

In the statement of claim plaintiff charges that defendant has by his articles imputed to plaintiff serious offences. The question is, are they criminal?

[Smyth v. Stephenson, 17 P. R. 374, referred to.]

I feel constrained to hold that the articles in question may impute a criminal charge, having regard to R. S. O. ch. 9, secs. 159 and 188, sub-sec. 7. I think the decision in Regina v. Wason, 17 A. R. 221, shews that there is such a thing as Provincial criminal law (if I may be allowed to use a convenient, if not strictly accurate, expression). This view, I think, is supported by the decision of the Supreme Court of Canada in Attorney-General for Canada v. Attorney-General for Ontario, 23 S. C. R. 458, on the question of the pardoning power. . . .

Such enactments of the Legislature of Ontario must, I think, be held to be included in the exception as to a "criminal charge" in R. S. O. ch. 38, sec. 10 (a). But, however that may be, and even if I am wrong in that opinion, it is clear that the words complained of are capable of the interpretation put upon them by the statement of claim, "that the plaintiff, having so corruptly and illegally received said moneys as aforesaid, had wrongfully converted the same to his own use." I am of opinion that this certainly involves a criminal charge.

The motion must, therefore, be dismissed with costs to plaintiff in any event.

MAY 19TH, 1903.

C.A.

PILGRIM v. CUMMER.

Partnership—Offer of Partner to Sell Share to Co-partners—Acceptance—Specific Performance—Covenant—Restraint of Trade—Security.

Appeal by defendants from judgment of ROBERTSON, J. (1 O. W. R. 531) in favour of plaintiff in an action for a partnership account.

The argument of the appeal was begun on the 18th May before MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.