

be consolidated with *Stuart v. Brodie*, with leave to all parties to amend; all parties agreeing to take the consolidated action down to trial at the next sittings. Costs in the cause.

BRITTON, J.

OCTOBER 15TH, 1902.

CHAMBERS.

CALDWELL v. BUCHANAN.

*Libel—Pleading—Defence—Stating Facts and Circumstances—Embarrassment.*

Appeal by defendant from order of local Judge at Perth striking out paragraph 3 of the statement of defence in an action for libel by a member of the congregation of St. Andrew's Presbyterian church in the village of Lanark against the minister of that church. The alleged libel stated that the plaintiff had accepted a deficient certificate of membership in irregular form. The 3rd paragraph of the defence stated at great length the facts and circumstances under which the defendant wrote the alleged libel, and concluded as follows: "The defendant's attention was called to the said article (an article in another newspaper) by members of his congregation, and it was urged that the false impression thereby conveyed should be corrected, and the defendant thereupon wrote and forwarded to such papers as had a circulation in the said counties what he believed to be a fair and impartial statement of the result of such proceedings, which said statement is the article or articles complained of."

J. H. Moss, for defendant.

Grayson Smith, for plaintiff.

BRITTON, J.:—I shall not interfere with the discretion which the local Judge exercised in striking out this paragraph and allowing defendant to amend as he may be advised. The application was made under Rule 298, not under Rule 261, and the only question is, whether this paragraph embarrasses plaintiff or is calculated to do so in the trial of the real issue between the parties. An embarrassing plea is one in which matter is pleaded that the defendant is not entitled to make use of. No doubt a good deal of liberty is allowed in case of libel, where defendant may set out all the facts relied on as shewing justification or privilege or in mitigation of damages, but it is not clear what paragraph 3 is intended to be. It may mean that the impression created by the certificate of membership which the plaintiff had obtained was a false impression, and that the defendant was justified in an attempt to correct that impression in the mind of the