

who rests his claim upon a document, which, on his own statement, purports to be a criticism of a matter of public interest, to shew that it is libel, i.e., that it travels beyond the limit of fair criticism, and therefore it must be for the Judge to say whether it is reasonably capable of being so interpreted, and, if it is not, then there is no case for the jury, and it would be competent for him to give judgment for the defendant."

All the cases dealing with this subject limit the power of a Judge, in cases of fair comment, to deciding whether what is said to be comment can reasonably be considered to be so unfair as to amount to libel, and not extending to whether it should be so treated.

Examples of this are the *Capital Country Bank, Limited v. Henty* (1882), 7 A.C. 741; *Kimber v. Press Association* (1893), 1 Q.B. 65, where a verdict for defendants was upheld where it was said that no reasonable man could hold that the omissions from the report of a trial rendered it unfair: *Merivale v. Carson* (1887), 20 Q.B.D. 275, per Lord Esher, M.R., page 279, where he defined the power of the Court of Appeal in this way: "If the Court thought that the expression could not, by any reasonable man, be thought to have that (libellous) meaning, the Court could overrule the verdict of the jury." otherwise the question was for the jury.

In *Thomas v. Bradbury* (1906), 2 K.B. 627, Collins, M.R., considered that the Court would be usurping the functions of the jury if, where there was any evidence as to some of the innuendoes averring imputations of discreditable motives, it directed judgment for the defendants.

It is very clearly put in *Cooper v. Lawson*, 8 A. & E. 746, by Coleridge, J., at page 753: "It would be much too strong to say that all such comments are to be submitted to the jury; for there are cases, one of which has been put, where the inference is so fair that if you prove the fact you prove the correctness of the comment. But this was not such a case. The comment introduced an additional fact and then it was for the jury to say whether that was fairly done or not."