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OCTOBER 7TH, 1902.

DIVISIONAL COURT.

CROW'S NEST PASS COAL CO. v. BELL.

Libel—Pleading—Defence—Fair Comment—Embarrassing Pleading—Particulars.

An appeal by plaintiffs from an order of BOYD, C., in Chambers, refusing an application by plaintiffs to strike out one of the defences in an action for libel.

G. G. S. Lindsey, K.C., for appellants.

A. E. Knox, for defendants.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., LOUNT, J.) was delivered by

MEREDITH, C.J.:—This is an action for libel, the libelous matter complained of being an article referring to the appellants' operations, contained in a newspaper published or alleged to be published by the respondents.

One of the defences set up is that of fair comment.

The learned Chancellor, upon the application of the plaintiffs to strike out that defence, directed that the pleadings should be amended. The appellants are not satisfied, and have appealed from the order, contending that, even with the amendment which the learned Chancellor directed to be made, the defence is insufficient.

The article complained of contains a number of allegations of fact—statements of fact—and the paragraph of the statement of defence objected to does not attempt in any way either to give a statement of the facts upon which it is alleged the article was fair comment, or allege that the statements of fact in the article complained of were true.

We think the position of the appellants is right.

It is clear upon the authorities that a man may not invent his facts and comment upon them and succeed upon the ground that, the facts being assumed to be true, the comment is fair.

The matter has been the subject of discussion in a good many cases in this Province and Dominion and elsewhere.