

names of Sykes, Snaith, [431] and Co., who were proved to be Byers's bankers, was in the possession of the petitioning creditor, and produced by him at the trial, with a cross marked on it; which cross, however, was unexplained. The bankrupt's papers had also, it appeared, fallen into his possession at the time of the bankruptcy. A clerk of Sykes and Co. proved, that 100l. was received from Pole and Co. on Byers's account the day after the check was drawn; and a clerk of Pole and Co. proved, that that amount was that day paid by them on account of the petitioning creditor. These clerks could only verify the entries to the above effect in the bankers' books, but were unable to recollect the identical check.

Vaughan and Cross Serjts., who shewed cause against the rule, contended, that here was sufficient evidence for the jury to presume a loan of 100l. from the petitioning creditor to Byers, especially as the check had come back to the hands of the lender.

BEST C. J. I am sorry that this objection must prevail against the justice of the cause, but no evidence has been given which will justify the jury in presuming the existence of the petitioning creditor's debt. All that distinctly appears towards raising such a presumption is the delivery of a check by Smith to Byers; for the mere circumstance of its coming back to the hands of Smith is not evidence that it has been paid, especially when there is no proof that it was ever in the hands of Byers's bankers; and when it is considered that Byers's papers fell into the hands of Smith, the clerk who paid the check ought to have been called.

The rest of the Court concurring, the rule was made

Absolute.

[432] YRISARRI v. CLEMENT. Feb. 13, 1826.

[S. C. 11 Moore, 308: at Nisi Prius, 2 Car. & P. 223.]

1. The Defendant having published imputations against the Plaintiff as envoy of the state of Chili, and the Plaintiff in a declaration for libel having stated as matter of inducement, that he was envoy of that state: Held, upon motion for a new trial, that the admission of these two facts upon the face of the alleged libel was sufficient proof of them to enable the Plaintiff to sustain his action.—2. An action of libel does not lie for any thing written against a party touching his conduct in an illegal transaction; but for misconduct imputed to him in any matter independent of the illegal transaction, though arising out of it, an action lies.—3. Held, that the following passage, "The Plaintiff lost no time in transferring himself, together with 200,000l. sterling of John Bull's money, to Paris, where he now outtops princes in his style of living," did not impute to the Plaintiff having committed a fraud on the English nation.

This was an action for a libel. After the usual allegation of the Plaintiff's good character, the first count of the declaration proceeded,—

"And whereas, also, before the time of the committing the grievances by said Defendant in this count and the four next following counts mentioned, the said Plaintiff had been, and was appointed by certain persons exercising the powers or authority of government in a certain republic or state in parts beyond the seas, to wit, in the republic or state of Chili, in South America, to the office or station of envoy extraordinary and minister plenipotentiary from the said republic or state of Chili, to and at the courts of Europe, and amongst others to the court of this United Kingdom, to wit, &c.

"And whereas before the time of the committing the grievances by said Defendant in this count and the four next following counts mentioned, the said Plaintiff had been and was authorized, empowered, and directed by said persons exercising the powers or authority of government in the said republic or state of Chili, in South America, to negotiate a loan or loans for the service of said republic or state of Chili, to wit, at, &c.

"And whereas, also, before the committing of the grievances by said Defendant in this count and in the four next following counts mentioned, to wit, on the [433] 1st January A. D. 1820, the said Plaintiff had come to and arrived in this country, and had become and was resident therein, to wit, at London aforesaid, in the parish and ward aforesaid:

"And whereas, also, before the committing of the grievances by Defendant in this count and in the four next following counts mentioned, to wit, on the 1st July 1822, the said Plaintiff, by virtue and in exercise of the said power and authority conferred on him by the said persons exercising the powers or authority of government in the said republic or state of Chili, in South America, had entered into, made, and concluded, for and on the part of said republic or state of Chili, a contract with certain persons, to wit, John Hullett and Charles Widder, carrying on trade and commerce in the city of London by and under the style and firm of Hullett, Brothers, and Co., for raising a certain loan of money, to wit, a loan for 1,000,000l. sterling money of this kingdom, for the service of said republic or state of Chili, by the sale of certain bonds or obligations, to wit, bonds or obligations of and on the part of the government of the said republic or state of Chili, which said bonds or obligations had been and were signed by said Plaintiff as envoy extraordinary and minister plenipotentiary for the said republic or state of Chili, and by virtue and in exercise of the said power and authority conferred on him for that purpose as aforesaid, and had been and were issued by him the said Plaintiff to the said Messrs. Hullett, Brothers, and Co., and had been and were sold and disposed of by and through the agency of them the said Messrs. Hullett, Brothers, and Co., to divers subjects of this kingdom, as the buyers and purchasers thereof, to wit, at London aforesaid, in the parish and ward aforesaid :

