



# Crime and Punishment

*Minety*

## Claims Court

Extraordinary Charge of Assault

Henry Hibberd v W T Perry Keene

This was an action for an assault. The defendant pleaded not guilty.

Mr Edwin James, QC, and Mr Hawkins were counsel for the plaintiff. Mr Lush QC and Mr Cripps were counsel for the defendant.

Mr Edwin James, QC, in opening the case, said the plaintiff appealed to a jury for damages under no ordinary circumstances, but for a very gross and degraded assault, committed without the slightest palliation or excuse on the part of the defendant. The plaintiff is a gentleman of some property and position in the county of Wilts. The defendant is also a gentleman of property, having succeeded to some landed property there, and changed his name in consequence from Perry to Keene, and resided within two or three miles of the plaintiff. They were both connected with a company for making alcohol out of beet, and the learned counsel detailed the particulars of the assault, which will be found in the subjoined evidence.

Mr Henry Hibberd deposed: I live at Braydon House, Minety, Wiltshire. I have been a resident there about two years. I purchased the estate I am now residing on. The defendant lives within three miles of me. He is an independent gentleman. A short time since, a company was formed for extracting alcohol from beet. I was to superintend the farming part, and the defendant the manufacturing part, each depositing £1,500 for shares. We went on amicably for some time, but at the beginning of the year, the defendant suggested that a man should be put on to assist in managing the farm, to which I objected. In August last, the defendant claimed a right of way over my fields, and someone broke open the gate and drove a vehicle over my crop of standing beans. I had the gate fastened up, and on the 10<sup>th</sup> of August I received a letter from the defendant, giving me notice to re-open the gate, or he should break it open, he claiming a right of way over it. The field had not yet been used as a right of way in my time, and not for years before.

Mr Mansell, of London, had an interest in the company, and on the 11<sup>th</sup> of August last he went with me to one of the fields of beet in which the men were working. I saw the defendant and the Rev Mr Tuson, the vicar, on horseback, riding very fast towards the spot where I and Mr Mansell were standing. They had evidently seen me when they were some fields off. The defendant said, "Well Mr Hibberd, you are telling the men some more of your lies." I replied, "I have not spoken to the men." He said, "I don't believe you.

You are a liar. I know you told them the other day that I had no property, except a few dirty entailed acres." I replied, "I have never spoken to the men on the subject," but I had said something similar, in confidence, to our clerk. Defendant said, "We will call the men, and see." The men were called up, and defendant said to a man named Pincott, "Who are the men who heard Mr Hibberd say so? Point them out to me." Pincott said, "Henry Walden." Walden was then called up and asked, and he said, "No, I never heard Mr Hibberd say anything of the sort." Pincott pointed out Robert Selby, who also denied it. Defendant said, "Who are the other men?" Pincott said, "Henry Daniels," who was working in a lower field. He was fetched, and when asked the question, denied having heard me say so. After that defendant said, "I tell you what I should like to do. I should like to give you something." I said, "What's that?" He said, "A devilish good licking." (Laughter).

The Rev Mr Tuson then interfered, and some conversation ensued between us. I reminded him that I had been called a liar by the defendant, and the men had failed to prove it. The Rev Mr Tuson said, "You are a liar and a rogue." (Laughter). The defendant had got off his horse, and I said, because the men had not borne out his assertion, "You see you have stated what is not true." He said, "Do you mean to call me a liar?" I said, "No, I don't make use of such language as that." Defendant repeated the question, and I replied he "had stated that which was not true." Defendant was wringing his hands, and as I turned my head he struck me under the ear, knocked my hat off, and sent me staggering, saying, "D---- you, take that." I then put my hand to my head, and walked home. When I got home I found the blow very painful, and there was a swelling behind the ear. I went into my room, and fomented it, and whilst there I received a note. I had been home scarcely an hour when I received it. Defendant's house is about two miles and a half from the spot where I was assaulted.

