Dr. Tilton, or any other person, he has here only attacked *mercury* and *blood letting*. If he ever disapproved of the private character of the defendant, he has not exemplified

* The difference was explained to exist at present only as to the origin, whether by importation or of domestic source. With respect to treatment they now both agree with the system of Dr. Rush.

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exemplified it: the physicians were the main battle, and great was the shock, but Cobbett was a mere skirmisher, on the practice and not on the man.

I speak in reference to the publications mentioned in the declaration, for though the plaintiff's council have a right to read any other publications, it is only to shew the *quo animo*, or design with which the others were written.

But the malice of this man is said to be *deep, antecedent, concomitant and subsequent*.—All this I deny. The testimony of Dr. Dewees is called to prove that it was *antecedent*.—Sometime in 1796, Doctor Rush delivered, on occasion of the departure of Dr. Rittenhouse from this life, an *elegant eulogium*—too *elegant* to be forgotten.

However, there was some little of that sort of *spice* in it which was not pleasing to Mr. Peter Porcupine. It was *too republican* for his taste. I do not know what Dr. Rush's political sentiments are, but if they are of one sort, I should dislike them as much as Cobbett. If of another sort, I should approve of it, and perhaps not think it *too republican*. But that is to be no measure for him; he had a right to attack them. In a conversation about the merits of that eulogium, he says "Damn him, I will attack him for it." This, to be sure is very illiberal, but he did not say in what way he would attack him, or that he meant more than to attack him as a political man. There is no evidence of any private malice that *Peter* had in his heart, nor can it be contended that this eulogium was the ground of his attacks, mentioned in the declaration, for had it been so it would not have rested so long in silence as from January 'till September. No, from the representation of gentlemen themselves, he was of too combustible a matter to keep it so long. If it made any impression at all, it was not solid, for if it had, I think it would have been out of the power of *bleeding and drastic purges* to do it away. He was angry, and expressed his anger in a very coarse way. Well—In September came the attack. Is into the *man* or the *system*? It has appeared that Dr. Dewees practised upon the system of Dr. Rush, and yet he attended Cobbett's family. This is brought to prove the man, and not the system was the object of attack! I ask whether, if there had come an alarm of the fever during Dr. Dewees's attendance upon Mr. Cobbett's family, he would have been suffered to use Dr. Rush's system? If that had been done, then indeed there would have been reason to conclude *the man* was attacked. I cannot but consider this circumstance respecting the Eulogium to be an attempt to draw the attention of the Jury from the real merits of the case, tending to establish a belief that there was deep settled malice, which he kept in his breast during that period, growing deeper and stronger in proportion to the time it existed in the mind, and therefore, gentlemen, you are earnestly instructed to give verdict for the plaintiff. On the same account also, the question is asked why Cobbett should wish a reform in medicine? and it has even been hinted that he might wish to leave the disease without a cure, and might not be displeased with the misfortunes of Philadelphia, because it would diminish the commerce, and probably serve his own country. This surely is too much to say of any man, but tho'
serious

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Serious, I have no doubt you will put the whole of these insinuations upon a candid footing, and decide only upon facts. As to his wishing to leave the disease without a cure, it is absurd, for he stayed in Philadelphia during the fever of '97, in which situation, he subjected himself to be the first victim of his own envy ! This is what I think you will scarcely believe.

In the evidence of Dr. Mease it appears that Cobbett made use of a very intemperate expression, but having been sued, he might be idle enough, knowing himself to be master of a very bitter weapon the pen—he might think he could thereby induce Doctor Rush to withdraw his action. If so, he was guilty of a very great misconception. He was very wrong, but I rather think it must have been the effect of haste, without any evil intention. Gentlemen, upon your oath, try if you can couple these words with those spoken to Doctor Dewees ! I think you cannot.

As to the words to Mr. Cox, I am of the same opinion with Mr. Harper : that he would “ not have written against the system, if Dr. Rush had not been the author of it.” It was paying a very great compliment to Doctor Rush. This appears to have taken place about the time the suit was commenced, and to have been pressed upon him by Doctor Cox. Doctor Cox himself seems to believe it to be an attack upon the system. His view was no doubt to preserve the life and health of his fellow creatures, many of whom, in his opinion, suffered from this mode of treatment, and therefore he did his utmost to point out the danger.

Upon this part I shall not remain longer, since I think neither “ keen, private, nor personal malice,” as has been pretended, can be proved. Gentlemen view the whole together as Mr. Levy said, and if you see all this “ fixed, keen, private, personal malice” against Doctor Rush, then you must give verdict for the plaintiff. But I consider that the great alarm which existed in the public mind at that time, many deeming the practice in question to be no less than poison, and death—If such was the alarm, and such the apprehension, for which I appeal to your recollections—then, I say it was not improper to point the shaft of ridicule against the system so replete with danger.

But, Gentlemen, suppose you should be of opinion that the Plaintiff has been injured by those publications, and damages ought to be awarded, the next question that occurs to you is *what ought those damages to be ?* It has been a question asked by the plaintiff's counsel “ Who knows how many have been prevented from applying to Dr. Rush ?” How a negative can be proved I cannot conceive ; neither he nor I can tell *who has been prevented* ; that is entirely in the dark. Doctor Rush's Counsel, when they drew up the declaration drew it upon special damages. Near the conclusion of the declaration are these words ! (*The said Benjamin*) is also thereby greatly prejudiced in his business practice and profession of Physician, and practitioner as aforesaid, *many persons have been induced to withdraw their confidence from the said Benjamin, as Physician, aforesaid, and the following persons, who were previously accustomed to employ the said Benjamin a Physician as aforesaid to wit :*

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"The *mountains* are in labour, and a ridiculous *mouse* creeps forth"!!

