the last provincial election, for the purpose of inducing the temperance voters of the riding of North-East Toronto to vote against the candidates supporting the Government, and upon the plaintiff in connection with the circular; and also upon the Rev. Canon Greene and the Rev. Ben. H. Spence for their action in publishing what was called a repudiation of the circular.

The appellant company, by its statement of defence, pleaded a general denial of the allegations contained in the statement of claim, and the defence of fair comment.

The defence of fair comment was not dealt with by the learned Judge, or left to the jury, but the case was left to them as if the defence of fair comment were a defence of justification, and the jury were told that if the statements of which the plaintiff complained contained a charge of forgery against him, and the defence of justification was not proved, the plaintiff was entitled to recover; and, on this direction, the jury found for the plaintiff, and assessed the damages at $5,000.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

J. B. Clarke, K.C., for the appellant company.

W. J. McWhinney, K.C., and E. P. Brown, for the respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O. (after stating the facts as above):—We have come to the conclusion that there was a mistrial because of the way in which the case was left to the jury.

The error into which the learned Judge fell was induced by the action of the appellant company, who insisted that its defence of fair comment was a plea of justification; and, if the case had been an ordinary one, and the damages moderate, this might have been an answer to the application for a new trial.

The damages were large—perhaps not so excessive as to justify the granting of a new trial if the only question were as to the damages; but, in view of the large damages awarded, and the importance of not impairing the right of the public press to comment fairly upon public matters, we have come to the conclusion that there must be a new trial.

In view of the course taken by the appellant company at the trial, to which I have referred, the costs of the last trial, and of the appeal, will be costs to the respondent in any event of the action.