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JUDGE TAYLOR'S CHARGE

By the Grand Jury of Edenton District.
CONCLUDED.

A libel is a malicious defamation of any person, made public by printing, writing, signs or figures, in order to provoke him to wrath, or to expose him to public scorn and ridicule. And as such an offence tends to provoke the injured party, his family and friends, and to stir them up to revenge, which it would be difficult to restrain, were not such injuries redressed by public justice, so a libel intended to bring reproach on the memory of a deceased person, is alike subject to indictment. The intention to cast a stain upon his memory, and to injure his posterity, must, however, in such be apparent, for then it endangers the peace. This principle does not exclude a fair discussion of the conduct of deceased persons, circulated in the true spirit of historical writing, to exalt virtue and to degrade vice.

It is an aggravation of a libel, if it reflect on those who are intrusted with the administration of affairs. For, in addition to the private animosities, which are thus likely to be engendered, such publications are a source of some of the severest evils that can afflict the community.

Until very lately it has been part of the law, that the truth of a libel is no justification in a criminal prosecution. It has been considered, for two centuries past, as repugnant to good policy to permit the malicious publication of even truth itself; since as Lord Coke observes, a man aggrieved ought to have recourse to the law, and not avenge himself by the odious means of libelling. It has been supposed that the comforts of society might be hourly endangered, and its tranquility interrupted, by tolerating such a practice; and therefore, while the law permitted party, who was sued in a civil action for a libel, to plead the truth in bar, it considered only in criminal prosecution, the tendency of libels to disturb the peace of the community, and punished the provocation, not the falsity.

These reasons, however, have not been thought conclusive by the legislature, who in 1855 passed an act allowing a person indicted for a libel to justify himself by proving the truth of the facts. The law must accordingly be to administered, and we must indulge the hope that experience may sanction the innovation; for it is certainly an object of grateful contemplation, when the catalogue of public offences can be lessened, consistently with the safety of the state.

Actual breaches of the peace may be committed by an affray, where two or more persons fight in a public place to the terror of the citizens. The fighting must be in public, otherwise it amounts only to an assault. Any private person, who is present, as well a magistrate or constable, may justifiably part the combatants. The latter indeed are bound to keep the peace, and secure the parties, so that they be accountable in due course of law.

By a riot, where three or more persons use any force or violence in the execution of any design whatever, wherein it is not permitted by law. Persons are rioters, who being innocently assembled together, do afterwards, upon a dispute happening to arise between them, form themselves into parties, with promises of mutual support, and make an affray.

Sheriffs and all peace officers are bound to use their best endeavors in the suppression of riots, and may lawfully command all other persons to assist them. Private persons may likewise endeavor to prevent those whom they see engaged in such disturbances, from executing their purpose.

Offences against public justice may be committed,

By an escape of a person arrested upon a criminal process. The great public mischief which has resulted from the frequency of this offence, induced the legislature to pass an act in 1791, whereby willful and negligent escapes are subjected to the same punishment; and the sheriff or gaoler, convicted of the offence, is to be removed from office, and fined at the discretion of the court.

The act likewise provides, that the burden of proof shall be placed on the defendant, who after the state has proved the commitment of the person, can alone exculpate himself by showing that the escape was not by his consent or negligence. In noticing this offence, cannot but remark, that the general insufficiency of the goals throughout the state, is a grievance of the most serious public nature, and one which, whether viewed in its effects upon the public justice, or the public wealth, demands the interposition of the legislature. Until some remedy is applied to this evil, guarding and removing prisoners from one district to another, must continue to be a groaning expense to the state.

By common barratry, as frequently exciting and stirring up suits and quarrels amongst the citizens, either at law or otherwise.

By maintenance, or an officious intermeddling in a suit that does not concern a man, as assisting either party with money to prosecute or defend it. This is an offence against public justice, because it tends to perpetuate litigation; but a man is not debarred from assisting his near relation or poor neighbor out of charity or compassion.

