

given of a prosecution by information against the Chevalier De Ou, for publishing a libel against the Count de Guerehy, ambassador from France. The prosecution was commenced in the Court of King's Bench. The information states the title, the name of the libel fully and literally, as it was published in French, and then states the translation in English at full length. I bring forward these cases to prove what the practice is; and it is an observation of one of the best judges that ever sat in the King's Bench, Lord Holt, that "the form of pleading is evidence of what the law is."

If, then, it be the practice to recite in the indictment the name, to describe the title of the book, or libel published; if this has been the invariable practice ever since the unhappy prosecutions for libels took place in that country—I believe there is no doubt but the title of this book ought to have been stated in the indictment. I have learned to think with diffidence, but I am firmly persuaded that the attorney for the United States cannot give a single case from the English books of a contrary practice. And with respect to prosecutions in the United States, I know not what the practice may be in the few instances that may have occurred. It appears, too, that substantial reasons, founded on principles of sound law, and sound justice can be adduced in support of this practice. A principle on which I rely to explain this practice to be correct, is, that it is a universal rule of law, that if a man's words, spoken or written, be made the foundation of a charge against him, the whole should be taken together. If the whole writing charged to be libellous, be stated in the indictment, it will be in the power of the defendant to resort to other passages of the same book to explain it. If the defendant were indicted for publishing "The Prospect Before Us," he could resort to other parts of the book for an explanation. It was the duty of the attorney for the United States to have done so; as he has omitted it, he ought to be precluded from producing it in evidence. I will now state the other reason, in support of my objection to the admissibility of this book as evidence. It is founded on this principle which hath always prevailed, or was supposed to prevail in criminal law, that in all criminal cases, the offense should be described with all possible accuracy and precision. In felony, it is necessary to insert in the indictment the goods and chattels alleged to be stolen, as well as the name of the person to whom they belong. The reasons are furnished by the books, why this precision is deemed necessary; the first, that the defendant may know the charge against him, and be able to defend himself; the other, that he may plead the conviction or acquittal in bar of a subsequent prosecution for the same offense. (Hawkins' Pleas of the Crown, page 322.) The defendant is charged with writing and publishing a libel of the following tenor and effect. And but very few passages are selected from the books, which bear but a very little proportion to the extent of the whole of it. I ask, how is the defendant to know whether these few passages were taken from "The Prospect Before Us," or from some newspaper, in which they have been republished by some person, for whose conduct he was not responsible? Unless