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*Feb. 19, 20
*June 22

BULLETIN COMPANY LIMITED (DEFENDANT)..... } APPELLANT;

AND

RICE SHEPPARD (PLAINTIFF)..... RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Libel—Newspaper—Fair comment—Public interest—Personal corruption —Public and private reputation—Civic administration.

A newspaper article alleged that the members of a municipal council (referring to the plaintiff and others,) "will have to do a lot of explanation to satisfy the" public that their action "was for the protection of the city's interest and not because of a split as to a possible rake off. . . . . We have had one year of Tammany. We can't stand another."

Held that no action for libel will lie against a newspaper which makes fair and reasonable comments upon the evil conditions prevalent in the city and upon corrupt and unlawful practices provided these comments do not exceed bounds of legitimate criticism and could not be construed as imputing personal knowledge and corrupt intention on the part of a member of the municipal council.

Per Davies and Brodeur JJ., the court must decide this question, not on any possible interpretation which might be suggested of the language complained of, but upon such interpretation as is reasonably fair and as would be understood by the people of the city in question.

Per Fitzpatrick C.J. and Anglin J. dissenting: The statements complained of amount to allegations of personal corruption against the respondent.

Per Anglin J., Those statements go far beyond a fair expression of a reasonable inference from any proven facts and indicate an absence of that "honest sense of justice" and of that "reasonable degree of judgment and moderation" on the part of the critic which are essential to sustain a plea of fair comment.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta, (1) which reversed the judgment of Ives J. at the trial, by which the plaintiff's action was dismissed with costs.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

(1) 27 D.L.R. 562.

The material circumstances of the case and the questions in issue on the present appeal are stated in the head-note and in the judgments now reported.

G. F. Henderson K.C. for the appellant.
E. B. Edwards K.C. for the respondent.

THE CHIEF JUSTICE (dissenting)—The appellant devoted much pains, both in the newspaper articles out of which the present libel suit arises and at the trial, to proving his assertion that there was in the Edmonton city council a party, to which the respondent belonged, known as the "administration party," the members of which held together on all matters of substance, and, composing the majority of the council, had the control of the affairs of the city. There is no point to the statement, unless the power of the alleged party was directed to improper and corrupt ends. The rule of the majority is necessarily incident to any elected council, and such majority has commonly stability through the party system as may be seen in Parliament, the chief council in the land. It was not necessary, as the appellant claims,

that the result of this system was to bring about a condition in Edmonton practically the same as the Tammany system in New York.

The appellant, in his defence, alleged that his attacks were directed against the system and not against the respondent as an individual. This is perhaps rather inconsistent with the argument advanced in the article of the 28th November,

that good government depends on men rather than on form,

but there can, I think, be no doubt that the innuendo in the article of the 2nd December is supported,

that the plaintiff conspired with other members of the council of the City of Edmonton to conduct the business of the city so as to secure

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private ends instead of the public good and to introduce and carry out in the City of Edmonton corrupt and unlawful practices usually associated with the name of Tammany.

As the learned judge delivering the judgment under appeal says:—

> There can in this matter be no way open for an interpretation which would not impute personal knowledge and participation;

it is personal corruption.

The appellant is really driven to the claim insistently made before this court that there is a difference between charges against the respondent in his public and in his private capacity. There is none; and I think this cannot be too emphatically stated. The morality which a man is bound to observe in his public life is the same as in his private life. There are not two persons in a man, neither are there two codes of morality but only one. Whilst a man has the same responsibility for his actions whether in his public or private capacity, he is also entitled to a corresponding protection when unjustly charged with immoral acts either in his public or private capacity.

I give the effect of the appellant's argument so far as I can gather it, but as it is to be found in his factum, it is certainly confused and apparently far from clear to the writer of it. In it we read:—

> The second point taken by the appellant is that the learned judges in appeal failed to appreciate the difference between criticism of the public action of a public man and an imputation upon the same person in his private capacity.

Criticism of a man is not synonymous with an imputation upon him. The passage proceeds:—

> The quotation from the judgment of Mr. Justice Stuart at p. 187 of the case, already given, shews that the judges in appeal had clearly in mind the proposition of law that there must be an imputation upon the private or personal character of the respondent in order that he might be entitled to judgment.

There is no such previous quotation, and I can

find nothing in the judgment to which counsel can be referring. Further, I do not know the proposition of law asserted. The learned counsel appears throughout to confound the words "private" and "personal "capacity" and "character." What is meant by a man's private character I do not know, but every imputation upon his character is a personal imputation whether in his public or private capacity.

Again, it is said:—

> The learned judges have surely gone too far in finding that the reasonably necessary result of the language was a charge of personal corruption. Had they kept in mind the distinction which is always made between conduct in a public capacity and conduct in a private capacity it would have been clear to them that the article not only did not make any charge against the respondent in his personal capacity but made it plain that the criticism was directed against the system and not against the individual.

There is no such distinction made or capable of being made and the confusion of language is worse than ever. What capacity can the respondent have which is not a personal capacity? Apparently the argument is that a charge against the respondent in his personal capacity is a charge against the individual, but a charge against a public man is not a charge against an individual but a system. It is idle to attempt to follow such arguments any further.

Mr. Justice Beck did not, as alleged, dissent from the judgment of the other judges of appeal; on the contrary, he agreed with it and went further. I do not find it necessary to say more than that I concur in the disposition of the case made by the Appellate Division and would dismiss this appeal with costs.

DAVIES J.—This action was one brought by the plaintiff against the defendant printing company for several alleged libels published respecting him in

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their newspaper the *Bulletin* in the City of Edmonton.

The plaintiff was an alderman of that city at the time the articles were published and the libels related to his actions and conduct as such alderman and as one supporting what was known as "the administration" in the city council of Edmonton. They were written on the eve of a city election for a number of aldermen. The plaintiff was not one of these, as he had been elected for a two year term, only one of which had expired.

The articles complained of were written in a very vigorous and forceful style and did not mince matters n charging that the civic "administration party," that is the mayor with a majority of the aldermen who usually voted with him to support and carry out the policy he advocated, had brought the affairs of the city, socially as well as financially, into a very disgraceful condition which could and should be remedied by the election of a new mayor and a body of aldermen who would support a new and better policy and method of civic government.

There were five distinct libels charged against the defendant as having been published in its newspaper. In order to understand these articles properly and to appreciate their true meaning and object and how they would be understood by an ordinary citizen of Edmonton, it is absolutely necessary to read the record we have before us, which includes not only the articles in full as published and the evidence given at the trial, but also many exhibits and amongst them an important report made by Mr. Justice Scott, who had been appointed to examine and report upon the existence of crime and vice within the city and whether its growth and extent had been such as to indicate a failure on the part of the civic authorities to enforce the law.

The learned judge, acting as such commissioner, found it difficult, if not impossible, to obtain the evidence of many witnesses who were in a position to know the facts on which he was asked to report, as they had been spirited away and could not be had.

