

A MONTH or two ago an interesting libel case was heard in Auckland, between a singer, Madame Mae Brodie, and a newspaper, the "New Zealand Observer." The paper, in the course of critical comment on a recital given by the singer, published comments which she regarded as damaging to her reputation, and a jury awarded her £400 damages.

The case may have reminded some readers of an action taken in Auckland in 1913 by John Fuller, against the "Triad," a critical periodical of the day, and so we have secured the contemporary account of that case, and reprint it below. Following it are the accounts of two other cases where artists have sought monetary compensation for what they claimed to have suffered at the hands of critics. One comes from the 'nineties and it is reported by G. B. Shaw, who took an interest in the fortunes of fellow music-critics of the day. The other case is that of the three Sitwells, who won £350 each from "Reynolds News" in 1941.

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THE FULLER CASE

HERE is the article which appeared in the *Triad* in March, 1913, criticising a Sydney journal called *The Theatre* for its uncritical policy and for overpraising:

"Even poor old John Fuller has had it ladled out to him. It is not fair to encourage an old man like that in the delusion that he has a voice . . . The fact of the matter is that while John had a shrill and tuneful enough little pipe years ago, it is now not much more musical than a pig's whistle. He never was a singer of any special merit, because his voice was not properly trained, and he never knew just what to do with it. Otherwise John Fuller is an original and humorous old bird, and when he wastes a penny or runs the risk of losing sixpence you may expect to see the stars drop. Some months ago in Auckland he stopped a well-known journalist in the street. 'Come up and hear me sing,' he said. 'Old John knew in his heart that the writing man could not possibly want to hear him sing. However that may be, the writer said he would call up. 'I'm pretty busy,' he said, 'and I've been pretty seedy. Still I'll try to look in on Saturday night.' At that, John pursed his lips. 'Rather big business on Saturdays,' he said. Now John Fuller is perhaps the only man now prominent in the show business in Australasia who would be quite capable of that depth of managerial meanness. But that is John all over, and John will never change, this side the rolling Jordan. His close-fistedness doesn't matter. Because that is, after all, his own affair. But ah, if somebody could only persuade him not to 'sing' any more."

That appeared in March, 1913. Six months later, C. N. Baeyertz, editor of *The Triad*, found himself defending an action for £501 damages for libel (a claim for less than £500 would not go before a jury of 12). We condense the



C. N. BAEYERTZ
A pig's whistle was not libellous

THE LAW AND THE CRITICS



"GREAT artists and most interesting performances pass, and must continue to pass, unnoticed by me as a critic because they are under the auspices of gentlemen who have threatened me with actions when I have pointed out imperfections in their enterprises, though, most inconsistently, they never sent me a ten-pound note when I praised them."—G. B. SHAW.

report of the case as telegraphed to the *New Zealand Times*, August 21, 1913:

Fuller and his counsel (W. C. McGregor) put the case for plaintiff . . . successful concert singer for many years . . . helped in Oratorios, no fewer than 10 items a night . . . voice as good as ever, and so on. Then Sir John Findlay, defending *The Triad*, asked Fuller whether the article would injure his professional engagements.

"Certainly! To tell the public my voice is like a pig's whistle will injure me."

"To write in a bantering tone?"

"Bantering! Bantering! It's the most malicious I have ever heard in my life."

"Well you are the most sensitive musician I have ever met."

His Honour Piqued

Here His Honour broke in: Do you suggest that you lose anything at all by reason of the publication?

Fuller: If the article had been widely read, certainly.

His Honour: You have been singing at your own theatres for five or ten years, and you say that your engagements will suffer?

Fuller: What I suggest, you honour. His Honour: Answer the question. Do you suppose that your engagements will be affected?

Fuller: If I had no theatres, no manager would engage me after reading that article.

His Honour: You are not answering the question, Sir, and you have gone very near contempt of Court. You must answer questions when I command. However, you refuse to answer, and I will leave the jury to draw their own inference.

The question was repeated, and plaintiff said that if he was bankrupt tomorrow his voice would not now be an asset. It was not thin and nasal. "It comes out very easily," he said.

Here counsel for defendant (Sir John Findlay) resumed his cross-examination:

"Like the song of a bird?"

"Yes, like the song of a bird."

"If anyone said to you that your voice was thin and nasal, how would you prove it was not?"

"I would sing to him" (Laughter).

"Do you know what a pig's whistle is?"

"It is very objectionable."

"Do you know that the dictionary definition of it is 'a low whisper'?"

"I do not, and I won't admit that the author is right."

"You should look up the meaning of the word before claiming £501 damages."

When the cross-examination of plaintiff had concluded, Mr. McGregor (Fuller's counsel) proceeded to call expert evidence as to the quality of Fuller's voice. This was ruled out, on the ground that experts could probably be got in equal numbers to pronounce an opinion either way. No evidence was called for the defence.

The judge, in his summing up, said that the first statement complained of was no libel, and the reference to "managerial meanness" was fair comment. After 20 minutes the jury found for defendant, and judgment was given accordingly.

G. B. SHAW ON CRITICS

TWENTY years before, there was a similar case before the Court in England, for the account of which we are indebted to a music critic of that time who wrote in *The World* under the signature of G.B.S.

"I pursue my present calling by sufferance—by a sort of informal Geneva Convention, which puts actions-at-law in the same category with explosive bullets," he wrote. "The moment I understand that the appeal to law is not barred between myself and any artist or entrepreneur, I fly in terror from the unequal contest and never again dare to open my lips, or rather dip my pen, about that litigious person."

Shaw was thinking, when he made these remarks, of the case where an Italian singer, Ciampi, sued the *Daily Telegraph* (whose music critic was Joseph Bennett) and won a farthing. In Shaw's own words:

"Almost Culpably Good-Natured"

"Last season an opera singer, of whom I am reminded by an unconfirmed report of his death at Malta, had his performance criticised by my eminent colleague, Mr. Joseph Bennett, in a manner which was almost culpably good-natured. The artist, however, declared that the effect of the criticism was to open the eyes of impresarios to the undisputed fact that he was no longer in his prime; and, the paper in which the notice appeared being well able to pay any amount of damages, he sued it. The case was peculiarly favourable to the critic, as there was no difficulty in making even a jury see that the criticism erred only on the side of leniency. But one of the proofs of its justice was that it had depreciated the market value of the artist's services as any unfavourable criticism must if it has any effect at all.

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OSBERT SITWELL
Had quarrels with the critics