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TICHBORNE V. TICHBORNE.

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ing up a set of documents, which have never been submitted to the Judge who has to determine the case, and making comments upon them. This is the first intimation I have had of a single word of the evidence, and it has never yet been submitted to the Judge. The *animus* of the commentary we gather in a great measure from the concluding paragraph of the article, because, having taken the evidence in his hand, and commented on it (whether correctly or not, I cannot say), he concludes by stating that this is the only evidence which the plaintiff at present has brought forward, and he says—"We happen to know as a fact that (certain gentlemen whom he names, supposed relatives of the claimant, his uncle and certain officers, and his aunt and his cousin, who are all named,) have had interviews with him." How does this writer know that fact? Of course he has been in communication with some one or other of these parties, and some one or other of these parties, the writer presumes, from their not having made affidavits, do not favour the claimant's case, because, he says, "Do we not find any affidavits from them in corroboration of this identity among the documents included in the volume now before us, we presume that they failed to recognise in the claimant their long-lost relative." That affords a clue to the source from whence this article emanates.

It was stated that the plaintiff had not made an affidavit stating that he did not furnish the book of affidavits to this author of this commentary. "*Qui s'excuse s'accuse.*" Why should he swear to anything of the kind? We all know that, in matters of an interlocutory description, if the defendant really believed or suspected anything of the kind, it would be easy for him simply to set forth certain facts, pledging his belief to the truth of them, and that would be sufficient to call upon the plaintiff to answer them. The plaintiff is not obliged to excuse himself beforehand from all the possible motives that may be imputed to him in the course of a cause before anybody has ventured to accuse him.

Then something has been read from the bill in order to show that the plaintiff has courted the attention of the public to his case. That may or may not be so. But the statement which is contained in the bill says nothing on earth about any affidavit which had been filed to support his case; it says nothing about anything pending before the Court—it could not, in fact, because there was, of course, no affidavit filed anterior to the suit being instituted. Now what are these comments which are said to be fair comments, which are said to be unbiassed comments, and which are said further not to err against those rules which have been laid down as fair comments on matters of public interest and public notoriety? In the first place, let me observe, that rule does not extend to comments of any description on a matter that is pending, waiting for argument and waiting for decision. I think this Court would be failing extremely in the administration of justice if it allowed comments of such a description as are here contained to be made on any documents whatever which are before the writer and not before the Court, but which are afterwards to come before the Court, and which comments have a clear

and distinct tendency, and I say are intended to have a tendency, towards directing and swaying the mind of the Court or jury, or whoever may have to determine the cause. Let us examine what the comments are. Every turn of the case is put adversely to the claimant. I was surprised at Mr. Speed's figure of speech when he expressed his doubt as to who had reason to complain of the article. The article is in fact an argument, not an incapable argument, for I am not accusing the writer of incapacity, but it is an able argument adverse to the view put forward by the plaintiff. The writer says he has read the affidavits, but he does not give the public the information contained in the affidavits, so that the public may form their judgment upon the affidavits, or even upon portions of them, but he points out some two or three facts which he says are stated, and then makes strong comments upon the omissions. The article begins by stating that the plaintiff's tale is that he was lost in a vessel and saved in another vessel, and then it states "neither the name of the vessel that thus saved the claimant's life, nor of her captain, or of any of his rescued shipmates, are given in the claimant's affidavit." Then it proceeds to relate his interview with his mother, and her statement in her affidavit. That seems to be principally narrative, and at the end of it she says that in her judgment "his features, disposition, and voice are unmistakable, and must be recognised by any impartial and unprejudiced persons who knew him before he left England, and that his memory as to everything which occurred to him up to the time of his leaving England is perfect." That is made use of again in a further part of the argument. Then the writer says: "We have not space to enter into details as to the statements of the thirty-four persons whose affidavits follow those of the claimant and Lady Tichborne. Many of them are important enough." Even that is qualified by saying, "if the deponents can endure cross-examination in the witness-box, many are obviously false, absurd, and worthless, being those of persons who, never having seen the claimant before he left England, are nevertheless convinced that he is the person he claims to be." I say, as to such a comment as that, it is quite obvious in whose favour the comment is made, but such a comment as that far transcends the bounds of any legitimate comment, if it were legitimate or could be legitimate to make comments anterior to the case being heard or the affidavits being brought before the Court which has to decide upon it. Then the writer says: "many of them are important enough, if the deponents can endure cross-examination in the witness-box; many are obviously false, absurd, and worthless, being those of persons who, never having seen the claimant before he left England, are nevertheless convinced that he is the person who he claims to be." No details of those affidavits are given. For aught I know it may be open on argument to show that notwithstanding those persons may not have seen him, they may have had some other good reasons for their belief; they may have had letters from him, or some correspondence with him; a certain number of circumstances may be stated which may have led to their being so convinced. I cannot,