Boston June 8 – 1860

Gerrit Smith Esq.

Dear Sir,

Yours of the 3rd inst was not recd until the 6th.

Without looking at authorities, my opinion is that a settlement with one of the parties ora judgment obtained against one, and paid by him, would not be a bar to an action against the others. But if there is a doubt on the point, I will look into it. But I think if a settlement ~~was~~ were made by one or a verdicr paid by one, the amount so paid could be given as evidence to reduce the damages to be rendered against the others. So that, if two or three should pay damages, the suits against the remainder would drag heavily.

I fear that the suits against the publishers, separately from the committee, would be unfavorable to our cause. Juries are disposed to be very lenient to the publishers of papers because it is, in most cases, supposed that the publication is made on rumor and in an eagerness to give the public the earliest news, and not from any personal malice. In the present case, I think, the publishers, if sued seperatly from the committee, will be able to mitigate their offense very materially in the eyes of a jury – because it will doubtless appear that the manifesto was published as an advertisement like any other advertisement very likely without being read by the editor. But if read, still, as it was vouched for by thirty responsible names, who professed to have investigated the matter and ascertained the facts, and were abundantly able to meet any pecuniary responsibility, it could hardly have been expected that the advertisement should be refused. And no actual malice could be presumed against the publisher . If it whould be said that he ought to have retracted the charge, afterwards, it may be answered that it was hadly incumbent on him to retract a charge made by so many responsible men, who had deliberately promulgated it under their own signatures. The jury would say that although the publisher is technically guilty, yet morally the guilt rests principally, if not wholly, on the committee. They will therefore be likely to let the publishers off with a very light verdict. And then this light verdict rendered against the publishers, will have a bad influence on the trials to come afterwards against the committee – tending to make the impression tha the libel was no very serious crime after all.

My opinion still is, as it was originally, that the publication of the libel <u>by the procurement of the committee</u> – that is, as an advertisement, in several different papers, is ground for many different actions against the <u>committee</u>; and that in each suit against the committee, one publisher should be joined, because only

one publisher is party to each separate publication whereas the committee are parties to all the publications.

I think each publication is ground for a separate action because each publicatrion was read by different parties (the different publications making in each case, the difference in the parties) and designed to accomplish a different object. These objects, though similar in kind, are not, in law, identical. Thus the object of the publication in the Herald, was to poison the minds of say, 100,000 persons who read the Herald. The object of the publication in the Tribune was the poison the minds of another 100,000 persons, who read the Tribune, but do not read the Herald. And so on with the other publications. Each one was intended to reach a different class of persons from those reached by the others.

I am also in favor of bringing the suits against the entire committee, whether we have specific proof against individuals or not, beyonf the publications, with their names attached, and the non-repudiation of the publication by them, I believe those two facts are sufficient for a prima facie case – sufficient to throw on them the burden of proving their innocence. If a party is not bound to disavow a libel published in his name, and under circumstances so strongly tending to satisfy the public that he authorized it, libels can be published with impunity, and to any extent. through the agency of a printer, who may be pecuniarily irresponsible, unless some of them should come personally into court, and on oath exculpate themselves, then the judgment will only be against the remainder.

If any of the committee should comeinto court, and on oath exculpate themselves, we could then use them as witnesses against the others – for if the suits should be brought against all, they will all doubtless hold committations on the subject and the guilty ones will expressly or implicitly confess their guilt to the others.

I submitted the question to our friend Seade, whether the publication of the libel with the names attached, and the non-repudiateion of it, did not make out a prima facie case? He though it did. And yesterday he aws kind enough to search the books for me but did not find that the point had ever been decided. My inference is that it must always have been taken for granted such evidence was prima facie proof for otherwise I should infer the question would have been repeatedly raised. Perhaps, however, Mr Sedgwick woll draw a contrary inference.

One other advantage, I think, would result from bringin the suits against the entire committee. It is this. I think the rich members like Moses Taylor, would pay two or three times as much out of their own pockets for a settlement if the suit should be brought against all, than if brought against them individually – for, if the suits were brought against all, it would be understoof, by the

public, that each member of the committee paid his appropriate share – even though, in fact, it should all be paid by a few. I am afraid also that a jury would look with disfavor on suits against individual members of the committee. They will naturally say that all were equally guilty, and that common fairness requires they should all be joined in the suits, and held to an equal accountability. And I dear, they would render but a very moderate verdict against on, where they would have been very glad to render a very large one against the whole.

In saying that I think the suits should be againt the entire committee, I should perhaps have excepted Mr Phelps. It may be best to sue him separately, even if ___ him should the suit be brought in the State court. For various reasonas, we do not wish to complicate the law question in his case, with the suits against the others.

In regard to the policy of bringing the suits against the entire committee, it is very unpleasant for me to differ from Mr Sedgwicj. But it is my duty to give you what seems to be the best advice – and I so so with my reasons for it. If, however, my opinion should be overruled, I shall not feel the least dissatisfaction, but rather a relieve, that the responsibility of any error (if error there should be) will not rest with me.

I am copying my argument on the consular question, and will send it to you in a few days.

I would like that Mr Sedgwick should have a copy of this letter.

Yours truly

L. Spooner