In Penrhyn v. Licensed Victuallers' Mirror, 7 Times L. R. 1, the form of defence is given in which the defendant, who set up the defence of fair comment, where there were matters of fact alleged, stated that, so far as the article complained of contained statements of fact, those statements of fact were true, and as to the other matters that they were matters of fair comment; and that was held to be the proper form of pleading in such a case.

In Martin v. Manitoba Free Press Co., 21 S. C. R. 518, Brown v. Moyer, 20 A. R. 509, and Douglas v. Stephenson, a decision of this division, 29 O. R. 616, 18 Occ. N. 339, afterwards affirmed by the Court of Appeal, 26 A. R. 26, 19 Occ. N. 60, this view of the law is recognized and acted upon.

It seems to us, therefore, that the order of the learned Chancellor did not go far enough, and that the pleading must be struck out, unless the respondents elect to amend, by either setting out a statement of the facts with regard to which they allege the article was a fair comment, or, in the other form, by justifying the statements of fact contained in the article, and as to the other matters pleading that they were fair comment upon those matters of fact.

Two forms of pleading this defence are given in Odgers on Libel and Slander, 3rd ed., numbers 29 and 30, pp. 672 and 673.

The form of pleading number 29 is that which was recognized as the correct pleading by a Divisional Court composed of Justices Mathew and Grantham in Penrhyn v. Licensed Victuallers' Mirror. The third paragraph, which is the material one, is as follows: "In so far as the said words consist of allegations of fact, they are true in substance and in fact; in so far as they consist of expressions of opinion, they are fair comments made in good faith and without malice upon the said facts, which are matters of public interest."

The other form it is not necessary to refer to.

The respondents should have ten days in which to make their election and to amend.

The motion of the appellants also asked for particulars of the defence. We think it would be premature to determine anything as to that until the form of pleading is settled. It may be that the pleading may contain all the information that the respondents are required to give, and, therefore, we do not interfere with the order in that respect, but leave the appellants, if they are so advised, to make their application when the pleading is placed upon file.

The costs of the appeal will be to the appellants in any event.