

back for a new trial . . . or is one properly falling within Rule 615, where the Court has before it all the materials necessary for finally determining the question in dispute. Question 6 reads: "Did Tibbs, in uttering any of such words which you find he did utter, act within the scope of his employment by the Press Publishing Company, for their benefit?" Answer: "No." Does this mean that he did not act within the scope of his employment and did not act for the benefit of the company, or does it mean that, although he acted within the scope of his employment, yet in doing so it was not for the company's benefit? Probably the former is what the jury intended. If the latter, then, in my view of the law, plaintiffs would, notwithstanding the answer to question 6, be entitled to judgment against both defendants. But, assuming the answer to negative both branches of the question, can the Court, upon the findings of the jury and the admitted facts in this case, finally determine the question in dispute without sending the case back for a new trial? . . .

[Reference to *Hamilton v. Johnson*, 5 Q. B. D. 263; *Yorkshire Banking Co. v. Beatson*, 5 C. P. D. 109; *Lancey v. Brake*, 10 O. R. 428; *Stewart v. Rounds*, 7 A. R. 515; *McConnell v. Wilkins*, 13 A. R. 438; *Rowan v. Toronto R. W. Co.*, 29 S. C. R. 717; *Donaldson v. Wherry*, 29 O. R. 552; *Clayton v. Patterson*, 32 O. R. 435; *Jackson v. Grand Trunk R. W. Co.*, 2 O. L. R. 689, 32 S. C. R. 245; *Sibbald v. Grand Trunk R. W. Co.*, 18 A. R. 184, 207; *Jones v. Howe*, L. R. 5 Ex. 115; *Millar v. Toulmin*, 17 Q. B. D. 603; *Ogilvie v. West Australian Mortgage and Agency Corporation*, [1896] A. C. 257.]

It is, perhaps, difficult to reconcile all the Canadian cases with the later English cases . . . as to when the power given by Rule 615 ought to be exercised. But, having regard to the facts in each particular case and the manifest object of the Rule, it would seem to be proper to exercise the power there given in any case in which, upon the facts known, no jury would be justified in finding a contrary verdict, and where there is no reason to suppose that on a second trial further evidence may be adduced or that facts may be more fully brought out which may change the result, and provided all necessary materials are before the Court for finally determining the question at issue between the parties. The Court is not justified in discarding the findings