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THE TRIBUNE.

LAW OF LIBEL...LIBERTY OF THE PRESS.

J. Fenimore Cooper versus **The Tribune.**

From the Auburn Journal.

Weisnert to-day the decision of the Supreme Court, delivered by Mr. Justice JEWETT, in the case of J. F. COOPER vs. GREELEY & MCELRATH—an early copy of which we have procured from Mr. SEWARD. The public can see that the rigor of the law as to what constitutes a libel, is not relaxed an iota by this decision, but is rendered still more rigorous. Yet, the right of the accused to *justify* is vindicated: the defendants being secured the right to give the truth in evidence, which we suppose is all the editors of The Tribune, or any other honest editor desire.

By the way, as to the manner in which the law of libel has been made, this opinion admits that as it now exists, it is a departure from the law as it existed in England 120 years ago, and that such departure has been made solely by judicial decisions.—Courts, it would thus seem, may alter the law for the worse, but cannot retrace and correct their own errors. We believe there is a court, however, higher than the Supreme Court, which sometimes has independence enough to review the adjudications of that tribunal. And the press will expect such an examination of the law of libel in the Court of Errors.

SUPREME COURT....LIBEL.

Jame Fenimore Cooper vs. Horace Greeley and Thomas McElrath. Demurrer to 2d, 3d, 4th, 5th and 6th Pleas.

RICHARD COOPER, for plaintiff; WILLIAM H. SEWARD and —— CONDER, for Defendants.

By the Court, JEWETT J. The first count of the plaintiff's declaration is for publishing, and procuring to be published, in The New-York Tribune, on the 29th day of November, 1841, a libel of the plaintiff, containing, among other things, the following:

"At all events, having published the letter excepted to, as a matter of intelligence, without any sort of feeling toward Mr. Cooper but such as his conduct seemed to excite, we have at all times stood ready to publish, cheerfully, any correction or contradiction he might choose to send us. He chooses to send none—but a suit for libel instead. So be it then. Walk in, Mr. Sheriff. There is one comfort to sustain us, under this terrible dispensation. Mr. Cooper will have to bring his trial somewhere. He will not like to bring it in New-York—for we are known here; nor in Otsego—for he is known there. *We believe he has no reason at all but to bring it in Montgomery County, among those who were the witnesses against Fenimore, in his defeated suit of Weed v. Webb.* That is rather inconvenient to us—but we feel confident of a fair trial and a good deliverance, before any American Jury. So, Mr. Effingham, fetch on your bears!"

The defendants in this plea then aver, that the plaintiff, before the publishing said words, to wit, on the 29th day of November, 1841, at Albany, caused to be published in the Albany Argus, a public newspaper printed at Albany, a notice setting the same out, charging upon the defendants the publication of *false statements*—and the defendants aver that said words published by them were in reply to, and commenting on, said notice; and they further aver that plaintiff at the time, and long before that time, to wit, for ten years, resided in the County of Otsego, and was known to many good and worthy citizens of this State residing in the said County—and *being so known*, he had acquired, and had to wit, on the day of the publication of the said words last mentioned, the reputation there, of a proud, captious, censorious, arbitrary, dogmatical, malicious, illiberal, revengeful, and litigious man—wherefore he was in bad repute in the said County of Otsego; and the defendants averred, that by means of the said plaintiff being in such bad repute in the County of Otsego, he would not like and did not like to bring an action against the defendants for words published by them, to trial in the county of Otsego: wherefore the defendants being such editors, &c. published, &c. as they lawfully, &c. To which plea the plaintiff demurred, and assigned the following causes of demurrer to the 2d plea:

I. That the matters therein contained, are not a justification of the words set forth in the first count.

II. That the plea does not specify any act or acts of the plaintiff, nor state particularly any facts which show that the plaintiff was ever justly held in bad repute, in the County of Otsego.

III. That the comments in said plea, with respect to the reputation of the plaintiff in the County of Otsego are improper and insufficient, to show that the reputation of the plaintiff in said County, was ever bad.

IV. That it does not appear with sufficient certainty from said plea, that the reputation which it alleges the plaintiff to have had in the County of Otsego, was a consequence of his being known to the citizens of said County.

V. Plea does not well and sufficiently aver the facts substantially alleged in the libel, to wit:—that the plaintiff at the time of the publication of the libelous words, was in bad repute in the County of Otsego—and that such bad repute was a consequence of his being known in said County.