But while he reported that

there is no direct evidence of the receipt by any alderman, commissioner or other officer, servant or agent of the city, of any money for the protection of vice,

he went on to say:

If the evidence of the prostitutes who left the city on the eve of the investigation could have been procured, more light might have been thrown upon the question. Some of those who were examined before me are shown to have stated that they were under protection by the police by reason of their having paid for it; but, upon their examination, they denied that they had paid any money for that purpose.

He winds up his report as follows:—

Having regard to the inconclusiveness of the evidence already given in some respects and to the number of witnesses whose absence has made it impossible to examine them, it is suggested that the present report be treated as an interim one, and the authority conferred by the council for the inquiry be extended, so that, if it hereafter becomes possible to obtain any further information, a tribunal for that purpose will be available. The general condition revealed is of the most serious possible character and it seems important, from the point of view of the citizens generally, that the fullest possible light should be thrown upon the subject and the persons responsible definitely ascertained.

The conditions the learned commissioner was able to report upon being, as he said, of the "most serious character" and "requiring the fullest possible light to be thrown upon the subject," it became not only the right but the duty of the press of the city thoroughly to discuss the deplorable situation revealed and to make such fair and reasonable comments upon it and upon the civic administration responsible for it as the revealed facts called for.

Such right and duty however would not, of course, justify unfair or unreasonable comment reflecting upon the characters and reputations of those more or

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less responsible for those facts. The defence set up by the defendant is that, in the discharge of its right and duty as a newspaper, it did not trespass or go beyond what was fair and reasonable comment upon matters of public interest.

Whether such defence has been made out is the question before us now, and, in determining it, we are practically acting as jurymen and must decide, not on any possible interpretation which might be suggested of the language complained of, but upon such an interpretation as is reasonably plain and fair and as would be understood by the people of Edmonton.

It is, in my opinion, most unfortunate that the issues had not been submitted to a jury—a tribunal recognized as peculiarly well qualified to pass on such a question as we have before us. But we have to deal with the case as it stands with a conflict of judicial opinion.

The learned trial judge held that each and all of the alleged libels were fair and reasonable comments upon matters of public interest and on such a finding of fact he dismissed the action.

The Appeal Court was divided.

Three of the learned judges agreed with the trial judge with respect to all of the alleged libels but one, that they were merely fair comment in matters of public interest; but with respect to that one, two of them concurred in the opinion delivered by Mr. Justice Stuart that,

> it contained beyond doubt an insinuation that the plaintiff was one of a number of aldermen who were acting corruptly and dishonestly in their dealing with the paving contracts

and that applying the meaning of the word "Tammany" to be that given by the defendant in its article of December 1st it clearly

supported the innuendo alleged in the fifth paragraph of the claim that the plaintiff conspired with other members of the council to introduce and carry on in the City of Edmonton corrupt and unlawful practices.

Mr. Justice Beck held that all of the articles charged as libellous were in fact so and was in favour of setting aside the verdict of the trial judge and entering judgment for the plaintiff and if he was not satisfied with nominal damages "there should be an assessment of damages."

The extract from the article of December 2nd, which the Appeal Court has held to be libellous, is as follows:—

> The members of the council (clearly referring to the plaintiff among others) who were so careful not to let a printing contract of $10,000 or $12,000 get by their friends will have to do a lot of explanation to satisfy the men who had to stint their families in order to get their taxes paid by last Monday afternoon that their split on the paving contracts running into the hundreds of thousands was for the protection of the city's interest and not because of a split as to a possible rake-off * * * We have had one year of Tammany. We can't stand another.

I have given the judgment of the majority of the Court of Appeal a great deal of consideration and do not find myself able to concur in the conclusion they reached as to the libellous character of this article.

In construing that article and forming a conclusion as to what is really meant, one must place oneself in the position of a resident of Edmonton to whom it was specially addressed on the then eve of an election for mayor and aldermen for the then coming year. One must ask oneself in view of the then existing proved conditions in civic matters, of Judge Scott's report, of the evidence given at the trial and of all other surrounding circumstances, whether, as the trial judge found, the article did not go beyond what, in the extraordinary and unfortunate civic circumstances, was fair and legitimate criticism or had crossed

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the line as the Appeal Court found and become libellous. But in forming one's conclusion, one must not confine one's mind to the *ipsissima verba* of the extract from the article in question found to be libellous but upon the language of the article as a whole and in the light of all the surrounding conditions and circumstances.

I do not think that the language of the article when so viewed necessarily "imputed personal knowledge and participation" on the plaintiff's part in civic corruption and dishonesty or of a corrupt conspiracy of which the plaintiff was a party with regard to the affairs of the City of Edmonton.

I fully agree with the statement of the learned judge (Mr. Justice Stuart) that

> when personal corruption is charged, there is no distinction between the plaintiff as an alderman and as a private citizen.

Where I cannot agree is in finding any charge of personal corruption at all.

The writer was referring to and considering the actions of "the majority of the administration" to which, it is true, the plaintiff was allied and with whom he as a rule voted. The learned judge himself says in his judgment:—

> After an examination of the reports of the proceedings of the council, I am of the opinion that it could with some appearance of reason by a fair and honest though vigorous critic be argued that there was such an administration party and that the plaintiff at least supported it.

I fully agree. I also concur generally in the reasons given by the learned judge for the conclusions reached by him and concurred in by the majority of the court with respect to all the other alleged libels that they did not exceed the bounds of legitimate criticism when read in the light of all the circumstances and should not be construed as "imputing personal

and corrupt intentions" on the plaintiff's part. The learned judge says in his judgment;

> I think I can go a step further and also say that an assertion that there was such a party, that the plaintiff was a member of it, that the policy of the party was one of corruption and dishonesty would also not be a libel upon the plaintiff except by an innuendo that the plaintiff knowingly and consciously assisted and supported such a policy. Assuming personal innocence of any corrupt or dishonest motive on the part of the plaintiff, that is, personal ignorance of the real aims and purposes of his party, there could be nothing but legitimate and fair criticism and comment upon his action as a public man in charging him with supporting a party having such corrupt and dishonest purposes because, *ex hypothesi*, he would not be personally corrupt or dishonest, but only innocently mistaken in his course of action. The presence of an innuendo or personal knowledge and participation would in my opinion clearly be necessary before a charge against him of being a member of such a party could be considered libellous.

Adopting and accepting as I do those reasons, however, I cannot concur in the conclusion reached by him respecting the article of the 2nd December. There is no charge that the plaintiff knowingly and consciously was a party to a corrupt conspiracy to defraud the city or that he personally was guilty of fraud or corruption. It was the "administration" of which the plaintiff was a member that was being attacked, not the plaintiff personally. He, it was argued, must be held responsible with the others comprising it for its acts and its policy. But to say that a member of a party must be held responsible for the acts of the administration he supports and to call that administration "Tammany" falls short in my judgment under such facts as are here disclosed of charging personal corruption and dishonesty.

I frankly admit that it is difficult sometimes to draw the line between libel and fair and reasonable comment upon matters of public interest.

