

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

J. M. McEvoy, for the appellant.

W. B. Raymond, for the defendants, respondents.

CLUTE, J., in a written judgment, said that it was argued that the publication complained of was clearly libellous upon its face; and that, while it would have been difficult to sustain a case against the defendants in respect to the publications other than the one in which the word "only" was used, that publication, taken with the others, clearly carried the meaning that the plaintiff was disregarding his duty as alderman in not being present and taking part in the important matters that were brought before the council.

The learned trial Judge said in part in his charge: "It is my duty to tell you as a matter of law whether the words are capable of having a defamatory meaning, and it is your duty to find whether the words have in fact a defamatory meaning. . . . The first article is an article that has been read to you in which it is said that only certain aldermen were present at a certain meeting, meaning thereby, fairly plainly, that Wilson was not there; and I think I shall come to the conclusion that that is in itself capable of being defamatory. It is a false statement, for Wilson was present at that meeting, and I think saying of an alderman that he was not present is defamatory of him in his office as municipal councillor, because the faithful municipal councillor ought to be present at meetings."

After dealing with the other publications and stating that no evidence was given of special damage, he charged on the question of damages.

The Libel and Slander Act, R.S.O. 1914 ch. 71, sec. 5, provides:—

"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 plaintiff, merely on proof of publication by the defendant of the alleged libel, and of the sense ascribed to it in the action. . . ." This was first enacted by 13 & 14 Vict. (1850) ch. 60, sec. 1, which was taken from Fox's Libel Act, Imp. statute 32 Geo. III. ch. 60, which applied to criminal proceedings by way of indictment or information only. When the Act was introduced into Canada, it was made to apply "to any *action*, indictment, or information."

"Fox's Act laid down no new principle:" Baylis v. Lawrence (1841), 11 A. & E. 920, at p. 925. "Fox's Act was only declaratory of the common law:" per Brett, L.J., in Capital and Counties Bank v. Henty (1880), 5 C.P.D. 514, at p. 539. "Libel or no libel,