further than it was carried by the plea. Mr. *Kent* argued that it was desirable to claim a declaration of rights because the magistrate might grant absolution from the instance on the claim. But exactly the same proof which would justify a declaration of rights would make the proper judgment on the claim judgment for the defendants, not absolution from the instance. Conversely, if the facts proved in this case were only sufficient to entitle the Court to grant absolution from the instance, the declaration claimed by the counterclaim could not have been obtained. That point, therefore, seems to me to fail. For these reasons I agree that the appeal falls to the ground and that jurisdiction of the magistrate was not excluded by the counterclaim.

DE VILLIERS, J.: My brother Gregorowski agrees with the judgment. The appeal is dismissed with costs.

Appellant's Attorneys: *Wagner & Klagsbrun;* Respondent's Attorney: *Jas. MacIntosh.*

CAME v. ROBINSON.

1915. *April* 9. DE VILLIERS, J.P., and BRISTOWE, J.

Defamation.—Privilege.—Exaggerated repetition of information received.

A plea of privilege cannot be maintained where the information given was not believed or was grossly exaggerated by the informant.

Appeal against a judgment by the resident magistrate, Boksburg.

The plaintiff (Came) sued the defendant for £100 damages for slander. The words which defendant was alleged to have uttered were spoken to a certain Mrs. Waldeck in the presence of her daughter Enid: "I have something to tell you. Last Tuesday night your daughter Enid was seen coming out of a 'pub' after closing hours with the worst woman in Benoni." Upon Mrs. Waldeck saying, "It is perfectly untrue, as I know where Enid was that night," and apparently referring to the plaintiff, Mrs. Came, "I allow Enid to go out with her; she even comes to my house," the defendant replied, "You approve of it"; to which

Mrs. Waldeck said, " Yes "; and the defendant answered, " Oh, shame! Mrs. Waldeck."

The magistrate found that the words were used on a privileged occasion, and gave judgment for the defendant with costs. The plaintiff appealed.

L. Greenberg, for the appellant: There is no privilege in this case; *vide* Melius de Villiers on *Injuries* (pp. 208-209); *Davis* v. *Jacobs* (1914, T.P.D. 123). There was no social or moral duty cast on the defendant; see Odgers *on Libel and Slander* (4th ed., pp. 245, 246, 247); short of the most intimate friendship there is no privilege in a case like this. See also *Stewart* v. *Bell* (1891, 2 Q.B.D. 341); Odgers, *Loc. Cit.* (p. 252); *Fine* v. *Lee* (17 S.C. 251); where the Court found that privilege on the ground of intimate friendship did not exist. There was no proof of intimate friendship here. In *Reynolds* v. *Ainslie* (1904, T.S. 868) the information was not volunteered (as in this case) but given after enquiry. In *Tossel* v. *Farrant* (1909, T.S. 693), it was decided that the presence of others at the time does not destroy the plea of privilege. As to malice, see *Croger* v. *Bettington* (2 E.D.C. 361, at p. 371); *Stewart* v. *Bell* (1891, 2 Q.B., at p. 351). A desire to gossip may amount to malice.

Moreover, privilege would only apply if the defendant honestly thought that what he was speaking was the truth. Here he did not repeat what he was told. He altered in material particulars the information he had received. He therefore cannot plead privilege; see *Watson* v. *Van Heerden* (6 E.D.C. 276); *Stewart* v. *Bell* (*supra*, at p. 360).

There was no appearance for the respondent.

DE VILLIERS, J.P.: In this case plaintiff sued defendant for £100 damages for slander. The words which defendant was alleged to have uttered were spoken to Mrs. Waldeck in the presence of her daughter Enid: " I have something to tell you. Last Tuesday night your daughter Enid was seen coming out of a pub after closing hours with the worst woman in Benoni." Upon Mrs. Waldeck saying " It is perfectly untrue, as I know where Enid was that night," and, referring to Mrs. Came, the plaintiff, " I allow Enid to go out with her; she even comes to my house," the defendant replied: " You approve of it "; to which Mrs. Waldeck said " Yes "; and defendant answered, " Oh, shame! Mrs. Waldeck." The defendant denied that he used the words complained

of, and pleaded that the words were uttered on a privileged occasion. The magistrate found on the facts that the words as set forth in the summons were substantially the words which had been used by the defendant, but gave judgment in favour of defendant on the ground that the occasion on which the words had been used was a privileged occasion.

