the prisoner could lawfully escape by force if necessary; and it may well be doubted if defendant can justify a negligent escape on any such presumed illegality. See *Rex* v. *Fell*, (1 Ld. Raym. 424.) It would be throwing a needless difficulty in the way of administering justice so to hold. Till the final decision of commitment to gaol or discharge on bail, I think the matter may fairly be considered as still pending before the justices.

The only difficulty I feel is as to the counts. If I cannot refer to the second count, the first may seem not to meet the facts exactly as they occurred. In that count only one remand is alleged, while two remands or adjournments took place Unless we may consider the last day's delay simply as a continuance of the custody, as if the constable, instead of a formal remand, kept the prisoner, as it were, all the time before the justices awaiting their decision, which depended on the success or failure of the attempt to procure bail.

The verdict is general, and the only question of fact left to the jury was, whether defendant negligently allowed Woodward to escape, not depending on the particular form of the charge in either of the counts.

That he remains in custody under the original warrant, I refer to Burns' Justice, vol. vi., p. 368: "And when he hath brought him to the justice, yet he is in law still in his custody, till the justice discharge, or bail, or commit him," referring to 2 Hale, 120, where it is said: "When he hath brought him to the justice, yet he is in law still in his custody till either the justice discharge or bail him, or till he be actually committed to the gaol by warrant of the justice."

Per cur.—Conviction affirmed.

MYERS v. CURRIE.

Slander—Evidence of plaintiff—Rule refused—General bad character—Leave to appeal.

Held, that in an action for slander, evidence of plaintiff's general bad character previous to the speaking of the words, is not admissible, even in mitigation of damages

Held also, that where evidence offered at a trial and rejected, affects only the amount of damages, and the amount of damages assessed is small, the court in the exercise of the discretion vested in it by the Error and Appeal Act (Con. Stat. U. C. cap. 13, *s.* 24,) will refuse leave to appeal

[Easter Term, 1863.]

This was an action for slander, tried before RICHARDS, J., at the last assizes for the county of Lambton.

The declaration contained four counts. The first, was for falsely and maliciously speaking the words "Myers stole James' four barrows and took them to the Oil Springs and sold them." The second, was for the use of the words "As soon as Andrew Clinton comes home I will put Myers through for stealing James' hogs, &c" The third, was for the use of the words "Myers stole James' hogs and took them to the Oil Springs and sold them, and left him with only two little pigs" The fourth, was for the use of the words "If Myers took James up he would miss it, for I believe it was Myers and Rueben Booth, and nobody else, that took James' hogs"

The only plea on the record was not guilty.

The defendant offered evidence of plaintiff's general bad character previous to the speaking of the words in mitigation of damages, but the learned judge rejected it.

The jury found a verdict for plaintiff $15 damages.

R. A. Harrison moved for a rule *nisi*, calling upon plaintiff to shew cause why the verdict should not be set aside, and a new trial had between the parties, upon the ground of misdirection and rejection of evidence. He cited Tay. Ev. 2nd edn., pp. 314 and 315; *Bell* v. *Parker*, 11 Ir. Com. L. Rep. 418.

HAGARTY, J.—In this case we refuse the rule. Though there are dicta in text books to shew that evidence such as tendered at the trial was admissible, we think the weight of authority is against the reception of such evidence in an action for libel or slander.

Wilson, J, concurred.

Per Cur.—Rule refused.

R. A. Harrison then, pursuant to s. 24 of the Error and Appeal Act, (Con. Stat. U. C. cap. 13,) applied for leave to appeal, submitting as the matter complained of was misdirection, the court should grant the leave asked, although the damages assessed were small.

WILSON, J., on a subsequent day, said that as the evidence offered affected only the amount of damages, and as the damages were only $15, the court had come to the conclusion in the exercise of the discretion vested in the court by the Error and Appeal Act, to refuse leave to appeal.

Per Cur.—Leave refused.

COMMON PLEAS.

(*Reported by* E. C. JONES, Esq., *Barrister-at-Law, Reporter to the Court.*)

BISHOP OF TORONTO v. CANTWELL.

Ejectment—Prescription—Conveyance of right of entry.

The claimant set up title under deed from patentee of the Crown, dated 16th March, 1842 The defendant claimed 21 years' possession.

It was proved for the defence that defendant and his father had worked on the lot in question since 1833; that they put up a house on the lot in 1840 or '41; that previously they had been in possession and claimed it as defendant's land. It was a wild lot when they took possession thereof. defendant's father bought it at a government sale at Hamilton, stating he bought it for his son.

In reply, a letter was proved from the defendant to T. C. dated 22nd May, 1836, in which he stated he would not lease or leave the land in question until he was paid for his improvements, complaining of the value put upon the lot.

It was proved T C. was assistant secretary of the Church Society, and had since died. Also, that plaintiff first knew the defendant was in possession in 1845.

The jury found for the defendant. On motion for new trial, *held*, that the defendant, being in possession at the date of the deed to the plaintiff, (16th March, 1842,) nothing passed to the plaintiff by that deed, as the statute of this province, Con. Stat. U. C., authorizing the conveyance of a right of entry, was not then passed.

[M. T., 26 Vic.]

Ejectment for the northerly half of lot No. 14. 3rd concession of Puslinch. Writ issued 24th of February, 1859. Defence for the whole. The claimant set up title under a deed from the Reverend George Mortimer, dated the 16th of March, 1842. The defendant claimed by twenty years' possession before the commencement of this suit.

The case was tried at Guelph, in November, 1862, before Richards, J. It appeared that on the 23rd November, 1835, the Crown, by letters patent, granted this half lot to the Rev. George Mortimer in fee. And by deed dated the 16th of March, 1842, the grantee conveyed the same in fee to the claimant, in trust as an endowment for the "See of Toronto," and for the benefit, maintenance, and support of the bishop of such see for the time being, and his successors in office for ever.

On the defence it was proved by a witness that he knew defendant and his father since April, 1833. That the father lived on lot No 13, and the defendant on No. 14, and that they chopped, logged, built houses and barns ever since he could remember; that he first saw them working on the premises in question in 1834; that it was about 21 or 22 years ago, less or more, since they put a house on the premises; they had 15 or 20 acres cleared. Defendant and his father were in possession claiming it before that as defendant's land. There are now 50 or 60 acres cleared and a house and barn on it. It was a wild lot when they first took possession. Defendant bought it at an auction sale at Hamilton. This witness never heard of any other title than that got through the sale at Hamilton. Another witness swore that defendant's father made improvements on lot No. 14, to the best of his knowledge as much as 26 years ago, and put up the house over 22 years ago. That the defendant was in possession ever since anything was done upon the place. He got it from his father, who said he had bought it for his son. It was unimproved when they went there. Two other witnesses proved to the same effect, carrying the building of the house back to 25 or 26 years; and one of them said he was at Hamilton when the defendant's father bought the right, as the witness understood at Hamilton.

In reply, a letter written by defendant to Mr. T. Champion, dated the 22nd of August, 1846, was proved and put in, in which the defendant expressed his desire to know whether he shall have a deed to get from the proper authorities in course of time, "in case he takes a lease," and proceeding, "As every other settler is at present settling about their land I would wish to do so in like manner, as I am still improving on it. I should like to know for what? but I do not intend to lease it or leave it until I