

Held, that R.S.O. (1887), c. 136, s. 6, the Act to secure to wives and children the benefit of life assurance, as amended by 51 Vict., c. 22, s. 3, and 53 Vict., c. 39, s. 6, applied to this case; and the wife was entitled to one-half of the sum payable under the policy first mentioned for life, and the other society was untouched by the will, and went to her absolutely; while, as to the second insurance, the wife was entitled to one-half for life and widowhood by virtue of the will.

W. R. Riddell for the plaintiffs.

J. Hoskin, Q.C., for the infant defendants.

Bain, Q.C., for the widow.

Practice.

MACMAHON, J.]

[Feb. 20.

BLANCHFORD T. GREEN.

Discovery—Libel—Damages in way of trade—No allegation of special damage—Examination of plaintiffs—Disclosure as to diminution of profits—Particulars—Evidence.

In an action for damages for libelling the plaintiff in the way of their trade, the plaintiffs did not allege special damage, but alleged generally that their business and commercial reputation had suffered. Upon examination of the plaintiffs for discovery, they refused to answer as to what business they had lost by reason of the alleged libels.

Held, that no evidence of special damage would be admissible at the trial, but that the plaintiffs would have the right to place figures before the jury to show a general diminution of profits since the publication of the alleged libels; and if the plaintiffs proposed to give this class of evidence at the trial, the defendants were entitled, on the examination for discovery, to know how such diminution was made out, and the figures by which it was proposed to support it, but not to seek information as to the loss of any particular custom; but if the plaintiffs did not propose to give such evidence, the defendants were not entitled to the discovery.

It was, therefore, ordered that the plaintiffs should give particulars of any damage intended to be claimed for diminution of profits; and if particulars given, that the examination should be continued and discovery afforded;

but if particulars not given, that the evidence of diminution of profits should not be given at the trial.

Bicknell for the plaintiffs.

Kappele for the defendants.

Court of Appeal.]

[March 1.

FEWSTER T. TOWNSHIP OF RALEIGH.

Reference—Consent—Special referee—O.J.A., R.S.O., c. 44, s. 101—Order referring all questions of fact in controversy—Determination of question of liability.

Except by consent, the court has no power to order a reference under s. 101 of the Ontario Judicature Act, R.S.O., c. 44, to any person other than an official referee or the judge of a County Court.

Where the question of the defendant's liability in an action is expressly raised on the pleadings, such question should be determined before a reference of all the questions of fact in controversy, including the amount of damages, is ordered.

Matthew Wilson, Q.C., for the appellants.

C. J. Holman for the respondent.

JONES P. PAXTON.

Transcript of judgment—County Court Division Court—Issue of execution—Return of nulla bona—"Proceeding"—52 Vict., c. 12, s. 24.

In an action against a sheriff for a false return to a writ of *fi. fa.* issued on a judgment entered in a County Court by the filing therein of a transcript of a judgment recovered in a Division Court, it was objected by the defendant that the transcript was a nullity, because no execution against goods had ever been issued and returned *nulla bona* in that Division Court.

Held, that, under the statute and Rules now in force, the issue of execution and return of *nulla bona* in another Division Court, to which a transcript had previously been sent, was a sufficient foundation for the transcript to the County Court.

Burgess v. Tully, 24 C.P. 549, distinguished.

Held, also, that a transcript to a County Court is not a proceeding within the purview of s. 24