Where, then, are the instances in which Doctor Rush has received damages? Wherein is he injured?—all the industry of those Gentlemen could not find out special damages, or a customer withdrawn. It appears that such was Dr. Rush's reputation, that he is not injured. You knew what this reputation and character is at present. I do not mean by this that, if you discover the expressions to have proceeded from *malice* you are to give any damages; but you must be guided by the injury sustained in a great manner. Has not Doctor Rush from 1793 to 1797 and from 1797 to 1799 been in as great business as he could do?

Plaintiff's Counsel.—We say No.—We can prove from his books that his business has materially lessened since this newspaper attack commenced on him.

Mr. TIGHELMAN.—It is said that Mr. Cobbett violated the law by subsequent publications. I grant that, from the moment the suit was commenced he has done wrong in doing or saying any thing until the trial. So far he was liable to punishment, but not in this way, nor at this time. He was liable for contempt of Court, and if Dr. Rush had complained, he could have been committed for that contempt. The moment a suit takes place the law says the parties ought both to be silent, *because everything ought to come before a Jury*, who shall not have their passions raised, or be prepossessed in favor of either party. Therefore, this does not prove that he shall recover aggravated damages.

One of the Counsel has supposed libels to be the sources of numerous evils, and laid down the position that to secure good government you must punish libels severely; thus severe punishment would be the best criterion of a good government! I trust this will never be a law principle; that no person will ever be punished, not even an *alien*, to prove how good the government is. How fatal would be the administration of Justice if this was law! To what severities would it not lead!

It has been said, that you are the uncontrolled Judges of damages. In matters of debt or property, there can be no difficulty as to the estimate of damages proper, and then the Court will not suffer what is easily perceivable to be an extreme award. But, in civil suits, as in an action for Slander, when damages are uncertain, and difficult, the ascertainment of those damages are more peculiarly the province of the Jury, though in that they are not perfectly uncontrolled; but the Court will not grant a new trial, unless the damages given are "outrageous;" unless, "at the first blush, all mankind would revolt against it." Farther, they are not uncontrolled, because they are to consider the Plaintiff's suffering, and the Defendant's ability to pay. Would you give against William Cobbett the same damages as against a man with an hundred times the property? Surely not. You must consider the circumstances of the man. There has been no evidence adduced in respect to the circumstances of the defendant, but it is a rule in Courts to fine the party *not to his ruin*.

The

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The Counsel has told you, that if a Physician's character is suspected, it is ruined. Then may I say that Dr. Rush's is not only not ruined, but in as high credit and reputation as can attend a physician, and therefore not even suspected, and if not suspected, he is not injured.

It has been said, that if damages were not given sufficiently high, persons would take the law into their own hands, and the Jury must take the consequences, therefore you must give high damages to avoid being implicated yourselves! Gentlemen, pay regard only to justice, and leave the consequences; measure the degree of injury received on the one hand, and the ability to pay on the other, and thus estimate your damages. Remember, that although the doctor may have a right to damages, his reputation will not in the least be affected by your not giving him *large* damages.

I pass by the gentleman's appeal to the just heavens, and his piteous scene of crying children and a weeping wife, because I know you can only estimate this as an appeal to your passions. I shall, therefore, only proceed to examine the cases referred to you.

The case in 2 Willson 206 was a flagrant violation of the liberty of the subject, by unjust imprisonment, and 300*£* was not too high an award, though the imprisonment was short, and the treatment good. The Secretary of State was there exercising arbitrary power by taking the man up upon a general warrant. Thus it struck the jury. "To enter a man's house by virtue of a nameless warrant is worse than the Spanish inquisition: a daring attack;—an attempt to violate *magna charta*," said Lord Campden.—A more dissimilar case to the present cannot possibly be cited.

The other case p. 244 of the same book is also on a general warrant. The case 252 called the turtle case, was an unprovoked and unreasonable assault and battery, where the damages ought to be great, but the defendant was able to pay.

It is disagreeable for me to make any observations on the letter which I was impelled by my duty to read at the commencement of my defence. You will collect from that letter a few ideas which I think may prove that the Doctor has not only been intemperately, but uncommonly severe upon every one who had the misfortune to differ from him in practice. He has said "As well might there be two suns or two moons, as to suppose that two sorts of fever prevailed in that year," although so many different symptoms made their appearance. His treatment of the Health Laws is extremely severe, he does not only speak against the physicians, but against the Legislature itself. One solitary instance of good might happen therefrom, but upon the whole he declares the laws very destructive. Though he does not handle the objects of his attack in strains so strong as Cobbett does, yet he is extremely severe. If he suffers himself to be led to such great lengths in his attacks, upon his brethren, the Physicians, and upon the Legislature itself, I trust you will not consider him entitled to as great damages as though he had been silent.