The letter was then put in and read. "Sir, -- Notwithstanding the subject of difference between us, I feel that I was not justified in striking you, and I take the earliest moment on my arrival at home to express my regret that in the heat of the moment I should have so far forgotten myself, and I beg to offer you my apology. -- I am, &c, "W T Perry Keene"

My neck was very stiff for two days after, and I was obliged to have leeches applied.

Cross-examined by Mr Lush: Mr Mansell was staying with me at my house, and saw the letter. I took no notice of the letter of apology just read, the action was brought on the 20<sup>th</sup> August. There were no differences between us except as to distillery matters. I had differences also with the Rev Mr Tuson. Mr Keene and his son took £1,500 worth of shares in the concern. I first spoke to the defendant about it. The Rev Mr Tuson had also shares. After speaking to defendant, he said he thought there was something in it. I swear I don't recollect saying I had a license of £1,000 a year from Messrs Dray & Co. I purchased my estate for £5,800 and sold 75 acres to the company for £4,500. That included the value of the license. I never quarrelled or disagreed with the defendant before March relative to the man Pincott. I resigned from the management of the farm from being insulted at Pincott's being placed in that position. There was a meeting between us the day before. I most certainly swear that I only said to Corn, our distiller, when the distillery was stopped, that I doubted Mr Keene had sufficient ready money to carry on the concern, as it was reported he intended to do. The distillery is in course of winding up. It was no doubt a failure. I have lost a good deal of money in connection with it. I sold the remainder of the estate to Mr Webber for £7,500. I did not promise Mr Webber to stop up all rights of way. Defendant agreed the distillery right of way should be stopped, and in consequence I undertook to stop it up in the sale with Mr Webber. I applied to Mr Keene to sell me a piece of land, and he refused, but offered to sell it to the company. (The plaintiff was cross-examined at some length relative to the disputed right of way, and plaintiff's breaking faith with him in advertising and selling his land, which had been the cause of such ill feeling between them). I did not, when Mr Tuson called me a rogue, say, "D---- your eyes, both of you. I have not done with either of you yet." I said, "I have not done with Mr Tuson." I am not in the habit of swearing. I did not say to Mr Mansell, as soon as I received the blow, "Come along, Mansell, that will do." I did not hear the

men who were called up say that they heard me say neither Keene nor the company had any money, and that both wanted me to lend them £1,000, they said they had heard so.

Re-examined: I had lent Mr Tuson £500 about which there was a dispute, and it was in reference to that he called me a rogue. I had to sue him before I got my money back. The ill feeling between myself and the defendant commenced by the introduction of Pincott into the management of the farm. Keene leased some of his property to the company. I have offered to buy back the land I sold to the company. The defendant once challenged me.

The learned Judge: I think you had better confine yourself to what occurred on the 11<sup>th</sup> August.

Mr Henry Mansell, of the firm of Mansell and Elliott, auctioneers and valuers, of Cornhill, corroborated the plaintiff's evidence.

In cross-examination he said: At Hibberd's request I made a note at the time of what the defendant said and handed in his notebook,. Mr Hibberd's son is in our house of business.

A workman named Smart was called, and corroborated the plaintiff's evidence.

This was the plaintiff's case.

Mr Lush, in addressing the jury for the defendant, said the action ought never to have been brought. The defendant in a moment of forgetfulness, committed an unjustifiable act, and afterwards on reflection he took the earliest opportunity of doing what every gentleman would do under the circumstances – wrote an apology to the plaintiff for his conduct; and he hoped the jury would consider the defendant had, by so doing, done all that was necessary under the circumstances. Mr Keene still expressed his regret for what he had done, and what could he do more? The letter he wrote to the plaintiff was taken no notice of by him, and if the plaintiff's object was not to put money into his pocket, why did he not call upon the defendant to pay a sum of money towards some charitable institution? He might have done more, and published the defendant's letter in the newspapers, if he desired the defendant's apology should be made public. The learned counsel entered at some length into the transactions between the parties, contending that the provocation given by the plaintiff to the defendant was very great, and called upon the jury to express their opinion of the matter by giving the plaintiff as damages the smallest coin of the realm. He called the following evidence:

Mr W T Perry Keene deposed: I am the defendant, and reside at Minety with my family. The plaintiff purchased a property there in 1856, and came there to reside. On the 9<sup>th</sup> May 1857, he called at my house, with his solicitor, relative to the Distillery Company. Ultimately I consented to take 600 shares for myself and 100 for my son. In November 1857, before I went to Ireland, I had a conversation with the plaintiff. He told me he should not part with his property in Minety.

