

Eng. Rep.

DAW v. ELEY.

[Eng. Rep.]

by Mr. Roebuck against the editor of a Sheffield newspaper.

Southgate, Q. C., and *Jangley*, for Collette, contended that the letters had in fact no relation to the matters in dispute in the suit. Collette had taken a great interest in the question as a volunteer, and the letters were not such as would prejudice the mind of any person in reference to the suit.

W. W. Karslake appeared for the editor of the *Volunteer Service Gazette*, and contended that at all events the order ought not to go against him. He knew nothing at first about Collette's position in reference to the suit, and was not bound to refuse to allow a discussion in the columns of his newspaper of a matter of such general interest as that of the cartridges, or to insert every letter sent to him on the subject.

LORD ROMILLY, M. R.—I will read the letters before I dispose of the matter finally; but, as it strikes me at present, I think the conduct of Mr. Collette cannot be defended. The principle upon which all these cases are founded is quite established. It is that no person can be permitted to do anything with a view to pervert the sources or the proper flow of justice, or, in fact, to make, any publication or write anything which would be likely or might possibly induce the Court, or the jury, or the tribunal which might have to try a cause to come to any conclusion other than that which is to be derived from the evidence brought forward by the parties to it.

Certainly no one ought to be permitted to prejudice the minds of the public beforehand, by mentioning circumstances relating to a case. If that is done with the intention of perverting the ends of justice, it is unquestionable that the Court could stop it, and very often it will judge for itself what are the fair inferences to be derived from the publications which appear. But it must also go beyond this, and must stop the publication of these things where the evident result would be to affect the administration of justice, though that might not have been the intention of the person who did it. The main question in the present case is whether Mr. Collette was justified in writing the letter of the 26th of September, which is the first letter on the subject. There is a leading article on the same subject, but that does not say a word, as far as I have seen, on the priority of any invention, and does not even mention Daw's patent. But Mr. Collette's letter treats of nothing else, as it appears to me, with the exception of this at the beginning:—"The writer of the article in your last issue, under the heading 'The Cartridge of the New Military Rifle,' can have scarcely given the subject a practical consideration when he places the Daw cartridge in comparison with the present Boxer service cartridge, particularly when he says that the Daw cartridge approaches the first essential more nearly than the Boxer, the first essential being safety." If it had stopped there (and I am not now considering the position which Mr.

Collette filled), and had merely enlarged upon that subject, it might have been said that it was a fair discussion of the respective merits of two particular patents. But he says as to the portions of the cartridge claimed as new by Mr. Daw, that "they had all been in public use before Mr. Daw's patent of March, 1867," and that "a Mr. Rochatte, of Paris, in January, 1867, obtained a provisional protection" for a similar invention, and so on. What have these statements to do with the comparative merits of the two? He, further on, asserts that Mr. Daw in all his cartridges uses Snider's process. That is not a question of whether one is or is not better than the other. It is stating that Mr. Daw's patent is worth nothing because he is using an old process. Then he goes on, "This is in all respects similar to, 'Pottet's base arrangement,' except, that the 'anvil' is cylindrical and grooved up the side." There are things expressly stated in these letters to show that Daw's patent cannot be original. Then these letters are put in, not by a mere stranger who might say he really knew nothing at all about the suit, but by the solicitor to the defendant, who is opposed to Mr. Daw. Surely that is a very strong feature in the case. He must wish that his client should succeed, and it is impossible that he could write an article in a newspaper, which, if believed, must have a beneficial effect upon his client, and afterwards say, "I had no intention of that sort at all, however much I may wish for it." It must be regarded as an endeavour to interfere with the due administration of justice. Where is the line to be drawn? It is highly important that the Court should not allow steps of this sort to be taken by the officers of the court, in causes in which they are engaged, which possibly may have an effect favourable to their client, or unfavourable to the other side. I may further say that if I am to go minutely into every sentence of a letter which is written in a public newspaper, to say this is questionable, and that is doubtful, and the like, it is imposing a task and a duty upon the Court which it will be impossible to perform. There is one distinct line drawn, which is this, that gentlemen who are concerned for contending clients in this court, whether solicitors or counsel, should abstain entirely from discussing the merits of those questions in public print. If they do it at all they ought to put their names to their communications; but to let the public suppose that it is merely done by a person who takes a great interest in matters of this description, and has great knowledge of the subject, and that he discusses the question in a public point of view, when, if the fact were known, he is the solicitor of the defendant, and has the strongest possible interest in its success, appears to me conclusive upon that point.

Dec. 14.—**LORD ROMILLY, M. R.**—I have little to add to what I stated on Friday, when I explained the reason which induced me to take the course which I now intend to take. The perusal of the articles confirms me in the view I have taken, and it must be admitted by everybody to be an extremely improper thing for a solicitor in a cause to write an article in a paper which may either directly or indirectly be believed, and which may influence the suit upon which he is engaged. I do not believe it was done with any

the case came clearly within the rule in *Tichborne v. Tichborne*, the only difference being that the newspaper articles in that case were calculated to prejudice the public mind in reference to the suit, and so injuriously affect the complaining parties; while in *Mr. Roebuck's case* the allegations of his opponents in the suit were used to damage his position as an individual.—**Ed. W. R.**