

The result was, that the Court, at the subsequent Michaelmas Term, in October, delivered their unanimous opinion, that the **WHOLE OF THE COMPLAINT WAS MALICIOUS, AND WITHOUT FOUNDATION.**

Upon this acquittal, containing on the one hand, so honourable a testimony of the innocence of the Attorney General, and on the other, holding up both to public and private view, a malicious and unjustifiable attempt, on the part of the Complainants, to wound and blacken his reputation, without even the shadow of any *probable Cause* for the accusation, the present action was grounded. — Another action, *mutatis mutandis*, was commenced against Mr. Bowley, the other partner, and at issue the same Term; a brief account of which trial, will follow the one now in detail.

In this place it may be proper also to remark, that Mr. Cambridge, so far from being satisfied with his acquittal of the Attorney General, has since exhibited and brought forward, before his Majesty's Most Honourable Privy Council, five distinct articles of charge against him, being in substance the same with five of the charges which formed the principal object of the Complaint before the Supreme Court. For the result of this accusation before the Privy Council, against the Attorney General, as well as against the three other officers of his Majesty's government, in this Island, the reader is referred to their Lordships Report, which has been long since published at large, in a former paper.

A Special Jury being struck, impanelled, and sworn, the Attorney General proceeded to open the cause.

He began with explaining to them the nature of the action they had to try; and on this head, among other things, observed, that malice in the acuser, either *express*, or *implied*, must necessarily form the basis and groundwork of such an action. — That *express* malice, which in most, if not in all cases, consists either of words written, or spoken, can, from the very nature of the thing, be seldom or never proved, as it could scarcely be expected, that an acuser, however deep the baneful principle may have taken root in the heart, would publish it either to the world at large, or to his friends; and more especially, as the ruthless and ruinous object of such a passion, when predominant, might be much more easily obtained without a declaration of his intentions, than with it. That for a man to say, while he is contemplating a prosecution against another, or while he is actually prosecuting him, "I will prosecute him with malice," or, "I will seek my private revenge against him, by a prosecution, although I know or believe him to be innocent," would be throwing off the mask of dissimulation at too great a risk; and would, in a principal degree, defeat his own hopes of a conviction: At any rate, after an acquittal, this open shew of intention would

unavoidably subject the acuser to all the pecuniary effects of such an action as the present one.

He said, therefore, that the proof of the malice necessary to the support of such an action, must, in almost all cases, arise by way of implication, or inference, from a variety of circumstances, forming each a link in the great chain of malice. That malice, being essentially nothing more than a property of a vicious and depraved heart, is, in its own nature, incapable either of being seen, felt, or heard, or in other words, of becoming an object of any of our external senses, and therefore, strictly speaking, can be known, with intuitive certainty, to him only who is the Trier and Searcher of all Hearts, or to the heart itself that harbours and makes welcome so destructive a guest. He compared it to the case of a fraud, the proof of which, he said, is generally collected from certain circumstances which the law calls *marks* or *indicia* of fraud, and from whence the principle itself is for the most part, if not always, inferred.

After these remarks, he took occasion to advert to that part of the Declaration which stated, that the accusation against him was brought with "premeditated malice, and without any probable or reasonable cause;" and these, he said, were emphatical and operative Words in the Law. The malice, therefore, if inferred at all, must be inferred from the want of a probable cause. The question, he said, whether there was or was not such a probable cause, naturally resolved itself into two general propositions, the one tending to culminate and the other to exculpate the Defendant, but both depending altogether upon the weight of the evidence to be offered, which might establish a belief of the one, or create a disbelief of the other.

He then proceeded to arrange and apply his evidence, which consisted, principally, of public authentic documents: And in doing this, he remarked, that the malice stood proved, *prima facie*, in the very face of the record, as laid in the Declaration —

That the prosecution against him was essentially different from prosecutions in the usual and ordinary course of law, which Mr. Cambridge cautiously avoided for reasons not of the very best impression: That in common prosecutions for felonies, riots, &c. the verdict either expressly affirms the charge, or as expressly denies it, by the affirmative or negative words, *guilty*, or *not guilty*; and consequently the judgment entered on such a verdict, can say no more than the verdict itself does.

But where the mode of resort will admit of it, as in the case of a complaint to the Court against any of its Officers, it is usual, he said, to make their opinion to express, more particularly than what is found in a general verdict, the innocence or guilt of the party accused. Accordingly the Court, when they delivered their opinion on the before mentioned complaint, directed the clerk to make it part of the en-

try, that the whole of it was, "*malicious and without foundation.*" The prosecution, therefore, he said, appeared on the record itself to be *malicious*, and must be considered to be so, at least, *prima facie*, until this proof by record, which is the highest proof the law knows of, should be countervailed by other evidence that the Court was not possessed of on the former hearing.

A full detail of the whole evidence, on either side, with the various observations and reasonings on the different parts of it, would occupy more room than the narrow limits of one paper can supply. We are, therefore, able to gratify our readers with only some of the general principles, accompanied with the result of the whole.

The Attorney General, after having gone through his evidence, and pointed out to the Jury a great variety of instances in which he thought the malice of Mr. Cambridge clearly appeared, concluded with observing, that if the evidence offered to their consideration, should be thought a defective or too weak a proof of that malice, the very name of "an action for a malicious prosecution" ought to be expunged from the books of English Law, as a proof never was or could be fuller to the purpose of maintaining an action of this nature, than what had been offered in support of the present one. He added, that Mr. Cambridge could not possibly clear himself but by one of two ways: First, by impressing a belief on the minds of the Jury, from the general complexion of the evidence at large, that although it did not reach to the establishment of the truth of his original charges, yet it might be sufficient to show a *probable cause*: or, secondly, by proving to the satisfaction of the Jury, the absolute truth and unimpeachable certainty of those charges. He then sat down.

Mr. Cambridge, who had applied for and obtained leave of the Court to argue his own case, although there were two other Gentlemen of the Profession unengaged, then rose, and entered upon his defence.

The principles laid down by the Attorney General, he seemed to admit, and therefore confined himself, principally, to the proofs of "a probable cause." He went over the whole of the charges in the order they stood in the petition, and applied the proofs taken down on the hearing of the complaint, to each of them in the same order progressively. A number of witnesses were also examined, from whose testimony, in conjunction with the written evidence, he said, he hoped it would appear, that although the truth of those charges might not be considered as fully established, so as to confer guilt upon the Attorney General, yet enough might be discovered to convince the Jury, that there was a probable cause for the prosecution, and consequently it could not have been a *malicious* one, if the principles laid down by the Attorney General were right. He observed also, and several times repeated the observation, that if such