LENNOX, J. APRIL 22nd, 1919.

BISSONNETTE v. PILON.

Slander — Words Imputing Criminal Offence — Housebreaking — Injury to Property—Criminal Code, sec. 539—Failure to Shew Actionable Wrong—Finding of Jury—Nonsuit—Costs.

An action for slander, trial with a jury at Cornwall.

F. T. Costello, for the plaintiff.
R. Smith, K.C., and D. A. McDonald, for the defendant.

LENNOX, J., in a written judgment, said that, on motion for a nonsuit, he allowed the case to go to the jury, reserving the question whether, if the jury found that the words were spoken and understood in a defamatory sense, they constituted an actionable wrong, that is, imputed an offence punishable by imprisonment. The jury found for the plaintiff and assessed the damages at $100.

It was objected that the alleged slanderous words, if spoken at all, were uttered in the French language, and were set out in the statement of claim in the English language only. Odgers, in his work on Libel and Slander, is not very emphatic on this point. It was contended too that the allegations were not substantially proven; there was some variance. But neither of these points was now of importance, except that it was to be noted that there was no proof of the words, "He is a house-breaker."

The house spoken of was vacant, and it was at least debatable whether it could be regarded as a "dwelling house;" it was not referred to as a dwelling house, simply as "my house;" actual entry was not charged, nor did the circumstances suggest bodily entry; no crime was committed *in* the house, nor was criminal intent charged. The house was broken into, but whether in the day or in the night was not very clear, and at all events there was nothing known to the hearers, or in the language used, that covered this point. Interpreted in the way most favourable to the plaintiff to sustain a cause of action, the most that could be urged was that what was said was the imputation of an offence under sec. 539 of the Criminal Code (injury to property). This was not actionable per se: Routley v. Harris (1889), 18 O.R. 405; Webb v. Beavan (1883), 11 Q.B.D. 609.

The action should not have been brought; but, on the other hand, the defendant did too much blabbing, and if it should cost him something he would not be unduly punished. The action should be dismissed, but, if this ended the litigation, without costs.