

strike out the defence of the defendant Smythe, and particularly para. 4 and clauses (a) and (e) of para. 6. The Master refused; the plaintiff appealed, and MULLOCK, C.J. Ex., dismissed the appeal, directing, however, that particulars should be furnished of the allegation in para. 4, "that the plaintiff was and is not a desirable person for Controller." These particulars had been delivered; and previously certain other particulars were delivered pursuant to demand.

As to para. 4, it was not a proper plea in an action for libel alone; but the defendants contended that this was not an action simply of libel or an action of libel at all.

Upon the argument, the plaintiff's counsel agreed to abandon any claim for conspiracy; but, as affecting the costs, it seemed necessary to inquire what was the cause of action alleged in the statement of claim.

The form of the statement of claim was apparently taken from a precedent for a statement of claim in conspiracy in Bullen & Leake's *Precedents of Pleadings*, 7th ed. (1915), p. 278. The claim was for conspiracy; and it was not necessary to consider whether it was not also a claim for libel.

Paragraph 4 in effect stated that the conspiracy-agreement, if there was any agreement, was for a rightful purpose, i.e., to prevent the election of an undesirable person to office; but that is no defence to an action for conspiracy. This paragraph did not raise the issue whether the acts to be done were according to law—and that was the thing of importance. If it was intended to be a plea to damages, it should be so stated specifically: *Dryden v. Smith* (1897), 17 P.R. 505; *Fulford v. Wallace* (1901), 1 O.L.R. 278. If it was intended to make the allegations in this paragraph part of the defence of fair comment, they should be pleaded properly and specifically in that way: *Merivale v. Carson* (1887), 20 Q.B.D. 275.

This paragraph could not stand; but neither party would be helped or hurt by either retention or removal.

As to para. 6 (a) and (e), if the action was in conspiracy and publications were laid as the overt acts causing damage, these publications must be charged as being either unlawful in themselves or (2) directed to an unlawful end. The defendants were entitled to plead so as to answer either charge concerning these publications. An answer to the first charge must be a contention that the publications are not libellous—accordingly any defence to an action of libel based on these publications would be properly pleadable in an action of conspiracy. If the paragraphs complained