

case a judgment is given in favour of the defendant, that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, or that the grounds of action are trivial or frivolous, and the Court or Judge may make an order that the plaintiff shall give security for costs. . .

“(2) Where the alleged libel involves a criminal charge, the defendant shall not be entitled to security for costs under this Act, unless he satisfies the Court or Judge that the action is trivial or frivolous, or that the circumstances which under section 8 entitled the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge.”

Section 8(2): “The plaintiff shall recover only actual damage if it appears on the trial

“(a) That the alleged libel was published in good faith,

“(b) That there was reasonable ground to believe that the publication thereof was for the public benefit,

“(c) That it did not involve a criminal charge,

“(d) That the publication took place in mistake or misapprehension of the facts, and

“(e) That a full and fair retraction of any statement therein alleged to be erroneous was published. . . .”

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

W. E. Middleton, K.C., for the plaintiff.

FALCONBRIDGE, C.J.:—My brother Riddell has disposed of the objection that the decision of the Master in Chambers is final, in *Robinson v. Mills*, 19 O. L. R. at p. 170. I would come to the same conclusion if his judgment were not binding on me.

I disposed of the first branch of the case at the argument. It is quite covered by the judgment in *Smyth v. Stephenson*, 17 P. R. at p. 376.

Then it is argued that all the circumstances referred to in 9 Edw. VII. ch. 40, sec. 8, except (c), exist here.

The action is certainly not trivial or frivolous, if the alleged libel may involve the charge of conviction for a crime, and there is too much doubt as to some of the other circumstances, e.g., whether a typographical error is equivalent to mistake or misapprehension of the facts, and whether the retraction was sufficient.

On the whole, I think that the learned Master was right, and that this appeal must be dismissed, with costs to the plaintiff in any event.

My brother Riddell's judgment in the case mentioned above seems to imply some doubt whether this order is non-appealable.