

injunction against further breaches of the agreement, and with costs of the action on the County Court scale, the action being to establish a right. The defendants to have the costs of appeal, to be set off against the plaintiffs' damages and costs. The pleadings to be amended, if necessary.

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FALCONBRIDGE, C.J., IN CHAMBERS.

OCTOBER 11TH, 1909.

KELLY v. ROSS.

*Security for Costs—Libel—Newspaper—Criminal Charge—Action Trivial or Frivolous—Typographical Error—Retraction—Order of Master in Chambers—Appeal to Judge in Chambers—Further Appeal—9 Edw. VII. ch. 40, secs. 8, 12.*

Appeal by the defendants from an order of the Master in Chambers dismissing a motion by the defendants for security for costs in an action for libel.

The libel complained of was published in an Ottawa newspaper in January, 1909, and was as follows: "Comments of Mr. Justice Grantham in England on Kelly's conduct and conviction with Ernest Terah Hooley, the notorious London promoter, were also given." Innuendo, that the plaintiff had been tried before Mr. Justice Grantham in England and convicted of a criminal offence. It was alleged by the defendants that "conviction" was a misprint for "connection."

THE MASTER quoted from the judgment in *Smyth v. Stephenson*, 17 P. R. 374, at p. 376: "If the words which a plaintiff charges to have been used in a sense which involves the making by the person using them of a criminal charge against him, may have that meaning, the case is brought within the exception:" that is, the exception in R. S. O. 1897 ch. 68, sec. 10 (a).

The Master also thought the action was clearly not trivial or frivolous; and that a sufficiently conspicuous retraction was not published at first, and it might be that the second was too late.

By sec. 12 (1) of the Libel and Slander Act, 9 Edw. VII. ch. 40 (O.): "In an action for libel contained in a newspaper, the defendant may, at any time after the delivery of the statement of claim, or the expiry of the time within which it should have been delivered, apply to the Court or a Judge for security for costs, upon notice and an affidavit by the defendant or his agent, shewing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in