

At the expiration of the extended time the railway company again made default in payment, and notice was given them by the bank that the bonds would be sold unless the debt was paid on a certain day named; the company then brought an action to have such sale restrained.

*Held*, affirming the decision of the court below, that the bank and E. and W. were respectively first and second incumbrancers of the bonds, being to all intents and purposes mortgagees and not trustees of the company in respect thereof, and there was no rule of equity forbidding the bank to sell, or E. and W. to purchase under that sale.

*Held*, further, that if E. and W. should purchase at such sale they would become absolute holders of the bonds, and not liable to be redeemed by the company.

*Held*, also, that the dealing by the bank with the bonds was authorized by the Banking Act.

*Henry, Q.C.*, and *Newcombe* for the appellants.

*Borden, Q.C.*, and *Russell, Q.C.*, for the respondents.

Manitoba.]

THE MANITOBA FREE PRESS v. MARTIN.

*Libel—Personal attack on Attorney-General—Pleading—Rejection of evidence—Fair comment—General verdict—New trial.*

In an action for libel contained in a newspaper article respecting certain legislation, the innuendo alleged by the plaintiff, the Attorney-General of the Province, when such legislation was enacted, was that the article charged him with personal dishonesty. Defendants pleaded "not guilty," and that the article was a fair comment on a public matter. On the trial the defendants put in evidence, plaintiff's counsel objecting, to prove the charge of personal dishonesty, and evidence in rebuttal was tendered by plaintiff and rejected. Certain questions were put to the jury requiring them to find whether or not the words bore the construction claimed by the innuendo, or were fair comment on the subject-matter of the article. The jury found generally for the defendants, and in answer to the trial judge, who asked if they found that the publication bore the meaning ascribed to it by the plaintiff, the foreman said: "We did not consider that at all." On appeal for an order for a new trial,

*Held*, that defendants not having pleaded the truth of the charge in justification the evidence given to establish it should not have been received, but, it having been received, evidence in rebuttal was improperly rejected; the general finding for the defendants was not sufficient, in view of the fact that the jury stated that they had not considered the material question, namely, the charge of personal dishonesty. For these reasons a new trial was properly granted.

*Haegel, Q.C.*, for the appellant.

*Ewart, Q.C.*, for the respondent.