The first question in the examination of the case as presented by the pleadings is whether the first count of the declarations is good is substance. If not it would follow that the second plea to it whether good or bad, need not be examined for the purpose of giving judgment upon the demurrer—as the rule is that where the count is so defective in its structure that a verdict will not cure it, the defendant on demurrer to the plea may fall back upon the count.—Miller, v. Maxwell, 16; Wend. 9

It is attempted to be maintained that the count is bad on the ground that the words charged to have been published are not libelous. The construction put on the libel by the plaintiff—that it charges him of being in *bad repute* in the county of Otsego, in consequence of *being known* in that county, and for *that reason* he would not like to bring a suit for libel in that county. How are these words of the supposed libel to be understood by the Court? It cannot be doubted but that it is the duty of the Court, in an action for a libel, to understand the publication complained of in the same manner as others do, without any effort to find out loop-holes as the means of escape for the defendant from the offences charged.

"The construction which it behooves a court of justice to put on a publication which is alleged to be libelous, is to be formed, as well from the expressions used as from the whole scope and apparent object of the writer."—Van Buren, Senator, Spencer, V. Southwick, 11; John. Rep. 592; Fiddler, v. Delavan, 20. Wend 57.

It seems to me that the meaning of the words charged as imputed by the inuendo is plainly true. It may, perhaps, be admitted that the charge is not made in an open and direct manner, but ironically. Such expressions in a publication will not for that reason shield the publisher from the imputation of a libeler. The sting of the words in this case is in the imputation which it is alleged they carry. That the plaintiff had acquired in Otsego county a reputation *so odious* that he would not dare to risk a trial against the defendants for the offence charged in that county, knowing enough of the influence of human actions justly to apprehend danger to himself from such trial there, for that cause. If I have rightly apprehended the true meaning of the words of the publication, the question follows: is such language with such meaning and application libelous, within the rule of law applicable to the action for a libel? The counsel for the defendants on the argument (although they did not admit that even such language could be considered libelous within what they were pleased to denominate some modern definitions of libel) yet they undertook to show by argument and authority, that in the days of the late Chancellor Kent and Chief Justice Spencer and their associates, at a period of more than forty years gone by, the rule in regard to what words published amounted to a libel, had been greatly extended and unjustly so. The definition complained of was said to have been submitted by the late Gen. Hamilton and adopted by the Court in the case of The People, v. Croswell, 3 John. Cas. 354; and approved by this Court in Steel, v. Southwick, 9 John. 215. The Court, in the last case say that—

"A writing published maliciously, with a view to expose a person to contempt and ridicule, is undoubtedly actionable—and what was said to the effect by the Judges of the C. B. in Villiers, Mosely, (Wms. 405) is founded in law, justice and sound policy."

The opinion of the Court in the case of Riggs v. Denniston (3 John Cas. 295) was to the same effect; and the definition of a libel, as given by Mr. Hamilton in the case of The People v. Croswell (3 John. Cas. 354) is drawn with the utmost precision. It is a *censorious or ridiculing writing, picture or sign, made with a mischievous or malicious intent, towards Government, magistrates or individuals.* To allow the press to be the vehicle of malicious ridicule of private character, would soon deprave the moral taste of the community and render the state of society miserable and barbarous. In the case of Cropp v. Tilney, 3 Salk. 226, Holt Ch. J. said,

"Scandalous matter is not necessary to make a libel. It is enough if the defendant induce *an ill opinion to be had of the plaintiff or make him contemptible and ridiculous.* Any written slander, though *merely tending to render the party subject to disgrace, ridicule or contempt* is actionable, though it do not expose anybodies name punishable in the temporal courts." (Cainy, Edit. of Black. Comm. 2 Vol. 125 ch. 8)

It was said on the argument that—

"Adopting Hamilton's definition, it would not embrace the present libel. It is not a censorious or a ridiculing writing. It reflects upon the plaintiff certainly, but not severely or censoriously, while it neither affects nor betrays any sentiment of ridicule."

If the counsel's admission that the imputed libel "reflects" upon the plaintiff, although not severely, may be taken as evidence of the law, it strikes me that he has surrendered the point. The degree of censure or ridicule contained in the writing is no part of the definition. A "censorious or ridiculing writing toward an individual" is defined to be a libel "if made with a mischievous and malicious intent." Censoriousness is defined by Walker to be a "disposition to blame and condemn"—"the habit of censuring or reproaching;" and to "redec." In the 5th subdivision of his definitions the same author defines it to be "*to bring reproach—to reflect on—to cast censure or reproach.*" It would seem to me that if a censorious writing, made with a mischievous and malicious intent toward an individual is libelous—that a writing made with a like intent, *reflecting* upon an individual, although more or less severe, would be more or less libelous. But I do not think the rule requires any such nice. It is enough for me that I approve of the rule as settled, acted upon and understingly adhered to for the last forty years by this Court.

