With regard to the sending of transcripts of judgments, it will be as necessary to send them as heretofore as well to adjoining as to more distant counties, for all cases not coming within the perview of the new statute, for you will observe that the words in this statute "*and upon judgment recovered in any such suit,*" confines the power to issue and of the bailiff to execute an execution to the cases referred to in the act only, and not to all cases generally.

With regard to the power of the court to issue judgment summonses to enforce payment of judgments recovered under the act I have strong doubts; and I should doubt the power of the judge to order the commitment of a person summoned, who lives out of the county wherein the court is held, on account of the peculiar wording of the 160th section of the Division Court Act; I cannot regard the proceeding by judgment summons as a "*proceeding to enforce the payment of a judgment*" which may be "*issued to the bailiff of the court,*" and "*to be executed and enforced by him in the county in which the defendant resides, &c.*" I regard it as a proceeding independent of the judgment altogether, adopted to punish the defendant for not obeying the order of the court by paying the amount of the judgment or sum adjudged against him.

The second statute to which I have drawn your attention is that respecting the fees payable to the fee fund, being hereafter payable in stamps. I recommend you to a very careful perusal of its provisions, for there must be no carelessness whatever with regard to the stamps.

I do not know what provisions the government have made regarding the issuing of stamps. You will observe that it is not your duty to keep a supply of them; and every one who wishes a step to be taken in the court which requires a stamp must furnish you with the stamp first, before you are permitted to do any act or take any step; for instance, if a defendant wishes to give a confession, either through you or the bailiff, he must furnish a stamp of ten cents and affix it to the confession, and pay you your fee, or the bailiff his fee besides, for without the stamp the confession will be void, and either you or the bailiff will be punishable for taking it, and there is no reason for charging, nor have you a right in any case to charge this fee and stamp to the plaintiff.

There will be no fee (nor stamp) so low as five cents, nor any less than ten cents.

All fees for hearings will have to be stamped at the time the hearing is closed, and affixed either to the judges list after he has designated the result of the hearing on the list, and such fee as he may in disputed cases order, up to $2—or it should be ready to be placed upon the summons at the time of the hearing. The stamps for judgments or orders are to be affixed to the procedure book—or to the order whenever an order is given of a special nature—such as an order for a new trial, or to change the venue, or the like.

I recommend you to read this letter to, and attentively to peruse these two Acts of Parliament, in presence of the bailiff. I remain, dear sir,

Your obedient servant,

D. J. HUGHES, *County Judge.*

The Clerk of the Division Court at ——.

UPPER CANADA REPORTS.

ERROR AND APPEAL.

(*Reported by* ALEX. GRANT, ESQ., *Barrister-at-law, Reporter to the Court.*)

[Before the Hon. W. H. DRAPER, C. B, Chief Justice of Upper Canada; the Hon. P. M. VANKOUGHNET, Chancellor; the Hon. W. B RICHARDS, Chief Justice of the Court of Common Pleas; the Hon. Vice-Chancellor SPRAGGE; the Hon. Mr. Justice HAGARTY; the Hon. Mr. Justice MORRISON; and the Hon. Mr. Justice ADAM WILSON]

(ON APPEAL FROM THE COURT OF COMMON PLEAS.)

WILLIAM MCINTEE, APPELLANT, AND JOHN MCCULLOCH, RESPONDENT.

Slander—Privileged communication—Malice.

In actions for slander or libel it is the province of the judge to determine whether the occasion of uttering the slanderous words or writing the libellous matter complained of, was or was not privileged, and if privileged, *held*, reversing the judgment of the court below, that in the absence of evidence of malice, there is nothing to be left to the jury as to *bona fides* or otherwise.

This was an appeal from the judgment of the Court of Common Pleas in an action for slander, brought by the respondent against the appellant, refusing a rule to set aside a verdict in favor of the plaintiff, and enter a nonsuit.

The words for which the action is brought, and evidence taken at the trial are fully set forth in the judgment of the court below, reported in the 13th volume of the reports of that court, page 438. From that judgment the defendant appealed, on the ground that the words complained of were privileged by the occasion on which they were spoken, and, therefore, that the plaintiff could not recover without proving express malice; that there was no evidence of such malice, and therefore nothing to leave to the jury; that the absence of any evidence or admission of the offence charged by defendant against plaintiff did not take the case out of the general rule stated and approved of in the court below, or distinguish it from the authorities by which such rule is established.

The respondent contended that the judgment below was right, and ought to be affirmed on the grounds stated therein.

C. Robinson, Q.C., for appellant.

James Paterson for respondent.

In addition to the cases cited in the court below, counsel referred to and commented on *Gardner* v. *Slade*, 13 Q B. 796; *Campbell* v. *Spottiswoode*, 3 Fos. & Fin. 421; *Cooke* v. *Wildes*, 5 Ell. & B. 328; Selwyn's Nisi Prius, page 1255; Addison on Torts, page 708, and the cases there cited.

The judgment of the court was delivered by

VANKOUGHNET, C.—If the judge rule that the occasion justifies the use of the words, what is there to leave to the jury? It is said the *bona fides* of their use, but that is established when the privilege is admitted; for the truth of the words is assumed to support the privilege; or at least the defendant is not called upon to prove it, and that being so the *bona fides* is made out; for the mere fact of the man taking a malicious pleasure in the use of the words on a justifiable occasion gives no cause of action any more than in a case where a judge finds there is reasonable and probable cause for an arrest. Suppose, when the judge, having found that the occasion justified the use of the words complained of, proposes to leave it to the jury to say whether the defendant used the words *bona fide*, believing them to be true, and the defendant, to remove all doubt, offers to prove their truth, when it has been already necessarily ruled that he is not called upon for any such evidence, what will the judge then do? Will he then receive the evidence? Ought not the defendant to be allowed to offer it on the question of malice or *bona fides*, if that is to go to the jury. *See Jackson* v. *Hopperton*, 10 L. T. N. S. 529; *Nolan* v. *Tipping*, 7 U. C. C. P. 524; *Whitely* v. *Adams*, 9 L. T. N. S. 483; S. C. 10 Jur. N. S. 470.

Per Cur—Appeal allowed, and rule to be made absolute to set aside verdict for plaintiff and enter a nonsuit for defendant in the court below.