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MISCELLANEOUS.

SHARPE vs. VIALLS, Clerk. The Speech of C. Philips, Esq. as delivered at the Court of King's Bench, in an action between Sharpe vs. Vialls, Clerk, to recover damages for a malicious prosecution for stealing Beef and Bread—value, two pence—on Thursday, Dec. 12, 1822, before the Lord Chief Justice and a special Jury.

My Lord, and Gentlemen of the Jury.

The jury has heard from my learned friend that this action was brought to recover compensation in damages in consequence of a prosecution maliciously preferred—that is, preferred without any probable cause to warrant it, from the absence of which, malice, though not distinctly proveable, was still presumable and inferential. I need not state to you that the grounds ought to be strong indeed to warrant any man in putting another on his trial on a charge of felony. The principles of Constitutional Law are too well known in England to require any statement on the subject. My charge to-day against the defendant is, that he did institute such a prosecution against my client; not only without any probable grounds to warrant it, but upon grounds the most absurd, the most oppressive, and the most capricious—a proceeding not only repugnant to his character as a clergyman, but detestable in the eyes of every human being. Gentlemen, I feel, however, that I have much to combat in advocating the cause of humble poverty against pampered oppression—I have to charge that oppression upon a character where the virtues and the charities of life are presumed to dwell—I have to fear also, lest the language which I must hold towards the individual may be misconstrued into any disrespect to his venerated profession—most assuredly I mean no such thing—but when I find a man in a lofty station struggling to prove that he owes his rank rather to fortune's blindness than to personal deserving, and when I find him hiding the world's heart under a religious garment, it is my duty to overcome the pain which the exposure gives me—a duty to the rank such conduct has dishonored—a duty to the Church, thus more endangered by its own professors, than by all that infidelity can urge against it.

I shall proceed to detail to you the facts—hear them if you can with gravity—think of them, I trust you will not, without indignation. The plaintiff is a poor man, living by the labor of his hands. The defendant, Mr. Vialls, is a clergyman of the Church of England, of ample fortune and its usual attendant, a large establishment. It happened that in October, of the last year, the defendant was employed in the garden of Mr. Vialls, as under gardener, and on the 21st of that month, it being Sunday, he dined with his aunt at Camberwell. They had a small round of corned beef for dinner, and, upon his departure, his aunt, with much hospitality, pressed him to accept a slice of it. He accepted it, returned home, and placed it in an open tool box in the garden, the usual depository for the under gardener's dinner. About 11 o'clock the Parson went to take the air in his garden—he proceeded with the sagacity of an old pointer to the tool box, and made a dead set upon the poor man's beef. (Laughter.) He was not contented with the tithe of it, or he might perhaps have pleaded the prescription. (Continued laughter.)—But he swept it at once entire and wholesale into his breeches pocket.—(The laughter here was loud and prolonged.) Out of the Doctor's own lips I shall prove this ludicrous disposal of the beef. The poor man was earning an appetite, which it seems even breakfast could not take away from the Parson. The Doctor proceeded directly to his house; he dived at once into the kitchen: 'Follow me,' said he, to the astonished cook, 'follow me to the larder, and bring the carving knife with you.' (Laughter.) The cook followed with trembling apprehension, the scullion retreated in silent consternation. Arrived at the kitchen, he cast a look at a round of beef which had already done duty in the family, cut a measured slice from it with much caution, performed the like operation upon a loaf of bread; and then stalked away without uttering a syllable. 'Lord bless us,' says the cook, 'how hungry my master is; breakfast just over, he's

taking to the luncheon.' Not for a luncheon, however, was the beef intended; all that day, and all that night it was the Parson's companion, and the next morning the cook received a summons to attend his dressing room; there spread out in state, he shewed her the slice he had cut out of the round, and the beef he had manuevered out of the tool box; so cut to match that you could scarcely distinguish between them. 'Won't you swear, said the Parson, that these two slices are from the same round?' 'Its impossible that I can, said the cook, 'beef's beef all the world over.' 'I can, said the Parson; there's a slice that come off my round, and I'll swear it did, because I found it in the tool box.'—'Your round, said the cook, was safe in the larder; the door was locked, and the key was in my pocket.' There was a reason, too, which the Doctor assigned for claiming the beef, and which, as it has at least the merit of originality; I shall mention. Indeed, he repeated it before a jury. I know the beef to be mine from its complexion! Gentlemen, perhaps he might. I dare say there was a lily whiteness about the fat, and a modest saltetre, Aurora-like redness about the lean, familiar to the eyes of Doctors of Divinity.