But it is objected that the inuendo is not justified by the language of the writing. However that may be, it perhaps is unnecessary here to inquire; as if bad it could only be reached by special demurrer. The proper office of an inuendo is to apply the libel to the precedent matter; but cannot be used to add or enlarge, extend or change the sense of the previous words. And when the new matter stated in the inuendo is not necessary to support the action, it may be rejected as surplusage.—1 Chitty Pl. Day's ed. 382; and so when it is attempted by an inuendo to enlarge the sense of the words—2 Dane's Abt. of the Am Law 596; Thomas v. Crosswell 7 John. R. 270; Roberts v. Camden 9. East. 93. An inuendo may *explain* the meaning of the words—although it cannot *enlarge* it—without the aid of a colloquium; and a leading case on this point is where in an action for slander the *words* were; "he has burnt my barn"—and held that the plaintiff could not say, by way of inuendo, "my barn full of corn." But if in the introduction of the count there had been an averment that the defendant had a barn full of corn, and that in a discourse about it the defendant spoke the words:—an inuendo be meant by his words the barn full of corn would have been good. In such case the inuendo would explain and apply the preceding parts of the declaration by showing the defendant's words were uttered in a conversation about the defendant's barn full of corn.—In Van Vechten v. Hopkins 5 John. R. 226, Van Ness J. explains the inuendo of an averment of a colloquium and an inuendo. The *averment* is to ascertain that to the count which is doubtfully expressed, and to add matter to make doubtful things clear. A *colloquium* shows the words were spoken in reference to the matter of the averment; and if an *inuendo* is explanatory of the subject matter *sufficiently* expressed before. The averment of extrinsic matter in this count was for the purpose of showing that the libel was published, as it is expressly alleged to have been, "of and concerning the plaintiff."

An *inuendo* is an averment that *such a one* means such a *particular person*—or that such a *thing* means such a *particular thing*; and coupled with the introductory matter it is an averment of the whole connected proposition by which the cognizance of the charge will be submitted to the jury, and the cause of action appear to the court. The explanation intended to be given by the *inuendo* here, of the words,

"Not in Otsego (meaning the county of Otsego) for he (meaning the said plaintiff) is known there, (thereby meaning that the said plaintiff in consequence of being known in the county of Otsego was in *bad repute* there, and would not for that reason like to bring a suit for a libel in said county of Otsego,)"

it seems to me is not liable to the objection that it enlarges, adds, extends or changes the sense of the previous words; and whether the alleged libel was published of and concerning the plaintiff, and the true meaning of the words was as is alleged by the averment and inuendo or not, is a question of fact which it is the province of the jury and not of the Court to decide.—5 John. Rep 221; Goodrich v. Woodbridge, 3 Cow. 531; Peake v. Oldham, Cowper Rep. 272-3; 2 St. Rep. 961; Denter v. Tyler, 12 John. 260. It is well settled, that where the slanderous charge may be collected from the words themselves, or from the general scope of the publication, it is not necessary to make any averment as to circumstances, to the supposed existence of which the words refer. So when the libelous meaning is apparent on the face of the declaration, inuendoes and averments are unnecessary; but if introduced, and not warranted by the subject matter, they may be rejected as surplusage. Croswell v. Weed and others, 25 Wend. 621.

It is made an objection that the pleader, after adopting the word *repute*, extends it to mean *reputation*; but the counsel made no attempt, as I remember, to point out the difference between the definitions of the two words; and unless the distinguished American lexicographer has committed an error in that particular, the pleader in this case has not been guilty as supposed. The words *repute* and *reputation*, when used as suggested, convey the same idea.

