

FIRST DIVISIONAL COURT.

DECEMBER 9TH, 1915.

\*GOVENLOCK v. LONDON FREE PRESS CO. LIMITED.

*Libel — Pleading — Defence — Admission — Justification — Failure to Prove Truth of Alleged Libel—Jury—Verdict—Improper Admission of Evidence—New Trial—Costs.*

Appeal by the plaintiff from the judgment of MEREDITH, C.J.C.P., at the trial at London, dismissing an action for libel, upon the verdict of a jury.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

R. S. Robertson and R. S. Hays, for the appellant.

J. M. McEvoy, for the defendants, respondents.

HODGINS, J.A., delivering the judgment of the Court, said that the writing complained of—published by the defendants in their newspaper—was to the effect that the plaintiff had been fined and suspended from the race-track at Seaforth for assaulting one Conley, the starter; and the innuendo was, that the plaintiff had been guilty of an unlawful assault and of an indictable offence and of improper conduct as a horseman. The important defence was expressed thus: "In so far as the said words consist of allegations of fact, they are true in substance and in fact, save that the plaintiff did not assault Mr. N. H. Conley, but was fined by him for irregularities on the race-track." This plea was treated at the trial as an ordinary plea of justification, the trial Judge ruling that the libel did not in fact allege that the plaintiff had assaulted the starter, but did allege that he was fined for assault. This ruling seemed to leave out of account the admission in the plea that the statement that the plaintiff was fined for assault was not true, and the allegation that what he was fined for was "irregularities on the race-track"—quite a different thing.

The evidence shewed that the assault was not committed by the plaintiff, though the fine was in fact recorded against the plaintiff, and afterwards removed. The plea, if treated as one of justification simply, was disproved when it was shewn that the starter intended to fine some other person. The mere recording against one individual of a fine intended for and pronounced against another, is not sufficient to establish it, if it had no real existence in intention.