perjury. The charge of perjury was dismissed by the magistrate.

E. Sydney Smith, K.C., for plaintiff.

J. P. Mabee, K.C., for defendant.

Judgment of the Court was delivered by

MEREDITH, C.J.—Although it appeared in the plaintiff's case at the trial that a mass of evidence was given at the hearing before the police magistrate in direct contradiction of what he had there testified, yet as the appellant, who was examined as a witness on his own behalf at the trial testified that what he had deposed to was true to the knowledge of the respondent, the trial Judge was not in a position to determine whether absence of reasonable and probable cause was shown until the jury had passed upon the disputed question of fact, for if plaintiff's version was accepted by the jury there was not reasonable and probable cause for the prosecution, for upon that hypothesis what the plaintiff had sworn to was true to the knowledge of the defendant. There should be a new trial. Costs of last trial and motion to be in the action.

Smith & Steele, Stratford, solicitors for plaintiff.

McPherson & Davidson, Stratford, solicitors for defendant.

MEREDITH, C.J. JANUARY 8TH, 1902.
LOUNT, J.

DIVISIONAL COURT.

CLUNIS v. SLOAN.

Slander—Privileged Occasion — Proof of Malice Necessary—Social or Moral Duty—Question for Judge, not Jury—Damages not Excessive.

Motion by defendant to set aside verdict and judgment for plaintiff for $500 in an action for slander tried before Meredith, J., and a jury at Chatham, and to dismiss the action or for a new trial upon the grounds of misdirection and excessive damages. The plaintiff is married to the sister of the defendant. The plaintiff alleged that the defendant had on four different occasions spoken words accusing the plaintiff of having stolen binder twine. The defendant contended that one of the occasions was privileged, and the jury should have been told that unless they found express malice the defendant was entitled to a verdict, and there was no evidence proper to submit to the jury, as to other occasions. On the first occasion in question which was claimed as privileged, the defendant admitted that the words were spoken to his mother and sister, and he denied speaking on any other occasion.