

your verdict, for with the results of your verdict you have nothing to do, but in order to explain to you that the real issue is as to whether Mr. Tassé has committed an offence or not.

At common law, a libel consists of any writing by which a man defames his neighbour, unless it be by what is known as a privileged communication. The privilege does not consist in saying what is true, but one is privileged in saying what it is one's duty to say, or what it is one's interest to say for one's own protection. If, however, the utterance was to gratify what the law distinguishes as "express malice" the privilege disappears. This appears to me to be very wise law; but the number of communications thus privileged was very limited, and as popular institutions developed, and all matters were more unreservedly discussed, it was felt that the limit of privilege was too restricted for many practical purposes. In the 6th and 7th Vic. a statute was introduced into the Imperial parliament, and passed there, for the purpose of giving greater liberty to literary critics. It is true this Act was introduced under the auspices of a distinguished judge, nevertheless I think the alteration in the law was unfortunate. In the course of this trial you may have heard me say that it was deplorable. This is perhaps a strong expression; but I do not hesitate to say that when an important alteration is being made in the common law, it should be made on principles that are in accordance with those of the common law, and that there is great cause for regret when this is overlooked. At any rate, when it was attempted to introduce the new English law into Canada, it was resisted, it is said, by no less a person than the late Sir Louis Lafontaine, and it was adopted for Upper but not for Lower Canada. The law of libel, therefore, remained in this province, as it stood at the time of the Quebec Act, which introduced the criminal law of England, as it then existed, into the Province of Quebec, until 1874. Then, after a trial in this court, attention was drawn to the difference existing in this respect between the law of this province and that of the other provinces, and a change was demanded, almost with clamor. This

change took place, and is now our law, and we must be governed by it, just as we had to be governed by the old law, no matter what people might think fit to say. In order to apply the new law properly, let us see to what the change amounts. The other day, in an argument which took place in your presence, Mr. Mercier described it as not being a fundamental change in the law of libel, but as being a new defence given to the person accused of libel. This is a very correct way of putting it so far, and I readily adopt it. However, it is to be observed, that it differs materially from any defence that existed before. As the law now stands the accused may plead, specially, that what he wrote was true and that it was published (not that he published it) for the benefit of the public. These two things concurring, he is absolved. It will be at once seen that under this plea no account is taken of malice. It matters not whether the defendant was moved by the direct malice or by the best motives. Truth and the public benefit are the tests of innocence or guilt. We have then three points to examine—1st, the truth of the matter alleged; 2nd, the question of whether the publication was for the public benefit; and 3rd, if you think the "defendant" guilty, whether he published the injurious matter knowing it to be false. If you think him guilty in manner and form as is laid in the indictment, you will say so simply; but if not, you can return a verdict of guilty of libel, but without knowing it to be false.

The libel is in these words (*translation*).—
 "We know what has happened since Mr. Mercier contested the election of Mr. Mousseau, of the very man he had contributed to elect. Being unable to seize upon a portfolio he then sold himself for \$5,000. Has there ever been a more revolting suit?"

Mr. Geoffrion has told you that the libel must be taken as a whole, and that words that are not libellous by themselves may become libellous by the context. This is correct; and as to the truth of the libel I must add that the whole injurious matter must be true. It is not sufficient that there should be some truth in it, and so the false be covered by the true,—the whole thing