

*Held*, (1) that as to statements made in the discharge of the defendant's official duty, to the plaintiff's husband as postmaster, and to two other persons as sureties for him, the occasions were privileged; but not so as to statements made to a partner of one of the sureties, who used the post-office, and to whose business premises the defendant contemplated removing it; for the defendant and the partner had no such common interest in the matter as justified the communication, nor was there any public, or moral, or social duty resting on the defendant which justified him in making it. Even had the evidence shown that the defendant honestly believed that such a duty rested upon him, or that there was such a common interest, if such belief were unfounded, the occasion would not have been privileged.

(2) Where the occasion is privileged, the plaintiff's case fails, unless there is evidence of malice in fact, and the burden of proving this is on the plaintiff, who must adduce evidence upon which a jury might say that the defendant abused the occasion either by wilfully stating as true that which he knew to be untrue, or stating it in reckless disregard of whether it was true or false.

And where the plaintiff in her evidence denied that she had made a confession to the defendant, but admitted that after her denial the defendant continued to assert to her, and appeared to believe, that she had made one;

*Held*, that there was evidence of malice in fact to go to the jury.

(3) The defendant was not entitled to notice of action as a public officer; the statutes requiring such notice applying only to actions brought for acts done.

*Royal Aquarium Society v. Parkinson*, (1892) 1 Q.B. 431, followed.

*Murray v. McSwiney*, L.R. 9 C.L. 545, distinguished.

*Seem*, also, that the statutes requiring notice of action cannot be invoked where the words spoken are defamatory and have been uttered with express malice.

*Lynch-Staunton and Farmer* for the plaintiff.

*Ritchie*, Q.C., and *F. E. Hodgins* for the defendant.

MEREDITH, C.J., and ROSE, J.]

[June 29.]

REGINA v HUGHES.

*Justice of the peace—Jurisdiction—Trespass—Railway—Arrest—51 Vict., c. 29, s. 283.*

Section 283 of the Railway Act of Canada, 51 Vict., c. 29, enabling a justice of the peace for any county to deal with cases of persons found trespassing upon railway tracks, applies only where the constable arrests an offender and takes him before the justice.

A summary conviction of the defendant by a justice for the county of York, for walking upon a railway track in the city of Toronto, was quashed where the defendant was not arrested, but merely summoned.

*DuVernet* for the defendant.

*Aylesworth*, Q.C., for the prosecutors.