

After delivery of the statement of defence an order was made striking out paragraph 3 thereof and allowing the defendants to amend: 14 O. W. R. 617, at p. 619. The defendants amended by substituting the following for the former paragraph 3: "3. The said article, to which these defendants crave leave to refer in full upon the trial or other disposition of this action, was one of considerable length, and contained many statements concerning the plaintiff, all of which, except the statement expressly complained of in this action, were and are true in substance and in fact. But for the mistake aforesaid the whole of the said article would have been true in substance and in fact. Such mistake was made without any malicious motive or intent whatever."

A motion was made before the Master in Chambers to strike out this paragraph, and the Master made the order asked for, but allowed an amendment to be made substituting for this paragraph such allegations as might be proper to set out the alleged mistake of the defendants in printing "conviction" instead of "connection."

The defendants appealed.

H. M. Mowat, K.C., for the defendants.

W. R. Wadsworth, for the plaintiff.

RIDDELL, J.:—It is not contended nor can it be that the defendant in an action of libel can say, by way of defence to the action, "I did not say of you what you claim that I did, but I did say of you something else, and that is true." *Rassam v. Budge*, [1893] 1 Q. B. 571, concludes that question.

But it is argued that this paragraph is admissible pleading as bearing upon the question of damages, and *Beaton v. Intelligencer Printing and Publishing Co.*; 22 A. R. 97, is cited. That, however, is quite a different case. Part of the pleading which had been excepted to set out the circumstances under which the alleged libel had been published. There could be no doubt, on the authorities quoted, that such circumstances could be proved as in mitigation of damages. Paragraph 7, leaving out some of the verbiage, set out circumstances rebutting malice; this also, it will be observed, is directed to damage; while paragraph 8 only "alleged . . . what would be used as an argument to the jury in mitigation on production of the article itself." None of these paragraphs contained allegations against the plaintiff claiming that they were true; so that, even though *Beaton v. Intelligencer Printing and Publishing Co.* were considered as an authority as to what should be done on a motion to strike out paragraphs of the statement of