it is of the utmost importance that the issue of fair comment should be pronounced upon by the jury and not by the Judge. Libel or no libel is wholly for the jury, and if they find for a defendant on that issue, then he has not been guilty of libel, no matter how defamatory the words may seem. The plea of fair comment is really an appeal to public opinion as represented by the jury, and asserts the right in a free country to free speech and free comment. If that plea is successful, then, notwithstanding that, in the opinion of a Judge, the language exceeded the bounds of fair comment as he understands it, the defendant escapes punishment and the plaintiff suffers for the good of the community. As put by Mr. Justice Denman in *Odger* v. *Mortimer* (1873), 28 L.T. 472: "the jury are the guardians of the freedom of public comment as well as of private character." There is another and more prosaic reason given by Lord Atkinson in *Dakhyl* v. *Labouchere*, 1908, 2 K.B. 325, p. 329, namely, that the defendant is entitled to have his view, *i.e.*, what he contends is the meaning of his comment, placed before and considered by the jury.

This is the proper conclusion to be drawn from a long line of cases, and while the standard of what is and what is not fair comment has varied, there is no change as to the forum which has ultimately to decide its proper definition. In the *South Hilton case*, already cited, Lopes, L.J., says that the question, "is the comment fair and *bonâ fide?*" is essentially one for the jury, and Kay, L.J., whether the article is fair "is essentially a question for the jury."

One of the earlier cases is *Cooper* v. *Lawson* (1838), 8 A. & E. 746, where the comment was that the plaintiff, a surety on an election petition, was a hired surety. It was there laid down that, where the comment is in nature of a conclusion from the jury, and Kay, L.J., that whether the article is fair "is essentially a question for the jury."

In the well known case of *Campbell* v. *Spottiswoode* (1863), 3 B. & S. 769, which decided that *bona fides* did not save com-