

claimed to be due under a contract of hiring with defendant was reversed on appeal to the Supreme Court of Canada the illness of deceased by which he was permanently incapacitated would itself terminate the contract and that a finding of the jury that deceased did not continue in his employment after notice of a rule that an employee was only to be paid for time that he was actually on duty was against evidence and must be set aside. A new trial having been ordered and had, the presiding judge, on the conclusion of plaintiff's case stated that in his opinion the additional evidence given made no material change in the case from what it was before and withdrew the case from the jury.

*Held*, that the facts being substantially the same as before, no useful purpose could be served in submitting the case to a jury, and that the judge was right in withdrawing the case from the jury and in dismissing the action.

*W. B. A. Ritchie*, K.C., and *Finn*, for appellant. *Drysdale*, K.C., for respondent.

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Full Court.] McLEAN v. CAMPBELL. [Dec. 18, 1905.

*Slander—Words charging theft—Publication—Misdirection of jury as to privileged occasion—New trial—Damages.*

In an action for slander the words complained of were "You (meaning the plaintiff) stole my feather bed and silver spoons," and at the same time, in answer to the question, "Do you really mean to blame me for stealing them," the further words, "Most undoubtedly I do" (meaning thereby that the plaintiff was guilty of stealing his feather bed and silver spoons). Plaintiff was a tenant of a portion of defendant's house and owing to some difference which had arisen was engaged at the time the words in question were used in packing up the articles belonging to her with a view to their removal and defendant was objecting to having them removed until the following day, claiming that they had not been properly checked over. The words were uttered in the presence of third parties. The trial judge instructed the jury that the occasion was privileged unless malice was shewn. The jury returned a verdict in plaintiff's favour and assessed the damages at \$250.

*Held*, 1. The occasion on which the words complained of were uttered was not privileged and that the directions given to the jury were erroneous on this point, but as it was evident that defendant was not prejudiced thereby a new trial should not be allowed.