In the instance before us, I feel compelled to hold, largely for the reasons advanced by the learned judge

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who delivered the majority judgment of the Court of Appeal when deciding against the libellous character of all the other charges, that the article in question of the 2nd December did not under all the circumstances exceed the bounds of fair and legitimate criticism upon a matter of great public interest and did not impute to the plaintiff personal fraud or corruption in connection with the affairs of the city of which he was an alderman or that he "had conspired with other members of the council to introduce and carry on in the City of Edmonton corrupt and unlawful practices."

I think undue weight has been given to the use of the word "Tammany" in the libel complained of Years ago in the United States the word was in very bad odour especially in New York under the "Boss" governments so called of Tweed and some of his successors. But a construction seems to have been placed upon the meaning of the word in the libel complained of which it does not necessarily bear. It is argued that Tammany government means the practical and systematic application to civic government of the old party cry "to the victors belong the spoils" not only with regard to appointments to office but with respect to the letting and awarding of civic contracts. That may be so; the policy may be a very vicious one and may be carried out in ways the most objectionable and corrupt. But it does not necessarily follow that it must be corrupt and it certainly cannot be said that it involves personal charges against each and all of those who supported the administration so called "Tammany." In fact, the defendant, when first charged with libel by the plaintiff, most emphatically disclaimed any intention of imputing personal corruption to the plaintiff or conspiracy on his part to abet, or procure, or maintain corruption. If

any such construction was put upon the language complained of, the defendant unequivocally repudiated it and expressed himself as willing and ready to make the most complete apology.

The substance of the charge was that the plaintiff as a public man and an alderman supported by his votes and maintained in power an administration that the paper held was corrupt—not that he did so for any personal benefit or knowingly and consciously abetted and assisted and supported corruption in civic government.

The plaintiff, it must be remembered, was not before the electors for re-election. He had another year to serve as alderman. The articles were written to defeat the mayor, "the Boss" of the administration, and those members of it seeking re-election. Looking at the conditions and circumstances and atmosphere surrounding the publication of the article complained of, the relation of the plaintiff to the attack made, and the purpose and object of the writer, so far as I acting as a juryman can determine them, I conclude that the court below has placed a meaning upon the article which it does not reasonably bear and that under all the circumstances it does not exceed the bounds of fair comment and criticism, though it may be fairly argued that it reaches to those bounds.

I would have been very much surprised if any independent witness, a citizen or resident of Edmonton, could have been found who would state that he understood the article to bear the meaning the learned judges determined it did.

I need hardly say that no such witness was found.

The law on this important subject of fair comment as concisely stated in 18 Halsbury, at p. 711, is, I

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think, correct and is supported by authorities which will not be challenged.

It reads:—

> The defendant may nevertheless succeed on his plea of fair comment if he shews that the imputation of which the plaintiff complains, although defamatory, and although not proved to have been true, yet was an imputation in a matter of public interest, made fairly and *bonâ fide* as the honest expression of the opinion which the defendant held upon the facts truly stated, and was in the opinion of the jury warranted by the facts, in the sense that a fair minded man might upon those facts *bonâ fide* hold that opinion.

The conclusions inferred as matters of opinion have not to be proved as facts and on the issue of fair comment the mental attitude of the commentator is immaterial.

I am of the opinion that the appeal should be allowed with costs here and in the Court of Appeal and that the judgment of the trial judge should be restored.

IDINGTON J.—The respondent was an alderman of the City of Edmonton when the appellant as the publisher of a newspaper called "The Bulletin," in evident anticipation of the annual city election, attacked in five different articles the conduct of the mayor and city council in relation to their management of the city's municipal government.

The respondent complained of these articles in an action tried in Edmonton before Mr. Justice Ives without a jury and he dismissed the action.

Upon an appeal to the Court of Appeal for Alberta that judgment was reversed and judgment entered for $450 damages and costs.

The opinion judgment of the majority of the court held that each one of the first three of said articles, taken by itself, was not libellous under the circumstances, but that the fourth, published on the 2nd of December, was so.

The part of the article which Mr. Justice Stuart, writing the majority judgment, quotes and relies upon is as follows:—

> The members of the council (clearly referring to the plaintiff among others) who were so careful not to let a printing contract of $10,000 or $12,000 get by their friends will have to do a lot of explanation to satisfy the men who had to stint their families in order to get their taxes paid by last Monday afternoon that their split on the paving contracts running into the hundreds of thousands was for the protection of the city's interest and not because of a split as to a possible rake-off * * * We have had one year of Tammany. We can't stand another.

The formal judgment of the court is expressed in general terms and makes no distinction between the several counts (if I may be permitted to use the old fashioned term) in the statement of claim. But in the argument of counsel before us, it seemed to be conceded that the judgment appealed from must rest upon this paragraph alone.

The innuendo thereto in the statement of claim is as follows:—

> meaning thereby that the plaintiff conspired with other members of the council of the City of Edmonton to conduct the business of the city so as to secure private ends instead of the public good and to introduce and carry out in the City of Edmonton corrupt and unlawful practices usually associated with the name of "Tammany."

No witness was called to support this innuendo and we are left to conjecture.

I am unable from reading that article, indeed all the articles in their entirety, to attach any such meaning as Mr. Justice Stuart places thereon.

I think we must look at all the facts and read all the articles and understand so far as we can the situation with which the writer of the article is dealing before we can even approximately reach a correct interpretation of this paragraph.

The article was largely based on the action, or want of action, on the part of the mayor and those in the

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council usually supporting him. The respondent would have us believe he was a man of independent action in everything and not tainted with the common frailty of uniting with others to push forward any agreed on policy.

He seems to have been a respectable man who was nominated on a municipal ticket along with the mayor, and that ticket seems to have carried at the election in December, 1913, for the part of the council of 1914 to be then elected.

His knowledge of his colleagues was, according to his own story, so slight that I infer he knew little of Edmonton's chosen people.

Indeed he seems to have been such a stranger that I doubt if he could ever have been elected but by reason of his being placed on their ticket or some one else's ticket.

And at the organization of the council for the coming year, he was kindly taken by the hand on the part of those on whose ticket he was elected, and selected as one of the chosen three to strike the standing committees for the year.

That labour, he tells us, was not very arduous, for when he retired to a room with the other two, who were certainly then friends of the mayor, he found the lists all ready. All he had to do was to assent, and he instantly assented accordingly.

How could a stranger given a place on two committees, when some had to be satisfied with only one place, refuse to thus assent? Or had he been consulted beforehand?

Certainly if we analyse the composition of the committees thus struck and bear in mind so much of the council's doings as presented to us, someone close to the mayor had been consulted, unless we attribute

the result of these labours to some miraculous inspiration.

As any one of experience knows, the formation of these committees was perhaps the most important step of the year, either to promote the general good or the strengthening the hands of the mayor, or someone else, bent on dominating the council. Hence the due preparation of the lists of men constituting the needed committees. There is much in the result arrived at which shews the mayor had a policy of his own and saw to it he could control things generally as he desired.

The respondent, later, on the 3rd of February, although on two committees already, was chosen as a member of the Health and Safety Committee, when a Mr. Calder, of whose position as one of the opposition to the administration party there seems to have been no doubt, had resigned from that committee.

