and her freight, and to condemn the "Parisian" and her freight, and the bail therefor, in the amount to be found due in the usual way by reference and in the plaintiffs' (appellants') costs in the courts below. The respondents must pay the costs of the appeals.

Appeal sustained.

Counsel for the Appellants—Pickford, K.C.—Butler Aspinall, K.C.—A. Pritchard. Agents—Pritchard & Sons, Solicitors.

Counsel for the Respondents—Sir R. Finlay, K.C.—F. Laing, K.C.—C. Robertson Dunlop. Agents—Thos. Cooper & Company, Solicitors.

HOUSE OF LORDS.

Monday, March 18.

(Before the Lord Chancellor (Loreburn), Lords Robertson and Atkinson.)

DAKHYL *v.* LABOUCHERE.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Reparation—Libel—"Justification"—"Fair Comment"—"Quack."

In actions for libel against newspapers where pleas of "justification" and "fair comment" are stated in defence, the latter plea does not arise if the former is made good, it being precisely where the criticism would otherwise be actionable as a libel that the defence of "fair comment" comes in. Further, a personal attack may form part of a fair comment upon given facts truly stated if it be warranted by those facts, *i.e.*, if it be a reasonable inference from those facts. Whether the personal attack in any given case can reasonably be inferred from the truly stated facts upon which it purports to be a comment is a matter of law for the determination of the judge before whom the case is tried, but if he should rule that this inference is capable of being reasonably drawn, it is for the jury to determine whether in that particular case it ought to be drawn.

Meaning of "quack" *considered.*

Appeal from an order of the Court of Appeal (COLLINS, M.R., STIRLING and MATHEW, L.JJ.) made on the 28th July 1904, setting aside the verdict and judgment for £1000, entered for the appellant at the trial before LORD ALVERSTONE, C.J., and a special jury.

The action was tried in March 1904 and was for a libel which appeared in the newspaper *Truth* on the second April 1903.

The alleged libel was in the following terms:—"Sundry inquiries have reached me during the last week or two respecting one Dr H. N. Dakhyl, of 178 Holland Road, Kensington, who appends to his name the symbols 'B.Sc., B.A., M.D., Paris, &c.,' and describes himself as 'a specialist for the treatment of deafness,' ear, nose, and throat diseases. Possibly this gentleman may possess all the talents which his alleged foreign degrees denote, but, of course, he is not a qualified medical practitioner, and he happens to be the late 'physician' to the notorious Drouet Institute for the deaf. In other words, he is a quack of the rankest species. I presume that he has left the Drouet gang in order to carry on a 'practice' of the same class on his own account, and probably he is well qualified to succeed in that peculiar line."

At delivering judgment—

LORD CHANCELLOR (LOREBURN)—In this case, which was one of libel, the Court of Appeal has ordered a new trial, and I am driven to the conclusion that no other order is possible. The pith of the libel is that the defendant wrote of plaintiff as a "quack of the rankest species" in connection with his service on the staff of the Drouet Institute. The defendant denounced the Drouet Institute on what he alleged to be public grounds as an organised system for dishonestly obtaining money from persons suffering from deafness in hope of a cure. The defendant pleaded that his accusation against the plaintiff was true, and also that it was protected as a fair comment upon a matter of public interest. The jury found a verdict for the plaintiff for £1000. I rest my opinion that the verdict cannot stand upon two grounds. In the first place, the defendant was entitled to have the jury's decision on his plea of justification whether the words used were true in the plain meaning which the jury might attach to them. Unfortunately the learned judge told the jury more than once that the term quack meant a pretender to skill which the pretender did not possess. If that were a sound direction, and really it was put as a direction, there could not be a verdict on this point against the plaintiff, for admittedly he possessed skill. But there are other meanings of the word quack, such as a person who, however skilled, lends himself to a medical imposture. The jury were the persons to affix the true meaning to the words, and to say whether or not they fitted the plaintiff. But they had not the chance if they followed the judge's direction. In the second place, the defendant was in my opinion entitled to have the jury's decision as to the plea of fair comment, whether or not in all the circumstances proved the libel went beyond a fair comment on the plaintiff and on the system of medical enterprise with which he associated himself, as a matter of public interest treated by defendant honestly and without malice. The plea of fair comment does not arise if the plea of justification is made good, nor can it arise unless there is an imputation on a plaintiff. It is precisely where the criticism would otherwise be actionable as a libel that the defence of fair comment comes in. But the learned judge put aside that defence and told the jury that unless a justification was proved they were bound to find a verdict for the plain-

tiff, and that, unless justified, the libel is not fair comment and cannot come within the region of fair comment. I agree in what was said to us of the evil which may flow from an order for a new trial in this case. In all cases it is a most deplorable result, not to be entertained upon any but the most solid grounds, as the only means of redressing a clear miscarriage. In the present case I regret it all the more, because the amount of the verdict seems to indicate that the jury took the plaintiff's view of the facts. But I cannot reconcile myself to allowing a verdict to stand when I am convinced that the opinion of the jury was not really taken on two vital points on which the defendant was in law entitled to insist and did insist.