"And whereas, also, before the time of the committing of the grievances by the said Defendant in this count and the four next following counts mentioned, [434] one John Hullett, being one of the partners in the said house or firm of Messrs. Hullett, Brothers, and Co., had been and was appointed by certain persons exercising the powers or authority of government in a certain other republic or state in parts beyond the seas, near or neighbouring to the before mentioned republic or state of Chili, in South America, that is to say, in the republic or state of Buenos Ayres, in South America, consul-general for the said republic or state of Buenos Ayres, in and towards this United Kingdom, to wit, at London aforesaid, in the parish and ward aforesaid :— yet the said Defendant well knowing all and singular the premises aforesaid, but contriving and maliciously intending wrongfully and unjustly to hurt, injure, and prejudice, and damnify the said Plaintiff in his said good name, fame, credit, and reputation, and to bring him into public scandal, infamy, and disgrace with and amongst all his neighbours and other good and worthy subjects of this kingdom, and cause it to be suspected and believed by those neighbours and subjects that he had been and was guilty of fraud, and otherwise to hurt, injure, prejudice, and damnify him, heretofore, to wit, on, &c., at, &c., did falsely and maliciously print and publish, and cause and procure to be printed and published of and concerning the said Plaintiff, and of and concerning the matters aforesaid, a certain false, scandalous, malicious, and defamatory libel in a certain public newspaper, commonly called or known by the name of the *Morning Chronicle*, in the form of a letter purporting to be written to the editor thereof, containing therein, amongst other things, the false, scandalous, malicious, and defamatory matter following, of and concerning the said Plaintiff and of and concerning the matters aforesaid, that is to say, "I (meaning the person purporting to be the writer of said letter) would ask another question not irrelevant on the pre-[435]-sent occasion : why did the appointment of consul-general (meaning the said appointment of consul-general for the said republic or state of Buenos Ayres, in South America,) to England fall on the person alluded to? (meaning the said John Hullett). It would not surely be owing to any approbation of his (meaning the said John Hullett's) conduct in meddling with the affairs of a neighbouring state (meaning the said republic or state of Chili, in South America,) which state (meaning the said republic or state of Chili,) without being in want of money, or even asking for it, this London agent (meaning the said John Hullett), saddles with a debt of one million of pounds, taken out of English pockets, for the benefit in reality of himself (meaning the said John Hullett,) and the Creole Spaniard (meaning the said Plaintiff,) who acted the part of plenipotentiary to the Stock Exchange in that drama (meaning and insinuating thereby that the said Plaintiff colluding with the said John Hullett to obtain money fraudulently in the matter of the said loan for one million of pounds for the service of the said republic or state of Chili, in South America, had defrauded the English subjects of this kingdom). The latter worthy (meaning the said Plaintiff), lost no time in transferring himself, together with his hundred thousand pounds sterling of John Bull's money to Paris, (meaning and intending thereby that the said Plaintiff had fraudulently obtained two

hundred thousand pounds sterling of the money of the English subjects of our sovereign lord the King, and had fled from this country with the same,) where he (meaning the said Plaintiff,) now outtops princes in his (meaning the said Plaintiff's) style of living. This notorious transaction, that will occupy a prominent place in the annals of stock-jobbing fraud, (meaning and insinuating thereby that said Plaintiff had colluded with the said John Hullett in the matter of the said loan raised for the said republic or [436] state of Chili, in South America, and had defrauded certain English subjects of this kingdom,) ought to have warned official men of the South American state, alluded to in Mr. Canning's speech, against trusting the management of their affairs in England to the same hands; but they have determined otherwise, and here are the consequences of their acting in contempt of public opinion. I (meaning the said person purporting to be the writer of the said letter,) write this not for the English readers of the *Chronicle*, but for the South Americans; they will not be at a loss to supply the names here omitted."

The four following counts set out the same libel, averring that the Defendant had falsely and maliciously published it of and concerning the Plaintiff and the matters aforesaid, and the various innuendoes to the words "the latter worthy lost no time in transferring himself together with 200,000l. sterling of John Bull's money to Paris, where he now outtops princes in his style of living," were,

That the Plaintiff in the matter of the said loan for the republic or state of Chili, had defrauded English subjects of 200,000l. sterling:

That he had acted fraudulently in the matter of the loan raised for the republic or state of Chili:

That he had fraudulently obtained 200,000l. from English subjects:

That he had committed a fraud.

