

SLANDER—MAGISTRATE—"JUDGE"—CRIMINAL CHARGE—WITHDRAWAL OF CHARGE—DEFAMATORY WORDS AGAINST PROSECUTOR—MALICE—PRIVILEGE—STRIKING OUT PLEADING—RULE 288—(ONT. RULE 261).

In *Law v. Llewellyn* (1906) 1 K.B. 487 the defendant applied under Rule 288 (Ont. Rule 261) to strike out the statement of claim as shewing "no reasonable cause of action." The action was brought for slander, the defendant was a magistrate before whom the plaintiff had prosecuted a charge against two persons for obtaining money by false pretences. The charge was withdrawn and after its withdrawal the defendant had uttered the words complained of, alleging that he regarded the charge as a gross attempt to blackmail. Channell, J., held that the occasion was privileged and no cause of action was shewn and struck out the statement of claim accordingly, and his order was affirmed by the Court of Appeal (Romer and Cozens-Hardy, L.JJ.,) on the ground, first, that a magistrate is a judge as was settled in *Munster v. Lamb*, 11 Q.B.D. 588, and *Hodson v. Pare* (1899) 1 Q.B. 455, and, therefore, anything said by him in the course of his judicial duty was privileged and could not be made the subject of any action: and, secondly, because the charge could not have been withdrawn without the defendant's consent, and it was reasonable and proper for him in giving his consent to state that the reason he allowed the charge to be withdrawn was because he considered it to be utterly unfounded, and the action of the plaintiff in making it discreditable; and it would have made no difference if he had first given leave to withdraw the charge, and then proceeded to give his reasons for doing so: because it would be all part of one and the same transaction.

DIVORCE—ADULTEROUS PETITIONER.

*Evans v. Evans* (1906) P. 125, although a divorce case deserves attention. The petitioner in 1902 filed a petition for divorce from his wife on the ground of adultery, and a decree nisi was obtained. This decree was subsequently revoked at the instance of the King's Proctor on the ground that the petitioner had concealed from the Court that he had himself been living in adultery. After the revocation of the decree nisi and until the filing of the present petition in September, 1905, the petitioner had ceased his adulterous intercourse and claimed to have lived chastely, and claimed a divorce on the ground of the adultery of his wife in April, 1905, but Barnes, P.P.D., dismissed the petition, holding that the previous adulterous conduct of the petitioner debarred him from relief.