false evidence given before the Senate committee by plaintiff, whom he described as "this charlatan." Part of the cross-examination of plaintiff for discovery was read by defendants. Plaintiff there stated that the Senate committee in question was investigating certain charges made by one Cook that he had been offered a Senatorship if he would pay the party in power a considerable sum of money, and that in the course of Cook's evidence before the committee he stated that plaintiff was one of the persons who had conveyed the offer to him. It appeared from the evidence that there had been two or three lawsuits at Ottawa in which plaintiff's father was concerned, and that he had succeeded in one of them, to which the late John E. Rochester was not a party, and had failed in another, the parties to which were plaintiff's father and John E. Rochester. There was conflicting evidence as to what had taken place at the Cobourg trial, and there was no evidence to support plaintiff's assertion that John E. Rochester had asked his forgiveness. The trial Judge advised the jury to lay the two statements side by side, that is, the evidence given by plaintiff before the Senate committee, and the letter published by defendants, and to take all the circumstances into their consideration, and if they were not able to say that the statements in the letter were true, then to consider whether they were a fair answer by John Rochester in defence of John E. Rochester's memory; that, if they considered the statements in the letter were a fair answer to what was said by plaintiff before the committee, their verdict should be for defendants; if they found the libel proved, they should find for plaintiff. He explained to them fully what constituted a libel. The charge was not objected to, and the jury found for defendants.

F. A. Anglin, K.C., for plaintiff, argued that the letter published by defendants was clearly libellous, and the jury were bound to find it so; that the defence of justification failed, and there was no case of privilege made out, so that the defence of fair comment also failed.

G. F. Henderson, Ottawa, for defendants.

The Court (STREET, J., BRITTON, J.) held that if the circumstances were not such as to raise the question of privilege, the plaintiff should not have allowed the case to go to the jury without objection upon the Judge's charge, which clearly treated the case as one of qualified privilege: Wills v. Carman, 17 O. R. 223; Parsons v. Queen Ins. Co., 43 U. C. R. 271; Macdonnell v. Robinson, 12 A. R. 270. It must be assumed in favour of defendants that the jury did as they were directed by the Judge, that is, laid plaintiff's evidence