The action was tried without a jury at a Toronto sittings.

I. F. Hellmuth, K.C., and W. R. Wadsworth, for the plaintiffs.

Peter White, K.C., M. L. Gordon, and John I. Grover, for the defendants.

LOGIE, J., giving judgment at the conclusion of the hearing, said that the action as framed was an action for publishing, without lawful occasion, an untrue statement, disparaging the plaintiffs' goods, and thereby causing special damage.

A false and malicious statement made by the defendant relating to the plaintiff's business, a natural consequence of which is to cause a general loss of business, as distinguished from loss of particular known customers, and which has produced that effect, is actionable; but what was done in this case, as disclosed by the evidence, did not constitute a combination in restraint of trade, nor was it criminal under sec. 498 of the Criminal Code; and such cases as Wampole & Co. v. F. E. Karn Co. Limited (1906), 11 O.L.R. 619, and Dominion Supply Co. v. T. L. Robertson Manufacturing Co. Limited (1917), 39 O.L.R. 495, were not applicable.

This case rested upon the common law, and Wren v. Weild (1869), L.R. 4 Q.B. 730, was applicable. It was there held that an action would not lie unless the plaintiff affirmatively proved that the defendant's claim was not a bona fide claim in respect of a right which, with or without cause, he fancied he had, but a mala fide and malicious attempt to injure the plaintiff by asserting a claim of right against his own knowledge that it was without any foundation.

The plaintiffs had not proved those circumstances which would entitle them to succeed.

In any event special damage must be proved, and the plaintiffs had failed to prove special damage.

The injunction granted by the Chief Justice of the Exchequer (ante 150) restrained the defendants from doing certain acts that they had previously done; but it was not proved that, even if that injunction had never been granted, the plaintiffs could not have sold the razors in the ordinary course of their business. While it was possible to prove that loss might take place, because certain persons could not sell at a "cut-rate," yet the purchase at $2.60 and the sale at $5 would allow such an enormous profit that the learned Judge could not see why it would be any restraint in reality of the plaintiffs' trade that a dealer or a hardware man or anybody like that should be told that they could not sell at less than $5. One would think that the margin of profit allowed in that would be a temptation to buy the plaintiffs' razors rather than a deterrent.

Action dismissed with costs.