It was insisted in behalf of the defendants, that to render a publication actionable, it must be "*defamatory*." If by this is meant the words must import a *crime*, (and in the connection in which the term was used I am unable to discover what else was meant,) I have no hesitation to say that it was never intended to libel in this State, and that has not been in England for the last one hundred and fifty years. The first action for a libel found in our books of reports, was that of Riggs v. Denniston, 3 John. Cas. 198, decided in 1802. The late Chancellor Kent, then one of the Judges of this Court, in delivering the opinion of the Court, observed that the charges against the plaintiff were clearly libelous, because they threw contumely and odium upon him in his character of Commissioner of Bankruptcy, instead of holding it actionable as subjecting the plaintiff to the loss of his offices. And such has been the doctrine of this Court to this time. In Van Ness v. Hamilton, 19 John. Rep. Chief Justice Spencer said—

"It may however be observed in the outset, that there exists a *decided distinction between words spoken and written slander.* To maintain an action in the *former* cause, the words must either have produced a temporary loss to the plaintiff, by reason of special damage sustained from their being spoken, or they must convey a charge of some act criminal in itself, and indictable as such, and subjecting the party to an infamous punishment, or they must impute some indictable offence involving moral turpitude. To maintain an action for a libel, it is not necessary that an indictable offence should be imputed to the plaintiff. *If a libel holds a party up to public scorn, contempt and ridicule, it is actionable.*"

It is insisted by the defendants' counsel that in the early stages of the law of libel there was no distinction between verbal and written slander; that no action could then have been maintained for any words written for which an action could not be maintained if they were spoken—and the case of Thornly v. Kerry 4, Taunton 355, decided in the Exchequer Chamber, 1812, among others to sustain that position has been cited by counsel. The action in that case was for a libel which charged the plaintiff Kerry with being a *hypocrite*, and with *having used the cloak of religion for unworthy purposes.* Kerry obtained a verdict against Thornly and had judgment in the King's Bench without argument—from which a writ of error was brought in the Exchequer Chamber and affirmed.—Sir J. Mansfield, Ch. J., in delivering the opinion of the Court, stated that the words, had they merely been spoken, would not have been actionable; and while he expressly repudiated the distinction which he admitted had prevailed for more than a century past between written and spoken scandal—yet as the rule of distinction had been so firmly established by some of the greatest names known to the law, and at least from a time as far back as Charles the Second—he could not venture to lay down at that day that no action could be maintained for any words written for which an action could not be maintained if they were spoken.

Assuming that at an early period of the law, before the art of printing was invented or perfected, the distinction between words spoken and written slander was not recognized—it may be seen I apprehend that there was then much less necessity for that distinction than subsequently, and especially in *modern* times, when the tendency of the public press is so strong to licentiousness. It does not appear to me that the rights of individuals to a good character are more than sufficiently defended by both the civil and criminal remedies which the law, as it has been established for the last century and a half, at least both in England and in this country, affords. I am entirely satisfied that there is a well founded distinction between written and spoken scandal, and am free to say that if I felt that this Court was at liberty to repudiate that distinction as a rule unsettled, public policy would and should interpose. The rule is repeated in Starkie on Slander—1 vol. Wendell 169;—he says, after a review of the whole law, on the subject:

"Upon the whole it may be collected that any writings, pictures or signs which tend to degrade from the character of an individual by imputing to him either bad actions or vicious principles, or which diminishes his respectability and abridges his comforts by exposing him to disgrace and ridicule, are actionable without proof of special damage;—in short, *that an action lies for any false, malicious and personal imputation effected by such means, and tending to alter the party's situation in society for the worse*; and so is the rule and distinction held in Massachusetts."—Clark v. Birney 2 Rich. 112, cum.

The count being held to be good in substance, the next question presented is—

Is the 2d plea good? It is objected that the charge of bad reputation should be justified by *facts* showing such reputation deserved; that such charge implies in its popular acceptation that the party charged has done some thing to bring himself into disrepute—and that a plea as general as the charge is bad; that it should state facts which, if proved, would make good the charge. The plea sets up as a justification that the plaintiff had the reputation in Otsego County of a *proud, captious, censorious, arbitrary, dogmatical, malicious, illiberal, revengeful and litigious* man, wherefore he was in bad repute; that by means, &c., without setting up any facts which show that the plaintiff had done any act by which such repute was deserved. Suppose the charge had been that the plaintiff had the reputation of having committed a particular crime: I apprehend that it would not be insisted on for a moment by any one that a plea as broad as the charge would avail the party. It would be unnecessary to set forth the necessary facts to show him guilty of the crime of which he had acquired the reputation. Otherwise it would require but a little effort on the part of the malicious to combine and put in jeopardy, if not to destroy, the reputation of any person, however pure it may be. The general rule is perspicuously stated at length by Spencer Ch. J., in Van Ness v. Hamilton 19, John. Rep. 342.