The sixth, seventh, eighth, and last counts contained no allusion to the introductory matter of the first count, and merely set out the above words, with the following innuendoes:

That the Plaintiff had fraudulently obtained 200,000l. of the money of English subjects, and had fled therewith out of the kingdom:

That he had left this country with 200,000l. fraudulently obtained from English subjects:

[437] That he had defrauded English subjects of 200,000l.

That he had committed a fraud.

At the trial before Best C. J., London sittings after Michaelmas term, the Plaintiff proved the seal of the government of Chili, as also that that country consisted of three provinces, two and a half of which were under the authority of the director Don Bernardo O'Higgins, who, with the other members of the government, made and enforced the laws. The remaining half province was in the hands of the old Spaniards. The Plaintiff's appointment as envoy to all the courts of Europe was then put in, signed by the director, as well as an authority to raise money for state purposes. A deed executed at Paris, and deposited in the Bank of England, was next put in, by which the revenues of Chili were charged with the payment of the loan to be raised by the Plaintiff, and a bond, by which it appeared that some payments had been made.

Evidence was also given of the independence of Buenos Ayres, and of the seal of that country attached to the appointment of John Hullett as consul. The loan raised was to the nominal amount of one million, for which it appeared that the Plaintiff had only received 675,000l.

After proof of the publication by Defendant, it was objected on his part, that the Plaintiff had failed to prove the allegation in the declaration, that Chili and Buenos Ayres were states; the present governments of those countries not having been recognized by the government of this. Upon which the Lord Chief Justice observed, that there were three sorts of foreign states; first, states that were merely acknowledged as sovereign independent states; secondly, states in connection, or such as were connected with us by existing treaties; thirdly, sovereign states neither in connection with us nor acknowledged by our government, such as [438] Japan, Siam, and many other states which conquest and commerce have made us acquainted with. In cases relative to the two first-mentioned states, it is only necessary to prove that our government has acknowledged them or treated them as sovereign independent states. In many cases it would be unnecessary even to adduce this proof, for the great states of

the world are taken notice of in acts of parliament made for confirming treaties and regulating the intercourse with them, and of such states the courts of law take judicial notice. The existence of unacknowledged states must be proved by evidence. The proof necessary to establish the fact of the existence of such states is, that they are associations formed for mutual defence, who acknowledge no other authority but that of their own government, observe the rules of justice to the subjects of other states, live generally under their own laws, and maintain their independence by their own force. It makes no difference that the new state formed part of another acknowledged state; states may be legitimately divided. The states of Holland and America were treated as sovereign states by the nations of Europe before their independence was acknowledged by Spain and Great Britain. The considering separated portions of an ancient state as new and independent states, does not legalize the conduct of British subjects who assist them in the contest with their old governments, such governments being in alliance with Great Britain. His Lordship, however, reserved the point for the consideration of the Court.

It was then objected, that the raising of loans for a state at war with a state which was in friendly relation with the government of this country, was an illegal transaction, and that the Defendant was not responsible for any thing said of the Plaintiff touching his conduct in the illegal transaction. The Chief Justice, however, overruled the objection, thinking the Plaintiff had been attacked in his private character independently of the [439] political transaction, and a verdict was found for him on the whole declaration, with 400*l.* damages.

Taddy Serjt. on the two objections above stated, obtained a rule nisi for a nonsuit or a new trial; and for an arrest of judgment, on the ground that the innuendo in the eighth count was more extensive than the words would bear. It might be said innocently of any person, that he set off to Paris with 200,000*l.* of John Bull's money; and if that count were bad, the verdict in a case for libel having been taken in all the counts, could not be entered up on a single one, *Holt v. Scholfield* (6 T. R. 691). [The objection that Chili could not be considered as a state until recognized as such by the government of this country, and that unless it were so recognized, the Plaintiff could not in a British Court allege his mission as envoy, or his authority to raise a loan, was urged at great length and with great learning by Taddy and Spankie Serjts. for the Defendant; but as the Court came to no decision on the subject, holding, that for the purposes of this action the Defendant had sufficiently admitted those points in the libel itself, it is unnecessary to report the argument.]

The objection, that the Plaintiff having been engaged in an illegal transaction, could not recover damages for any thing said of his conduct in that transaction, which was sustained chiefly on the authority of *Hunt v. Bell* (1 Bingh. 1), was answered by the assertion, that the libel contained imputations on the Plaintiff, on topics de hors the illegal transaction; his alleged absconding to Paris with the money raised having nothing to do with the illegality of raising it.

