

the alleged defamation was uttered, the defendant said to him that he did not know or recognize who the person was that broke into the car. This conjunction of statements of contradictory character, one to the plaintiff and the other to railway officers, appears to be enough, if believed, to shew ill intent or recklessness in making the defamatory charge. It depends on what view the jury will take; if they believe the plaintiff's version, that defendant told him he did not know the person who broke into the cars, and shortly afterwards told the railway officers that it was the plaintiff who broke in, they may find that defendant stated as true to the railway people what he did not know or believe to be true—which is malice in law; or the jury may disbelieve the plaintiff's interview with the defendant, and give credit to the defendant, in which case the plaintiff fails.

Altogether, though this aspect of the evidence was not presented to the trial Judge, I think the case was not one to be withdrawn from the jury, and that it must go down to be tried. Costs will follow the result of the trial, if not otherwise disposed of by the Judge who presides.

MAGEE, J.:—I agree in the result, but, apart from the alleged statement of the defendant to the plaintiff, I think the alleged slanderous statement being made by the defendant as of his own knowledge, the matter should have gone to the jury.

MABEE, J., gave reasons in writing for the same conclusion.

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