In light of the foregoing and what I am about to advert to, I think ordinary people, only conversant with ordinary actions of public men and their associates, would be quite justified in assuming and saying that the respondent was looked upon, by the other supporters of the administration, as a general supporter thereof. And as such men often know a man better than he knows himself, they might be quite justified in setting him down as such.

The organization for business seemed according to practice and policy to require commissioners to be appointed of whom each was in charge of the department allotted to him. This year, there were four such salaried officers of whom one was supposed to be under the Safety and Health Committee which had to deal with the police department. Perhaps it would be more correct to say the committee was under the

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commissioner. The commissioner assigned to the charge of the police was one that respondent had voted to place there.

The chief of police, an excellent officer, it is admitted, at the dictation of the mayor, was driven out of the service, and step by step the condition of things became so disgraceful that there was an outbrust of public indignation early in February.

The respondent admits having heard on the 1st of January and perhaps before, that prostitution was on the increase in the city. Mr. Justice Scott reports that the general increase of crime, which is the usual accompaniment of such a condition, is not traceable till about early February and so continued until the investigation.

The most pitiable thing in this case is the respondent's story of all he ever did to put a stop to this carnival of vice that Mr. Justice Scott's report sets forth as existent.

He voted for an investigation and brought a trifling incident or two to the notice of the commissioner besides asking him to restore a respectable policeman who had been dismissed.

If he had no more force of character than to rest satisfied with that course of conduct and serve on that committee in silence, as he seems to have done for four months, whilst the criminal part of the population were having a fine time, under the policy of the administration of the city, I assume he is, by reason of his thus lending his respectability for others to hide behind, not entitled to complain of being treated as one of the mayor's supporters.

It likely never would have been necessary to hold any expensive judicial inquiry such as began in the

following June after four months of agitation, had the respondent, and such as he, done their whole duty.

To remain almost dumb in such a position as he was given at the hands of the mayor and his friends was in my opinion an unworthy toleration of evil policies that was deserving of criticism and censure.

If not an active pandering to the desires of the seamy side of social life, it is a policy likely to reap its reward from that side, in kindly remembrance at election times.

If that is not in accord with just what "Tammany" sometimes stands for in popular estimation and expression, I misunderstand the term.

Neither Tammany nor any other organization ever sinks so low as to be in action wholly wicked or composed entirely of wicked men. The most deplorable thing about what Tammany and its like are betimes supposed to stand for, is the facility with which respectable men lend their support to those dragging down what was originally respectable. Alone they would be powerless. The aid of respectable men willing to give their countenance to those of evil mind is the menace of what may ultimately destroy free institutions.

It need not necessarily be a slavish and unfaltering support but yet enough to lend aid and encouragement to that combination of men who are pursuing an evil or dangerous policy which entitles the press to classify them as of that party or faction and subject to more or less severe criticism as the occasion calls for.

There are several incidents in the later development of the municipal mangement by the mayor and those supporting him, in which the respondent voted with them, which formed the subject of some of these attacks complained of.

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These incidents furnish concrete illustrations, either of the party alliance of respondent with the administration party (or faction as he on examination for discovery designated the parties in the council) or an identical conception of duty in given crucial tests of the principles which guided him as an alderman in the discharge of his duty. In either alternative he does not seem to me to have any right to complain of his classification by the writer of the articles, if his votes on these occasions reflect his views of public duty.

The mayor conceived the idea that the slow method of voting the moneys which lent itself to obstructing the aims and desires of the administration should be swept away and power sought to constitute a two million dollar fund for the council to draw upon, and for this proposal the respondent voted. It was adopted in haste and without due consideration submitted to the electors who refused their assent.

They were entitled to have the fullest consideration thereof by the council before being called upon to vote. They were entitled to assume that the council had only after such consideration decided to recommend the adoption of such a scheme before putting the city to the expense of such an election. Moreover they were entitled to look to these chosen men for guidance.

I am unable to justify the method of the submission or to understand how such risks as involved in the adoption of the scheme, liable to be operated by the men who had brought disgrace upon the city through the mismanagement of police affairs, could properly be supported by any one possessing the experience of that mismanagement, yet respondent tells us he was independent in so acting.

There is another concrete illustration of how the administration acted and in doing so got the support of the respondent in a way of which the objectionable feature is easily understood. I refer to the letting of a contract for printing the telephone directory.

Three tenders were the same on one basis affording greater service than a fourth for a less figure. It seems the superintendent selected that, of the three first named, given by the Esdale Press which had given satisfactory service. It is charged that the difference between that tender and the one favoured meant a loss to the city of $1,700, or, in another way of putting it, possibly $2,000 to $2,500. I cannot find these figures verified. But that there was a loss does not seem to be seriously denied.

The civic commissioners were approached by the printing company writing a letter and pointing out some things which possibly entitled it to some consideration from the point of view which had been taken earlier in the year.

And it then ended the letter thus:—

> It is the aim of the printers of the city to see the work equally distributed so that the condition of affairs that obtained during 1913, in which year the *Bulletin* Job or Esdale Press obtained seven-eighths of the city's printing does not occur again.
>
> We favour the distribution of the city's printing on the pay roll basis and are anxious to include the Esdale Press in a just distribution, but we feel that the letting to one firm of a contract that is likely to reach the $12,000 mark is putting the whole matter back where it was in 1913. Being taxpayers and employers of labor we feel that your Commission Board will see the justice of this course.

The council ultimately adopted this scheme in substance and the respondent supported it. It seems to me a most vicious principle of action on the part of the majority, including the respondent.

If proper to apply any such rule to printers why

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not extend it to contractors of every kind giving the city a supply of labour and material? And the same mode of reasoning would shut out all outside contractors. The printing or other contractors would no doubt thus get better prices and all classes so involved would if the scheme of division were fairly conducted have reason to rejoice. But what of the rest of the ratepayers who would not fall within the contracting classes yet had to help foot the bills in their taxes?

This, as I understand it, is alleged to be a leading feature of what is sometimes offensively referred to as the "Tammany System."

The reward the respectable alderman gets is electoral support and the baser elements occasionally get a something more commonly called a "rake off."

The adoption of such a method is doubly offensive in the case of the printers publishing newspapers. He who saps the independence of the press is the worst corrupter of the people in any community.

The amount involved in this case was small, but well tended and cared for the plant would grow.

Yet it is to the article complained of herein which trenchantly criticised this conduct of the majority, including respondent, responsible for the adoption of such methods, in dealing with the printing for the city, that the judgment below refers in order to find the meaning of the language used.

In the paragraphs I have quoted above as that upon which the judgment rests there is blended an allusion to this very transaction and to a something else I am about to deal with and explain how I understand it and the allusion respecting it.

So far as the paragraph alludes to the printing business I hold the appellant has amply maintained its plea of justification.

The "split on the paving contracts running into the hundreds of thousands," etc., cannot be understood without bearing in mind what is sworn to have taken place.

It was proven and not denied in argument that there were such paving contracts before the council in April, and that in relation thereto there seemed to have been some split, or division of opinion let us put it, between some members of the council usually referred to as the administration or its supporters or as a faction.

