

to the public, and is a vigorous thinker and an uncompromising and energetic writer in all discussions and communications relating thereto, and the said words were written and published, if at all, in good faith and without malice and in the public interest, and were not intended to seriously or at all charge the plaintiff with the crime of theft as contemplated by law or with any crime, but were only intended by the defendant to call in good faith and without malice and in the public interest to the attention of the said Attorney-General the said conduct of the plaintiff in not making a return of and under the said convictions, and which said conduct of the plaintiff the defendant in good faith believed had a tendency to reflect upon the judicial office and to bring the administration of justice into disrepute and contempt and to call for the dismissal of the plaintiff from his said offices of Justice of the Peace and Stipendiary Magistrate as aforesaid."

The above quoted paragraphs were now moved against as stated. The defence further alleged in the plea of privilege that the plaintiff had been sued in a *qui tam* action under section 1134 of the Criminal Code for retaining pecuniary penalties, and the penalty therein mentioned recovered against him.

August the 24th, 1909. W. E. Roscoe, K.C., for the motion referred to Order 19, r. 27; Order 21, r. 4; Order 25, r. 4; Order 34, r. 30; Order 36, r. 37; Annual Pr. 1909, p. 251; Holmested & Langton's *Jud. Act*, 2nd. ed., 455; King's *Law of Defamation*, 355, 358, 416, 570, 611; Nichol's *N.Y. Pr.* 963; *Black v. Woodworth*, per Drysdale, J., April 5th, 1909; *Odgers on L. & S.* 3rd ed., pp. 113, 115, 677; *McDonald v. Sydney Post*, 39 N. S. R. 85, 86.

John J. Power, K.C., *contra*, cited *Odgers' L. & S.* (Blk. ed.), pp. 57, 499; *Bullen & Leake*, 6th ed., 832; *Thompson v. Bernard*, 1 *Camp.* 48; *Cyc.*, vol. 25, p. 465; *Bush v. Prosser*, 11 N. Y. 347, N. Y. *Civil Code*, sec. 165; *Beatty v. Intelligencer*, 22 *Ont. A. R.* 97; *Vansycle v. Parish*, 1 *O. L. R.* 13; Order 19, r. 4; Order 34, r. 30; *King's Law of Defamation* 358, 405; *Millington v. Loring*, 6 *Q. B. D.* 190; *Whitney v. Moignard*, 24 *Q. B. D.* 630; *Cunningham & Mattinson* 77; *R. S. N. S.*, 1900, cap. 10, sec. 3 (6); *Shea v. O'Connor*, 26 *N. S. R.* 205; *Power v. Pringle*, 31 *N. S. R.* 78; *Wason v. Walter*, *L. R.* 4 *Q. B.* 73.

Roscoe, K.C., in reply cited *Odgers' L. & S.* 3rd ed., 307.