

A case raising somewhat the same question is *Digby v. Financial News* (1909), 1 K.B. 502, where, however, the comments were upon particulars and documents supplied by the plaintiff himself. As pointed out by the Court (p. 508), the plea of fair comment on the contents of these documents did not involve proving the truth of the facts in them, but merely that they did not misstate the contents of these documents, nor misuse the material supplied to them.

In the case of *Peter Walker & Son, Ltd. v. Hodgson* (1909), 1 K.B. at page 255, Buckley, L.J., in reviewing that case says that "the truth or falsity of the plaintiff's statements was not in issue between them, and it was not for the defendants to prove their truth or falsity. The statement of facts which the defendants made was that the plaintiff had asserted certain facts which in fact the plaintiff had asserted."

The cases of *Connec v. Lake Superior Printing Company*, 2 O.W.R. 543, 743; *Digby v. Financial News, Ltd.* (1907), 1 K.B. 502, and *Peter Walker & Sons, Limited v. Hodgson* (1909), 1 K.B. 239, are sufficient to suggest that particulars of the facts which at the trial are to be asserted as true, should be insisted upon. Street, J., in *Connec v. Lake Superior Printing Company* (1903), 2 O.W.R. 543, gives the correct reason for the present form of the plea of fair comment: "Where an alleged libel upon a public man consists of statements of fact and comment upon them, it is not permissible to a defendant to plead as a blanket defence, covering all that he has alleged, that it is all fair comment. He must plead that the facts stated are true, and that the rest is fair comment."

It has been suggested that the Judge has the right to decide whether the comment is capable of being considered comment at all.

The duty of a trial Judge, as stated by Collins, M.R., in *McQuire v. Western Morning News Company* (1903), 2 K.B. 100, is this (p. 110):—

"It is always for the Judge to say whether the document is capable in law of being a libel. It is, however, for the plaintiff