The result of that difference of opinion led the mayor to publish in a local newspaper an interview giving, as I infer from the evidence, his justification of some proposal to withdraw the proposed paving contracts. In that interview he had referred to "a gang of wolves" and as a result thereof no doubt there was much speculation as to who composed the "gang of wolves."

It is proven that, following that publication, Alderman Driscoll, up to then a steady supporter of the mayor, demanded, in council, an explanation from the mayor of whom he referred to, that the mayor refused and Driscoll left and said he would not attend till an explanation was forthcoming and ceased to attend council meetings for some weeks thereafter.

He did come back again though no explanation was offered so far as the public knew.

What was the meaning of all this? There certainly had been a grave difference of opinion and rupture of some kind between those concerned and it was a matter well deserving of criticism. Indeed, an investigation of some kind would have been in order but respondent did not move for it.

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The city's charter provides for several methods of investigation including a committee of the council and when respondent failed to move, he cannot have treated the matter so seriously as the Court of Appeal has done.

All the paragraph, upon which the judgment rests, says and means in that regard is that the electors were entitled to think in view of the printing contract business, and the mode of dealing with it, that there was a something in the split not merely for the protection of the city's interests, but because of a split as to a possible rake off. By whom that was expected is not stated. It certainly could not be by all, else there could have been no split. It certainly indicated something that those concerned had no desire to have cleared up. It did not involve the mayor for it is he that made the accusation.

Yet I most respectfully submit that he could maintain an action upon this paragraph by the same reasoning as the judgment puts forward to maintain that of the respondent.

All said therein relative to the "gang of wolves" cannot found any action. Indeed, no one seems at the trial to have supposed so. The respondent's answer as to it does not indicate he had any grievance as to it. But as to the printing business he assumed a different attitude and says there was nothing wrong in it he ever knew of. I differ from him for the reasons already stated.

I therefore cannot find anything in the paragraph but criticism of facts, well and amply proven and deserving what was said and needed to be said in the interest of the public.

There are many other illustrations of the curious views held by some of those concerned of their public

duty in transacting the city's business needless to dwell upon.

Moreover, it is to be observed that the appellant in the very article complained of set forth many of these cases as well as those I have mentioned and gave the division lists upon them, wherefrom the reader could see wherein the respondent occasionally opposed his colleagues, and whether or not he was in serious or important matters generally of the party supporting the administration.

Even if there had been something more than appears in the case as a whole when a learned trial judge has had before him the man and the situation during a long trial, as the learned trial judge here had, and he dismissed such an action, his finding should not, I respectfully submit, be lightly set aside.

If it had been the verdict of a jury, it must have stood unimpeachable.

In a case of this kind where the defendant had given in the strongest terms an explanation that should remove all suspicion of personal dishonesty and pointed out that anything said was relative to his public acts and these acts are plain and palpable so that any one reading can tell whether or not the criticism is fair and it is found by a learned judge fair, it should rest there.

The appeal should be allowed with costs here and below and the judgment of the learned trial judge be restored.

DUFF J.—This appeal should be allowed and the action dismissed with costs. The primary tribunal in this instance was a judge without a jury; but that does not, in my judgment, in the circumstances of this case, greatly affect the principle upon which the verdict

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should be dealt with. It is impossible fairly to construe the publications of which the respondent complains without reference to the circumstances existing in Edmonton and to the atmosphere in which the articles were published and read. Having regard to the facts which were notorious and in the light of which the public would read the articles the learned trial judge might, I think, reasonably hold the expressions which the Court of Appeal held to be actionable to be a not unreasonable comment upon the conduct of the group of municipal politicians controlling in part, at least, through the plaintiff's assistance, the municipal administrative machinery which was notoriously exerting its authority and influence in ways tending to destroy respect for the law and to propagate public immorality.

The conduct of this group, when considered as a whole as exhibited in the evidence, gave too much ground to suspect some of its members of designs in relation to the municipal finances; strong language with regard to the group as a group was both natural and justifiable; and I am by no means satisfied that the learned trial judge was wrong in holding that the plaintiff was not charged with anything more disgraceful than giving his support generally to this ring —and by means of that support enabling it on critical occasions to retain control—a charge proved in fact to have been true.

ANGLIN J. (dissenting)—The holder of an elective public office seeks damages from the proprietor of a newspaper for the publication of a series of articles which he alleges contained libellous statements in regard to his discharge of the duties of his office. The defences set up are "no libel" and "fair comment."

In dealing with such a case two dangers confront the courts, which are veritably a Scylla and a Charybdis. On the one hand the right of fair comment on the conduct of public business must not be so restricted that one of the chief instruments for protection against corruption and maladministration in public affairs will be rendered impotent. The publicist who attacks corruption and incompetence in the conduct of public business and has the courage, when justified by facts, to say to a guilty public representative "Thou art the man," should have the assurance that he can rely upon the courts to protect him against the blackmail of the unmeritorious action for libel. On the other hand, a newspaper writer cannot be allowed, under the cloak of fair comment, to make with impunity against a public man in regard to the transaction of public affairs, charges which are not merely untrue but for which there is in fact no foundation on which they could reasonably be based and the libellous character of which, if made against the same man in regard to the administration of a private trust committed to him, no one would dream of questioning. By permitting such libels on public men to pass without condemnation the courts would not only discourage the citizen who esteems his good reputation at its true value and is properly sensitive to attacks upon it from undertaking public office, but would go far towards stamping with approval the wholly vicious idea that the conduct of public business is not subject to the same code of morals as that which governs the performance of fiduciary duties in private life.

What else is meant by the contention, thinly veiled, if at all, that, while such conduct is "reprehensible," so long as the writer abstains from suggesting

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the motive of personal pecuniary profit or advantage, it is not libellous to charge an alderman with having been a party to the manipulation of contracts involving the expenditure of civic funds "with a view to securing the interests of 'the boss' and his friends rather than those of the city"—"with a view to private profit rather than civic gain," and in such a manner that "the taxes are made to pay for the votes which keep the controlling majority in their places as aldermen?" What other significance has an "apology" in which, after setting forth the following paragraph from the notice served complaining of the alleged libel:—

> The statements complained of are false and malicious and are libels upon Mr. Sheppard in that they falsely charge him with being guilty of the crime and offence of aiding, abetting and protecting crime and criminals, encouraging and protecting vice, and as an alderman, conspiring with others to introduce and carry out in the City of Edmonton corrupt and unlawful practices usually associated with the name of "Tammany," and in that they falsely charge him with fraudulent, dishonest and dishonourable conduct and motives as an alderman of the City of Edmonton, and by the production of the findings of Judge Scott and otherwise attempt to prove the truth of the statements against him,

the writer, while disclaiming an intention to reflect on the personal character or motives of Mr. Rice Sheppard, and withdrawing and expressing regret for the publication of any statement which could be reasonably so construed, asserts, as to *Alderman* Sheppard, the right "to take an entirely different stand," adding:—

> It is not necessary to reiterate the statement of the *Bulletin's* position regarding the results of Tammany administration or its membership.

