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IN THE QUEEN'S BENCH.
APPEAL SIDE.

CAROLINE J. FERGUSON,

APPELLANT,

AND

CHARLES ROGER,

RESPONDENT.

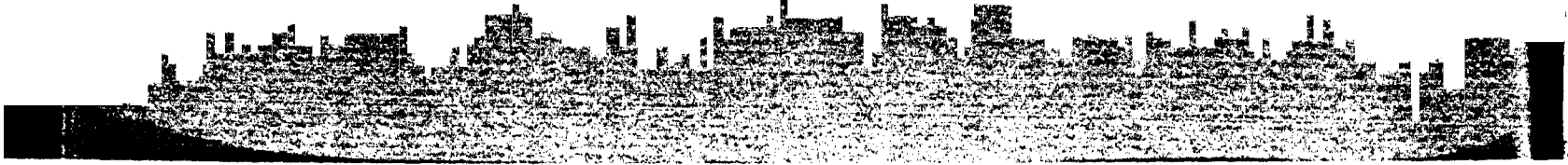
CASE OF THE APPELLANT

HOLT & IRVINE,

Attys. for Respt.

IN PRINCE GEORGE'S COUNTY

I



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PROVINCE OF CANADA,)
DISTRICT OF QUEBEC.) **IN THE QUEEN'S BENCH.**

CAROLINE J. FERGUSON,

APPELLANT,

AND

CHARLES ROGER,

RESPONDENT.

CASE OF THE APPELLANT.

THE Action, from the judgment in which the present appeal has been instituted, was an action for libel, and was dismissed, with costs, on the ground that the plaintiff had not adduced sufficient evidence of *publication*; the Honorable President of the Court declaring, at the same time, that they were prepared, but for this defect in the evidence, to enter up judgment against the defendant for the full amount of damages demanded.

The plaintiff filed at the enquête a certified copy of the defendant's affidavit, lodged by him as editor and proprietor of the "Quebec Observer," at the office of the Clerk of the Peace for the District of Quebec, (Vide Appendix, A.) and also a newspaper corresponding with the description given in the affidavit.

The Provincial Ordinance 1 Vict.-Cap. XX. Sec. 9, declares such affidavit, or a certified copy, "*in all proceedings civil and criminal*" touching any newspaper mentioned in any such affidavit, or *touching any publication in such newspaper*, to be *conclusive evidence* of the truth of the matters set forth in such affidavit, against every person who has signed the same;—

Sec. XI enacts, that "it shall not be necessary after any such affidavit or affirmation, or a certified copy thereof, shall have been produced in evidence as aforesaid, against the persons who made and signed such affidavit or affirmation, or are therein named according to this Ordinance, or any of them, and after a newspaper, pamphlet or other such paper as aforesaid, shall be produced in evidence, intituled in the same manner as the newspaper, pamphlet or other paper, mentioned in such affidavit or affirmation or copy is intituled, and wherein the name or names of the printer and publisher, or printers and publishers, and the place of printing mentioned in such affidavit or affirmation, for the *plaintiff*, informant, or prosecutor, or person seeking to recover any of the penalties given by this Ordinance, to prove that the newspaper, pamphlet or paper, to which such suit or trial relates, was purchased

“ at any house, shop or office, belonging to or occupied by the defendant and
 “ defendants, or any of them, or by his or their servants or workmen, or where
 “ he or they, by themselves, or their servants or workmen, usually carry on the
 “ business of printing or publishing such newspaper, pamphlet or other such
 “ paper, or where the same is usually sold.”

And Sec. XII directs the Clerk of the Peace to furnish a certified copy of the affidavit, to any person applying for it, “ in order that the same may be
 “ produced in any *civil* or criminal proceeding.”

The Court below, it is respectfully submitted, inadvertently overlooked these sections of the Ordinance, for it would be difficult to state in more clear or comprehensive terms, that, in *all* cases, the publication of a libel shall be considered proved, upon production of the affidavit specified, or of a certified copy, and of a newspaper corresponding with it, containing the same description of person and place of printing.

