

Meredith, C.J., Rose, J., McMahon, J.]

[Jan. 3.]

DOWNEY v. STIRTON.

*Libel and slander—Evidence—Admissibility—Publication of previous libel by plaintiff—Subsequent libel—Mitigation of damages.*

In a libel action the defendant in order to mitigate the plaintiff's damages may shew that he was provoked to libel the plaintiff, because the plaintiff had previously libelled him, but (Rose, J., dissentiente) no subsequent libel or slander can be given in evidence.

The defendant being sued for libel contained in a newspaper set up in mitigation of damages an alleged libel against himself published the day before in another newspaper by the plaintiff, for which latter libel he had himself in another action already recovered damages. The judge directed the jury that it was for them to consider whether it was consistent that the defendant should recover damages for what was contained in the previous libel and then come and claim in this action that the said previous libel was an answer to this action against him; but that as a matter of law it was competent for the defendant so to do.

*Held*, no misdirection.

Per ROSE, J. *Seemle*, evidence of the conduct of the plaintiff in a libel action subsequent to the publication of the libel complained of may sometimes be admissible in evidence in mitigation of damages, as for example, if the plaintiff had after publication of the libel taken the law into his own hands and assaulted the defendant severely, such conduct might be given in evidence before the jury as taking away from the plaintiff much claim to punitive damages; so, too, if the plaintiff had sought redress by subsequent libel on his part.

*Lynch Staunton*, Q.C. and *Drew*, for plaintiff. *Riddell*, Q.C. and *Guthrie*, for defendant.

The above decision was followed by FALCONBRIDGE, C.J. and STREET, J., in the case of *Down v. Armstrong*, decided Jan. 8th, 1901.

Master in Chambers.]

[Jan. 12.]

VANSYCLE v. PARISH.

*Pleading—Defamation—Defence—Privilege—Mitigation of damages.*

In an action for slander the complaint was that the defendant had falsely and maliciously accused the plaintiff of stealing the defendant's newspaper. The defendant pleaded "that if he spoke the words complained of, which he does not however admit, but denies, they were so spoken in good faith and without any malice whatever towards the plaintiff, under the following circumstances"—setting out the circumstances which led the defendant to believe that the plaintiff had stolen his newspaper.