

1937

c 113 Libel and Slander Act

Ontario

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Bibliographic Citation

Libel and Slander Act, RSO 1937, c 113

Repository Citation

Ontario (1937) "c 113 Libel and Slander Act," *Ontario: Revised Statutes*: Vol. 1937: Iss. 1, Article 117.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1937/iss1/117>

CHAPTER 113.

The Libel and Slander Act.

1. In this Act "newspaper" shall mean a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers, and shall include a paper printed in order to be made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements. R.S.O. 1927, c. 101, s. 1.

Interpretation.
"Newspaper."

LIBEL AND SLANDER.

2. In an action for libel or slander the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words or matter were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim shall be sufficient. R.S.O. 1927, c. 101, s. 2.

Averments in actions for libel or slander.

3. In an action for libel or slander where the defendant has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such libel or slander before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. R.S.O. 1927, c. 101, s. 3.

Apology in mitigation of damages.

LIBEL.

4. On the trial of an action for libel the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plain-

General verdict.

tiff, merely on proof of publication by the defendant of the alleged libel, and of the sense ascribed to it in the action; but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases. R.S.O. 1927, c. 101, s. 4.

Special verdict.

Consolidation of different actions for same libel.

5.—(1) The court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels contained in articles the same or substantially the same published in different newspapers, brought by one and the same person, may make an order for the consolidation of such actions so that they shall be tried together, and after such order has been made, and before the trial of such actions, the defendants in any new actions instituted in respect of any such libel or libels shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Assessment of damages and apportionment of damages and costs.

(2) In a consolidated action under this section the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against such last mentioned defendants, and the judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of the costs between and against such defendants.

“Article,” meaning of.

(3) For the purposes of this section “article” shall include anything appearing in a newspaper as an editorial or as correspondence or otherwise than as an advertisement. R.S.O. 1927, c. 101, s. 5.

NEWSPAPER LIBEL

Plea negating malice and negligence and that apology published.

6. In an action for libel contained in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel, or if the newspaper

in which the libel appeared is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff. R.S.O. 1927, c. 101, s. 6.

7.—(1) No action for libel contained in a newspaper shall lie unless the plaintiff has, within six weeks after the publication thereof has come to his notice or knowledge, given to the defendant notice in writing, specifying the statement complained of, which shall be served in the same manner as a statement of claim or by delivering the notice to a grown up person at the place of business of the defendant. Notice of action.

(2) The plaintiff shall recover only actual damages if it appears on the trial,— When plaintiff to recover actual damages only.

- (a) that the alleged libel was published in good faith;
- (b) that there was reasonable ground to believe that the publication thereof was for the public benefit;
- (c) that it did not involve a criminal charge;
- (d) that the publication took place in mistake or misapprehension of the facts; and,
- (e) that a full and fair retraction of any statement therein alleged to be erroneous was published either in the next regular issue of the newspaper, or in any regular issue thereof published within three days after the receipt of such notice, and was so published in as conspicuous a place and type as was the alleged libel.

(3) The provisions of this section shall not apply to the case of a libel against any candidate for public office in Ontario, unless the retraction of the charge is made editorially in a conspicuous manner, at least five days before the election. R.S.O. 1927, c. 101, s. 7. Case of candidate for public office.

8. A defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of any libel to which sections 6 and 7 apply, and, except so far as regards the additional facts hereinbefore required to be pleaded by a defendant, such payment shall have the same effect as payment into court in other cases. R.S.O. 1927, c. 101, s. 8. Payment into court.

9.—(1) A fair and accurate report published in a newspaper of any proceedings in the Senate or House of Com- Privileged publications.

mons of Canada, in any Legislative Assembly of any of the provinces of Canada, or in any committee of any of such bodies or of a public meeting, or, except where neither the public nor any newspaper reporter is admitted, of any meeting of a municipal council, school board, board of education, Department of Health, local board of health, or of any other board or local authority formed or constituted under any of the provisions of any public Act of any of the provinces of Canada or of the Parliament of Canada, or of any committee appointed by any of the above-mentioned bodies, and the publication of the whole, or a portion or a fair synopsis, of any report, bulletin, notice or other document, issued for the information of the public from any Government office or department, or by any Department of Health, Minister of Health, medical officer of health, or local board of health, or the publication, at the request of any government or municipal official, commissioner of police, or chief constable, of any notice or report issued by him for the information of the public, shall be privileged, unless it shall be proved that such publication was made maliciously.

