

cannot agree, it should be referred to the Master to ascertain those damages. The judgment in favour of the plaintiffs should stand, but the damages (if any) should be set off.

Success being divided, there should be no costs of the action or appeal. If a reference is had, the Master should dispose of the costs thereof.

The defendant should have leave to amend by setting up his claim for breach of the collateral agreement as a counterclaim.

The damages should be the difference between the amount the defendant should have received for the lots had the plaintiffs carried out their contract (the purchase-price plus \$200) and the value of the lots.

Appeal allowed in part.

HIGH COURT DIVISION.

BRITTON, J.

MARCH 27th, 1918.

REDMOND v. STACEY.

*Libel—Newspaper—Publication—Failure to Give Notice before Action—Libel and Slander Act, R.S.O. 1914 ch. 71, sec. 8—
“Defendant”—Editor—Publisher—Release.*

An action for libel.

The action was tried with a jury at Whitby.

H. H. Dewart, K.C., for the plaintiff.

D. L. McCarthy, K.C., and F.S. Mearns, for the defendant Stacey.

BRITTON, J., in a written judgment, said that, at the close of the plaintiff's case, counsel for the defendant Stacey asked for a dismissal of the action on two grounds: (1) that, the action being for a libel published in a newspaper, the notice to the defendant required by sec. 8 of the Libel and Slander Act, R.S.O. 1914 ch. 71, had not been given; and (2) that, the action being originally brought against the Reformer Printing Company Limited for publications in their newspaper, the plaintiff had released that company, upon a settlement being made; and, the company and Stacey being sued as joint tort-feasors, the release to the company operated as a release to Stacey.