

the Government bulletin upon which the article purported to be based, stated that the plaintiff company's sugar was of the highest grade of purity of all the sugar examined, and quoted at length a letter from the analyst stating that the original bulletin did not state nor did it intend to convey the idea that the sugar referred to was injurious to health.

Plainly these two letters, written by third parties after the plaintiff's cause of action was complete, could not be used in evidence against the defendant, and should not be set out on the face of the record.

The only trouble in dealing with the motion was occasioned by the fact that, after the Master's order and before the appeal, the defendant filed a statement of defence. It was said that this was done by a mistake in the solicitor's office.

Generally a motion against a pleading is precluded by pleading to it; but the Court can relieve from this slip, and should do so when what is complained of is a matter of importance which might, unless remedied, bring about confusion and a mistrial.

The defence might be withdrawn and redelivered if it were not that examinations had been had, and inconvenience might be caused. The defence contained no reference to the matters struck out, and no harm would follow allowing it to remain.

The plaintiff company would have the right to amend on the defence being filed after the disposal of this motion, and should have the same right reserved in this order.

Order striking out para. 5 and all of para. 12 after the word "examined." Costs of the motion and appeal to the defendant in the cause. The plaintiff may amend the statement of claim as advised within 2 weeks from this order. Nothing said as to any suggested amendments.