

TOWNSHEND, C.J.:—This is an application to strike out as embarrassing certain portions of the defence pleaded. It is an action for libel.

The first paragraph sets out that the defendant holds the rank of commander of the Royal Navy of Great Britain and Ireland. That fact is immaterial to the defence as the rank of an individual cannot of itself affect his liability for uttering a libel unless shewn and pleaded to be in connection with his duties as such. The case referred to by Mr. Power, *Wason v. Walter*, L. R. 4 Q. B. 73, is not in point here. There, defendant in justifying the publication of the alleged libel was compelled to shew that as proprietor of a newspaper in which it was published, the libel was a fair and accurate report of the proceedings in the House of Lords. It was therefore a necessary allegation in his defence, but entirely irrelevant here, and must be struck out.

That portion of the 4th paragraph of the defence following the denial that the words were not written or published or understood, nor bear the meaning alleged by plaintiff, is also attacked as embarrassing and irregular. The defendant in his third defence has set forth in detail the facts and circumstances under which he wrote the alleged libellous letter to the Attorney-General. Under the defence he will be enabled to prove everything which may constitute a defence on the ground of privilege. He contends that the portion of the 4th paragraph objected to is what is termed a conciliatory plea, or, at any rate, may stand as matters in mitigation of damages.

I do not know that I quite appreciate what is meant by a conciliatory plea in bar in libel or slander. A libel must be met either by a plea of denial or justification on the ground of privilege, or that it was true. I presume "conciliatory" refers to matters in mitigation of damages, and if so the authorities all agree such matters must be so pleaded, or the plaintiff may treat the defence as pleaded in bar. Some of the matters alleged in the 4th paragraph go in mitigation of damages, and if defendant wishes to avail himself of these, he must give the notice required by the rules as stated in the Annual Practice, 1909, at p. 251. On the other hand a defendant is strictly not entitled to plead in his defence matters which may tend to mitigate the damages: *Wood v. Durham*, 21 Q. B. D. 501; *Wood v. Cox*, 4 Times Rep. 550. In actions of defamation if the defendant