"A plea in bar of the plaintiff's action must be certain to a common intent; it must be direct and positive in the facts set forth, and must state them with all necessary certainty. It is not correct to say that in a plea justifying a libel, because the subject comprehends multiplicity of matter, there may be general pleasing to avoid prolixity."

And again.

"The rule to which I allude is laid down in the case of J. Anson v. French 1 Term. Rep. 755. Then the action was for a libel charging the plaintiff with being connected and concerned with a gang of swindlers and common informers. The plea stated that the plaintiff had been guilty of swindling and connected with, and was one of a gang of swindlers and common informers, and had also been guilty of defrauding divers persons with whom he had dealings and transactions. On demurrer to this plea, it was decided that 'it was bad on account of its generality; that it was contrary to every rule of pleading to charge the plaintiff with swindling without showing any instance of it; for whenever one person charges another with being a fraudulent man, he must particularize the instances which his charge is founded, and therefore ought to disclose them.'"

In this case there is no charge made of an act, improper, immoral, criminal or otherwise; but merely in the estimation of the public in the county named his reputation is bad—that is his good name, credit or honor *derived from public opinion* was more or less lost or bad—and so at the time of the publication was held in public estimation. The charge implies no particular act committed by the plaintiff. The defendants justify the charge of the bad repute in which the plaintiff was held by averring that the plaintiff had the reputation of being proud, &c., wherefore he was in bad repute, &c., by reason thereof he did not like to try his suit in that county. I think the plea is sufficient. If not I do not see that the subject matter of such defence could be at any time set up. How is it possible in the nature of things for the defendants to spread upon paper the particular manifestations of pride, &c. and prove that the public reputation was the consequence of them? General good or bad reputation of an individual is the estimate in which it is held by public fame where the person is known.

The third plea to the first count is the same in substance with the second, except it does not contain any averment that plaintiff had the reputation of possessing any particular traits of character, by which it was held bad; but merely alleges the plaintiff's residence, of being known there—and being so known, had acquired a bad repute among citizens there residing.

This is more general than the second plea is, but I do not see that it is sufficient. The plaintiff is not charged with the doing any act, or omitting to do any act, by which he is liable to a particular charge affecting him in his character, &c. in any manner: and of course the rule requiring the plea to set forth the particular acts of the plaintiff constituting the particular thing charged, is not applicable to this defence. The libel merely represents the estimate which the public place upon the plaintiff's general character. That *is a fact*, not capable, generally, of being charged upon, or traced, as the result of any particular or general conduct of the party. It is public opinion charged.—It may exist without any just foundation: but whether it is justly or unjustly formed, the ground of it is manifestly incapable of being put in issue: and I do not think that a party is called upon to set forth and prove the grounds of such public estimate of reputation, and much less, that such public estimate was correctly made, unless the party is charged with a reputation of being guilty of some particular offence, or the neglect of some duty. In such case, the party making the charge should be held responsible for the truth of the charge—and the allegation and proof of the reputation would not avail the accuser.

The second count commences with the averment that the syllables "*inhu*" followed by a dash, when they occur in the publication thereinafter set forth as follows, to wit: "*inhu*——", were meant and intended by the said defendants for the word "inhuman;" and that the defendants, in using said syllables in the connection with the context, intended to convey, and did convey, the idea, that the plaintiff, on the occasion referred to in that part of the publication, had acted in an inhuman manner: and also with the averment that the syllables "ungen" followed by a dash, as follows, to wit: "ungen——" when they occur in the said publication, were meant and intended by the defendants, either for the word "ungenerous" or "ungentlemanly"—and that by using &c. the syllables as last mentioned, meant and intended to convey, and did convey, the idea that the plaintiff, on the occasion referred to in that part of the publication, had acted either in a most ungenerous or most ungentlemanly manner, and then sets out the following as the libel complained of:

"Knowing that we positively did and do of the severe illness of the wife of Mr. Weed, and the dangerous state of his eldest daughter, at the time of the Fonda trials in question—regarding them as we do—the jokes attempted to be cut by Fenimore and his friends upon the subject of the story ground up from one girl to the mother and three or four daughters—his fun about their having the Asiatic Cholera among them, or some other contagious disease, &c. &c.—however it may have sounded to other ears, did sound to us rather inhu——ha-ha there! we had like to put our foot right into it again, after all our nation. We mean to say that, considering just the day before Mr. Weed had passed through his severest ordeal—considering the disposition to Fenimore, being assured by said counsel, that as the law is now expounded and administered by the Supreme Court, he had no earthly choice but to bow his neck to the yoke, pay all that might be claimed of him, and publish whatever humiliation should be required—or else prepare to be immediately ruined by the suits which Fenimore and Richard had already commenced, or were about to bring for him—considering, also, the question of how much Mr. Weed had yet to pay towards his subsistence—how keenly Mr. W. has had to smart for speaking his mind of him—we did not think that Fenimore's talk, at this time and place, of Weed's family and of Weed himself, as a man so paltry that he would prefer to sickness in his family as an excuse to keep away from court, and would resort to trick after trick to put off a case (in which he was defendant, for a day or two; and defendants aver that at the time of such trial, Weed's wife and children were sick, not of cholera, &c. and that Weed was, in consequence, detained, these things being known to the plaintiff) Defendants aver that they did speak of the plaintiff having brought three actions against Weed, one against Hoffman and White—and two against all—in one of which (Weed defendant) plaintiff recovered $85, on 12th April, 1842; in another against all, $87, on the 14th Sept., 1842; another noticed for trials above, that plaintiff had, on the 1st Dec. 1842, sued out three writs against Weed, White, &c. all prosecuted by R. Cooper, Attorney, &c. who had them in his possession and showed them, by plaintiff's direction, to S. H. Hammond, counsel for Weed, who insisted that Weed should compromise, &c. who did submit matters between plaintiff and himself (as Weed's daughter, lately married, and grown-up daughters often baffled in tears, by these attacks on their father. Some said this was mawkish—but we consider it good, and think it told. We have a different story as to what the girls were crying for—but we won't state it, lest another dose of Supreme Court law be administered to us."

Thereby meaning that the said plaintiff by some unworthy and disreputable conduct, was the cause of affliction and tears in his family.

To this count the defendants plead *actio non, &c.* to so much of that part of the libel set out, firstly, thereto as follows: "knowing, &c." because the defendants say they were editors, &c. and the words constitute part of an article giving an account of plaintiff's suit against defendants tried at Fallston Spa, on the 9th December, 1842—and that on such trial, plaintiff, in addressing the jury in presence of the Circuit Judge, holding said Court, spoke of and concerning one Thurlow Weed and of an action before them had by plaintiff against Weed for words published of plaintiff—and of and concerning provocatings therein, &c. held in and for Montgomery county, and of and concerning the non-attendance of Weed and the cause thereof and his motives therefor and of and concerning his wife and the daughters of Weed, the words following, to wit—

"That he, the plaintiff, did not believe any thing about the said Weed's family being sick at the time when the said Circuit Court was held at Fonda; that he believed that he, the said Weed, falsely pretended that his family were sick to excuse himself from attending the trial of the said action, on that occasion; that the story of the sickness of so many of the family was improbable and absurd; that it was convenient and desirable for Weed to have an excuse of the sickness of his family on that occasion; that the story told by Weed of said sickness began with the alleged illness of one of the daughters (Weed's eldest daughter, Jane Weed,) and grew larger and larger as suited the exigencies of Weed's case, until it was represented that not only that daughter, but the mother and three or four daughters were sick; and that the plaintiff then and there derided and jeered the sickness of Weed's family by saying ironically that they must have had the Asiatic Cholera among them, or some other contagious disease—and that they recovered speedily from their illnesses when the said Circuit Court was passed; that said Weed was a man so paltry that he would pretend to sickness in his family as an excuse to keep away from court, and would resort to trick after trick to put off a case (in which he was defendant, for a day or two; and defendants aver that at the time of such trial, Weed's wife and children were sick, not of cholera, &c. and that Weed was, in consequence, detained, these things being known to the plaintiff. Defendants aver that they did speak of the plaintiff having brought three actions against Weed, one against Hoffman and White—and two against all—in one of which (Weed defendant) plaintiff recovered $85, on 12th April, 1842; in another against all, $87, on the 14th Sept., 1842; another noticed for trials above, that plaintiff had, on the 1st Dec. 1842, sued out three writs against Weed, White, &c. all prosecuted by R. Cooper, Attorney, &c. who had them in his possession and showed them, by plaintiff's direction, to S. H. Hammond, counsel for Weed, who insisted that Weed should compromise, &c. who did submit matters between plaintiff and himself (as Weed's daughter, lately married, and grown-up daughters often baffled in tears, by these attacks on their father. Some said this was mawkish—but we consider it good, and think it told. We have a different story as to what the girls were crying for—but we won't state it, lest another dose of Supreme Court law be administered to us."