LORD ROBERTSON—I entirely concur in the judgment just delivered by my noble and learned friend on the Woolsack.

LORD ATKINSON—I concur in the opinion that the appeal should be dismissed and the judgment of the Court of Appeal affirmed. In the long and elaborate summing up of the learned Lord Chief-Justice I find the following passages in addition to those quoted by Collins, M.R.:—"But I am entitled to tell you that the defendant is not entitled to call the plaintiff a quack because he advertises, and Mr Shee very properly corrected himself when I pointed out that he had gone too far. Mr Shee at first said, quite unintentionally, that a man was a quack if he advertises. I should have been bound to tell you that that is not the law. Mr Shee very properly withdrew the expression, and said if a man advertises it is some evidence of his being a quack. The fact of the plaintiff having advertised, and making up his prescriptions and sending them by post, has nothing to do with this case; the question for you is simply this—Aye or no, is this man, an M.D. of Paris, a quack or not?" And further on, when dealing with the advertisement, the contents of which the medical witnesses had described as absolute nonsense, Lord Alverstone, C.J., instructed the jury as follows:—"The publishing of that advertisement does not in any way show that Dr Dakhyl was a quack, but if he was a party to that advertisement, and if it is not nonsense, of course you would think that he was a man who had to a certain extent puffed a system which may be a perfectly good system, in a way which was not very gentlemanly and not very straightforward; and if it is nonsense, it is a thing which he ought not to have done. Upon that Mr Shee says—'I am justified in calling any man who was a party to such an advertisement a quack of the rankest description.' That is for you. All I can say to you is this—You have to consider it from the point of view of the evidence whether because a man has published an advertisement showing that he is not a gentleman that he is a man whom you would not like to have much to do with; but, on the other hand, it does not show that he is a quack. But if you came to the conclusion that he, a gentleman of medical skill, knew that that was a lie, you would not think very much of him." From these and other passages to the same effect contained in the summing up, it is, I think, clear that at the trial Mr Shee on behalf of the defendant put forward, or attempted to put forward, the same contention which he put forward before your Lordships—namely (1) that the accusation made against the plaintiff in the words which have been described as the sting of the libel amounted in effect to this, and only to this, that the plaintiff "was a quack of the rankest species by reason of his connection with the Drouet Institute, and by reason of his having resorted to and adopted the quack methods of that notorious establishment." And (2) that the libel so interpreted was true in substance and in fact, or, if not, was a fair comment. I do not for a moment suggest that the meaning thus put upon the libel by the defendant is its true meaning, but I think that it would be impossible to contend successfully that it is not reasonably susceptible of that construction, or, to use the words of Lord Esher, M.R., in *Merivale* v. *Carson* (20 K.B. Div. 275), that "it could not be thought by any reasonable man to have that meaning." If that be so, as I think it is, it was the right of the defendant to have it in some form of words distinctly left to the jury to say whether the meaning so put upon the libel by the defendant was in fact the meaning which it conveyed to the mind of the ordinary reader. This, however, was not done. No such question was ever left to the jury. The contention was practically ruled out; and the reason why it was not left to them was apparently this—that the libel, read in the sense so contended by the defendant, does not necessarily impute to the plaintiff want of skill or professional incompetence at all, whereas it would appear to me that the learned Lord Chief-Justice was of opinion that the words "he is a quack of the rankest species" necessarily conveyed an imputation of want of skill or incompetence, and that his instruction to the jury on the point amounted to a direction to that effect. He treated the question of the plaintiff's "being a fully qualified man able to deal with the treatment" of the diseases treated in the Drouet Institute as being put beyond all controversy by his possession of the degree of M.D. of Paris, and nearly at the end of his summing up uses the following words:—"It seems to me that the first question which you have to consider is—Has the defendant established before you that this man was a quack of the rankest description? That is the sting of the libel. I am not going over it again. I have told you what that means, and you will consider it from that point of view. If the defendant has not established it, then of course the plaintiff is entitled to your verdict. Upon the other part of the case, if you think the system of the Drouet Institute, which Dr Dakhyl is now carrying on, is a system to which no competent medical man ought to be a party, then you would not think so much of him." But the only portion of his summing up in