Gentlemen, with these remarks, I leave the cause to your decision, and repeat that I hope, if you should consider the plaintiff deserving of damages, you will consider how little injury he has sustained, and what

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are the defendant's circumstances; but I trust you will believe, with me, that none of these publications flowed from malice, and that nothing in them was meant to injure the Doctor as a man or as a Physician, but to attack his system. If these are your opinions, you must give a verdict for the defendant.

WE THEREFORE

MR. INGERSOL.

With your Honors' leave.

Gentlemen of the Jury,

THE Counsel for the Defendant have dwelt much on an observation which is very trite, but certainly very true; that the understanding is not to be trusted when the passions are engaged.

I will therefore endeavor at present, to suppress my feelings;—the honest indignation which, in spite of my efforts is ready to burst forth; and examine calmly the facts; I will approach your passions through the fair and honest medium of *your understandings*, and if I succeed, as I think I shall, in shewing that every *tittle* of our declaration is supported by the clearest proofs, then I contend that your sensibility ought to be excited. For, give me leave to say that any man who can believe the testimony we have produced; he who reflects on the particulars stated, with a full conviction of their truth, and then remains wholly unmoved, must be callous, and lost to every honest sentiment of humanity.

What, Gentlemen, is the nature of our complaint? Is it of a common, or of a peculiarly aggravated nature? Wearing himself out in the duties of his profession, the Plaintiff, like a saving *Angel*, arrested the arms of Death, exposing himself, when it was difficult which most to admire, the profundity of his professional skill, or the vigor and benevolence of his mind, that bore him up against the dread of infectious scenes, which the stoutest Hero could not have approached without trembling. While thus employed, the foul attack is made; he is announced to the world as a “Quack—Empyric—Potent Quack.” and “Grand Empyric,” and the confidence of his Patients is withdrawn; he is represented as either by design or ignorance, destroying “thousands and tens of thousands” of his fellow citizens. He is represented by this printer, as the exterminating Angel, going through the streets and heaping dead bodies on each other, and practising little arts and tricks to support his reputation, which would disgrace even a mountebank.

This is only an Epitome—The particulars I will detail to you as I go along.

One of two things you must do; you must either say that the character given by Cobbett of Dr. Rush—that he is a Quack, Mountebank, &c. is just, that he has, either from ignorance or a bad motive, de-

stroyed

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stroyed his fellow citizens, and deserves to be banished not only this city, but society; or the alternative presents itself—You must believe the suggestion is false and malicious, that his well earned character has been wrested from him, for which the offender should pay damages;—compensatory they cannot be—but exemplary—such as should mark him hereafter as the most aggravated calumniator, and detestable of characters: one whom neither sense of honor, of duty, or of propriety will restrain. Let the offender know that though the Law has *Lead*en feet, yet it has *Iron* hands: that though slow in its operations, it is direful when once it catches its prey.

The charge consists of these particulars:

First, The Publications.

Secondly, Its Falseness.

Thirdly, its Malice.

With regard to the publications, when you take the papers out with you, you will find them to be a *burthen* of defamation, so that his press groaned under the weight of—not to say “ribaldry” but the most severe, atrocious and indecent personal abuse. You will please to observe that in this instance we do not pursue a *Journeyman* Printer, as in the case of Gen. Hamilton at N. York. There was some pretence urged for pity; but here we bring before you the Printer and Editor; not the printer only, who may suffer an innocent victim, from the concealed name of his correspondent, whom a sense of honor may induce him to secrete, but the editor himself, who made it his constant practice to *villify* and traduce the unoffending, and in these instances, the man whose upright conduct, and useful labors would have been supposed to remove him far even from *suspicion* of ill fame.

Instead of resorting to an Indictment where Dr. Rush might be a witness, we come fairly into the field with an action which puts the parties upon an equal footing. The question is not now whether the truth may or may not be given in evidence, but we invite the conflict. If William Cobbet can substantiate any thing against Dr. Rush, he may now come and do it; or he may come and justify himself if he can, but *that* he pretends not to do; the publications are not denied, although loaded with such atrocious *villainy*.

The defendant had his choice to *take* one of several courses; he might say all these things were true, and pretend to substantiate them, or he might say he did not mean it as it has been construed; or he might say “I have been very rash and unguarded in my treatment of an injured man, and upon reflection, I am at war with myself as much as you can be with me.” But what has he done? He has undertaken to justify himself in the acts. I appeal to your honors whether it has not always been the practice in Pennsylvania, when a defendant has not endeavored to prove his disavowal, but persisted in a justification of himself, and aggravation of his offence—whether in such a case, the guilt appearing plain, the jury does not always give *exemplary* damages? One of his Counsel speaks of Dr. Rush as all but super-natural—another *hints* and insinuates, and damns by feint praise; and a third

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third acknowledges that the publications contain many untruths; that they are "*Stuff, Nonsense and Ribaldry*;" but he wishes to ease his client from the legal consequences. If he contends that we do not put the right meaning upon his publications, then it must at last be left for us to understand their true meaning, except he can convince us otherwise. I therefore ask you Gentlemen, where there is any thing to *justify* or *palliate* or whether they do not come up to the very *climax* of abuse and vulgarity, more than I hope will ever appear again, either in this, or any other country.

A perfectly accurate idea of these publications, then, becomes indispenibly necessary; and here, so far, I will accede to the wishes expressed by my learned opponents. I will not wander from the publications; they shall form my text, and I will keep close to it.

