

ou acheté, au nom du défendeur, aucun des effets sur lesquels portaient les dites opérations; que le dit défendeur n'en a livré ou reçu aucun, et qu'il y avait entre eux entente parfaite que le paiement des différences serait le seul résultat de leurs dites opérations;

"Considérant que la loi dénie toute action pour le recouvrement de deniers ou autres choses réclamées en vertu d'un contrat de jeu ou de pari; que les dites opérations intervenues entre les parties sont de véritables jeux de bourse et des paris sur la hausse et la baisse;

"Considérant que le chèque en question n'a pas été un paiement réel fait à compte des dites opérations, et n'a créé aucune novation; qu'il n'est que la preuve de la promesse faite par le défendeur de payer des deniers pour le recouvrement desquels l'art. 1927 du Code Civil refuse d'accorder une action;

"Maintient les défenses et renvoie l'action, mais sans frais."

W. S. Walker, for plaintiff.

Greenshields & Busted, for defendant.

SUPERIOR COURT.

MONTREAL, January 31, 1882.

Before JOHNSON, J.

MCDONALD V. RYLAND.

*Slander—Action by servant against master—
Evidence.*

PER CURIAM. The plaintiff was a domestic servant in the defendant's employ, and she sues her old master for damages for slander, in falsely stating that she had stolen effects belonging to him, and carried them away with her when she left. She also alleges that he employed detectives, and searched her trunks, and subsequently, when she had obtained another situation, repeated the slanders, and made her lose it.

There was a plea of prescription; but under the amendment made to the declaration, it does not apply. The other plea is equivalent to the general issue.

The proof is deficient. The defendant admits he suspected the woman, and spoke to herself no one else being present. That could not be slander. Then, when she had got another place at Mr. Perkins', she lost it because the agent of the *Star* agency office, who had recommended her, withdrew his recommendation,

upon information which he said he had got from Mr. Ryland; but we have not the evidence of the agent himself, only that of Mr. Perkins, who relates what he said, which of course is not evidence. Even if it were, it would be pressing very hard on the privilege of a master to say that, as between him and the domestic servant agency through whom he got a servant, he might not, even without being asked, communicate confidentially the true character of the person he suspected of robbing him. Again, there is the evidence of Bridget Meagher, a friend of the plaintiff, at whose house she sometimes lodged when out of place. This woman says a detective came there to look after the plaintiff, and enquired for her trunks, wishing to search for ladies' and children's clothing that had been stolen. This cannot be slander by Mr. Ryland. Why was not the detective himself brought here to say what Mr. Ryland told him, and then we might have seen if there was anything beyond a privileged communication? But no; not a word from the man himself, but only what Mrs. Meagher says he said. After this, there is the evidence of Mr. Alexander Perkins and Mr. Warwick Ryland, both of them relating to strictly privileged communications respecting the character of this servant, which was being enquired of by Mr. Perkins.

Now, this is the whole case. Mr. Ryland admits he spoke to the agent, and to the detective; but he admits no slander; he says he told them he suspected her, but declined to arrest her. There can be no reasonable doubt about the disappearance of the things; about her departure at break of day, before the servants were up, and her taking away a heavy box, requiring two men to handle it, while she had only brought a very light one. I say there can be no reasonable doubt, because though it was argued that these facts were proved partly by the defendant himself in his own favor, and partly by Mr. Warwick Ryland, who was not up early enough to see her actually leave,—such a fact is in the nature of things known to the whole household,—I do not admit that when a plaintiff calls the defendant as a witness, his evidence can be mutilated to suit the plaintiff. He cannot make evidence in his own favor, but what he says here certainly does not make evidence for the plaintiff. The plaintiff had to