

with the N. P. & M. R'y Co. for raising a large sum of money for the Company, "a portion of which was to be dishonestly and corruptly received by the plaintiff for his own use and benefit, to the great detriment of the Province." To this the defendants pleaded not guilty, and fair comment on matters of great public interest.

At the trial the jury brought in a general verdict for the defendants. When the verdict was announced, the learned Judge, who had left certain questions to the jury, said: "Have you anything to say as to any of the questions? Do you find whether the publication has the meaning ascribed to it by the plaintiff?" To this the foreman replied, "We did not consider that at all. We found the article complained of, was a fair comment on a matter of public interest, but the jury while giving the verdict, desire to state that it would have been better if more temperate language had been used." The learned Judge then said, "If it imputed a specific act of misconduct to him (the plaintiff) it could not be fair comment, you understand that, do you?" To this the foreman replied, "I think we understood your Lordship's directions thoroughly."

Upon a motion for a new trial,

*Held*, (DUBUC, J., dissenting). That if the publication charged the plaintiff with what the innuendo alleged it did, viz: a specific act of misconduct, it could not be fair comment unless the jury found the charges to be true, and as from the answers given by the foreman, it was clear that the jury did not consider whether or not the words complained of had the meaning ascribed to them in the innuendo, there should be a new trial.

*Campbell v. Spottiswoode*, 3 B. & S. 776, and *Davis v. Shepstone*, 11 App. Cas. 187, followed.

*Per* TAYLOR, C. J., and BAIN, J. Under a plea of fair comment, when there is no plea of justification on the record, the defendant may prove that the facts commented on are true, but he may not adduce evidence to shew that charges of specific misconduct or dishonesty he has made are true.

*Per* TAYLOR, C. J. The jury either misunderstood or disregarded the charge of the learned Judge.

*Per* DUBUC, J. The jury thoroughly understood the learned Judge's directions and had a perfect right to disregard the questions and bring in a general verdict.

The plaintiff in his case in chief proved the publication, and called a witness who proved that the plaintiff was acting as Railway Commissioner and his signature to a contract between the Government and the Northern Pacific and Manitoba Railway Company, and he also said that public discussion over this contract led him to apply the language of the alleged libel to a particular clause in that contract, and there was nothing else to which it could, in his mind, be attributed. The defendants called witnesses to prove the truth of the charges. The plaintiff then tendered in rebuttal the evidence of two witnesses to disprove the truth of these charges and the evidence was rejected.

*Per* TAYLOR, C. J. This evidence was improperly rejected, as it was not gone into in the case in chief and was proper rebuttal evidence, and there should be