I will analyze it; I will dissect it; I will contemplate it in different points of view, and reason upon these points; I will follow the defendant through all his windings, and at every turn prove malice upon him. These publications furnish an exhaustless fund of observation, and should I speak a week there would yet remain more to be said.

Two positions stated by the first Counsel who spoke for the defendant must be kept constantly in view through this cause: That Doctor Rush dispensed his medicines, and administered the healing art to the best of his great abilities, and without even suspicion as to his integrity.—That the defence rests upon this ground that the defendant has made a public discussion of a question of general concern, free from personal abuse of the plaintiff's moral or professional character. The gentleman then, as if apprehensive that his concessions might furnish a weapon against himself, immediately adds that a little acrimony mixed with the disquisitions does not render it scandal, and that *acrimony* existed even among the Physicians themselves.

Much depends upon what name we give a thing. What the gentlemen calls *acrimony*, I call *slander* and personal abuse, with a deliberate design of demolishing the reputation of Dr. Rush.—God's Providence is by some called a *lucky bit*, Piety *superstition*, Seduction and Debauchery *gallantry*, violence *spirit*, and the whole store-house of *defamation*, here ransacked for epithets of reproach, is denominated *Acrimony*! We may call any thing by a *soft* name, but that does not alter the nature of the thing. The Counsel in admitting the eminence in point of skill, and the purity of Heart of the Plaintiff, takes from the defendant all possibility of defence in attempting to lay its foundation. If Doctor Rush is thus deservedly eminent, and if there can be no suspicion of his integrity, and he has acted so uprightly in his attendance upon a disease, the most fatal that ever Providence inflicted upon a guilty world, with what temper ought a man to come forward and speak of him? Certainly it ought to be with much deference and respect to his character and conduct. But even supposing he did fall into an error, shall he be held up to the world as the most remorseless of murderers?

We are told by the learned counsel on the other side that "*Ridicule* is the test of *truth*." I deny the position. This was the favorite position of that Arch Deist Shaftesbury—driven from the field of *Rea-*

son and Argument, this was his only subterfuge in his attacks on Christianity. It is possible, to be sure, to render *truth* a *ridicule*; in the same manner you may dress a wise man in a fool's cap. This maxim, so long ago exploded by the greater part of mankind, must now be revived—its revival is worthy of the cause of the defendant!—The very gospel of Heaven, by distorting its sense, and by partial representations, may be made to appear ridiculous: But this is no test of its intrinsic merits.

The law, however, has resolved this question: "*You shall not, by a libel, or by writing, set a man in a ridiculous light*"—the reason forms a part of the rule—it goes on, "*and thereby diminish his reputation.*" 3 Blackstone 125. The same doctrine is exemplified in the other books, and the law says expressly, that "*you shall not make a representation even to impute to a man BOASTING and VAIN GLORY.*"—This is a principle laid down in Hawkins. Slander endeavors to creep behind every covert battery, and assumes every form—sometimes it even pretends to praise and commend a man, for the very purpose of introducing its venom. Gentlemen, the law says this is a libel; judges have said so throughout the annals of every court, and shall we and *juries* affect not to understand what every illiterate man understands to be libellous?

The principle of innocence in these publications, on account of their pretended disquisitions on the yellow fever, is not just; but if it was established, it would not help the defendant. What discussion on the system, or what respecting the treatment, or what that tends to shew that system to be *ridiculous*, do you find in these publications? I will defy the counsel to point out a single syllable either as to the *nature, origin or treatment* of the yellow fever; not a word even to ridicule the positions laid down!

Does the ridicule appear to be aimed at the *system* or the professional reputation and character of the physician! that, says Mr. Harper, is the question. You may not, says he, combat the system by destroying the reputation of the practitioner.—So far we agree. To this test, thus furnished by the opponents counsel I appeal.—If the defendant did enter into the nature and application of the remedies, I am quite uninformed; but I think he did not. Let us see how he attacked the system and not the man, as is pretended. The first publication introduced begins with two lines, wherein it is represented that Dr. Rush is one *quack* holding conversation with another. Now, gentlemen, I would submit one question to your understanding:—is it the system that he calls a *Potent Quack*, or is it Dr. Rush? Is it the system that he has stigmatized with the degrading epithet of *Don Sangrado*, or is it Dr. Rush personally?

Who was this Don Sangrado?—Mr. Harper has told you in part—*A Quack damned to everlasting fame*, in the novel of Gil Blas.—What could be the meaning when it was applied to Dr. Rush? What would you think of it, if you were to be called Moses Castello?—a man who practising merchandize, was arraigned and convicted of a *fraud* in this court. Would you put up with the insult, merely because the person who called you so, should say "I was only discussing a question of commerce

commerce?" If this was to be done in a public paper, would you treat it with silent contempt?

William Cobbett, at the time he made these publications, whatever defence he has now set up to the contrary, did not mean to adopt the subterfuge which is now used. He meant to put it beyond all kind of doubt who he meant; for lest *all these names* should not be perfectly understood; as if some persons would still be at a loss to know who he meant that *disbonored his profession, and was not worthy the public confidence*; he proceeds on to the introduction of Spilbury's advertisement, which pretends with the same remedy to cure all manner of diseases, however different their nature, calling it first, "a puff equal to Dr. Rush's," and concluding "there, beat that if you can." Thus, you see, this *Quack*, this ridiculous *Empyric* is, forsooth, put upon the same footing with Dr. Rush!—It would insult your understandings to insinuate that this was not to degrade Dr. Rush. Nay, he expressly says in one of his public papers that *he would demolish the fortress of his reputation*.

