

deducting certain disbursements, paid to plaintiff on account of the purchase money, and that the title to the land and the lumber was to remain in plaintiff until the payments agreed to be made by S. were completed.

*Held*, that the evidence was not admissible as varying the written contract.

*Held*, further, that a bill of sale of the lumber made by S. to plaintiff while writs of execution, of which plaintiff failed to shew that she had not notice, were in the hands of the sheriff, was void, as made contrary to the provisions of the statute.

*S. D. McLennan*, and *F. T. Congdon*, for appellant. *W. B. A. Ritchie*, K.C., for respondent.

Full Court.]

TOBIN v. GANNON.

[Feb. 4

*Libel and slander—Action by solicitor—Evidence—Defence sustained—Privileged communication—Innuendo.*

In an action by plaintiff claiming damages for certain words alleged to have been spoken by defendant of and concerning plaintiff in his capacity as a solicitor, whereby plaintiff was injured in his credit and reputation, the evidence at the trial shewed that the defendant in conversation with L. in reference to a case, asked L. who his solicitor was, and upon L. mentioning plaintiff, defendant said that if he had an honourable man like M. he might win his case. L. said that he would not change until he found some fault—that plaintiff always did honourably with him, whereupon defendant said that plaintiff was a dirty man. The words proved were different from those set out in the statement of claim, and the innuendo in the statement of claim was inapplicable. Leave was given to plaintiff on the trial to amend, but no amendment was made.

*Held*, setting aside with costs, including costs of trial, the verdict for plaintiff, that in the absence of evidence to shew how the words proved were spoken and understood, the Court could not frame an innuendo to conform to the evidence.

On the trial defendant called plaintiff as a witness, and plaintiff having admitted that he had collected a sum of money for a client which he failed to pay over, and that he had given a note for the amount collected which he had also failed to pay, and that a judgment had been obtained against him for the amount which was unpaid at the time of the trial,

*Held* 1. This evidence shewed conduct which was dishonourable to plaintiff as a solicitor, and fully justified the language used by defendant.

2. If the words proved were spoken and understood in the sense that plaintiff was not an honourable solicitor defendant had substantiated a good defence.

3. The communication was a privileged one, L. being a party who had an interest in knowing of it.

*W. F. O'Connor*, for appellant. *C. S. Harrington*, K.C., and *W. R. Tobin*, for respondent.