

SELECTIONS.

PUBLISHING A JUDGE'S JUDGMENT.

ON February 26th, before Baron Huddleston and a special jury, the case of *M'Dougall v. Knight* was tried. The case raised the question whether the publication of a judgment by one of the parties to an action can be made the foundation of an action for libel. In the year 1884 an action was tried in the Chancery Division between the present plaintiff gentleman residing at Battlefields, near Bath, and the present defendants, a firm of auctioneers in Bath. In delivering judgment in this action, Mr. Justice North made certain observations upon the behaviour of Mr. M'Dougall during the trial, and expressed certain conclusions unfavourable to that gentleman's conduct in the course of the transactions in question. This judgment was subsequently printed and circulated in pamphlet form by the defendants, with a preface in which, after stating that the reports in the local papers were fragmentary, the defendants said they offered to their friends "a *verbatim* report of the very able judgment of Mr. Justice North, which contains an impartial statement of facts with the facts deducible from them, and really gives all the information necessary to be known." This pamphlet contained the libels complained of in the present action, the passages relied on in the statement of claim being the passages of Mr. Justice North's judgment above referred to. At the beginning of the case Baron Huddleston asked how the plaintiff could succeed, this being an action for the publication of a judgment in which a learned judge delivered certain findings after five days' trial. It was contended that by their preface the defendants made the words their own. It was further submitted that a publication was only privileged when it was a fair report of the whole proceedings, not of the judgment merely. Moreover, it was proposed to show express malice, in which case there would be no privilege. The cases of *Lewis v. Levy*, 27 Law J. Rep. Q. B. 287; *E. B. & E. 537*; *Millisich v. Lloyd*, 46 Law J. Rep. C. P. 404; and *Stevens v. Sampson*, 49 Law J. Rep. Q. B. 120; *L. R. 3 Exch. Div. 53*, were cited. Mr. Alexander William M'Dougall, the plaintiff, gave evidence as to what had occurred

at the trial before Mr. Justice North, his evidence being directed to showing that the judgment did not give a fair and accurate report of the proceedings. He stated that the only evidence given on the points above referred to, on which Mr. Justice North had found against him, was that of himself and his wife, their evidence being opposed to the finding, and that no charges of the kind made by his lordship had been laid by the counsel for the defendants. The plaintiff also said that after the judgment he saw Mr. Knight and told him that he intended to appeal, though the judgment was substantially in his favour. (Evidence as to what subsequently passed in the Court of Appeal was excluded by his lordship.) In cross-examination at a later stage of the case, Mr. M'Dougall said that the report as published was not a fair or accurate report of what Mr. Justice North had said, and pointed to passages in support of this, particularly passages where the learned judge had read evidence from his notes, which the report did not profess to reproduce, only the beginning and end of such passages being given, and the hiatus marked by the words, "&c., &c." The plaintiff said that evidence favourable to himself was omitted in some of these passages, but failed to point to any other place in which evidence in his favour was not noticed in the judgment. Mrs. M'Dougall gave corroborative evidence on these points.

On objection that there was no case to answer, it was contended that, apart from the question of privilege, there was evidence that the report was not accurate, and it rested with the defendants to prove that it was, and that there was evidence of express malice—first, in the publication of the report for his own ends by a party to the action, as distinguished from a newspaper reporter or other disinterested party; secondly, in the publication after notice of an intended appeal; and, thirdly, in the failure to withdraw or apologize after the Court of Appeal had negatived Mr. Justice North's finding on these points. Baron Huddleston, having stated that he should take the opinion of the jury on the issues raised by the pleadings, called the shorthand writer, who stated that the report as published was a *verbatim* report of the judgment, except as to a few