Now, gentlemen, I ask you whether it is the system or the man attacked? he loads the Dr. with all kinds of epithets which malice and ill nature could possibly invent; holding him up as a vain puffer; when the language of the law is express that "you may not impute to a man vain boasting." A child could not be at a loss to understand the meaning of these attacks.—The idea of attacking the system was an after thought; it originated in the ingenuity of the counsel; because the defendant has never once said that he understood it, or was able to produce an argument against it. It was not the system which he attacked, when he ascribed to Dr. Rush the vain boasting practice of courting and making encomiums upon himself, and raising a reputation which he did not deserve, by writing letters and answering them himself, &c.

What would you think of a man who would interfere in the decision of a cause, in which property to the amount of millions was depending, or in a case of *life and death*, that would tell you at the same time, he neither understood the cause, nor had studied the merits of it, nor the guilt or innocence of the accused, and afterwards say he was only in jest, he was only laughing; would you not declare he was like the man in holy writ, who "threw firebrands, arrows and death," and said, *I am only in sport?*"

Gentlemen, the questions which have been made, and which the learned counsel have exerted themselves so much to overthrow, are answered by Cobbet himself. In the dialogue between him and Dr. Cox, does he speak as though he wished to convince the public; as though he was attacking the system only? No, he does not pretend to have spent a moments reflection either as to the system, or the cause, but that *he knew nothing at all about it*, he was only laughing about it, as his learned counsel say! Here the "cloven foot" plainly appears, he acknowledges that if it had not been Dr. Rush who supported the mode of treatment, he should not have troubled himself about it.

"Out of the abundance of the heart the mouth speaketh." Little thought he that he was furnishing evidence against himself at the trial.

In

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In September, 1797, he sets out stigmatizing him with the epithet of "QUACK." Was not this the way to destroy his reputation, by writing him down, by making the people believe he was a quack? Will gentlemen contend this is not actionable? If he is a quack in the yellow fever, is he not to be presumed a quack in every other disease? If a man undertakes to be a physician when he does not understand the nature or the cure of the disorder, is that man to be trusted?

It has been said that Dr. Rush's person was not attacked because his family was not. Who could be ignorant of the contemptible point of view in which Dr. Rush was held up at this time, and surely his family must be very anxious as to his fate, and the insults he underwent. This, to me, is a good proof that it was the medical skill of Dr. Rush that was attacked, for we find in other parts of the publications that "Rush and the Rushites" are held in a very contemptible point of view, not being able to distinguish between the small pox and the yellow fever, and the declaration is made, that pregnant women were sent by them to the hospital, thus suggesting but in terms which cannot be mistaken, the gross ignorance of this "Master Bleeder," this "Potent Quack."

But say the Plaintiff's Counsel this is not particularly aimed at Dr. Rush; it refers to a whole class. But, Gentlemen, is it the *less* criminal because the insinuations extend to a *whole class*, instead of one individual? It is more a discussion of the system on that account. No, it cannot act as an extenuation, but an aggravation of the slander.—Can you conceive that the introduction of Dr. Tilton, and this letter concerning him was necessary to the mere discussion of the system? 'Tis true that no action has been brought by Dr. Tilton, but Cobbett appears to be following up his abuse upon Dr. Rush by that circumstance, representing Dr. Tilton as a violent party man; mentioning him as ill formed, and that his judgment was wrong in as much as he mistook a bruise on the arm of a woman for the yellow fever. He attacks him as a Rushite and a "Bleeder."—As one of the exterminating Demons. Insinuations, with so much explanation, are fully equal to direct attacks. What means the insinuation "that dead men tell no tales," &c. but that he delighted in destroying his fellow-creatures. That they are insinuations does not deduct from the criminality. It is far worse than open attack, because it adds *meanness* to *malice*.

The words "Empyric" and "Quack," are used through his whole reflections on Dr. Rush. We may therefore, ask what means the word "Quack?"

"A boastful pretender to an art which he does not understand;—a vain boastful pretender to Physic; one who proclaims his own medical abilities in public places. So the learned Addison explains it. Pope calls it "an artful tricking practitioner in physic."—"a mountebank; a bold and ignorant pretender to the art of physic." It is a word of a determined, ascertained meaning, more so than even bankrupt to a merchant.—Thus illiberally has he treated Dr. Rush, but has not explained when bleeding ought, or ought not to be used; what is moderate and what excessive bleeding; nor an idea of the evils of the practice; but with the most inquisitorial meanness, has blackened what he

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could not attempt to confute. Can it be pretended that he was not well acquainted with the meaning of the words he used? No, for at another period we perceive him boasting of his classical reading. He has designedly called Dr. Rush a boastful pretender to physic, an art which he did not understand; and this will appear from his false representation of the Doctor's conduct in writing letters, &c. Indeed in one place he says, the "citizens were duped" by that gentleman's conduct. It therefore cannot be doubted that he has been guilty of a libel.

While this profusion of abuse is heaping on an innocent head, his counsel think to lessen his criminality by calling Doctor Rush a man as great as he is good. If they believe so, how inconsistent is their defence of the assassin of that great and good character!

