

moved for judgment, and contended that, upon the pleadings and evidence, it was now simply a question of damages. The plaintiffs now asked for a new trial upon substantially the same grounds—that evidence was given of facts not set out in the particulars upon which it was alleged fair comment was based, and the facts alleged forming the foundation for fair comment were not proven.

There was much evidence for the defence, tending to support the comment made. There was evidence of the bona fides of the defendants, and it was clear that the matter was of public interest. Nevertheless, the learned Judge reluctantly reached the conclusion, on the authorities, that there must be a new trial, upon the ground that evidence was admitted, in support of the defendants' plea of fair comment, for which no particulars were given, and which might influence the jury. There had been a miscarriage at the trial, owing partly to the plaintiffs not clearly defining what was complained of in the newspaper article on which the action was based, portions of which article did not refer to the plaintiffs, and to the particulars not fully covering the ground upon which the defendants offered evidence.

There should be a new trial. Both parties should be allowed to amend the pleadings and particulars as they might be advised. The defendants should pay the plaintiffs' costs of the appeal, and the costs of the former trial should abide the event.

LENNOX, J., for reasons briefly stated in writing, agreed that there should be a new trial, and that the question of costs should be disposed of as stated by CLUTE, J.

RIDDELL, J., in a written judgment, discussed the facts and law, and stated that he had come to the conclusion that there must be a new trial. Upon that trial a different course must be pursued, with the real issues well kept in view. The defendants should prove the facts alleged against the plaintiffs, and then justify the comments. Some part of the difficulty arose from the plaintiffs' statement of claim including what could not be considered applicable to them—they should have leave to amend.

The order should be for a new trial, with leave to both parties to amend. The defendants should pay the plaintiffs' costs of the appeal and of the former trial.

KELLY, J., agreed in the result stated by RIDDELL, J.

In the result, the appeal was allowed with costs, and a new trial ordered; costs of the former trial to abide the event.