

actuated by malice; that they might take into consideration all the circumstances and all the evidence in coming to a conclusion as to whether the defendant acted from ill will or not in reporting the matter to the cheesemaker.

*Held*, that this charge was entirely free from objection.

The defendant, after himself stating in the witness box that one Hayes had informed him that the plaintiff was keeping the strippings and making butter from them, called Hayes as a witness, and proved that Hayes had told the defendant what he had stated. The plaintiff's counsel then in cross-examination asked Hayes his grounds for making the statement, and Hays said that he had seen the plaintiff's wife taking the strippings, and that she had not mixed them with the milk sent to the factory; that she told him that she always took the strippings from the cows and used them in the house. The plaintiff proposed to call, in reply, a witness to contradict Hayes.

*Held*, that this evidence, if sufficiently tendered, was properly rejected, there being no plea of justification, and the defendant not seeking to go into the truth of the charge. It was not competent for the plaintiff to make it relevant by himself asking Hayes, in effect, whether it were true or not, and then seeking to contradict him. The cross-examination of Hayes upon this point was proper, but only as a matter of credit, and the plaintiff could not call evidence to rebut evidence brought out by himself upon a matter going only to credit.

G. M. Macdonnell, K.C., for plaintiff. Whiting, K.C., for defendant.

Falconbridge, C. J.]

CLARK v. SINCLAIR.

[August 20.

*Wills Act—Lapse—Gifts to issue—Gifts to a class.*

*Held*, that s. 36 of the Wills Act, R.S.O. c. 128, which provides that gifts to issue who leave issue on the testator's death, shall not lapse, applies only to cases of strict lapse and not to the case of a gift to a class. *Re Totten*, 20 O.R., 506, not followed.

W. A. Baird, for plaintiff. W. M. Douglas, K.C., for adult children of testator. Wilson, for executor. Harcourt, for the infant defendants. Edgar Davidson and Denton, for other parties interested.

Armour, C.J.O., Falconbridge, C.J.]

[August 27.

ARMSTRONG v. CANADA ATLANTIC R.W. CO.

*Master and servant—Workmen's Compensation Act—Notice of injury—Excuse for want of—Evidence—Statement of deceased—Negligence—Cause of injury—Jury.*

The knowledge of the defendants of the injury and the cause of it, at the time it occurs, is (in case of death) a reasonable excuse for the want of