

CARTWRIGHT, MASTER.

OCTOBER 1ST, 1907.

CHAMBERS.

WELBURN v. SIMS.

Security for Costs—Slander—Chastity of Plaintiff—R. S. O. 1897 ch. 68, sec. 5, sub-sec. 3—Defence—Admission.

Motion by defendant for security for costs in an action brought under R. S. O. 1897 ch. 68, sec. 5, the motion being made under sub-sec. 3 of sec. 5.

W. D. McPherson, for defendant.

W. N. Ferguson, for plaintiff.

THE MASTER:—Paragraph 4 of the statement of claim charges defendant with having made defamatory statements impugning the plaintiff's chastity to certain persons, and proceeds as follows: "And to the plaintiff's husband the defendant said 'If you knew what I know, you would not live with that woman (meaning the plaintiff) for three minutes,'" and adding particulars.

The defendant's affidavit in support of the motion denies the previous alleged slanders and continues: "I did upon one occasion, in response to a question from Mr. Welburn, the husband of the plaintiff, tell him 'If you knew what I know you would not live with that woman for three days,'" but denying any other statement to Mr. Welburn, or any one else affecting the plaintiff.

It is objected that no defence is shewn to what is the most serious of the alleged slanders. There is confession, but not avoidance.

I agree with this view: and, following *Paladino v. Gustin*, 17 P. R. 553, I think the motion must be dismissed with costs to plaintiff in any event. This renders it unnecessary to consider whether the plaintiff is responsible for costs. At the close of the argument I was under the impression that this had not been successfully attacked, within the principle laid down by the Chancellor in *Bready v. Robertson*, 14 P. R. 7.

The defendant should plead in 10 days.