There is no room left for doubt when it is considered that the Ordinance in question is a transcript of the Imperial Act 38. Geo. III, Cap. 78. (Vide Appendix, B.) and when reference is made to the nature of the evidence given in the English Courts under that act. The authorities are numerous.

2nd Saunders on Pl. and Evid. 810, 811 ;

“ The affidavit, together with the production of a newspaper corresponding in every respect with
 “ the description of it in the affidavit, is not only evidence of the publication of such paper by the parties
 “ named, but is also evidence of its publication in the County where the printing of it is described to be.”

- 2 Harrison's Digest v. "Defamation," 2384.
- 2 Chitty's Gen. Practice. 48.
- 4 Bar. and Cress. 35.—*Rex vs. Amphlett.*
- 6 Dowl. and Ry. 125.
- 6 Bing. 409; *Cook vs. Ward.*
- 9 Bar. and Cress. 382.

— In *Mayor vs. Fletcher*, 9th May A. D. 1829, K. B. Jones, Sergeant, moved for a new trial, and the Court held that the production of *any* newspaper sufficed, under the 11th Section of the Act, without proof of the defendant's publication thereof. 2 Starkie on Slander, 47, 48. 10 East, 94. In the case here cited, that of the King *against* Hart & White, Bailey J. said, speaking of the same Statute of which the Prov. Ord. is a transcript, as above-stated.—“ As to the evidence of publication, the statute was passed
 “ as the title of it states, for the purpose of “ preventing the mischiefs arising from printing and publish-
 “ ing newspapers by persons not known ;” and it was meant to facilitate the proceedings, either civilly or
 “ criminally, against the several persons concerned in such publications.”
 “ And I cannot consider, as the objection supposes, that all these descriptions of persons, namely,
 “ plaintiff, informant, or prosecutor or person seeking, &c., apply to the same person seeking to recover
 “ penalties given by the Act ; but I take those words to apply to a plaintiff seeking to recover damages in
 “ an action for the civil injury sustained by him from the publication of the libel ; to the informant in an
 “ information granted by this Court or exhibited by the Attorney General for the same ; to a prosecutor,
 “ prosecuting by indictment for the libel ; or, lastly, to any person seeking to recover penalties under
 “ the Act.”

The Court below also erred, it is respectfully submitted, in allowing evidence to be given of the existence of *rumors* or *reports* touching the character of the plaintiff. The utmost length that has been hitherto gone by the Courts in this Country has been to permit evidence as to *general character* to be given ; and this on the ground that such evidence a party may be prepared to meet ; but it is impossible for an assailed party to grapple with mere *rumors*, and the Courts in England and in the United States have therefore almost all rejected the doctrine that, under the general issue, in mitigation of damages, the defendant may give evidence of the existence of such reports. The Appellant submits that to the spirit of the law of this Country which does not, except in a few special cases, permit the truth of the libel or slander to be pleaded, such evidence is peculiarly repugnant.

Upon the whole case, with reference to the merits, the Appellant respectfully prays that this Court will mark its sense of the wantonness and cruelty of the outrage upon her character and her feelings committed by the defendant, by mulcting him in exemplary damages.

Quebec, 12th June, 1855.

HOLT & IRVINE,
Attys. for Appt.

APPENDIX

(A.)

PROVINCE OF CANADA, }
DISTRICT OF QUEBEC. }

I, Charles Roger, newspaper proprietor and Editor, acknowledge myself to be the only proprietor and the responsible Printer of a newspaper intituled "The Quebec Observer," published at my office, situated in St. Peter Street, of the Lower Town of Quebec, the number of such house in the said street being 29, and I further declare that my dwelling house is now in Garden Street, and in the house in that street which is numbered 11.

(Signed.)

C. ROGER.

Sworn to before me this 7th Sept.,
1854, at the City of Quebec.
(Signed.) J. MAGUIRE.
J. P.

Certified a true Copy of the original in our Office.

Office of the Peace,
Quebec, 9th November, 1854.

(Signed.)

GREEN & DOUCET,
Clerk of the Peace.

(B.)

Imperial Statute 38 Geo. III. Cap. LXXVIII.