Gentlemen, the next appearance of the cook was before a Magistrate, where she distinctly swore to the utter impossibility of any access to the beef without her knowledge, and she solemnly denied that such access was ever afforded. The cook having failed, the butler was resorted to. The parson produced to him the slice from the round, and asked him whether it was not his property? 'No,' said the butler.—'God bless me, said the Parson, what a fool you are not to swear to beef!' He then produced the slice from the tool box. 'At all events, Joe, you will have no hesitation in swearing that this and the other came from the same round?' 'No, replied Joe, 'I'd rather say they did not, because the one is much drier than the other.' The old mathematician, when he solved the problem, and exclaimed *eureka!*, never felt one tenth portion of the Parson's ecstasy.—Its the same, Joe, its the same; its only drier because I carried it in my breeches pocket.—(Laughter.)

His next resource, gentlemen, was the plaintiff himself. The plaintiff was bewailing the robbery of his dinner, little foreseeing he was to be considered a thief—he told, at once, that he got the beef from his aunt at Camberwell, but Parson Vialls was not to be satisfied, nor would he even make inquiry. Day after day the parson beset him, tormenting him hourly with the same questions; at length his patience was quite exhausted, and he said, as I am told, in the presence of the butler, 'Sir, I told you the name of my aunt, and where she lived; I'll answer you no more questions upon the subject; I am ready to prove my innocence before any tribunal in the world.' In the mean time, gentlemen, the beef was hourly affording to the Parson another opportunity of lecturing upon the mutability of human affairs; in other words, it was getting musty; despatch was necessary. The Parson sent it down with a strict command that some of the servants should dine on it. The butler rejected it, as he was to be a witness; the kitchen maid, before she would not make her stomach a receiver of stolen goods; and the unfortunate cook will tell you that she bolted it herself in order to prevent a revolution in the scullery. (Laughter.)

Will you believe, gentlemen, that upon these grounds, against the speaking evidence of the man's daily return to work, against the paths of his own servants, against common sense, merely because he had a cold round in his larder—this prop of the Church, who keeps his lordly mansion, his equipage, and his retinue, determined to prosecute this helpless peasant on a charge of robbery! a charge so laid as to subject him to transportation. Did you ever, gentlemen, hear of such a case as this? I remember to have heard of one, and but one, which occurred in another country. It was not in Ireland, gentlemen, though Mr. Gurney's smiling would seem to say so. It happened in America, about fifty years ago. Johnny Hook, gentlemen, was a Highlander. He lived in one of the most economical parts of Scotland, until he arrived at years of discretion, when, of course, he emigrated. (Laughter.) He arrived in America about the period of the revolution, having brought with him from Scotland a little stout bullock, which I dare say he thought an apt emblem of his countrymen. (Laughter.) Patriotism is said to be a hungry quality, and unhappily for Johnny Hook, the American army encamped in the very field where his bullock was grazing. The bullock was soon sacrificed to the appetites of the invaders of the field, and the setting

sun beheld not its last rib in existence. At the conclusion of the war, Johnny set off from the farm, and brought his action against the American Commissary General for the price of his bullock. The defence was conducted by the inspired peasant, Patrick Henry, a name immortal in America, and which should never die wherever talent and genius are held in estimation. He touched the chords of the jurors' hearts, and when he had pictured before them the perils and privations which the American army had undergone, the achievements and victories they had obtained, he exclaimed with a feeling which soon became contagious: 'But who is this man who disturbs a nation's devotion, and at the very moment when they are with uplifted arms returning thanks to the god of battles, exclaims beef, beef, beef!'

In America the name of Johnny Hook will never die; Genius has touched it and made it immortal—but what was Johnny Hook when contrasted with Parson Vialls?—as a candle to the sun. From the moment that the Parson glanced his keen, worldly, tithe discerning eye into the poor man's box, his very imagination appears to have become possessed. Throughout all creation he could see nothing but beef! This rounded world, with all its rich varieties, was in his mind nothing but a round of beef; his roses and his lilies became transformed into bullocks; not a text could he think of except the fleshpots of Egypt. Beef became to him what ale was to Boniface, his diet and his dream, his garment and his pillow; in short whether the Parson was eating or thinking, dreaming or preaching, it was all the same; he saw nothing, said nothing, thought of nothing, but beef, beef, beef! The disease, innocent at first, became at last malignant; it excited all his sympathies, and he vowed by his holy hatred of persecution—by his love of Christian charity and forbearance—by his abhorrence of all sinful appetites in the poor—by his reprobation of all luxury out of the pale of the Church—that he'd grind the devoted beef eater to the dust! If he relented but for a moment the mutilated round swam across his memory, and with it came the train of its perfections. Oh, it was a round fit for a Rector's appetite—a round the very Corporation might have envied—a round to bid defiance to the whole Common-Council after a fast-day—

The round was a picture for painters to study. The fat was so white, and the lean was so ruddy. And then his Roman Indignation burst into soliloquy.—'I'll make an example of the miscreant; I'll make it a city business; I'll have the monster tried at Hick's Hall; I'll retain a Judge to prosecute him; the deputy recorder shall prosecute him; I'll go further, the Court of Aldermen shall be on the bench, and he shan't have even a chance, for I'll have him indicted five minutes before dinner; the rascal shall become a perfect Pythagorean, and take a distaste to the whole animal creation; (Laughter;) even in Botany Bay he won't have the hardihood to look a bullock in the face.' (Continued laughter.)

