

the defendant William Dunkin Fenning, falsely and maliciously wrote and published of the plaintiff Hutt, jun., these words, viz.: "He has been caught stealing; suspicion has long been directed to him as guilty of a series of thefts from the studies;" that on March 16, 1887, the defendant James Robertson falsely and maliciously wrote and published of Hutt, jun., the words, "He has lied to the last;" that on March 17 Fenning had libelled young Hutt in these words: "There is not a court of law that would have hesitated to convict him. Short of actually being caught in the act, no boy was ever convicted on clearer evidence. You plead for him a character free from dishonesty. He holds among his companions here a quite different character. What would Harry's faith have been at the assizes?"; that on March 12 the defendant Fenning had slandered the plaintiff Hutt, jun., by saying of him, "He will not confess; it is a great pity that he will not;" and that on March 14 both the defendants Robertson and Fenning had slandered Hutt, jun., by repeating the words set out in the first of the above alleged libels.

The defendants pleaded denying that Mr. James Robertson expelled young Hutt save in the discharge of his duty as the headmaster of the school, and alleged that Hutt was removed upon reasonable suspicion of having stolen money, and that before the alleged expulsion the defendant Robertson, as master, *bond fide* investigated the charge and came to the conclusion that it was true. In the alternative the defendants alleged that Hutt, jun., was in fact guilty of theft, and that in the defendant's (Robertson's) judgment it was necessary to expel him for such an offence. The defendants denied the alleged assault and false imprisonment. In the alternative they pleaded that they had acted *bond fide* and with reasonable cause, to the best of their judgment, in separating Hutt from his companions, and acted in the interests of the school discipline. With regard to the alleged libels and slanders, the defendants pleaded privilege. The defendants, the governors of the school, pleaded separately, in substance supporting the action of their masters. Upon these pleas issue was joined.

The following questions were left to and found by the jury on the direction of the learned judge: (1) Was it agreed between the father and governors that Henry Hutt should be liable to expulsion for reasonable cause? Answer: Yes, it was. (2) Did Mr. Robertson come to the conclusion upon reasonable grounds that Hutt had committed the theft, and honestly believed that he had? Answer: Yes, he did. (3) And did such reasonable grounds exist in fact? Answer: No. (4) Did Henry Hutt, in fact, steal the money out of the cash-box of study No. 17? Answer: No. (5) Had Robertson and Fenning

reasonable grounds for suspecting Henry Hutt? Answer: Yes. After March 12, 1887, and the discovery of the money in Hutt's box. (6) Did Robertson and Fenning honestly consider and come to the conclusion that the confinement of Hutt in the sick-room was necessary for the well-being of the college and the correction of the boy? Answer: Yes. (7) Was such confinement reasonable under the circumstances? Answer: Yes. (8) Are the libels and slanders true? Answer: Not true. (9) If not, did Robertson and Fenning honestly believe them to be true and publish them in that belief and from no indirect motive? Answer: Yes. (10) Did Robertson make the statement complained of to Dr. Bradby in an honest belief of its truth and for the purpose of obtaining his advice and assistance in the matter and with no indirect motive? Answer: Yes. (11) Did Robertson make the entry of Hutt's expulsion in the school notice-book with an honest intention and no indirect motive? Answer: Yes.

The learned judge, in the course of his summing-up, gave the following directions and explanations in the points of law involved in the case: With regard to the libels, that is, his lordship said, admitted, and therefore on them no action is maintainable unless you are of opinion that the defendants published them not believing in them, but from some indirect motive. That was their question; his was the one of privilege. As to the libels, the question of privilege did not arise, as it was admitted; but it was not admitted in the case of the alleged slander. But he would not yet decide that point. Besides relying upon the above pleas, the defendants further alleged that the libels and words were true. That again was for them to decide. This morning, he said he was prepared to hold that there was no such absolute discretion in masters of schools as that claimed in the governors' statement of defence as was originally pleaded. Such a power would be far too great and dangerous: viz., that any boy at school should be liable to be branded for life by expulsion simply because a master on his sole authority and discretion—however distinguished he may be—had come to the conclusion that such a course was necessary for the well-being of his school. Such an absolute discretion could never be permitted. All large bodies must, of course, be governed in the public interest, and in some cases such absolute discretion is necessary, but not in such a case as this. Passing from this, the learned judge said he would now go to the facts and first read the questions out which he was, he said, going to leave them. The first thing to be considered was, What is the authority of a master of a public school? There was, he observed, very little, if any, legal authority