

STREET, J.

APRIL 8TH, 1903.

TRIAL.

TRAVISS v. HALES.

*Husband and Wife—Liability of Husband for Torts of Wife
where Marriage before 1884—Libel.*

Action against a husband and wife who were married on 13th May, 1875, to recover damages for a slander uttered by the wife in April, 1901. It was agreed that there should be judgment against the wife for \$1 and costs, and for the same against the husband if he should be held liable under the law as it stands for this tort of his wife, and that the parties should be in the same position as if the counsel for the husband had moved to have a nonsuit entered for him at the trial upon the ground that he was not liable for the torts of his wife.

J. W. McCullough, for plaintiff.

F. A. McDiarmid, Lindsay, for defendants.

STREET, J.—The weight of authority is in favour of the view that at common law the husband was liable for the torts of the wife as a matter of principle, and not by reason merely of the fact that he was a necessary party to an action against her: Bacon Abr., tit. Baron et Feme, L.; Head v. Buscoe, 5 C. & P. 484; Wainford v. Heyl, L.R. 20 Eq. 321; Seroka v. Kattenburg, 17 Q. B. D. 177; Lee v. Hopkins, 20 O. R. 666, and cases there cited. But see, to the contrary, Amer v. Rogers, 31 C. P. 195. If a direct liability at common law existed, there is nothing in sub-sec. 2 of sec. 3 of the Married Women's Property Act, R.S.O. ch. 163, sufficient to relieve the husband. The liability of the husband was a necessary part of the common law principle of the identity of husband and wife. The liability to be sued along with his wife and to be made liable in such an action for her torts is still maintained, to a limited extent, by sec. 17 of R.S.O. ch. 163, and is by that section continued without any limitation down to the present time, so far as persons married before 1st July, 1884, are concerned. Judgment for plaintiff for \$1 and the costs of the action on the High Court scale against both defendants.

APRIL 8TH, 1903.

DIVISIONAL COURT.

McLAUGHLIN v. RODD.

*Security for Costs—Residence of Plaintiff—Ordinary Residence out
of Jurisdiction—Temporary Residence in Ontario.*

Appeal by defendant from order of MEREDITH, C.J., in Chambers (2nd March, 1903) reversing an order of one of