which he had purported to tell the jury what those words meant was the passage first quoted by Collins, M.R., in which he stated that they meant not only "an incompetent person but a person who puffs his own incompetence before the public," a person "who pretends to medical skill which he does not possess." With all respect to the learned Chief-Justice, I think that he was in error in the course which he took. I think that in effect he took upon himself to determine the question which it was the province of the jury to in fact determine—namely, the meaning which the libel conveyed to the mind of an ordinary reader, the sense in which the words complained of were to be understood by that reader. Upon the question of fair comment—with equal respect to the Lord Chief Justice—I think that he also fell into error. It is only necessary to quote two passages from his summing up dealing with this subject. They respectively run as follows:—"(1) You were told, yesterday, and you were told again this morning by Mr Shee, that the real question here was—Was this fair comment, and if it is fair comment the fact that the defendant has used strong or exaggerated language, if honestly used, would not prevent it from being fair comment. Upon one part of the case that is a perfectly just observation—namely, upon that part of the case which involves the question of the kind of practice that the plaintiff has carried on; but I am bound to tell you (and I ought to tell you plainly and forcibly, as I indicated to Mr Shee when he was addressing you, and when he rather invited my observation, and took it, as he always does, very fairly) that that has nothing to do with the personal attack upon the plaintiff as a man in his profession. If you find that the defendant has libelled the plaintiff in his profession as a medical man, the fact that the defendant wanted to comment upon a system of which he did not approve would be no justification at all. (2) Therefore, in so far as this paragraph, if it be a paragraph which is otherwise libellous, relates to the system carried on by the Drouet Institute, of which the plaintiff was the physician, and to criticising that system because it was a system purporting to advise people without seeing them, in so far as that is a matter for consideration, what Mr Shee told you about fair comment would be (and I tell you so) absolutely right, and you ought not to condemn a man because he has used strong language about it. The other branch of the case is the attack upon the individual, and, as has been laid down by many judges of far greater experience and ability than anything to which I can ever hope to attain, fair comment is not to be made the opportunity of personal attack. Therefore the first question which you have to consider is aye or no, is there any attack on the plaintiff in his profession as a medical man? If there is not, the personal element goes out of the case, and you may then consider a great deal of what has been said to you as the criticism upon the system, but if beside the system which is supposed to be attacked and criticised there is personal comment, then you have to consider whether it is true." The statement of the law contained in these passages is, I think, enforced in other portions of the summing up. I cannot find that it is in substance qualified in any. It is, in my opinion, altogether too wide. A personal attack may form part of a fair comment upon given facts truly stated if it be warranted by those facts; in other words, in my view, if it be a reasonable inference from those facts. Whether the personal attack in any given case can reasonably be inferred from the truly stated facts upon which it purports to be a comment is a matter of law for the determination of the judge before whom the case is tried, but if he should rule that this inference is capable of being reasonably drawn, it is for the jury to determine whether in that particular case it ought to be drawn. The well-known passage from the judgment of Crompton, J., in *Campbell* v. *Spottiswood* (3 B. & S. 769), relied upon by Sir Edward Clarke, was not confined to literary criticism, but applied "to writers on any public matter," and distinctly laid down the principle that if base and sordid motives which are "not warranted by the facts" be imputed, the fact that the writer *bona fide* believed his imputation to be well founded affords no defence. *Joynt* v. *The Cycle Trade Publishing Company* (1904), (2 K.B. 292) is to the same effect. In this case the established facts might not warrant the personal charge made against the plaintiff of being "a quack of the rankest species," if that charge necessarily implied "incompetence or want of skill" on his part, but if, on the other hand, the libel bears the meaning contended for by the defendant, and, as I have already said, I think it is reasonably susceptible of that meaning, then the question whether the imputation was a fair comment in that it was warranted by the established facts was quite another matter, and should have been left to the jury to determine. The assumption on which the learned Lord Chief-Justice appears to have proceeded—namely, that incompetence or want of skill was necessarily imputed to the plaintiff, shaped and coloured his whole summing up. It led him to instruct the jury upon the law in a manner which amounted to misdirection, and prevented him from taking the opinion of the jury on issue raised by the defendant as to the meaning of the libel. It was, I think, an erroneous assumption, and the fact that it was acted upon necessitates that there should be a new trial, however hard it may be on the plaintiff to be burdened with the costs of a second investigation. There can be no more just and wholesome rule of practice, in my opinion, than that laid down by Lord Halsbury in *Macdougall* v. *Knight* (14 App. Cas. 194) as to raising new questions on appeal, but this case does not fall within it. The questions raised here are not new. They were, in my view, raised below, and practically ruled upon by Lord Alverstone, C.J., in the course of the case.

