

Boston June 12 - 1860

Gerrit Smith Esq.

Dear Sir,

I send you by excerpts so much of my argument on the consul question, as is completed. ~~I had intended to review two other decisions, one in Pennsylvania and one in New York — and will do so if necessary. They are the only other decisions extant on the question. But they are the merest sophistry and trash. The question has never been examined, except in the most superficial and careless off hand careless manner. As evidence of this, I may mention that no distinction has ever been made wither by the act of congress or by by other court or consul, between cases arising under the constitution, laws, and treaties of the United States, and those arising under the laws of the States. Yet in this distinction, as you will see, lies the root of the whole question.~~

I wrote you on the 8<sup>th</sup> expressing the opinion that we ought to bring several suits (say, four or five) against the entire committee (except Phelps) and join one publisher with the committee in each suit.

The letter also expressed the opinion that the publication of the libel, with the names attached, and the non-repudiation of it, was prima facie proof of consent. Whether it be so, is to be judged of naturally, by what we know of the motives and conduct of mankind under similar circumstance. Judging in this way, would we not ~~at once~~ say "What honest, or even descent man, on seeing his name forged ~~attached~~ to such a libel ~~without his consent~~ would not go at once to the publisher, and require him to publish ~~at once~~ a repudiation of it? And also write you a letter, expressing his regret at the injustice done? And perhaps even go farther, and seek the punishment of the persons, who had committed the forgery?"

But if ~~all~~ these considerations are not prima facie proof that he consented beforehand to the use of his name. They are certainly sufficient evidence that he consented afterwards - that is that he was willing in his own mind, that his name should go to aid the mischief, by giving credit to the libel. This makes him at least and accomplice after the fact of publication. and that is sufficient for our purpose - for the mischief of a libel is no - like that of a bullet - all done on the instant it is fired off. But it continues on in its work of injury until it is contradicted.

In this instance, if any one of the committee did not consent to the use of his name beforehand, he at least consented to all the

injury which it might go in doing after the publication came to his knowledge.

Please send a copy of this letter to Mr Sedgwick, if you think it necessary.

Yours truly

L. Spooner

P.S. ~~In regard to~~ The consul question is to mu mind perfectly clear. It has never before been examined except in the most superficial and careless manner, There has never been a farthing's worth of argument produced on the other side, or scarcely either side.