

## [HIGH COURT OF AUSTRALIA.]

NORTON . . . . . APPELLANT;  
 DEFENDANT,

AND

CLARKE . . . . . RESPONDENT.  
 PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF  
 VICTORIA.

*Defamation—Libel—Fair comment—Justification—Particulars.*

H. C. OF A.  
 1911.

In an action for libel based on statements that the plaintiff had made charges against A. of which he knew A. was innocent, the defendant pleaded justification and fair comment, and stated as a particular of the facts upon which he intended to rely in support of the plea of fair comment that A. was not guilty of any of the charges "and the plaintiff was aware of such fact."

MELBOURNE,  
 Feb. 20.

Griffith C.J.,  
 Barton,  
 O'Connor,  
 Isaacs and  
 Higgins JJ.

*Held*, that the particular was properly struck out.

Leave to appeal from the decision of the Supreme Court : *Clarke v. Norton*, (1911) V.L.R., 83 ; 32 A.L.T., 126, refused.

APPLICATION for leave to appeal.

An action was brought by the plaintiff, the Anglican Archbishop of Melbourne, against the defendant, the proprietor of a newspaper, for libel. For the purposes of this report it may be assumed that the libel charged the plaintiff with having made charges against Canon Nash, a clergyman of his diocese, of which he knew that Canon Nash was innocent. By his defence the defendant said (*inter alia*):—"If the defendant published the words complained of . . . , which he does not admit, he says that in so far as such words consist of statements of fact they are true in substance and in fact, and in so far as such words consist



H. C. OF A. of comment they are fair and *bonâ fide* comment on matters of  
1911. public interest.”

NORTON  
v.  
CLARKE.

The plaintiff thereupon demanded particulars of “the facts upon which the defendant intends to rely in support of the plea of fair comment.”

One of the particulars given by the defendant in compliance with this demand was as follows:—

“That Canon Nash was not guilty of any of the charges laid against him by the plaintiff or which were brought before or dealt with by such Chapter, and the plaintiff was aware of such fact.”

*Cussen J.*, on application to him by the plaintiff, ordered this particular to be struck out, and this decision was upheld by the Full Court (*Clarke v. Norton* (1) ).

The defendant now applied for leave to appeal to the High Court from this decision.

*Starke* for the defendant. The defendant’s plea is a composite one of justification and fair comment. Under the plea of justification, the statement of Canon Nash’s innocence being alleged as part of the libel, the defendant is entitled to prove that innocence and that the plaintiff knew of it. Involved in the fact that the plaintiff knew that Canon Nash was innocent is the fact that Canon Nash was innocent. On the libel as stated the fact of innocence is relevant apart from the plaintiff’s knowledge of it. Under the plea of fair comment the defendant is entitled to prove all the facts stated by him to be the basis of the comment, and one of them is that Canon Nash was innocent.

*Per Curiam.* We think there is no sufficient ground for doubting the correctness of the judgment of the Full Court. On the contrary, the reasons given by *àBeckett J.* seem to be conclusive to show that what was offered by the order of *Cussen J.* was all that the defendant was reasonably entitled to ask for.

*Leave to appeal refused.*

Solicitor for defendant, *D. H. Herald.*

B. L.