

W. E. Middleton, for defendant.

W. M. Douglas, K.C., and A. H. F. Lefroy, for plaintiffs.

THE COURT (BOYD, C., MAGEE, J., MABEE, J.), dismissed the appeal with costs.

---

NOVEMBER 8TH, 1907.

DIVISIONAL COURT.

WOODS v. PLUMMER.

*Defamation—Privileged Occasion—Evidence of Malice—Contradictory Statements—Evidence for Jury—Setting aside Nonsuit—New Trial.*

Motion by plaintiff to set aside the nonsuit entered by ANGLIN, J., at the trial of an action for slander, and for a new trial. The plaintiff was a car examiner, and the alleged slanderous statement was to the effect that he had broken the seal off a car and taken out and concealed a bundle of handles.

The motion was heard by BOYD, C., MAGEE, J., MABEE, J.

R. S. Robertson, Stratford, for plaintiff.

R. T. Harding, Stratford, for defendant.

BOYD, C.:—The trial Judge rightly ruled that the statements complained of were made upon an occasion of qualified privilege. He rightly held that it then lay upon the plaintiff to displace the protection afforded by the occasion by some evidence of ill intent or malice, and that therein he had failed, and so dismissed the action.

To shew bad faith or ill intent it is not enough for the plaintiff to prove that the statements were untrue; he must go further and shew that they were untrue to the knowledge of the person who uttered them. Some evidence must be given which reflects upon the defendant's candour or honesty, proper to be submitted to the jury.

Now, here the plaintiff swore that the charge made by defendant to his superiors was not true in fact, and he also swore that almost contemporaneously with the occasion when