

## MAYO V. SMITH ET AL.

{5 Cranch, C. C. 569.}<sup>1</sup>

Circuit Court, District of Columbia. Nov. Term. 1839.

BAIL IN CIVIL CASES—ACTION OF  
LIBEL—AMOUNT OF DAMAGES ALLEGED.

In an action upon the ease for a libel, the damages were laid at twenty thousand dollars, and the plaintiff in his affidavit averred damages to the same amount; the court required the bail to justify to the amount of five hundred dollars only.

Case for libel. Damages laid at \$20,000. The plaintiff's affidavit to hold the defendants {Thomas J. Smith and P. S. Myer} to special bail stated that the defendants, on the 26th of March, 1839, "in a certain newspaper, called 'The Metropolis,' in the publication of which the said Smith and Myer were then and there concerned, published of and concerning" the plaintiff [Robert Mayo] "a certain false, scandalous, and malicious libel, headed 'Dr. Mayo and the Intelligencer,' which said libel is hereto annexed," &c. "And this deponent also saith that he is informed and believes, that said Smith has no intention of remaining in the District of Columbia, but is about to depart from said district for the Southern States. He further saith, that by the publication of said libel he hath incurred and sustained damages to the amount of \$20,000.

Mr. Hoban and Mr. Key moved for leave to appear for the defendant without special bail; or that the bail demanded should be mitigated, and cited *Jones v. Kelly*, 17 Mass. 115, and 2 Wheel. Abr. 54.

R. S. Coxe and Messrs. Brent & Brent contended that the affidavit of the plaintiff was conclusive; that the libel is atrocious. The affidavit is positive that the defendants published it in the newspaper in which

they were concerned, and that the plaintiff has thereby suffered damages to the value of \$20,000. The plaintiff's counsel cited the case of *Barrell v. Simonton* [Case No. 1,041], in this court, at May term, 1826, where bail was refused in an action for a malicious arrest, only on the ground that the action in which the plaintiff was arrested was not then terminated; and the case of *McDonald v. Little* [Id. 8,760], in this court, and the case of *Doyne v. Barker* [Id. 4,055], at November term, 1834, in which bail was required, in slander, in \$700, upon an affidavit of the plaintiff's belief that she had suffered damage to the value of \$3,000.

THE COURT (THRUSTON, Circuit Judge, absent), in the present case, said they would be satisfied with bail who could justify in \$500.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

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