It appears from the evidence that Mrs. Waldeck and defendant and his family had been on a friendly footing for a certain number of years. They had actually lived together in the same house for a time and the defendant had interested himself in Mrs. Waldeck's two daughters, for both of whom he had obtained appointments. For the younger one he had obtained an appointment which she was at the time filling. He had also obtained an appointment for the eldest, but owing to her youth she did not appreciate the importance of the matter and did not keep the appointment. Under these circumstances it is an interesting question whether the occasion was privileged. It is, however, not necessary to decide this question because we have come to the conclusion that, even if the occasion was privileged, the defendant is liable on the ground that he went further than the privilege warranted. I will, therefore, for the purpose of the judgment, assume, without actually deciding, that the occasion was privileged. The next question, then is, was the defendant *bona fide* in the communication which he made to Mrs. Waldeck. In order to test that we have to look at his own evidence. This is what he says: "I received the information which I communicated to Mrs. Waldeck from Mr. S. J. Taylor, of New Kleinfontein. I have known him about three years. I have always found him a reliable man. He told me that he and a friend had seen the daughter, a woman, and two men coming out of an hotel after closing hours. This was in Benoni. He did not mention the hotel. I have never seen Mrs. Came until to-day." Later on he says, "I was told that the lady was not a suitable companion for Miss Waldeck. I told Mrs. Waldeck so." The magistrate did not believe the defendant when he said that was all he told Mrs. Waldeck, but found that he said plaintiff was the worst woman in Benoni. He did not mention the name of plaintiff, but when Mrs. Waldeck asked him if he referred to plaintiff he acquiesced. It has also been pointed out that, according to the finding of the magistrate, the defendant also altered in material particulars the information he had received. He did not say she had been seen coming out of an hotel, but out of a "pub," and he did not mention the fact that they were leaving with two men.

As I have stated, in order to test whether the defendant is liable, we have to determine whether he was *bona fide* in what he did. The matter is put in this way in the case of *Stewart* v. *Bell*, by Lord Justice LINDLEY: "What, therefore, has to be ascertained is whether the defendant acted *bona fide* in the discharge of that moral duty which he had, or whether he acted from some other unjustifiable motive, from some motive other than a sense of duty." In this case we have come to the conclusion that he acted from some improper motive because the words which the magistrate found him to have used could not have been believed by him. If a person, upon receiving information, grossly exaggerates it, he cannot contend that he *bona fide* believed that information. He admits that he did not know these people, and therefore he could not have added anything from his own knowledge, and, having so grossly exaggerated the information which he received from Taylor, he must be taken to have acted from an improper motive. For those reasons he is liable. The appeal must, therefore, be allowed, and the case remitted to the magistrate to assess the amount of damages.

BRISTOWE, J.: I am of the same opinion.

DE VILLIERS, J.P.: The appeal is allowed with costs in both Courts, and the case remitted to the magistrate to assess the amount of damages.

[A. D.]

REX v. ENDEMANN.

1914. *March* 29. *April* 12. DE VILLIERS, J.P., CURLEWIS and GREGOROWSKI, JJ.

Criminal Law.—Sedition.—What constitutes.—Oproer.—Incitement to sedition.

The crime of sedition bears the same meaning as "oproer" and implies a gathering or concourse of people in defiance of the lawfully constituted authorities for some unlawful purpose, and there must be something in the nature of an insurrection. (GREGOROWSKI J., *diss.*)

A person who incites others to sedition can under the common law only be found guilty of the crime of sedition if the sedition has actually resulted from such incitement and not otherwise. (GREGOROWSKI, J., *diss.*)