BEST C. J. A motion has been made in this case for a nonsuit or a new trial, and the ground stated for the [440] first is, that the declaration has alleged there is such a state as Chili; that the Plaintiff has been appointed minister plenipotentiary from that state to this country; that there is such a state as Buenos Ayres; that Mr. Hullett has been appointed consul general for that state; and that there has been no proof of these allegations. I decided at the trial, that the existence of those states was proved, and I have now the satisfaction to state, that all my learned brothers fully concur with me, in thinking there is no foundation for the objection which has been raised on this head. The statement in the declaration was mere inducement, and it is sufficient if what is so stated has been admitted by the Defendant on the face of the libel itself. On the face of this libel the Defendant admits that there are such states as Chili and Buenos Ayres; and it was proved at the trial, that the Plaintiff had been appointed minister plenipotentiary for the first, and Mr. Hullett consul-general for the second. It appears to us all, that the allegations are made out.

The second objection was, that the Plaintiff could not recover, as the loan which he came to negotiate was illegal, and the Plaintiff, it was said, could maintain no action arising out of a transaction which was itself contrary to law.

The case of *Hunt v. Bell* I most fully agree to, and if I then had had the honour of a seat in this Court, I should have decided in the same manner, for I think that where a man complains of a libel written respecting an illegal transaction in which he is

engaged, the illegality of that transaction is an answer to his complaints; but it appeared to me at the trial, and my opinion is now confirmed by that of my learned brothers on the bench, that if a man is guilty of an illegal transaction, fraud ultra that transaction is not on that account to be imputed to him; or, in other words, if a man is guilty of borrowing money in a manner which the law has for-[441]-bidden, he is not, therefore, to be charged with committing a fraud upon the English nation.

Another point was made at the trial, which point I did not save for the consideration of the Court, and therefore no nonsuit can be entered. I thought the libel imputed to the Plaintiff the having committed a fraud upon the English nation. On re-considering the imputations in this libel, and the innuendoes in the declaration, I am of opinion the libel imputes to the Plaintiff no fraud whatever upon the English. It is a rule of law essential to the liberty of the press, that in all actions for libel every part of the paper must be read, in order to collect its meaning. On reading this libel over for that purpose, I think that the Plaintiff is charged with defrauding the people of Chili, and not, as is alleged in the innuendoes, with defrauding the people of England.

His Lordship here read the libel in proof of his opinion, and when he came to the passage, "I write this not for the English readers of the *Chronicle*, but for the people of South America;" he observed, this is most important to shew the meaning and object of the libel. The insinuation is, that you (the Plaintiff) have raised a loan which the people of Chili do not want, and have applied it to your own private purposes, and that insinuation means, that the fraud is committed upon the people of Chili, and not on the people of England. If I lend a man money, that money may be said to be taken out of my pocket, but if the agent who receives it from me for the borrower, spends it instead of delivering it over to the borrower, he does not cheat me, but the borrower. I am at present of opinion, that the innuendo, "meaning thereby that the said Plaintiff had cheated John Bull," is not made out, since that is not really the meaning of the passage.

As this distinction was not attended to at the trial, it is fit it should go down again.

[442] Mr. Serjt. Vaughan submitted that this was an entirely new point, and that counsel should have been permitted to be heard upon it.

The LORD CHIEF JUSTICE and Mr. JUSTICE PARK, however, were of opinion, that if the judge who tried the cause was satisfied that sufficient attention had not been paid to an important part of the case, and the Court agreed with him in that opinion, the cause must go down to another trial. The Court was not finally deciding, but putting the case in a state for further enquiry.

Rule absolute for a new trial.

End of Hilary Term.

[443] CASES ARGUED AND DETERMINED IN THE COURT OF COMMON PLEAS, AND OTHER COURTS, IN EASTER TERM, IN THE SEVENTH YEAR OF THE REIGN OF GEORGE IV.

REDPATH v. WILLIAMS. April 12, 1826.

[S. C. 11 Moore, 333.]

Sending process by the post in a letter which the Defendant refuses to receive, is not good service, although the refusal may have been wilful, and accompanied with a long avoidance of service.

The Defendant having avoided the service of a writ of *capias ad respondendum*, by causing her servant to say that she was ill, or not at home; the Plaintiff's attorney having learned from her counsel that she proposed to persevere in avoiding the service, enclosed a copy of the writ in a letter, and put it into the post, where he found it afterwards remaining, the Defendant when it was offered her by the postman having refused to take it in.

He then filed an affidavit of these facts, entered an appearance under the statute, and signed interlocutory judgment.

[444] Wilde Serjt. obtained a rule nisi to set aside this judgment for irregularity, against which rule