I agree with Mr. Justice Stuart that

> It is fallacious to say that any man leaves behind his personal character when he enters public life by accepting an office of honour, or that he can be safely though untruthfully accused of dishonesty and corruption merely because it can be pleaded that he was being referred

to in his capacity as a public man. A man's moral character is the same whether in private or public life and is in either case equally entitled to the protection of the law from libellous attacks.

A homily on false standards of morality in public life is not the purpose of these observations. They are intended merely to indicate the point of view from which, in my opinion, the consideration of the case at bar should be approached.

I agree with the learned judges of the Appellate Division that their function in dealing with an action for libel tried by a judge without a jury is the same as in any other case where that has been the mode of trial. Our statutory duty is to give the judgment which they should have given.

The inquiry with which we are immediately concerned is whether the judgment of the Appellate Division holding that the *Bulletin* Company had libelled the plaintiff Sheppard is right or wrong. Did that company's newspaper charge the plaintiff with having been guilty of the gross breach of the public trust committed to him as an alderman which conscious participation in the handling of municipal affairs and the awarding of civic contracts for the purposes above indicated would involve? Upon the facts in evidence is such a charge defensible as "fair comment?"

I put aside the alleged libels on the plaintiff in connection with matters dealt with by the report made by Mr. Justice Scott, who had held a judicial investigation into the manner in which the "social evil" had been dealt with by the city council and the police of Edmonton. In this particular, affirming the judgment of the trial judge, the majority of the judges of the Appellate Court held that what the defendant company had published, though no doubt

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perilously near the line in view of the attitude of the plaintiff upon that question, did not exceed the bounds of fair comment because in their opinion

> fairly and fully read in the light of all the circumstances (it) could not be taken as imputing (to the plaintiff) a personal and corrupt intention to encourage vice and crime.

Mr. Justice Beck thought otherwise. I am not prepared to hold that the conclusion of the majority on this branch of the case was so clearly wrong that we should reverse it.

A civic election took place in Edmonton on the 14th of December, 1914. At the same time the question whether a new charter introducing municipal government by a commission should be sought from the legislature was submitted to the electors. The plaintiff had been elected in December, 1913, as alderman for a term of two years and was therefore not a candidate for election in December, 1914. The defendant affirmed in its statement of defence, and (speaking generally) I think it proved, that during the year 1914 the affairs of the city had been controlled by a "party" in the city council which usually supported Mayor MacNamara and comprised a majority of the members, including the plaintiff, and that this "party" was known as the MacNamara administration.

The publication of the series of articles in which the alleged libels appeared began on the 21st of November, 1914. I make extracts from them, necessarily somewhat copious, confined however to the portions relevant to the crucial question whether they charge the plaintiff with having committed the gross breaches of public trust in regard to civic expenditure outlined above. The passages set forth in the statement of claim and alleged to contain this charge are italicized.

In his plea the defendant has claimed—and it is his right—that the series of articles should be read and considered as a whole. I have so dealt with them.

An article, published on the 21st of November, contains these passages:—

The *Bulletin* has received from W. H. Todd, secretary of the "Charter Committee," what the committee is pleased to call "an open challenge" to W. T. Henry, Hon. Frank Oliver, James Douglas, M.P., George S. Armstrong (postmaster), A. F. Ewing, M.P.P., Dr. H. R. Smith (deputy mayor), and W. J. Magrath, to debate the question: "Shall Edmonton adopt Elective Commission Government as provided in the new charter upon which the electors will vote on December 14th?" Evidently the charter committee is looking for a line of advertising that will achieve the main purpose they have in view—namely, to take public attention away from the matter that is of immediate and pressing concern by directing it towards a subject that is at the moment rather of academic than of practical interest.

* * *

The men who bedevilled the city's affairs during the current year are the men who are shouting for a new franchise and a new form of government. If there had been another or any other form of city government that they had control of, would the results have been different? Would the election of Messrs. McNamara, Clarke, East, May, Driscoll, Kinney and Sheppard, or any five of them as commissioners, with absolute and arbitrary power to do just what they pleased, have made them do any less harm than they did when they had control by being a majority of the council?

Would they have been less likely to use the taxpayers' money to build up a Tammany organization on strictly New York lines?

Having been served on behalf of the plaintiff and others with notices of their intention to bring actions for libel on account of these statements in the article of the 21st of November, and others not now relevant, the defendant, on the 28th of November, published another article from which I extract the following passages:—

TAMMANY SHOWS ITS TEETH.

Aldermen Sheppard, Driscoll and Kinney give notice of libel suits against the *Bulletin*, while Alderman Clarke threatens the "Unwritten Law" against Rev. Stewart—a new way of establishing confidence in the good faith and fair play of the Tammany candidates.

There is just one specific statement in the extract complained of:—

"The men who bedevilled the city's affairs during the current year are the men who are shouting for a new franchise and a new form of government."

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If the three martyrs take exception to this statement, the public will be delighted to hear from them or their colleagues now offering for election in what particular it is not correct and the *Bulletin* will be pleased to retract, apologize and pay costs to date if it can be shown not to be true in substance and in fact, or not to have been made purely in the public interest. Messrs. Sheppard, Driscoll and Kinney will surely not deny that the city's affairs have been "bedevilled" during the current year. *Neither can they successfully deny that they formed part of the council majority that controlled civic affairs during that part of the year when the "bedevilling" was done.*

The members constituting that majority are mentioned for the sole purpose of fixing in the public mind the fact that there was a definite majority—as it could not be definitely fixed in any other way—and not with any intent of reflecting upon their personal characters, action, or motives or the personal characters, actions, or motives of any one of them. In no way can the extract be fairly construed as such a reflection except in so far as the personal character of a public servant may be affected by his public actions, or the result of actions or failure to act for which he as a public servant is responsible.

If it is not the duty as well as the privilege of the press to criticize the results of the administration of public affairs by the elected representatives of the people, and to fix responsibility for acts of administration and their results upon the men from time to time elected or seeking election, we have passed from a condition of democratic government to that of irresponsible tyranny, which is none the less tyranny because it has the sanction of law—if it has that sanction.

An article of Dec. 1st opened as follows:—

HOW TAMMANY BUYS CONTROL OF THE PEOPLE WITH THE PEOPLE'S MONEY.

Tammany tactics are the methods by which the taxes of the city are made to pay for the votes which keep the members of the controlling majority in their places as aldermen. That is, money is paid out for work or material, either directly as wages or for purchases, or by the awarding of contracts to such persons and in such manner as may be expected to ensure their support and the use of their influence at the polls for the aldermen who do the bidding of the "boss" at the council board.

In the first place, the business of the city is dealt with as being the business of the "boss," not of the citizens, and in the second place it is directed with a view to securing the interests of the boss and his friends rather than those of the city. When the city's business is handled with a view to private profit rather than civic gain it is inevitable that it is not well done, or not done at all, while the city's money is spent and the city's credit destroyed.

The article proceeds to deal with steps taken in the council which resulted in the awarding to the Edmonton Printing and Publishing Company of a large printing contract for work which had previously

been done by The *Bulletin* Job, or Esdale Press, Aldermen Clarke, Kinney, Sheppard and Driscoll having supported the change. The article proceeds:—

The foregoing recital of facts shews that the contract for telephone directory was:—

Not let to the firm which could give the most efficient service.

