

affirmed and appeal dismissed. Costs of appeal out of estate, those of appellants as between solicitor and client.

Stuart, Stuart, & Bucke, London, solicitors for executors.

J. Folinsbee, Strathroy; Fraser & Moore, London; Urquhart & Urquhart, Toronto; Macbeth & McPherson, London; and J. Hoskin, K.C., solicitors for other parties.

Moss, J.A.

JANUARY 21ST, 1902.

CHAMBERS.

RE GIBSON.

*Infant—Custody Given to Mother—Pending Action for Alimony—Undertaking to Speed—Access to Infant—Allowed to Father.*

Motion by mother, upon return to *Habeas Corpus*, for custody of her infant child 3 years old.

H. J. Wickham, for the mother.

F. C. Cooke, for the father.

JANUARY 21ST, 1902.

DIVISIONAL COURT.

McKENZIE v. McLAUGHLIN.

*Discovery — Defamation — Privilege — Mitigation of Damages—Relevancy of Questions on Examination of Plaintiff.*

Appeal by plaintiff from order of FERGUSON, J., in Chambers, affirming order of a local Judge at London requiring plaintiff to attend for further examination for discovery and answer questions as to whether he had applied for a reward offered by a township council for killing a dog. Action for slander. The plaintiff alleged that the defendant had spoken of the plaintiff the words "he swore false and could be made jump for perjuring himself"—"he perjured himself and stole money from the township." The defendant did not justify, but denied speaking the words, said that the words, if spoken, did not refer to the plaintiff, set up (5) the circumstances under which certain words (not the same as those charged) were spoken, and (6) pleaded privilege.

The questions related to the reward, and asked whether plaintiff had been paid it, and as to his presence at a meeting of the council, and as to the statements he made at it, and as to the fact of the reward, and as to the times and occasions when the words complained of were spoken.

I. F. Hellmuth, for plaintiff. The questions are not relevant to any of the issues, and when justification is not pleaded cannot be relevant, except as to damages, and as no facts are pleaded in mitigation of damages, the questions are irrelevant and improper.

C. Swabey, for defendant.