and to degrade him in his said character and office, and to prevent the public from resorting to him as such Magistrate and Justice of the Peace in matters within his functions as such, falsely and maliciously wrote and published in a certain newspaper called the *Canadian Post*, of and concerning the plaintiff in his character as such Magistrate, and concerning him, while he held and exercised the said office, the words following:" [Then, after setting forth the words which described the holding of a court by two magistrates, without identifying them, except so far as a general description of their habits and character might be sufficient to identify them in the eyes of persons in the neighbourhood, it concluded]: "The defendant meaning thereby that the plaintiff is not worthy of the office of magistrate; that he conducted his magisterial duties in an indecent and disgusting manner; that he is insolvent and bankrupt; that he is dishonorable; that he is not deserving of belief under oath, and that he is dishonest."

The interrogatories proposed to be administered were as follows:

1. Are you the writer of a certain article published in *The Canadian Post* newspaper of the 23rd day of November, 1866, entitled "Magistrates," and signed "Crux?"

2. Is the plaintiff one of the magistrates to whom reference is made in that article, and if so, who is the other magistrate?

3. What occasion, time and place is referred to in the first paragraph of the said article?

4. Had you in November last or shortly before a quarrel with the plaintiff?

5. Have you procured, advised, or caused one Fraser to bring a suit against the plaintiff in reference to some act done by him in his capacity as a magistrate?

6. Have you ever said to any person that the said article was intended to apply to the plaintiff and to Israel Ferguson?

7. Did you write a letter to the proprietor of the said newspaper requesting him to insert the said article, and to forward to you three or four copies of the paper containing it?

8. Did you circulate any copies of the said newspaper by mail or otherwise, and if so, to whom did you send or give them?

9. Did you send one copy by mail to one Charles Lapp, who is connected with you by marriage, and who is a brother-in-law of the plaintiff, and did you write over the article in question in the said newspaper the words "Sid & Ferguson" in pencil? and did you mean the plaintiff by the word "Sid."

J. A. Boyd shewed cause.

These interrogatories should not be allowed:

1. They are asked before declaration, and should only, if at all, be allowed upon affidavits shewing a special state of facts. *Croomes* v. *Morrison*, 5 E & B. 984; *Anon* v. *Parr*, 13 W. R. 337: 11 Jur., N. S. 388.

2. This is a fishing application to ascertain whether the plaintiff has in fact any cause of action, and not in support of an ascertained cause of action.

3. It is an application for the purpose of fishing out information of a penal character: *May* v. *Hawkins*, 11 Ex. 210; *Tupling* v. *Ward*, 6 H. & N. 749; and interrogatories have been disallowed as imputing illegal conduct to party interrogated. *Baker* v. *Lane*, 13 W. R. 293; 11 Jur., N. S. 117; *Bickford* v. *D'Arcy*, 18 L. R. Ex. 354; *Peppatt* v. *Smith*, 11 L. T., N. S., 139.

4. There is a difference between libel and slander; and though interrogatories may be allowed in slander if allegations in declaration are specific as to when and where the slander was spoken (*Atkinson* v. *Fosbroke*, L. R. 1 Q B 628; 14 W. R. 832; *Stewart* v. *Smith*, Weekly Notes, 1867, p. 45), they should not be allowed in a case like this.

———, *contra*, referred generally to Day's C. L. P. Act, p. 235, *et seq.*, and contended,

1. That *Tupling* v. *Ward*, was distinguishable, and that action was against a publisher not an author, and that interrogatories may be exhibited even though the answers may tend to criminate the party interrogated. *Bickford* v. *D'Arcy et al.*, L. R. 1 Ex., 354; *Bartlett* v. *Lewis*, 31 L. J., C. P. 230.

2. Plaintiff seeks information as to a cause of action, which has evidently accrued to him, and which can be obtained from no other source; *Atkinson* v. *Fosbroke*, *ante*. In *Stern* v. *Sevastopulo*, 14 W. R. 862, 14 C. B. N. S. 737, the application was of a fishing character, to ascertain whether plaintiff had any cause of action against any one, and not as here, were the libellous words were actually published in a newspaper, under such circumstances as justified the plaintiff in supposing defendant to be their author.

Draper, C. J.—*Croomes* v. *Morrison*, 5 E & B. 984, determines that a plaintiff may deliver interrogatories before declaring, but the court expressed a strong opinion that the affidavits of plaintiff and his attorney, precisely such as are filed here, were not enough. Here we have only the additional affidavit, that the plaintiff intends to file a declaration similar to the one produced. In *Anon* v. *Parr*, 11 Jur., N. S., 388, the plaintiff not knowing his precise cause of action, applied for leave to administer interrogatories in order that he might declare correctly, and the Court of Queen's Bench refused the application. In *Atter* v. *Willison*, 7 W. R. 265, the court said, to allow interrogatories in a case like the present where the plaintiff issues his writ and then seeks to use them as a means of finding out whether he has any cause of action would be an abuse of the privilege.

But *Tupling* v. *Ward*, 6 H. & N., 749, expressly decides that in an action for libel the court will not permit the plaintiff to exhibit interrogatories (and the declaration had been filed in that case) to the defendant, the answers to which, if in the affirmative, would tend to shew that he composed or published the libel, and would therefore criminate him. The court says, "in cases of this kind it would be unfair to submit questions which a party clearly is not bound to answer, the object being either to compel him to answer when not bound, or to refuse, and so create a prejudice against him."

In *Atkinson* v. *Fosbroke*, L. R. 1 Q B. 628, the action was slander, and, it being shewn that defendant at a certain place, in presence of certain persons, had made imputations against the plaintiff to the effect that he had committed