If you wish information whether these words are in themselves actionable or not, the law is very explicit on that head. The very words are selected out in the elementary treatises; they are these: "words are in themselves actionable which injure a man in his trade or profession; such as charge a want of honesty or ability, &c." To call a "physician a quack," is afterwards selected *particularly*. William Cobbett, who is stated by his counsel to be a man of ability and learning, no doubt knew this, and therefore, used the very expressions forbid by the law, to defy the utmost power of the object of his attack. The words go on, "or that he has killed a patient with his physic."—He has selected these two parts which are actionable; he has called him "a quack," and then he has gone on to the comparative and superlative degree—"a potent quack and mountebank," and in order to complete the degradation, he adds that in his mode of treatment he has "killed his thousands and tens of thousands."

But says my learned friend, this does not mean that he murdered them, but many died from this mode of treatment, and therefore it is only an attack upon the system. What says my authority? "If a man says a Physician has killed his patients by his physic" *the words are actionable*. Though a man does not charge murder on the Physician, he is not excused, it is enough, if it implies that persons were killed through ignorance; because thereby he is not entitled to the confidence of his fellow citizens. The laws are not to be eluded by artful and ingenious constructions; you are the Judges, and can easily understand the expressions. Malice adopts an equivocal ambiguous stile, but if the "cloven foot" is discovered, if the veil is seen through, if the disguise is discovered, the law strips the sheep's cloathing from the wolf, and exposes him to indignation in his own natural deformity.

But, say gentlemen, whatever might have been said, Dr. Rush has as much business as he can do, and therefore he is not injured.—Does this appear in evidence?—Is it fact?—I am authorised to say that his business has sensibly diminished since the period at which the attack took place. But of this presently.

It is enough for me if I prove that the words are actionable in themselves.

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It is said that much dispute and acrimony was used in the controversy among the Physicians, and that it was no wonder if Cobbett forgot decency when Dr. Rush himself treated his opponents with so much acrimony and severity in his animadversions.

I do not see the force of this argument. If Doctor Rush *had* been guilty of even *scandal* in that disquisition, would that justify Cobbett to do so too? If he has been guilty of scandal, let him suffer for it from a due course of law. But has Dr. Rush, from the beginning to the end of what has been read of his discussion of the system, stigmatized any Physician as a Quack? No, but he respectfully calls them his brethren and treats them with tenderness. He was learned on the subject, and was a proper person to lead the public opinion: if therefore he has occasionally forgotten himself in speaking of a contrary system, he may be excused in part.

I say again if no injury, why take these methods if an injury, why not redress by law? My character—my professional and moral character attacked with the venom and art of a demon—my daily bread about to be taken from me—the subsistence for my family in danger of being lost to me—a head covered with grey hairs—fortune gone in paper money—prime of life passed in the revolutionary army—and law allow me no remedy: then the bands of society are rent asunder—I am in a state of nature, let me seek my private revenge, and I am satisfied without the aid of courts—Oh no if these measures are pursued I shall be punished—William Cobbett however ready to violate the law himself we know is in the habit of appealing to law for his protections against force and even against Libels.

The counsel for the defendant then softened and we are told that the only consolation left us under all this injury is silent contempt—strange inconsistency—if a man takes my purse, value of one shilling—laws and courts and juries give me remedy—but if he robs me of my good name, which ne'er enriches him, but makes me poor indeed, my only redress it is said is silent contempt.

If the evil extended, only to myself, the remedy the gentleman prescribed, though much worse than bleeding or mercury, might be more palatable; but if I allow myself to be brought into disrepute in my profession, to be considered as a Quack, as a pretender to knowledge in Physic which I don't possess, my business will leave me, and my family starve—my wife be reduced to distress—my daughters exposed to seduction, my sons be deprived of education and myself left a miserable object of delusion and pity.

It is true, as the learned gentleman observed the same words, if spoken are not actionable which are so when written or printed and published—the poison is in that way infinitely more disseminated—3 Blackstone 126, words spoken to me in the streets, may not be actionable, which if reduced to writing, are so, the words in the instance of the young lady, who recovered £4000 sterling damages, would not have been actionable if they had merely been spoken, the publication of actionable words imply malice, unless explained by the defendant.

It is necessary however that we should shew the circumstances of the case, in order to eliminate the nature of the offence. These positions
laid

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laid down, I shall undertake to shew that the defendant was determined to ruin Dr. Rush as a *Physician*, because he was a "*Republican*."

I think it is perfectly evident that he was not actuated by any motive to discuss any system for the cure of the yellow-fever.—Let us examine the facts. The defendant began his press early in 1796: the sentiments of Dr. Rush and his mode of treatment were perfectly notorious in 1793. I call upon the counsel, even at this late hour, to shew one word about Dr. Rush in that paper previous to the eulogium in December 1796—immediately afterwards the defendant thinks him "*too republican*," and he says "*damn him, I will attack him for it.*" I argue, the medical system of Dr. Rush being well known in 1793, why did he wait till the spring of 1797 before he threatened, and till the September following before he executed his threat? Not a single word about his republican principles! I know the ingenious turn that was endeavored to be given to these words—that *he would attack the principle*. No, gentlemen, the witness would not give the answer in that way: no, said he, he disapproved of the principle and he would attack HIM for it.