Improper matter.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.

When defendant refuses to publish explanation.

(3) The protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff shows that the defendant has refused to insert in the newspaper making such publication a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff.

Saving.

(4) Nothing in this section shall limit or abridge any privilege now by law existing, or protect the publication of any matter not of public concern or the publication of which is not for the public benefit.

Meaning of "public meeting."

(5) For the purposes of this section "public meeting" shall mean a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern whether the admission thereto be general or restricted. R.S.O. 1927, c. 101, s. 9.

Imp. Act, 51-52 V. c. 61, s. 4

Report of proceedings in courts.

10.—(1) A fair and accurate report without comment in a newspaper of proceedings publicly heard before a court of justice if published contemporaneously with such proceedings shall be absolutely privileged, unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared a reasonable letter or state-

ment of explanation or contradiction by or on behalf of the plaintiff.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter. R.S.O. 1927, c. 101, s. 10.

Improper
matter.
Imp. Act,
51-52 V.,
c. 64, s. 4.

11.—(1) In an action for libel contained in a newspaper the defendant may, at any time after the delivery of the statement of claim, or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant, or his agent, showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a judgment is given in favour of the defendant, that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, or that the grounds of action are trivial or frivolous, and the court may make an order that the plaintiff shall give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario. and the order shall be a stay of proceedings until the security is given.

Security for
costs.

(2) Where the alleged libel involves a criminal charge the defendant shall not be entitled to security for costs under this Act, unless he satisfies the court that the action is trivial or frivolous, or that the circumstances which under section 7 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge.

Where libel
involves a
criminal
charge.

(3) For the purposes of this section the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim.

Examination
of parties.

(4) An order made under this section by a judge of the Supreme Court shall be final and shall not be subject to appeal, but where the order is made by a local judge an appeal therefrom shall lie to a judge of the Supreme Court sitting in Chambers, whose order shall be final and shall not be subject to appeal. R.S.O. 1927, c. 101, s. 11.

When order
of judge
respecting
security
final.

12. An action for libel contained in a newspaper shall be tried in the county where the chief office of such newspaper is, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the court may direct the action to be tried, or the dam-

Place of
trial.

ages to be assessed, in any other county if it appears to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to the payment of witness fees, and otherwise, as may seem proper. R.S.O. 1927, c. 101, s. 12.

Limitation of actions.

13. An action for libel contained in a newspaper shall be commenced within three months after the publication thereof has come to the notice or knowledge of the person defamed; but where an action is brought and is maintainable for a libel published within that period the same may include a claim for any other libel published against the plaintiff by the defendant in the same newspaper within a period of one year before the commencement of the action. R.S.O. 1927, c. 101, s. 13.

Joinder.

Publication of name of publisher and address

14.—(1) No defendant shall be entitled to the benefit of sections 7 and 13, unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

Copy of newspaper to be *prima facie* evidence.

(2) The production of a printed copy of a newspaper shall be *prima facie* evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection 1. R.S.O. 1927, c. 101, s. 14.

Service of notices and of writ.

15. Service of any notice under this Act and of the writ of summons may be made upon the proprietor or publisher of the newspaper by serving the same upon any grown up person at such address. R.S.O. 1927, c. 101, s. 15.

Evidence in mitigation of damages.

16. In an action for libel contained in a newspaper, the defendant may prove in mitigation of damages that the plaintiff has already brought actions for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. R.S.O. 1927, c. 101, s. 16.

Application of s. 7 (1) and s. 13.

17. Subsection 1 of section 7 and section 13 shall only apply to newspapers printed and published in Ontario. R.S.O. 1927, c. 101, s. 17.

SLANDER OF WOMEN.

Proof of special damage not required in certain cases.

18.—(1) In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery, it shall not be necessary to allege in the plaintiff's statement of claim, or to prove that special damage resulted to the plain-

tiff from the utterance of such words, and the plaintiff may recover damages without averment or proof of special damage.

(2) The defendant may, at any time after the delivery of the statement of claim, apply to the court for security for costs, upon notice and an affidavit showing the nature of the action, and that the plaintiff is not possessed of property sufficient to answer the costs of the action if a verdict or judgment is given in favour of the defendant, and that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous, and the court may make an order that the plaintiff shall give security for the costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order shall be a stay of proceedings until the security is given.

(3) For the purposes of subsection 2 the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1927, c. 101, s. 18.