Not let to the firm that tendered at the lowest price.

That the Tammany majority in the council took out of the hands of the commissioners the letting of this and other contracts because they were determined they should go to the firms that could and would be of most advantage to them in the coming elections without regard to the interests of the city.

The Esdale Press was absolutely boycotted from city work from May 1st until November 1st for no other known reason than that the *Bulletin* company held a part of the stock in the Esdale Press and the *Bulletin* did not support the administration. No doubt the *Bulletin* could have traded its support of the interests of the city and of common decency for fat printing contracts for the Esdale Press, but neither the *Bulletin* nor the Esdale Press are in that line of business.

In this connection it is in order to point out that the evident reason why the Tammany majority was so insistent that the telephone directory contract should go to the Edmonton Printing and Publishing Company was because there is produced in the office of that company the only surviving representative of journalistic thuggery in the city since the decease of the *Official Gazette* and the *Daily Capital*. No doubt the grass has been short in recent weeks, and unless the city till could be tapped it would have to follow its late confreres, and Tammany would have been without an instrument of ruffianism with which it might hope to frighten off criticism and opposition at the polls, during the present contest.

Tammany always works for Tammany, and the joke is that the taxpayer "pays the freight."

An article of Dec. 2nd, contained the following:—

WHO IS TAMMANY?

Why did it split—And, Why Again Unite?

We have government by majority in Edmonton civic affairs. A majority of the electors voting elect the council. A majority of the Council hires or fires the commissioners, appoints the committees, votes the estimates, passes by-laws, and generally governs the city. The mayor is the administrative head of the city government and the members of the council usually acting with him form the majority that enables him to carry out his policy and constitute the "administration." If the administration is conducted on Tammany principles and for Tammany purposes—that is, to secure private ends instead of the public good—the members of the council who usually form part of the administration majority are properly responsible to the people for what is done and for the results of its being done. It is not necessary, nor would it be advisable, that the supporters of

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the administration should always vote together. So long as enough of them vote together to maintain Tammany control of the city's affairs, it diverts public attention from the true conditions if from time to time one or another votes the other way—assumedly for reasons of principle.

The aldermen who always voted against the mayor's proposals are of course not members of the "administration" or Tammany, and are not responsible for the mayor's policy or its results.

The Bulletin is now being threatened with three actions for libel because it intimated that Mayor McNamara and Aldermen Clarke, East, Driscoll, Sheppard, Kinney and May were, as members of the administrative majority, responsible for the condition of city morals and finances. As to whether there was or was not such a majority and whether these men or any of them were members of it, it is necessary to go to the records.

The writer then gives what purports to be an analysis of votes in council during the year to demonstrate the existence of an administration party of which the plaintiff was a member. The analysis includes this paragraph:—

On April 29th, the administration apparently split on the question of paving. The mayor's proposal to drop the entire paving programme was opposed in discussion by Driscoll and Sheppard. Later Driscoll ceased attending the sittings of the council, pending explanations by Mayor McNamara as to who were members of the "gang of wolves" to whom he had alluded in a published interview. Still later Driscoll again attended council meetings without any public explanation, such as he had demanded.

Continuing, the writer says:

It will be noted that although Messrs. Sheppard, Driscoll and Kinney from time to time voted against the administration, of all the instances mentioned above only in the case of the motion to withdraw the three money by-laws did the vote of any one of the three prevent the will of the administration from being carried out. On that occasion, the mayor—the then boss—was absent which no doubt accounted for the error. Or it may have been to shew the acting mayor that although acting mayor he was not actually "boss."

Nothing more seems to be necessary to shew that there was an administrative majority at the council board until the time came for awarding the paving contracts. The paving contracts ran into a great deal of money, and amongst a large number of paving contractors there is always a possibility that one or more may be approachable. The members of the council who were so careful not to let a printing contract of ten or twelve thousand dollars get by their friends will have to do a lot of explanation to satisfy the men who had to stint their families in order to get their taxes paid by last Monday afternoon that their split on the paving contracts, running into the hundreds of thousands, was for the protection of the city's interests

and not because of a split as to a possible rake-off. Mayor McNamara's reference to his efforts to protect the city against a "gang of wolves" in connection with the paving contract still stands without public explanation to the man who publicly held himself to be affronted by it. We have Mayor McNamara's word that there was a "gang of wolves." His statement has not yet been challenged. He and his colleagues are the men who ought to know—and evidently they do know. We have had one year of Tammany. We can't stand another.

On Dec. 5th appeared an article intituled

AN APOLOGY, TWO LETTERS AND CIVIC COMMENT.
Apology to Mr. Rice Sheppard.

This apology has been already noticed. The article concludes with this paragraph:—

It is not necessary to reiterate the statement of the Bulletin's position regarding the results of Tammany administration or its membership. Alderman Sheppard and his advisers are necessarily aware that the present general financial stringency affects the newspapers, as well as other lines of business. They know that one daily paper in Edmonton has recently suspended and that those which remain have to struggle to keep their heads above water. At such a time it has no doubt been figured out by Tammany that the Bulletin could be made to "lie down" during the civic elections, if plenty of libel suits were threatened or brought. The Bulletin has been in business for some years in Edmonton. During those years it has maintained a measure of reputation for dealing with public affairs from the standpoint of the public interest, frequently at considerable risk and cost. A libel suit is a serious matter under present conditions. But the most valuable part of the capital of a newspaper is its reputation. The Bulletin is placed in the position that it stands to lose either capital or reputation, if Alderman Sheppard can use the courts of the country to that end. Under all the circumstances it will have to take a chance on losing the capital, rather than the reputation. How far the citizens will on the 14th condone a system of terrorism ranging from threats of the "unwritten law" to libel suits, as a means of preventing criticism and deterring opposition to Tammany and its candidates, remains to be seen.

At the trial the president of the defendant company in his evidence gave a definition of the word "Tammany" similar to that above quoted from the article of the 1st of December. That word as used in the articles complained of probably required neither innuendo nor definition to make plain and obvious its defamatory signification. If a glossary were necessary the defendant supplied it in the article

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of the 1st of December. After having read and re-read the articles complained of I entertain no doubt that they charge the defendant pointedly and directly with having been a member of a "Tammany" party in the city council, which had had control of civic affairs for the current year—that they thereby charge him with having, as a member of that party, pursued

methods by which the taxes of the city (were) made to pay for the votes which (would) keep the members of the controlling majority (the Tammany party) in their places as aldermen,

with having "dealt with" the business of the city

as being the business of the "boss" (the mayor; see article Dec. 2nd), not of the citizens,

with having aided in directing the conduct of civic business

with a view to securing the interests of the boss and his friends rather than those of the city,

and with having been a participant in handling

the city's business * * * with a view to private (whose?) profit rather than civic gain.

