

## The Legal News.

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### SUPERIOR COURT—DISTRICT OF SAINT FRANCIS.

SHERBROOKE, Sept. 30, 1891.

Before BROOKS, J.

W. B. IVES v. C. PARMELEE.

*Libel—Cause of action—Declinatory exception.*

**Held:**—1. *That in an action for libel in a newspaper published in the district of Bedford, and alleged to have been circulated in the district of Saint Francis, throughout the Province, and in some places outside of the province, and claiming damages therefor, the Superior Court sitting in the district of Saint Francis has no jurisdiction, the whole cause of action not having arisen within said district, and the defendant not being domiciled or served therein.*

2. *That after the return of the action the plaintiff could not give jurisdiction by serving defendant's attorney with notice that he limited his action to damages caused by publication in the district of Saint Francis; and a declinatory exception having been filed the action was dismissed for want of jurisdiction.*

BROOKS, J. :—

Plaintiff alleges that the defendant is the publisher and editor of a newspaper called the *Waterloo Advertiser*, printed and issued weekly in the town of Waterloo, in the district of Bedford, in this Province, and which newspaper is circulated in the district of Saint Francis, throughout the Province, and in some places outside of the Province. He then goes on to allege the publication of certain libels on different dates in said newspaper; says that they are malicious and false, to defendant's injury; that they were copied into other papers and published throughout the district of St. Francis and Dominion of Canada. That plaintiff has been injured thereby in his private and public life to the extent of ten thousand dollars.

He caused the defendant to be served in the district of Bedford at his domicile. The

writ was returned on the 26th May, 1891; on the 27th May, defendant filed an *exception declinatoire*, and on the same day plaintiff filed a notice to this effect addressed to defendant's attorney: "Take notice that the plaintiff limits his demand in this cause to the damage caused him by the publishing of the alleged libels by the defendant in the district of Saint Francis only." Defendant's grounds of exception are that defendant was not domiciled or served in the district of Saint Francis; that the cause of action did not originate in the district of Saint Francis, and that the Superior Court here is incompetent to try and determine this case for damages not alleged to have been caused plaintiff in the district of Saint Francis, for a libel alleged to have been published in the district of Bedford, in a newspaper alleged to have been circulated in the several districts of this Province as well as throughout the world.

The plaintiff answers by saying that although the defendant is not sued at the place of his domicile yet the cause of action originated in the district of Saint Francis where the alleged libel was published, and plaintiff's action was specially limited to damages arising from the publication in this district, and the whole cause of action, as limited by the *retraxit*, arose within this district.

The questions that arise are these: first, the competency of the Court at the time that the writ was served upon defendant and returned into Court; and secondly, as to the effect of the *retraxit* filed after the writ was returned into Court (whether before or after the filing of the exception is not shown).

As to the first question, was the Court competent to hear the case as brought, that is as served upon defendant and returned into Court, I think there can be no doubt. The whole current of the decisions is to the effect that the Court had no jurisdiction. See remarks of Chief Justice Dorion in *Archambault v. Bolduc*, 2 Dec. C. d'App., p. 110 *et seq.* See also *Blumhart & Larue*, 11 Q.L.R. 253, where Mr. Justice Tessier declares: "Cela prouve la nécessité *ab initio* de limiter l'allégation du libelle et des dommages au district où l'on veut faire comparaître le défendeur en dehors de celui de son domicile, si l'on veut