

mare in Humphreys's possession, and shortly afterwards I saw it in Lossing's possession." "I saw Humphreys have this mare. He tried to trade her to me, and just afterwards I saw her in Lossing's possession." "I know all Lossing's horses; he never raised the mare. I seen Humphreys driving her, and then seen Lossing driving her a few days after." "McNally has two witnesses who were present when Lossing traded and got the mare from Humphreys:"—meaning thereby that plaintiff had committed perjury, and had purchased the mare knowing her to have been stolen.

G. H. Watson, K.C., G. G. Duncan, Norwich, and Neil Sinclair, for appellant.

G. F. Shepley, K.C., and J. C. Makins, Stratford, for plaintiff.

The judgment of the Court (OSLER, MACLENNAN, GARROW, JJ.A.) was delivered by

OSLER, J.A.:—The plaintiff was unable, even plausibly, to contend that the words proved to have been spoken or written, in themselves, in their natural signification, gave rise to a cause of action. Taken literally, and in their primary and obvious meaning, they are perfectly harmless, and they can only be actionable if shewn to have been spoken and written under circumstances which will fairly admit of their bearing a defamatory construction. The duty of the trial Judge in such a case is laid down by Lord Selborne in *Capital, &c., Bank v. Henty*, 7 App. Cas., at p. 744. The words here written and spoken, being in themselves harmless, and *prima facie* not even spoken of and concerning the plaintiff, it was incumbent upon him to prove facts to shew that they were capable of the meaning ascribed to them by the innuendo. This he has failed to do. Appeal allowed with costs, and action dismissed with costs.

MACMAHON, J.

JULY 3RD, 1902.

CHAMBERS.

RE SNYDER.

*Life Insurance—Certificate—Change of Beneficiary by Indorsation Referring to Will—Absence of Any Provision in Will—Effect of—R. S. O. ch. 203, sec. 151, sub-secs. 3, 6; sec. 59, sub-sec. 2—1 Edw. VII. ch. 21, sec. 2, sub-sec. 7.*

Motion by the executors and trustees under the will of Simon Snyder, and by Minnie Emma Snyder and Alberta Lucinda Snyder, the adult children of the testator, for an order directing payment out of Court to the executors of