After having on the 1st of December explicitly stated that the Tammany majority in the council (including the plaintiff) had manipulated a large printing contract and other contracts to the prejudice financially and otherwise of the city,

because they were determined they should go to the firms that could and would be of most advantage to them in the coming elections without regard to the interests of the city,

and having added an insinuation of direct corruption by saying,

no doubt the *Bulletin* could have traded its support of the interests of the city and of common decency for fat printing contracts for the Esdale Press, but neither the *Bulletin* nor the Esdale Press are in that line of business,

in its article of the 2nd of December it pointed out that the plaintiff and Alderman Driscoll had opposed

a proposal of the mayor in regard to paving contracts and then proceeded to suggest that the

split on the paving contracts, running into the hundreds of thousands,

was not

for the protection of the city's interest but because of a split as to a possible rake-off.

The indirect form adopted by the writer takes nothing from the force of the charge thus made. It rather serves to emphasize it. This same article had stated that

the administration *apparently* split on the question of paving,

this observation having been preceded by another—

It is not necessary—nor would it be advisable—that the supporters of the administration should always vote together. So long as enough of them vote together to maintain Tammany control of the city's affairs, it diverts public attention from the true conditions if from time to time one or another votes the other way—assumedly for reasons of principle.

The innuendo at the close of the 5th paragraph of the statement of claim,

that the plaintiff conspired with other members of the council of the City of Edmonton to conduct the business of the city so as to secure private ends instead of the public good and to introduce and carry out in the City of Edmonton corrupt and unlawful practices usually associated with the name of Tammany

is fully warranted by the terms of the articles complained of. Indeed they are not susceptible of any other interpretation, and the innuendo was probably quite superfluous. Evidence to prove it was certainly not required. I agree with Mr. Justice Stuart that—

There can in this matter be no way open for an interpretation which would not impute personal knowledge and participation. And when personal corruption is charged there is no difference between the plaintiff as an alderman and as a private citizen.

If what the defendant published of the plaintiff was not defamatory and libellous,

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written words which expose the plaintiff to hatred, contempt, ridicule and obloquy has ceased to be an accurate definition of libel or is inapplicable where the plaintiff happens to be a public man.

But it is claimed for the defendant that the matter complained of is merely "fair comment," consisting not of bare allegations of fact but either of mere expressions of opinion honestly held or of statements fairly made of inferences or deductions reasonably drawn from facts.

The statements complained of in my opinion cannot properly be regarded as mere expressions of opinion or as inferences drawn by the writer. They amount to allegations of disgraceful and corrupt conduct by the plaintiff and of grave and wilful breaches of the trust committed to him as an alderman in consciously and deliberately participating in the misuse of public moneys. *Davis* v. *Shepstone* (1).

No attempt was made to prove facts from which the truth of any of the charges might possibly be a reasonable inference. No evidence was given that civic money had been expended corruptly or dishonestly for private gain; no testimony that a single contract had been given for improper motives or otherwise than in what might fairly be regarded as the best interests of the city. There was not a shred of proof of a rake-off or of a conspiracy to blind public opinion by "apparent" splits. Nothing in the nature of "a Tammany organization on strictly New York lines" was shewn to have existed.

Moreover, statements of fact and comment are so intermingled in the matter complained of that it would be difficult for any reader to discern what pur-

(1) 11 App. Cas., 187, at page 190.

ports to be the one and what the other. *Hunt* v. *Star Newspaper Co.* (1).

But if the statements in question could be regarded as merely expressions of opinion or of inferences and therefore comment, they appear to lack the necessary quality of good faith and to go far beyond a fair expression of a reasonable inference from any facts, which the evidence establishes, to have been truly stated. They indicate an absence of that "honest sense of justice" and of that "reasonable degree of judgment and moderation" on the part of the critic which are essential to sustain a plea of fair comment. *Wason* v. *Walter* (2).

In this connection our attention is drawn to the fact that the so-called administration party had diverted from the "*Bulletin* Job or Esdale Press" some large and, no doubt, profitable printing contracts. But even a person who has a spite against another or who feels that he has been grievously wronged by such other may bring a dispassionate judgment to bear upon a discussion of his work as a public representative. *Thomas* v. *Bradbury Co.* (3). No doubt that is scarcely probable; and, where the imputation of evil motives and the suggestion of deliberate breach of public trust is made so persistently as it was in the articles now under review and rests upon so little of proven fact, the suspicion that the writer was actuated by malice is necessarily grave. I prefer, however, to rest my rejection of the defence of fair comment in this case on the ground that the statements complained of cannot be regarded as mere expressions of opinion and that no facts have been established from which an

(1) [1908] 2 K.B., 309 at pages 319 and 320.
(2) L.R. 4 Q.B. 73 at page 96.
(3) [1906] 2 K.B. 627 at page 642; 18 Halsbury, p. 707, note (*m*).

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inference could reasonably be drawn that the plaintiff's actions as an alderman had been influenced by the wicked motives and dishonourable purpose imputed to him. *Dakhyl* v. *Labouchère* (1).

No doubt a personal attack which imputes base and sinister motives is not necessarily and as a matter of law outside the limits of fair comment, *ibid.* But

> one man has no right to impute to another whose conduct may be fairly open to ridicule or disapprobation base, sordid and wicked motives unless there is so much ground for the imputation that a jury shall find not only that he had an honest belief in the truth of his statements but that his belief was not without foundation * * * It is not because a public writer fancies the conduct of a public man is open to the suspicion of dishonesty, he is therefore justified in assailing his character as dishonest * * * *Campbell* v. *Spottiswoode* (2).
>
> It is always to be left to a jury to say whether the publication has gone beyond the limits of a fair comment on the subject-matter discussed. A writer is not entitled to overstep those limits and impute base and sordid motives which are not warranted by the facts, and I cannot for a moment think that, because he has a *bonâ fide* belief that he is publishing what is true, that is any answer to an action for libel: *ibid.*, p. 778: *Merivale* v. *Carson* (3).

He may not make statements which "convey imputations of evil sort" not warranted by the facts truly stated. *Joynt* v. *Cycle Trade Publishing Co.* (4); *Walker* v. *Hodgson* (5). That which the defendant seeks to justify as comment was, in my opinion, neither fair nor such as might reasonably be made under the circumstances. There are no facts in evidence which would warrant any man in attributing to the plaintiff that he had participated in the expenditure of civic funds "with a view to private profit rather than civic gain"—that he had knowingly aided in directing the conduct of civic business "with a view to securing the interests of the 'boss' and his

(1) [1908] 2 K.B. 325, at page 329.
(2) 3 B. & S. 769 at pages 776 and 777.
(3) 20 Q.B.D. 275 at page 280.
(4) [1904] 2 K.B., 292 at page 294.
(5) [1909] 1 K.B., 239 at pages 251 and 252.

friends rather than those of the city"—that he had voted as he did in the matter of the paving contracts "because of a split as to a possible rake-off." To bring such imputations within a plea of fair comment a defendant must establish a foundation of facts upon which they can be reasonably based. That the appellant has failed to do.

BRODEUR J.—I am of opinion that this appeal should be allowed with costs of this court and of the Supreme Court of Alberta *en banc*, and that the judgment of the trial judge should be restored. I concur with Sir Louis Davies.

Appeal allowed with costs.

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