The plaintiff demurred to this plea and assigned various special causes of demurrer. Defendant joined in demurrer. The defendant's counsel on the argument insisted that the count was bad, and that however the plea might be considered, the defendants were entitled to judgment. I am of opinion that the count must be held good in substance under the principles above stated in regard to the demurrer to the 2d plea to the first count—and that the only question is whether the plea is good. It is objected—first, that it is bad, for the reason that it does not profess to answer but part, only, of the libelous words set forth in that count, and leaves the rest wholly unanswered. That objection must prevail, and the demurrer held to be well taken for that cause. Book v. Woodruff 6 Hill 421. It is well settled here, in the language of Mr. Justice Bronson, that

"Every plea in law must not only contain a good answer so far as it professes to go, but it must answer the whole declaration or count to which it is pleaded. If the whole be not answered, the plaintiff may demur, and the action will not be thereby discontinued, but the plaintiff will be entitled to judgment."

See, also, the other cases there cited.

The fifth and sixth pleas fall by the same objection. The plaintiff must have judgment upon the demurrer to the 4th, 5th and 6th pleas, and the defendants must have judgment upon the demurrer to the 2d and 3d pleas. Each party to have leave to amend on the usual terms.

(A Copy.) W. DENIO, State Reporter.

☞ **Alpha Delta Phi**—The different Chapters of the Alpha Delta Phi Society, will hold a Convention in New Haven, on the Wednesday preceding the annual Commencement of Yale College, (August 20th.)

New-Haven, July 22, 1845. jy25 12t

☞ **The Mercantile** Mutual Insurance Company, No. 3 Wall street, inform the public that they are prepared to meet all claims promptly, and their assets are so far unimpaired by the recent fire, that they are enabled to take Marine and Fire Risks as heretofore on the most reasonable terms. L. GREGORY, President.

JOSEPH ROXIE, Vice Pres't.

ELLWOOD WALTER, Sec'y. [jy 31 1m] July 21st.

☞ **Boston Subscriptions to the New-York Tribune** received by authorized Agents, KEDDING & Co. 4 State-street. Terms—10 cents per week or Two cents for Single Copies.

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☞ **J. D. Wheeler,** Attorney and Counsellor at Law, and Commissioner of Deeds, &c. will attend in the Reading-Room of Tammany Hall at all hours of the day and evening. jy15 ostf

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☞ **FREE EXHIBITIONS.—ELYSIAN FIELDS, HOBOKEN.**—Extraordinary Attractions every afternoon this week.

PROGRAMME.

PART I.

The performance will commence with Le Monster Thorne's wonderful feats of throwing Cannon Balls. Mr. Gardner will introduce his wonderful dog Rolla, who will do everything but talk. Mr. Whitlock will do the Locomotive and relate his amusing Bologna Story.

☞ Intermission of 15 minutes between every Part for Promenade and Refreshments.

PART II.

Medley Overture.....Full Band
Virginia Chorus—"Old Joe".....Emmet
Song—"Oh Bullsand Old Dan Tucker".....Gardner
Negro Song—"Hi him in the Eye Bell tim".....Whitlock
Negro Dancing and Comicalities, by Messrs. Gardner, White and Master Bryant.

PART III.

Railroad Overture.....Full Band
Negro Air—"Lucy Neal".....Whitlock
Original Negro Ballad—"Johnson".....Gardner
Ethiopian Parody—"Life by the Galley Fire".....Gardner
Negro Breakdown.....Mast. Bryant

PART IV.

Negro Song—"Walk along Jone".....Whitlock
Refrain—"Way down the Country".....White
Negro Song—"Old Grey Goose".....Whitlock
Finale—In which Mr. Gardner will show how the Bowery Girls come out at night.

The whole to conclude with the Le Monster Thorne, the celebrated Cannon Ball defier.

Every thing announced will positively be performed, and no fictitious names put on our bills. au5 3tos*

LONG ISLAND Camp Meeting Notice.—The following arrangements and rates for the Camp Meeting to be held at Farmingdale, commencing August 11th, 1845, will be strictly adhered to:

The fare to be three shillings each way, and baggage to be taken without additional charge. All passengers going to and returning from Farmingdale during the Meeting, to have seats in the regular passenger cars. The passengers will purchase their tickets at the ticket office before entering the gate to get into the cars. All passengers should be at the Depot from ten to twenty minutes before the time of the cars leaving, as the cars will positively leave at the appointed time. Leave Brooklyn at 7 o'clock, and at ½ past 9 o'clock in the morning, and at 3 o'clock and 5 o'clock in the afternoon. Returning, will leave Farmingdale at ½ before 7 o'clock and ½ before 9 o'clock in the morning, and at ½ past 2 o'clock and ½ o'clock in the afternoon. The fare to be reduced at all stopping places on the road to and from Farmingdale, during the Meeting. The time on the road not to exceed two hours. The tickets to be had at the Depot, South Ferry, Brooklyn, on Monday, August 4th, between 5 and 7 o'clock P. M. as the baggage will be taken to the ground on Tuesday morning. Tents will be put up by the Committee, if desired, at 50 cents each.

