

Chancery Division.

Full Court.]

REGINA v. ARNOLD.

[Jan. 16.

Misbehaviour in office—Public functionary—Auditing public accounts—Criminal law.

Special case reserved.

The defendant, an officer in the public service of Canada, having charge of public dredging in Quebec and Ontario, in respect to the expenditure and audit of public moneys for such purposes, used his own steam yacht for the purpose of towing the dredges from place to place, and of furnishing them with supplies, etc. He registered the steam yacht from time to time in the name of one or other of his friends, in whose name he made out the accounts for the use of the yacht in order to avoid newspaper notoriety in the matter, but not with the view of making any dishonest gains out of the department, and, in fact, no undue gains were made by him. In his capacity as such public officer he then certified to the justness and accuracy of the accounts respecting the use of the steam yacht, as though for services rendered by contractors with the government, and thereby received for himself payment for those services.

Held, that the defendant had been guilty of misbehaviour in office, which is an indictable offence at common law, and it is not essential that pecuniary damage should have resulted to the public by reason of the irregular conduct of their officer. The gravity of the administrative transgression was not to be ascertained by mere pecuniary results. The defendant was tempted to do what he did by the prospect of gain: he prospered by the dereliction of duty, and to accomplish his purpose it was necessary to conceal the actual transaction.

G. T. Blackstock for the defendant.

B. B. Osler, Q.C., and Hogg, Q.C., for the Crown.

BROWN v. MOYER.

Slander and libel—Fair comment—Evidence of facts—Admissibility—Pleading.

Motion for new trial in action for libel.

The plaintiff brought this action against the editor of the *Berlin Daily News* in respect to an alleged libel contained in an article in his newspaper, commenting upon the conduct of the plaintiff as a municipal councillor in connection with the refusal of the council to exempt a certain manufactory from taxation. Justification was not pleaded, but the defendant claimed the right at the trial, and was permitted to give evidence under the plea of fair comment to show how the plaintiff had acted in the committee of the council upon the consideration of the application for exemption.

Held, that the evidence was properly admitted.

Per Boyd C. Justification technically is not pertinent in such a case unless statements of facts as published are themselves libellous; but if the commentary on certain facts is complained of, then under fair comment may be proved the actuality of the occurrences alleged in order that the jury may pass