

And in the course of that discussion they were used as affording a fair and proper vehicle for the expression of the defendant's views and inferences in relation to such matter. Instead of justifying the words as true and correct in themselves the plea of fair comment in effect admits that, standing alone, they would or might be defamatory, but that, having regard to certain facts and circumstances which had transpired in some matter of public interest, they must be regarded in their relation to those facts and circumstances. Thus they are justifiable, *i.e.*, they form reasonable remarks or comments on those facts and circumstances, although not necessarily fair if regarded apart therefrom.

The allowance of such a plea is necessary if newspaper criticism and free discussion of public events is to be maintained, and it has its origin in the belief that such latitude is essential in a country with an independent press.

No man can be convicted of a libel if his fellow citizens on the jury do not consider the words used to be libellous, no matter how extravagant and harmful the expressions may be. That is, of course, provided the jury are not actually perverse. And it follows, if fair comment is allowed to be pleaded as a defence, that no newspaper should be convicted of libel upon such an issue unless a jury are allowed to say whether what is called comment is fair or so unfair as to be not comment, but defamation.

Collins, M.R., in *Thomas v. Bradbury*, 1906, 2 K.B. 627, likened the defence of fair comment to that of privilege, but, with the dislike which British lawyers have to analogy and to a scientific basis for their law, this has not been accepted as the proper view. But his comparison makes clear the essence of this defence. While he rests privilege upon a private right and fair comment upon a public one, a doubtful distinction, his examination of the reason underlying this special defence demonstrates that its justification is to be found in the necessity for free and independent public criticism, and not in any personal exception favouring newspaper writers. For this reason