By order of the Camp Meeting Committee. au1 1w*

EDUCATION.

REV. R. T. HUDDART'S CLASSICAL AND COMMERCIAL BOARDING and DAY SCHOOL.—Fourteenth-street, between University Place and Fifth Avenue.

This Establishment, which has lately been removed from Houston-street, is now prepared for the reception of an increased number of Boarders. No expense has been spared to render it a complete, well arranged school for boys. It has been long a favorite with the parents of this City, and the direction of one of the first architects in the city, and Mr. Huddart has much satisfaction in presenting to his Friends and the Public, an Institution in which every requisite for the accommodation, convenience, and comfort of his pupils is combined, and such as the experience of many years has suggested. The situation is healthy, and the day of the Pupils will be so disposed as to afford the greatest possible amount of time for present relations of the parties, most unexceptionable—there we go again!

And also counts upon the same words as are contained in the first count, alleged as another part of the said libel—and also it is alleged, that another part of the said libel are the following libelous words, &c.:

"Fenimore (meaning the said plaintiff) closed very effectively with an appeal for his character, and a description of the suffering of his wife and daughters, grown-up daughters often baffled in tears, by these attacks on their father. Some said this was mawkish—but we consider it good, and think it told. We have a different story as to what the girls were crying for—but we won't state it, lest another dose of Supreme Court law be administered to us."

Thereby meaning that the said plaintiff by some unworthy and disreputable conduct, was the cause of affliction and tears in his family.

To this count the defendants plead *actio non, &c.* to so much of that part of the libel set out, firstly, thereto as follows: "knowing, &c." because the defendants say they were editors, &c. and the words constitute part of an article giving an account of plaintiff's suit against defendants tried at Fallston Spa, on the 9th December, 1842—and that on such trial, plaintiff, in addressing the jury in presence of the Circuit Judge, holding said Court, spoke of and concerning one Thurlow Weed and of an action before them had by plaintiff against Weed for words published of plaintiff—and of and concerning provocatings therein, &c. held in and for Montgomery county, and of and concerning the non-attendance of Weed and the cause thereof and his motives therefor and of and concerning his wife and the daughters of Weed, the words following, to wit—

"That he, the plaintiff, did not believe any thing about the said Weed's family being sick at the time when the said Circuit Court was held at Fonda; that he believed that he, the said Weed, falsely pretended that his family were sick to excuse himself from attending the trial of the said action, on that occasion; that the story of the sickness of so many of the family was improbable and absurd; that it was convenient and desirable for Weed to have an excuse of the sickness of his family on that occasion; that the story told by Weed of said sickness began with the alleged illness of one of the daughters (Weed's eldest daughter, Jane Weed,) and grew larger and larger as suited the exigencies of Weed's case, until it was represented that not only that daughter, but the mother and three or four daughters were sick; and that the plaintiff then and there derided and jeered the sickness of Weed's family by saying ironically that they must have had the Asiatic Cholera among them, or some other contagious disease—and that they recovered speedily from their illnesses when the said Circuit Court was passed; that said Weed was a man so paltry that he would pretend to sickness in his family as an excuse to keep away from court, and would resort to trick after trick to put off a case (in which he was defendant, for a day or two; and defendants aver that at the time of such trial, Weed's wife and children were sick, not of cholera, &c. and that Weed was, in consequence, detained, these things being known to the plaintiff. Defendants aver that they did speak of the plaintiff having brought three actions against Weed, one against Hoffman and White—and two against all—in one of which (Weed defendant) plaintiff recovered $85, on 12th April, 1842; in another against all, $87, on the 14th Sept., 1842; another noticed for trials above, that plaintiff had, on the 1st Dec. 1842, sued out three writs against Weed, White, &c. all prosecuted by R. Cooper, Attorney, &c. who had them in his possession and showed them, by plaintiff's direction, to S. H. Hammond, counsel for Weed, who insisted that Weed should compromise