So far this may appear a jest, and as such so far you see I have not been unwilling to treat it. But what will you say when I tell you that he actually put it into practice? What will you say when I tell you that he took three whole days to deliberate, and then, though the poor man returned to his garden to his daily work as usual, actually had him arrested on a charge of felony! Yes, when the poor peasant with all the boldness natural to innocence, day after day presented himself before him; when he was bending in toil over the sluggish soil of his more insensible proprietor, he had him arrested on a charge of robbery! And who did this? a man of wealth; a man of God! the very "Dives" of the Bible, "faring sumptuously every day," and grudging to poverty even the crumbs from his table! Who was the Magistrate before whom he brought him? A Sergeant-at-Law; his own father-in-law! the son-in-law accused, and the father-in-law committed him; and, indeed, they were right not to let the glory of the achievement go out of the family. Imagine, Gentlemen, you behold the spectacle; the Parson swearing to the complexion of the penny worth; the butler endeavoring to coax him into reason; the cook maintaining the inviolability of the larder; the Sergeant threatening to bundle her out of the office, until at last, amid the Babel of the contest, and the alternate ascendancy of "beef!" "Church!" "Newgate!" and "Botany Bay!" he was confined to five hours' imprisonment by these twin ornaments of Law and Divinity.

At length his friends heard of his situation; he was then necessarily admitted to bail, and bound over to meet his charitable "Paster and Master" at the Sessions. Let us pause here, Gen-

tlemen, and reflect on the situation of my client during the interval. Turned out of his service on a charge of robbery; that robbery the robbery of his master; unable to procure employment under the doubt; obliged to expend the last shilling of his little savings, amounting to 30 pounds, in preparations for his defence; with many weeks before his innocence could be vindicated, and with the certainty that even in case of an acquittal the fact of his having been tried would cling to him forever; weigh these sufferings of a poor man, and an innocent man, and then say what a rich man & a guilty man should pay for their infliction. The interval, however might have had its value; it might have awakened in the prosecutor some compassionate feelings of humanity; did it do so? not for four weeks did he brood over the serpent egg of his malignity; for four weeks, night after night, did he lay his head upon his pillow, after praying to the Almighty (if such men ever pray) to be forgiven in the terms of his own forgiveness! I will suppose for a moment the worst against my client; I will suppose that this charge might have been true, and that the poor man, goaded by hunger, and tempted by opportunity, had taken the rich man's beef, "due one penny;" ought he not, as a Minister of the Gospel, to have forgotten and forgiven it; ought he not as a man, to have thanked the Power that placed him above temptation, and dropped a tear for the unfortunate? But when it was false, false on the very face of it; adopted upon grounds which even a drivelling idiot would have discountenanced, and stubbornly persevered in against the combined oaths of every one consulted, in the what terms shall we express our disgust and indignation?

At length the long expected Sessions came—at ten, to a moment, the Parson was in attendance; day after day he missed not a minute; and at least for half their period, upon the steps of the prison-house was this sleek emblem of orthodoxy to be seen, elbowing the thieves and convicts as they passed, and piously preparing to add an innocent man to their number. He was saved all trouble in procuring his attendance; he sur-rendered himself at once, not attended merely by his bail, but by the indignant crowds who had known him from his infancy, and who now pressed forward to attest the industrious honesty of his life. The cause was called on, and without compunction did this Reverend Clergyman, upon no other grounds except those I have stated, depose to a charge of felony against my Client! His wealth; his rank; his character; his sacred station; all were thrown into the scale against the poor man. What mattered it that he had risen to industry with the morning sun, and that its brightest noon could not reveal a speck upon his character! What mattered it that he had smoothed the sorrows of a parent's age! There stood a minister of the Gospel; a man whose functions placed him above suspicion; there he stood, with the very book in his hand from which he should preach the forgiveness of injuries, burning on my Client the brand of an ungrateful felony! Awful to the poor man, was that moment, his country, his liberty, his character, (the poor man's only wealth) at hazard, the little world in which he lived; all were the witnesses of his shame and degradation. If he were convicted, the utmost penalty of the law must have fallen upon him, and fallen justly, because to the civil crime a breach of trust was added; even on an acquittal pains and penalties must have followed; the expense he was put to! a fearful issue! but what did it signify to this follower of the Apostles! The poor man might have rotted in a dungeon; but he had a splendid palace in which to riot. The poor man might have tossed upon his bed of straw; but he had his silken canopy and his bed of down. The poor man might have traversed the returnless ocean; but he had the luxuries of life around him; he hoarded coffer and the groaning board to some souls, the poet tells, afford ample compensation for the scorn of mankind.