By Champerty; which is agreeable with a plaintiff or defendant to divide between them the subject sued for, if they succeed, and to carry on the suit at the Champertor's expense. That no man shall purchase a pretence to sue in another's right, is a maxim of law; because it would enable litigious men to disturb the repose of their neighbors.

By conspiring to indict an innocent man of a felony falsely and maliciously, who is accordingly indicted and acquitted. It also includes every confederacy to injure individuals, or to do acts which are unlawful or prejudicial to the community. One person alone cannot be guilty of a conspiracy; but one person may be prosecuted for having conspired with others, and may be tried and convicted alone. These four latter offences are punishable by fine and imprisonment.

By perjury, where a lawful oath is administered in a judicial proceeding, to a person who swears falsely, wilfully and absolutely in a matter material to the point in question. This offence, so deeply subversive of social confidence and private security, has been more frequently committed, it is to be feared, than detected or punished. Those whose duty obliges them to attend courts of justice, and to listen to the contrariety of evidence which a single cause often produces, are compelled to acknowledge the melancholy truth, that through passion, prejudice or corruption, this offence prevails to an alarming degree. One case which evidently tends to lessen the due solemnity of oaths, is the frequency with which they are referred to upon light and trifling occasions. Being thus multiplied and employed as the test of truth, upon every private dispute between men, they gradually come to be received as an idle ceremony, when introduced on higher occasions. The mind loses that just reverence for them, which every man ought to cultivate, and feels itself under no stronger obligation to resist the temptations to falsehood, than when an oath is not administered. When oaths taken to defraud the revenue, have become proverbial, and their falsehood admitted with indifference and even with gaiety, is there not reason to fear a farther extension of this laxity of principle? From the justification of perjury on the ground that it is a custom house oath; the transition is short to a court house oath; and in proportion as such a sentiment gains ground, must our lives, liberty and fortune be at the mercy of evil men?

It is to be lamented that such men have not particularly considered the nature of an oath, for we must hope, that if better known, it would be less frequently violated. A man who takes an oath, appeals to the Great Searcher of Hearts, whose existence he acknowledges and whose power over his life and immortal soul, he deliberately admits. He calls upon his maker to deprive him of his life, and to plunge his soul into everlasting misery, if he asserts anything contrary to his knowledge.

The punishment of this offence is provided by the act of 1791, and consists of a fine not exceeding five hundred pounds, standing in the pillory for one hour, the loss of both ears, and incompetency to be a witness.

Subordination of perjury, where a person procures another to commit wilful and corrupt perjury, is punishable under the same law, with fine, the pillory, the loss of one ear and a similar incompetency.

Frauds and deceptions committed on the Treasury or other offices of the State, are directed by an act of 1791, to be prosecuted at the instance of the officer presiding over such office.

The last offence against public justice which I shall cite, consists in extortion, where any officer takes, by colour of his office, any thing of value that is not due to him, or more than is due, or before it is due. This offence is punishable in the same manner with other misdemeanors; in addition to which the forfeiture of office is annexed in flagrant cases.

As the police of a State is important to the comfort and enjoyment of the citizens, public nuisances are provided against by common law, as well as by acts of Assembly. Where any period does any thing which tends to the annoyance of all the citizens of the State, or neglects to do a thing which the common good requires, he may be proceeded against by indictment—as by placing obstructions in public roads, rivers and bridges, or by neglecting to repair them when necessary. Offences of this kind are likely to be known to the Grand Jury, and therefore should be presented to the Court, in order that the overseers may be reminded of their duty. For where to great a portion of the citizens as in this state, must depend upon land carriage for the transportation of the produce of the soil, more attention ought to be paid to the state of the roads.

The necessity of enforcing decency of conduct, propriety and good order in the state of matrimony, and to repress an offence by which they were then sometimes violated, induced the legislature in 1790 to pass an act, by which it is made felony and punishable with death, for any married person to take another husband or wife, while the former is alive. The act makes an exception to five cases in which such second marriage, though in the two first it is void, is yet no felony. 1. Where either hath been continually beyond sea for seven years together. 2. Where either of the parties hath been absent from the other seven years, and the remaining party had no knowledge of the other's being alive within that time. 3. Where a divorce has taken place according to the existing law, or to that which may hereafter be introduced. 4. Where the former marriage is declared by law to be void. 5. Where either party was under the age of consent at the time of the former marriage. Upon the last exception it may be remarked that the second marriage amounts to a disagreement to the former one by one of the parties. But if parties marry before the age of consent, and upon the arrival of that age ratify the contract by agreement, either of them marrying afterwards would incur the penalties of the act.

