

made by the plaintiff at meetings of the municipal council; another question as to the fact of the council having offered a reward to be paid to any one who killed a dog found worrying sheep; another question apparently intended to elicit information as to the particular times or occasions when the words were spoken; and other questions which might elicit information relevant to the defence of privilege, were all questions relevant to the issues raised on the pleadings, and should be answered by the plaintiff.

Though a defendant may not be able to prove all that is necessary to be shewn to establish a defence of privilege, he is entitled to the benefit of what he does shew, in mitigation of damages, if it goes to that, subject, perhaps, to his having given the notice required by Rule 488.

The Court expressed no opinion on two questions raised, viz., whether, having regard to the provisions of Rule 488, it is necessary for a defendant to plead the facts on which he intends to rely in mitigation of damages (*Beaton v. Intelligencer Printing and Publishing Co.*, 22 A.R. 97), and whether, if it is not necessary to so plead, it is proper to examine for discovery as to matters affecting damages only, unless or until the notice required by the Rule has been given.

*I. F. Hellmuth*, for plaintiff. *C. Swabey*, for defendant.

Meredith, C.J., Lount, J.]

[Jan. 21.]

McINTYRE v. LONDON AND WESTERN TRUSTS CO.

*Trustees—Will—Annuities—Setting apart securities—Distribution of residue—Realization of estate—Investments—Redemption of annuities out of estate—Consent.*

An order made under Rule 938 declared that the persons interested in the residue of the estate of a testator were entitled to have sums set apart by the executors and trustees, from time to time, from the capital of the estate, to provide for annuities bequeathed by the testator, as sufficient funds for that purpose, came to the hands of the executors, or to have such sums applied by them in the purchase of Government annuities, and, after provision made for payment of the specific legacies and the annuities, to have the residue in the hands of the executors from time to time distributed among the persons entitled. The order also provided that, in the event of differences as to matters arising under the foregoing declaration, a local Master should determine such differences and give necessary directions.

*Held*, that the order was substantially right. The annuitants were not entitled to have the estate of the testator realized and converted into money further than might be necessary for the payment of his debts and funeral and testamentary expenses; their right was limited, after this had been done, to having the annuities sufficiently secured by the setting apart of such part of the estate as might be adequate for that purpose; and, there