Appeal dismissed.

Counsel for the Appellant—Sir E. Clarke, K.C. — Hon. H. Macnaghten. Agents — Collyer-Bristow & Company, Solicitors.

Counsel for the Respondent—Shee, K.C. —Eldon Bankes, K.C.—H. Fraser. Agents —Lewis & Lewis, Solicitors.

HOUSE OF LORDS.

Tuesday, March 19.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson and Atkinson.)

ATTORNEY-GENERAL *v.* LONDON COUNTY COUNCIL.

Revenue—Income Tax—Payment of Interest on Loans—Right to Retain Income Tax—Income Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 60, *No. IV*, *r.* 10, *sec.* 142—*Customs and Inland Revenue Act* 1888 (51 *and* 52 *Vict. c.* 8), *sec.* 24, *sub-sec.* 3.

The annual income of the London County Council liable to, and on which they paid, income tax was £956,000, consisting of £838,000 derived from rents &c., and £118,000, the annual value of landed property occupied by themselves. They had from time to time under their statutory powers created capital stock, which was charged upon their whole property. As interest on this stock they annually paid to shareholders (always deducting income tax due thereon), the sum of £1,371,000, the amount by which their own income was insufficient to pay this interest being raised by means of rates. Admittedly, they were entitled to retain for themselves so much of the deducted income tax as represented the tax on their income from rents and other sources—*London County Council* v. *Attorney-General* [1901], A.C. 26. *Held* that they could not retain, but were bound to hand over to the Crown, the amount of tax representing the tax on the value of the lands owned and occupied by them (£118,000).

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and ROMER, L.JJ.), reported (1905), 2 K.B. 375, who had affirmed a judgment of CHANNELL, J., reported (1904), 2 K.B. 635, in favour of the respondents, upon the trial of an information by the Attorney-General.

The facts appear fully from the reports in the Courts below, and in the judgments of their Lordships.

At delivering judgment—

LORD CHANCELLOR (LOREBURN) — The facts of this case are simple. The annual income of the London County Council liable to income tax is £956,000 a-year. I take round figures throughout. Part of it, viz., £838,000 a-year consists of rents or other sums which the Council receives. The remainder—viz., £118,000—consists of landed property which the County Council occupies. It does not let this latter property, but uses it and thereby saves the rent which it would have to pay if instead of occupying its own property it hired other property for the purpose. Upon all this £956,000 a-year the County Council has paid income tax. Upon the other hand, the County Council is obliged to pay £1,371,000 annually as interest upon borrowed money due to the holders of consolidated stock, and all the property upon which the County Council pays income tax is included in the security held by the owners of the stock. Thus the annual value of all the property owned by the County Council is less by £415,000 than the interest which it has to pay upon its debt; and the annual receipts by the County Council from that property show a still greater deficiency, for the County Council receives nothing in cash for that part of its property which it occupies. Pursuant to the scheme of the Income Tax Acts, which require the tax, where possible, to be collected at its source, the County Council when it pays £1,371,000 interest to the owners of consolidated stock is bound to deduct from the whole of it the amount of income tax due upon it. They have done so, and the question in this case is how much of the income tax so collected by the County Council must be handed over to the Crown and how much it may retain for itself. It is quite clear, and is not disputed, that in respect of the income tax deducted from the £1,371,000, the County Council must account to the Crown for the tax they have collected on £415,000 a-year, because they have received it purely as tax collectors for the Crown, and cannot pretend that it represents any moneys which have already paid income tax. Again, as to the remaining £956,000, the decision of this House in *London County Council* v. *Attorney-General* ((1901), A.C. 26) admittedly applies, and the County Council may retain for itself the tax which it has collected upon the £838,000 parcel thereof. All, therefore, that remains in dispute is whether the tax collected upon the balance —viz., upon £118,000 a-year—may be retained by the Council or must be accounted for to the Crown. This sum represents interest paid by the County Council to the holders of consolidated stock, which is not paid out of profits or gains brought into charge. It is paid out of rates, and on the rates which the Council pays over to its creditors it is bound by the proviso at the end of section 102 of the Act of 1842 to deduct the tax and pay it over to the Crown. It is said that the effect of this conclusion will be to tax the same income twice over. I cannot see this. The county Council pays tax on £118,000 annual value of their own land which they occupy. The holders of consolidated stock pay tax on £118,000 annual interest of the debt due to them from the County Council. It seems to me that the two incomes are different, the persons who receive and enjoy them are different, and the persons who pay income