

I think this case comes squarely within *Murphy v. Halpin*, Ir. R. 8 C. L. 127. . . . I adopt the language of Dowse, B., at p. 138, as singularly applicable to the chief conditions of this case. It was the duty of plaintiff as a member of the building committee to honestly criticize at meetings of the committee the workmanship on a building under its charge, and if such criticisms were not made in good faith and defendant felt aggrieved thereby, he could either resort to an action or communicate to the committee and such other persons as may have heard plaintiff's criticisms his defence thereto, accompanied with such retort upon plaintiff as may have been necessary as a part of his defence or fairly arising out of any charges made by plaintiff, and if in such retort defendant had reflected upon the conduct or character of plaintiff, it would be for a jury to say whether defendant acted in good faith and in self-defence, or was actuated by malice. But, in my opinion, he had no right to publish his defence and retort to the general public through the newspapers. In other words, the public as a whole, unlike the members of the committee and other persons who chanced to hear plaintiff, had no corresponding interest with defendant in the subject matter. . . . While I am clearly of opinion that the facts set forth in the 5 paragraphs in question establish no defence on the ground of privilege, I think many of them would be admissible in mitigation of damages, and limited to that purpose may be pleaded. . . . [Reference to *Stirton v. Gummer*, 31 O. R. 227.]

It is also well established that facts to be given in evidence in mitigation of damages in a libel action must be set out in the statement of defence: *Beaton v. Intelligencer Printing Co.*, 22 A. R. 97.

While I agree with the learned County Court Judge in the substance of the order made by him as to the statement of defence, I think it would have been better to have struck out only that portion of paragraphs 8 and 9 in which defendant claims that "the occasion is therefore privileged," and allow him to substitute therefor the words "and defendant pleads the aforesaid facts in mitigation of damages," but the leave given to amend fully protects defendant.

As to the counterclaim the learned Judge was of the opinion that, as the occasion on which plaintiff is charged with defaming defendant was prima facie a privileged occasion, the counterclaim should have shewn in what respect plaintiff exceeded his privilege. With much respect, I think