I trust we are all Republicans—Is there a man who hears me that does not feel and indignation in his breast that an *alien* should abuse him because he is a republican! The citizen of the United States who is not a republican, is a traitor. I am by choice a republican;—I am so by oath: The constitution of the United States is a republican form of government, and a republican form of government is guaranteed to each State.

But says the gentleman, there is a sense in which *republicanism* is assumed, it may mean *democrat* or *sans cullotte*: But I ask, do they show any paragraph in his writings or any action of his life in which he does not avow himself a *republican*, not in forced, but in the constitutional sense of the word. When a term is used, of determinate sense in the constitution of my country, I ought to be understood in that sense. And has Dr. Rush from the memorable day on which he voted for, and signed the declaration of our independence, till the present moment ever proved himself to be any other than a *republican* in the constitutional sense? The insinuations of his deviation might have been spared, since they are totally void of foundation. But republicanism is the whole extent of the offence for which he is to be persecuted while living, and his very ashes raked up to obtain a vindictive satisfaction upon his mangled memory after his death! And for all this shall we say, Go, and take a boxing match with William Cobbett? No, gentlemen, courts and juries will give a righteous and honorable decision.

I do not wonder at his resentment against Dr. Rush: he is one of those who in the language of the President of the United States, have *done too much, suffered too much, and succeeded too well* in our glorious struggle for liberty, ever to be forgiven. Gentlemen, I conceive an appeal to your feelings to be fair, because by temperate deductions I have established facts:—I see the sun shine, and the showers descend—I afterwards see the grass grow: I thence form a natural conclusion that one is the cause, the other the effect. The ingenious evasion of the gentlemen,

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gentlemen, that it was the political opinion he threatened to Dr. Dewees to attack, will not do : no, he must approach under a masked battery : the political sentiment was the real ground of the offence. When the threat was made, the opportunity to execute it was wanting ; he therefore suffered the malice to lie in his breast, until one the most fit that could possibly occur made its appearance : one which could not possibly at the time of the threat have entered into the contemplation of the defendant. But the measure was resolved on—the death warrant was prepared—a more fit opportunity could not have been wished for than the fever of 1797 in one respect, nor one less fit in another. We cannot reflect on the situation of our deplorable city at that period, and not be struck with horror at the recollection. We see the patient in extreme distress, stretched on his bed of sickness ; physicians themselves at a loss how to relieve that distress. It was at this eventful period. William Cobbett began his malevolent attacks ; tending to withdraw the confidence of the unhappy patients from their physician, and thus doubling their affliction.

Farther. This attack was not only threatened, but with violence : he assigns his reason, “ Damn him, I will attack him for it.”—The reputation of Dr. Rush was intimately connected with his political sentiments, and therefore he attacks the physician.—It is observable, that when he first threatens the attack, so far was he from being actuated by a wish to repel an improper mode of practice in Dr. Rush as a physician, that in that character he speaks of him as liable to no exception : He wishes him to confine himself wholly to his practice as a physician, and not to meddle with politics. But Dr. Rush was his object. “ Malice rankles in his heart,” and a few expressions which find their way out now and then, prove it to be deep rooted.—He confessed he knew nothing about the practice.

Doctors Griffith and Physic, commonly made use of the medicine and practice of Dr. Rush, and to as great a degree, but they had spoken no eulogium ; they had made no use of any *republican* expressions, and therefore they escaped without a single remark. Farther than that, Cobbett employed a family physician of the same school : Dr. Dewees, who followed the same mode of treatment, attended on the family. All this proves the meaning of the words used to Dr. Cox : that if it had not been supported by Dr. Rush, he should not have troubled himself about it.

For these reasons, gentlemen, I think I may presume, without the possibility of a doubt, that you will be of the opinion, that the action is well founded : that the words are, in themselves, *actionable*, and that they imply *malice*. But we have not rested on the legal ground, as we might with safety : we have gone farther, we have shewn that personal resentment instigated to the malicious attack, and that it was the sole and entire motive.

Gentlemen, I do not wish to introduce domestic scenes unnecessarily ; but surely when we contemplate injuries and damages sustained, we may, at least, relate what effect it might probably have on the family. Doctor Rush was engaged amidst scenes of danger and death ; not only exposed to, but actually attacked by that dreadful disease.

His

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His family were residing in the country. Instead of receiving letters from him, *his affliction was so severe he could not write*, suppose they receive these papers, in which he is stigmatized a "murderer" and "quack" and though he might survive the contagion, his character should remain aspersed and his memory after his death. So undeserving public confidence.—Would this have no effect on his family?

We have heard much about the liberty of the press. I think I would not yield to any man in sincere estimation of that invaluable right; I consider it the *eye* of our political body, and I would much rather a speck a small blemish should remain, than that by a rash and unskilful operation the noble organ itself should receive an injury. But it is difficult to run the precise line in composing the happy medium which the constitution has formed for the support of every thing which is dear to a citizen. In the constitution formed for Corsica, vide annual register of 1794 p. 90 are these words: "The liberty of the press is decreed, but the abuse of it is left to the law." Private reputation and character is protected by the constitution, the great fundamental law of this state.

Gentlemen, I acknowledge that this case, now about to be decided by you, is one of the most important ever intrusted to a jury of this country. It is true that for a long time past the licentiousness of the press has been extreme: neither the government nor individuals have escaped: no merit of character has screened the individual from attack through that medium. It is therefore that you ought to keep a steady watch over those intrusions upon the good order of society, for it is with you to protect character and government, which if you neglect, like the droppings of rain on a stone, it will wear it imperceptibly away: though the progress be slow, the effect is certain.

