

anxious to repair, "but defendants say that the allegations of the article are true," and they go into special allegations of the truth of each charge, and charge that the plaintiff had been guilty of obtaining money by false pretences in New York from Rothschild & Co, and plaintiff had been engaged in criminal practices obtaining money under false pretences; that the public is interested that such dishonest practices should be disclosed in order that the public and employers should be protected against plaintiff; that plaintiff has suffered no damage.

There is a special answer by the plaintiff, by which plaintiff alleged that the matter set out in the article complained of did not appear in any public Court record; that the only accusation ever made against plaintiff was by Watkins, wherein he accused plaintiff of having embezzled \$1.20, which complaint Watkins declined to prosecute, and withdrew, and the complaint did not contain any other of the matters referred to in the article complained of; and the complaint never was but an *ex parte* statement that the apology referred to was really no apology, couched as it was, and plaintiff could not receive it as an apology; besides the defendants by their plea retract it, but renew in a more aggravated form all the false and malicious statements of the article complained of; that all the accusations in the said plea contained are false, and constitute no defence, but are an aggravation of the injury done to plaintiff; that moreover the charges are vague, and do not formulate any specific instances of wrong-doing on plaintiff's part, which would give him an opportunity of refuting the same, and defendants' publication was not in the public interest, but unjustifiable, &c.

The parties consented to a trial by jury and a general verdict, and upon the trial the jury unanimously found for the defendants.

Now, we have motions, one by plaintiff for a new trial; the other by defendant for judgment on verdict. The motion for a new trial is founded upon the fact of illegal evidence having been admitted, legal evidence having been excluded, misdirection of judge upon points of law. This is stated in three different ways in the motion, and at great length. And because the charge as a whole constitutes a misdirection by the judge upon points of law;

because the plaintiff was taken by surprise by evidence led by defendants to establish particular charges against plaintiff not set forth in the pleas.

As regards misdirection by the judge at a jury trial, our code makes it cause for a new trial, and, by a particular article, orders that this question of misdirection shall not be judged but upon the notes of the judge filed of record, and when the party objecting has caused his objections to be entered therein. This is equivalent to bill of exceptions that used to be, and the judge is to certify as to what and how he charged.

The objections made by plaintiff and noted by the Judge as having been made against his charge in this case are two. Upon the first, and the Judge's ruling complained of by it, we are unanimously of opinion that there has been no misdirection, and we need not dwell upon this part of the case.

Upon the second, the learned judge reports that he said: "The law of this country is not different from that of England in a great many respects. As regards the public rights and liberties of the subjects of the English Crown, they would always be held by me to be the same, in respect of the right to discuss public events, here as in other parts of the Empire. If the jury had sufficient proof that the defendant published the statement complained of about this man, all the particulars of which were public, and known and elicited in a Police Court, and that they did so fairly, and with the sole desire to inform the public of the truth, without any injurious intent, then they ought to find for the defendant."

Were all the particulars set forth in the article complained of public? Had they been elicited in a Police Court? If we could answer in the affirmative we would be against the defendants' second objection; but we are forced, considering the article's caption, "The Rinfret Swindle," and its long comments, or narrative, about plaintiff's former employments and engagements, to answer in the negative to the questions proposed.

Under these circumstances we find that there has been misdirection, and therefore we grant the plaintiff's motion to set aside the verdict and for a new trial, and the motion of defendant for judgment upon the verdict is rejected.

New trial granted.

*Doherty & Doherty* for plaintiff.

*Macmaster, Hutchinson & Knapp* for defendants.