Gentlemen, do I use strong language? I am not ashamed to do so in this rascally transaction. I mean not to use measured language. Tho' when I meet a minister of the Gospel with the patent of his election stamped upon his life; humble amid the homage which his merit gains him; poor like the dying Fenelon from his charities; pious, not in his preaching, but in his acts; a link as it were, between the earth which he instructs, and the heaven to which he leads, teaching the happiness of the one and typifying the purity of the other; though I can admire such men even in my inmost heart, yet I will not extend my reverence to that vermin sanctity which burrows its way under the foundation of the temple, and eats the bread of the shrine it has endangered.—Gentlemen,

I need scarcely tell you the result of the prosecution. The prosecutor swore, as might have been expected, to the identity of the beef; to the identity of the bread; and after establishing his full claim to the pennyworth, he called up his household to corroborate him. One of them has been turned out of his service since, the other has a second opportunity to day. What they swear, I take it for granted they will swear new; and if they do, I defy any man of conscience to say that this man had any just ground for his prosecution, recollecting as you will that all was communicated to him before the Sessions, nay, before the arrest. What was the result? the Jury rose indignantly, interposing between the accused and the mortification of a defence—he was at once acquitted.

Parson Vialls departed, happy, I would have supposed, in the escape of innocence, if he had since offered the slightest compensation—if he had even tendered the expenses to which his caprice had put my client; but he has not done so; he chooses again to come before the public, again to meet, I trust, the merited rebuke of an honorable jury. The only point in which such a man can be made to feel is his purse, and I hope it will at last be opened to the claims of the poor. The trial over, my client and his prosecutor both departed, the one to his lordly mansion, the other to his home of desolation—the one exclaiming *populus me sibi datus*; the other ruminating on all the woes to which poverty is subject, and the wickedness which may thrive even under a consecrated garment.

The day of retribution, however, is at last arrived; & at your honest hands I confidently claim it. I claim it, not merely for expenses incurred—or imprisonment endured—for character involved—or oppression exercised—but I claim it in addition, for the agony of mind which the plaintiff must have suffered when he saw himself attainted before the world as a felon. But if I wanted an aggravation in this case, do I not find it in the station of the defendant in that education which should have ameliorated his heart—in that wealth, of which, as Clergyman, he was but the almoner of heaven—in that sacred office which should have pressed on him the assumption of benevolence? What would the world say, and naturally say, when they saw such a prosecutor? Would they not say, that glaring indeed must have been the guilt which forced him to depose to it.—Would they believe that it was assumed upon the grounds too ridiculous for credulity—grasped at, at first, with a disgraceful promptitude, and afterwards pursued with as disgraceful a perseverance, got up by a kind of family arrangement—dragged before the public against an evidence—against the possibility of access—against the familiarity of the article—against the unanimous testimony of every witness—examined. Gentlemen of the Jury, I leave this case to you; I leave it to you to be accused—expense accumulated—endured, and felony grounds like these—damis—but if you hold profbity in it, though clothed with rags; and oppression in horror, though it be robbed in lawn—I call on you to say so by your conscientious verdict.

The Jury instantly returned a verdict for the plaintiff—Damages Fifty Pounds.

WILD WOMAN. Extract of a private letter from Madrid, Dec. 28th.

"A truce to politics for one day, and let us sympathize with the charming fair ones of Madrid, who are dying to see the wild woman that has lately been found in the Sierra de Montero, a desolate and rude range of mountains in the south. She had been seen occasionally by the goatherds as they wandered thro' the mountains. The tale at length reached Cordova, and the authorities sent officers in pursuit of her. They succeeded in apprehending her, and she is now in one of the public hospitals of that city. She is not altogether destitute of understanding, nor ignorant of language, as she can say a few words, such as *papa papa, calo*, a cat, *cambo*, the country, and some few others. When she was asked if she would like to return to the country, she nodded her head in the affirmative. She eats whatever is given to her, but prefers uncooked meats and vegetables. In the beginning cooked victuals did not agree with her, and made her sick; she eats with an extraordinary appetite. Her cloaths appear as if they were placed on a stick; her arms were tied, because she was ever tearing her shoes, in spite of every care that was taken to prevent her. Sometimes she has thrown off all her garments, and runs out quite naked.