Gentlemen, you must take human nature as you find it, and we should not better it had we the power of formation: of the law does not give satisfaction for injuries, it is a sentiment written on the heart of man that *he will obtain it*, and no law will then stop his resentment. Of what avail, it will be argued, was it for me to restrain the impetuosity of my temper and await the course pointed out by the laws of my country: In vain do I respect them unless damages are given sufficient to stop the progress of a gross offence.—You will have no more complaints of this sort, but they will be obtained in another, and most fatal way, if the law is not sufficiently strong to curb it.

In England we find that juries understood this subject perfectly well.—Mr. Tilghman says it was a general warrant which affected the individual liberty which made them so severe in the cases referred to. The judge said it ought to be exemplary in order to protect the magna charta: so we say. So ought you to say in your verdict: it is not the injury sustained by Dr. Rush by the number of patients he has lost. The gentleman read the declaration and made some observations upon the *blanks*. He says no special damages are laid. Are we to run about to enquire who never came to Dr. Rush on this account? If that is required, it may as well be said at once that we shall have no damages, and that men shall publish what they please with impunity!

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As I observed before, in England juries understand this matter perfectly well. If a libel involves the public peace and good, specific injuries are not considered. In the case of a young lady whose chastity was attacked, 4000*l.* was awarded.

I hope Dr. Rush will not have to say as a gentleman in Scotland once said, "Oh that I had brought forward this trial in England, for there the Jury would take care the verdict should be such as would do honor to their impartiality." Gentlemen, the precedent cannot fail to have a desirable effect, if you give suitable damages. Instances seldom occur in Pennsylvania of this nature, but in one not long since the Jury proved that they will know the importance of private character: a person was proceeded against *ex parte* by one of the German religious societies, and excluded. The proceeding was entered upon the books of the Society. As it was an attack upon character, the man brought an action, and the Jury gave a verdict for the plaintiff of 500*l.* damages. Case, Stock against the German corporation.

Gentlemen, consider the situation of Dr. Rush at the time of attack;—a Physician of considerable ability in his art—at a period when his whole attention was doubtless engaged for the advantage of a deplorable city: when not an *Herb* nor *Drug* escaped his utmost researches; when not a part of the Human System but he pryed into; all his learning, all his ingenuity on the full stretch. The life of thousands in his hands, an important charge! Surrounded with difficulties, and thus indefatigably engaged he is represented as the most despicable of the human race. I ask you, gentlemen, whether this did not disable him from prosecuting his important pursuits? much of cure in such deplorable situations, depend on the confidence of the patient in his Physician, often more than in medicine: we know how much small shocks affect the mind so weakened by disease.—Who can tell what numbers perished from these publications in this way?

We are told that though Dr. Rush has his merit, he no doubt had his reward. I ask how he could receive his reward? among what class of persons did his practice extend? We well know that the rich had left the city, and therefore the thousands upon whom he attended could not pay him: it would have been to his advantage to have left the city, for a man of his eminence could have commanded business any where, but his point was to discover if possible, an alleviation of the general distress by examining and exploring this new species of disease, which has so often baffled the utmost skill of talents.

As to the merit of the defendant. It is said that he was of great use at a certain time in giving an alarm to the citizens of this country against foreign influence. I will tell you how far he went, and no farther: *He did not wish to destroy, but to change this foreign influence.* He wished to destroy it when it came from one foreign country, and place it on another. But to Americans sensible of the high destinies of their country, what is it from whom the influence comes? it ought to be wholly destroyed, come whence it may from France or from Britain.

I do not know that I need take up your time in referring to the opinion entertained of the plaintiff in other countries: suffice it to say that

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that almost every Philosophical and medical society in the world have honored his character. He is an honorary member of almost every society in Europe, or in the world. Dr. Trotter, the celebrated Physician in England speaks of him in terms strongly indicative of the veneration in which he is held abroad.

Although so great is his character and reputation, yet I acknowledge that the case is between A. plaintiff and B. defendant. But although your verdict must be according to evidence and justice, yet you must not be unmindful of character in order duly to estimate the damages. If Dr. Rush had not obtained a well earned reputation, I should not be pressing upon you to bear testimony to that character by exemplary damages, but the malevolent design, the spite and the ill nature is much blackened by the uprightness of character procured and preserved for many year by the plaintiff.

Gentlemen I thank you for your attention—I must in my conclusion beg you to consider the great evils of *slander*. Permit me to attempt its definition. Amongst all the offences that degenerate mankind can commit is one of the greatest : there is nothing that an honest and brave man has so much to fear.

Man need not dread a worse foe—it stabs with a word—It is the PESTILENCE walking in darkness, spreading CONTAGION far and wide, which the most cautious traveller cannot avoid.—COURAGE cannot defend against its insidious attacks—It is the heart searching DAGGER of the dark ASSASSIN.—It is the poisoned ARROW whose wound is incurable.—It is the mortal sting of the deadly ADDER :—nor GOVERNMENT nor OFFICER nor INDIVIDUAL can resist its fatal effects without the aid of LAW.—MURDER is its employment ; INNOCENCE and MERIT its prey, and RUIN its SPORT.