J. T. White, for plaintiff.

R. C. H. Cassels, for defendant.

HOLMESTED, K.C.:—After a careful perusal of the pleadings I am of opinion that the objections are well taken.

One way of testing the matter would be to assume that all the allegations in paragraph 5 were admitted to be true —would they constitute any defence or justification of the libel?—and applying that test to this paragraph, can it be said that the facts alleged offer any defence or justification? I think clearly not. For admitting that the plaintiff's method of conducting his office was a matter of comment—that furnishes no defence. The comment may have been mere idle gossip without a pretence of justification, and even if it were well founded, his method of conducting his office, though bad, would not justify the particular charge complained of by the plaintiff. Then would the fact that the matter of his employment of experts without providing for their pay was discussed by newspapers be any justification? For aught that is alleged, all such comments may not have had a particle of foundation in fact. The plaintiff may never have had anything to do with experts or their remuneration, but the fact might be true as alleged in paragraph 5 that the matter had been "discussed in the newspapers on the assumption that it was all true." The paragraph 5 therefore seems at present a wholly immaterial issue, viz., whether public comments and public interest as to the matters referred to in the alleged libel.

The gravamen of the plaintiff's claim is that the alleged libel charges him with malfeasance in his office as City Solicitor. How does the fact that other newspapers have discussed the matter and that public interest had been aroused in the charge in any possible way justify, excuse, or extenuate the publication of the libel complained of? I am unable to see that it can—even if such comments had any foundation in fact, and still less if founded on fiction. I therefore think paragraph 5 should be struck out with costs to plaintiff in any event.