These are some of the principal offences which the law endeavors to repress by public punishment; the species of which is in every case previously ascertained. No discretion resides with the court to change this settled sentence, or to substitute one kind of punishment for another. The quantity indeed in all inferior offences depend upon the degree and enormity of the crime, and must therefore of necessity be adjusted by those who learn from the trial, a correct relation of the circumstances.

In some cases the punishment ordained by law, may appear to us disproportionately severe, and that the penalty of death is indiscriminately applied to acts of very different degrees of turpitude. It is believed that all persons who consider the immense difference between the actual state of society in this country and in that whence our law is adopted, and who calmly reflect on the legitimate ends

of punishment, which can only be justified by necessity, will unite in the opinion that this is a defect of our criminal jurisprudence. But juries ought ever to be on their guard against being influenced to acquit evil men from any consideration drawn from the severity of the punishment which awaits them. For by so doing, they not only disobey the injunction of their oath, which binds them to return a true verdict according to the evidence; but they also invade the province of the executive magistrate whom the constitution hath invested with the power of pardon. We are bound to presume that he will do his duty, and past experience justifies the belief that clemency never will be withheld from a proper object.

The rigour of punishment and its disproportion to offences may, and no doubt at some future time will, operate as an inducement to the legislature, to revise and improve the criminal code; but it never can furnish any justification to courts and juries, in neglecting to distribute that justice which the law requires. For it must be evident to every man who enquires into the principle of our government, that the great objects to which it is directed, cannot be accomplished unless public functionaries confine themselves to the limits which bound their authority. While each revolves within its own orbit, like the bodies of the planetary system, the combined effort of our respective movements, must be uniform and harmonious; and it is then alone that the protecting energy of the constitution will be enjoyed by the citizens, when all regard it as the common centre of delegated power.

To the enumeration of crimes I will add a general rule; that all crimes of a general nature, all disturbances of the peace, oppressions and all other misdemeanors of a public evil example, against the common law, are subjects of indictment in this court, except where the original jurisdiction of them, is vested by act of Assembly in the county courts.

Besides the specific functions assigned to you as Grand Jurors, there are various duties of no less importance, but far more agreeable in their execution, which appertain to you as citizens and as men. They result from the obligation imposed on every one, to contribute his individual aid towards the prosperity of his country and the welfare of his fellow citizens; and although these duties are not prescribed by law, yet nature, reason, and the ties of conscience have an influence over the heart and mind of a just man more powerful than the words of a statute.

When the peace of society is maintained, and the visible effects of bad passions punished, the work of the law is done. It incessantly but necessarily conflicts one to infamy and another to death; while those who insult the stroke of justice, leave a sigh at the reflection that life and character might both have been saved, had early opportunities of instruction been presented to the victims; that he who is dishonored might have become worthy of the highest confidence; that he who is cut off, perhaps in the very dawn of manhood, might have lived longer in respectability and usefulness. But alas! too many of the youth of this country are nurtured in idleness and ignorance, in profligacy and dissipation; and the violators of the law are most frequently of this description. They are suffered too early in life to take their rank among Evils, before their understandings are sufficiently matured to select their companions, or to resist the influence of bad example, having no principles of duty instilled into their minds, they are led away by every temptation, and abandon themselves to every passion. Seduced by the practices of their friends and associates, (and not always discountenanced even by parents, prone to mistake prurency to vice for indications of ease) they become early proficient in gambling, falsehood and blasphemy; and passing from vices to crimes, gradually rise in the scale of guilt, until the offended laws of the country close with ignominy, a career, commenced in idleness and immorality.