

for the jury to say whether alleged defamatory matter published is a libel or not, and the widest latitude is given to them in dealing with it.

When no objection is made at the trial to the Judge's charge the ground of misdirection is untenable on a motion for a new trial.

In this action of libel the defendant did not plead justification, but he said in his defence that the alleged libel was a fair comment upon matters of public and general interest.

Held, that he was entitled under this defence to show that the matters upon which he commented were true.

Lefroy v. Burnside, 4 L. R. Ireland 556; *Davis v. Shenstone*, 11 App. Case 187; and *Rordan v. Willcox*, 4 Times L. R. 475, referred to.

Dickson, Q.C., and *Burdett*, for plaintiff.
Clute, for defendant.

Divl Ct.] [Feb. 4.
WELLS v. INDEPENDENT ORDER OF FORESTERS.

Insurance—Life—Benevolent society—Standing of deceased member—Re-instatement—Estoppel—Waiver—Costs.

W., who was a member of a subordinate court of the defendant society, died on the 6th May, 1884. His administratrix claimed in this action the amount of an endowment certificate upon his life, which was subject to a condition that the assured should at the time of his death be a member of the society in good standing. W. had not paid his assessment due 1st March, 1884, and by his failure to pay had become at once suspended by virtue of one of the by-laws of the society, and his name appeared in the minutes of a meeting held that month upon the list of suspended members. He had taken cold at Christmas, 1883, and by the end of February, 1884, it was apparent that he could not recover, and he never rallied up to the time of his death. Shortly before the 25th April, 1884, a sum sufficient to pay his assessments due 1st March, 1st April, and 1st May, was paid on his behalf to the financial secretary of the subordinate court. The conditions to be performed by a suspended member desirous of being reinstated after a suspension had been in force for thirty days, were, according to the by-laws, payment of arrears, passing medical examination, and being approved of by two-

thirds vote of the subordinate court. It was not possible for W. to have complied with the second condition, and he did not attempt to do so.

Held, that the by-laws were binding upon W. and the plaintiff, and that he not having been reinstated in accordance therewith, was not a member in good standing at the time of his death.

It was contended, however, that the fact of the receipt of the arrears by the financial secretary, and certain other circumstances, showed a waiver or created an estoppel on the part of the defendants.

It appears that the financial secretary was not familiar with the by-laws and thought, and informed W. that he was restored to good standing by the payment of arrears; that he transmitted the assessments paid to the supreme secretary of the society, who received and retained them, but carried them to the credit of the subordinate court, instead of to the credit of W., because in his view the reinstatement was not completed; and that W. was reported reinstated by the subordinate court on 25th April, 1883. The financial secretary had the right under the by-laws to receive the arrears, but only as a first step towards reinstatement.

Held, that in view of the fact that W. was hopelessly ill when the supreme secretary acknowledged the receipt of the assessments, there was no ground for the contention that the defendants were estopped from denying that they accepted the money with the intention of keeping the policy alive and of waiving the medical examination; and that under all the circumstances there was neither the intention nor the authority on the part of the supreme secretary to waive the examination.

As the plaintiff had been led by the action of the supreme secretary and the officers of the court below to believe that her father had been reinstated, no costs were given against her.

Tremecor, for plaintiff.

J. A. McGillivray, for defendants.

Full Ct.] [March 7.

REGINA v. RYMAL.

Criminal law—False pretences—Contract to pay money—Giving promissory note instead of money—Valuable security.

The defendant by untrue representations