Mr James objected to this evidence being received.

Examination continued: I returned from Ireland in January. During my absence plaintiff had had the entire management of the distillery. After my return, in March, Mr Pincott was appointed manager by the committee. I fancied then there was a change in the plaintiff's manner towards myself. On the 10<sup>th</sup> of August I wrote to the plaintiff, relative to a right of way he had stopped up, and afterwards met him in the field. I told him I had sent the note to him, and requested him to admit my right of way. He refused, saying, "You must do just as you please." The right of way had always existed. On his telling me that, I said "I should have the gates opened." I requested him, as we were in the adjoining field with the men at work, to return and to say to me, before the men, what he said to them about me behind my back. He denied having said anything, and refused to go back. I said, "You have -- I don't believe what you say -- you have said things both against me and Mr Tuson." He said, "In what?" I said, "In parting with your land." He said, "I only said I would not advertise it." I replied, "It's a dirty subterfuge, and worse than a lie." Some further

conversation ensued in which I told him I had lost all confidence in him. He refused to go back, and after some more conversation he walked away. On the following day I rode with Mr Tuson to the fields to look after the men. I was then the manager, the plaintiff had nothing to do with it. I saw the plaintiff in the field, and I said to Mr Tuson, "Why, George, there is Mr Hibberd amongst the men, I declare." I expected as soon to have seen the man in the moon there as Mr Hibberd, after what passed between us on the previous day. I cantered up to him and said, "What, are you here again, after what you have said about me and Mr Tuson to the men?" Mr Tuson afterwards rode up. Mr Tuson said, He took the opportunity of informing him (Mr Hibberd) the same as he had his other parishioners that he (Mr Tuson) had not put his hand into his pocket and borrowed £500." Mr Hibberd replied, "Why did you pay me then?" Mr Tuson said because you got me to put my hand to a piece of paper, and this act of roguery obliged me to pay the money." Mr Hibberd said, "You call me a rogue do you? Perhaps Mr Keene will call me a rogue too." Mr Tuson had previously said, "You know it's a lie, and I wonder your words did not blister your lips when you said so." After further conversation, I said, "I consider a dishonest act and a roguish one is very much the same." Plaintiff said, " ---- your eyes. I have not done with you yet." I said, "There is one thing I should like to do." Mr Hibberd said, "What's that?" I replied, "Give you a good thrashing." I had just before that got off my horse. Hibberd came up and said, "He was as good a man as I was." I replied, "You are not. You have neither truth nor honour in your bosom." After some further conversation, I said, "You don't mean to say I am a liar." He said, "Yes you are."

Mr Baron Martin: And what then?

Defendant: Why then I gave him a box on the ear (laughter). He said, "That'll do, Mr Mansell – come along," and they left the field. When the men were appealed to in the field they did not understand the question put to them. They said the defendant had not spoken to them that day. I afterwards found that he said it to Corvis, and that it was overheard by the men.

The Rev G Tuson was called, and corroborated the defendant's evidence.

Cross-examined: I never borrowed £500 of Hibberd. He was anxious I should join the company. I said I had no money to invest; but on his representations that the establishment of the company would benefit the parish by employing the labourers, I consented to shares being appropriated to me, to be paid for out of the profits of the concern. I, however, afterwards had to pay the money. I had no money then to invest, have invested some in South Western Hotel shares. I have resigned the vicarage of Minety, but have not left the neighbourhood. I am canon of Bristol Cathedral.

Mr Pincott gave similar evidence.

The learned counsel having addressed the jury, the learned judge summed up, and the jury returned a verdict for the plaintiff – damages £1.

Mr James: Will your lordship certify costs?

Mr Baron Martin: Certainly, and for the special jury.

Berkshire Chronicle 4 December 1858