

MASTER IN CHAMBERS.

SEPTEMBER 21st, 1912.

McVEITY v. OTTAWA CITIZEN.

4 O. W. N. 37.

Defamation — Libel — Security for Costs — Insolvent Plaintiff — Alleged Libel Involving Criminal Charge—Report of Proceedings before Magistrate—Animus.

MASTER-IN-CHAMBERS, *held*, that where an alleged libel is in the form of a report of the acquittal of plaintiff on a criminal charge, and the report impugns the correctness of the verdict, a jury might fairly say that the alleged libel involved a criminal charge.

Duval v. O'Beirne, 20 O. W. R. 884; 3 O. W. N. 513, referred to. Motion for security for costs dismissed, costs in cause.

Motion for security for costs in a libel action.

H. M. Mowat, K.C., for motion.

J. T. White, for plaintiff, contra.

CARTWRIGHT, K.C., MASTER:—The motion is supported by an affidavit that there is an unpaid execution in the hands of the sheriff of county of Carleton against plaintiff for over \$1,000. This is not in any way controverted. The motion is, however, resisted on the ground that the alleged libel involves a criminal charge. This is based on the fact that the opening words of the report in defendants' newspaper are as follows:

"City Solicitor was exonerated.

"Was alleged to have entered the premises.

"Despite the fact that sec. 61 of the Criminal Code of Canada allows (sic) that any trespasser resisting an attempt to prevent his entry into or on to property that is not his own is guilty of an act of assault, Deputy Magistrate Askwith dismissed an alleged case of assault Saturday against City Solicitor McVeity, when there was evidence produced to shew that he had used force in an attempt to gain admittance to property other than his own."

Thereafter sec. 61 is set out in full, and the evidence taken before the magistrate, the whole report covering three typewritten pages. It was argued that as it appeared from the report itself that the charge had been dismissed, the words "Despite the fact, etc.," could not be said to involve a criminal charge.

Whatever may be finally decided on this point, I think that in view of the late case of *Duval v. O'Beirne*, 20 O. W. R. 884; 3 O. W. N. 513, and the authorities there cited, that