Sec. 9.—And be it further enacted, That all such affidavits and affirmations as aforesaid shall be fyled and kept in such manner as the said Commissioners shall direct and the same or copies thereof, certified to be true copies, as hereinafter is mentioned, shall respectively in all proceedings, civil and criminal, touching any newspaper, or other such paper as aforesaid, which shall be mentioned in any such affidavits or affirmations or touching any publication, matter or thing contained in any such newspaper or other paper, be received and admitted as conclusive evidence of the truth of all such matters set forth in such affidavits or affirmations as are hereby required to be therein set forth, against every person who shall have signed and sworn or affirmed such affidavits or affirmations, and shall also be received and admitted, in like manner as sufficient evidence of the truth of all such matters against all and every person who shall not have signed or sworn or affirmed the same but who shall be therein mentioned to be a Proprietor, printer or publisher of such newspaper or other paper, unless the contrary shall be satisfactorily proved, &c.

Sec. 11.—And be it further enacted, That it shall not be necessary after any such affidavit or affirmation, or a certified copy thereof, shall have been produced in evidence as aforesaid against the persons who signed and made such affidavit or are therein named according to this act or any of them, and after a newspaper or other such paper as aforesaid shall be produced in evidence intituled in the same manner as the newspaper or other paper mentioned in such affidavit or copy is intituled, and wherein the name or names of the printer and publisher, or printers and publishers, and the place of printing shall be the same as the name or names of the printer and publisher, or printers and publishers, and the place of printing mentioned in such affidavit or affirmation, for the Plaintiff, Informant, or prosecutor, or person seeking to recover any of the penalties given by this act, to prove that the newspaper or paper to which such trial relates, was purchased at any house, shop or office, belonging to or occupied by the Defendant or defendants or any of them, or by his or their servants or workmen or where he or they by themselves or their servants or workmen, usually carry on the business of printing or publishing such paper, or where the same is usually sold.

Provincial Ordinance 1 Vic. Cap. XX.

Sec. 9.—And be it further ordained and enacted, &c., that all such affidavits and affirmations as aforesaid shall be fyled and kept and preserved by the Clerk or clerks of the Peace for the District in which such newspaper, pamphlet or other paper shall be printed or published; and the same, or copies thereof, certified to be true copies as hereinafter is mentioned, shall respectively in all proceedings, civil and criminal, touching any newspaper or other such pamphlet or paper as aforesaid, which shall be mentioned in any such affidavits or affirmations, or touching any publication matter or thing contained in any such newspaper, pamphlet or paper as aforesaid, be received and admitted as conclusive evidence of the truth of all such matters set forth in such affidavits or affirmations, as are hereby required to be therein set forth, against every person who shall have signed and sworn or affirmed such affidavits or affirmations, and shall also be received and admitted in like manner as sufficient evidence of the truth of all such matters against all and every person who shall not have signed or affirmed the same, but who shall be mentioned therein to be a proprietor, printer and publisher of such newspaper, pamphlet or other paper, unless the contrary shall be satisfactorily proved, &c.

Sec. 11.—And be it further ordained and enacted, &c., that it shall not be necessary after any such affidavit or affirmation, or a certified copy thereof shall have been produced in evidence as aforesaid against the persons who made and signed such affidavit or affirmations, or are therein named according to this ordinance, or any of them, and after a newspaper, pamphlet or other such paper as aforesaid shall be produced in evidence, intituled in the same manner as the newspaper pamphlet or other paper mentioned in such affidavit or affirmation or copy is intituled and wherein the name or names of the printer and publisher, or printers and publishers, and the place of printing, shall be the same as the name or names of the printer and publisher, or printers and publishers, and the place of printing mentioned in such affidavit or affirmation, for the Plaintiff, Informant, or prosecutor, or person seeking to recover any of the penalties given by this Ordinance, to prove that the newspaper, pamphlet or paper to which suit or trial relates, was purchased at any house, shop or office, belonging to or occupied by the Defendant and defendants, or any of them, or by his or their servants or workmen, or where he or they by themselves, or their servants or workmen, usually carry on the business of printing and publishing such newspaper, pamphlet or other such paper, or where the same is usually sold.

