

The Ontario Weekly Notes

VOL. XI.

TORONTO, MARCH 9, 1917.

No. 26

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

FEBRUARY 26TH, 1917.

*AUGUSTINE AUTOMATIC ROTARY ENGINE CO. v.
SATURDAY NIGHT LIMITED.

*Libel—Newspaper—Defence of Fair Comment—Particulars—Trial
—Evidence Going beyond Particulars—Improper Admission
—Failure to Prove Facts Forming Foundation for Comment—
Mistrial—New Trial—Leave to Amend—Costs.*

Appeal by the plaintiffs from the judgment of BRITTON, J., at the trial, upon the verdict of a jury, dismissing an action for libel.

The appeal was upon the ground mainly that evidence had been improperly received at the trial.

The nature of the case and the particulars of the alleged libel are stated in a former report, 36 O.L.R. 551.

The appeal was heard by CLUTE, RIDDELL, and LENNOX, JJ., and FERGUSON, J.A.

I. F. Hellmuth, K.C., and W. J. Elliott, for the appellants.

M. K. Cowan, K.C., and G. M. Clark, for the defendants, respondents.

CLUTE, J., in an elaborate written judgment, in which he referred to the facts and the authorities, said that at the trial there was an almost continual protest on the part of the plaintiffs' counsel that evidence was being admitted which was inadmissible, tending to prove facts which were not set out in the particulars as forming the basis for fair comment, and that the facts as set out in the particulars were not proven; and upon these grounds, at the close of the defendants' evidence, the plaintiffs' counsel

*This case and all others so marked to be reported in the Ontario Law Reports.