

*Held*, also (per BOYD, C.), that the nuisance in this case was of such a recurring nature as to be practically continuous and permanent, and so the reversion was prejudicially affected, and the owner could bring an action therefor, although the premises were in the possession of tenants.

C. H. Ritchie, Q.C., and McKeown for the appeal.

George Ritchie, *contra*.

Q.B. Div'l Court.]

[May 16.

MILLS v. THE MERCER COMPANY.

*Discovery—Examination of party—Privilege—Criminating answer—Subpoena and appointment—Officer of company—Substitutional service.*

In an action upon promissory notes the defendant pleaded that the plaintiff and certain other persons had, contrary to 52 Vict. (D.), c. 41, s. 1 (c), conspired together to harass the defendants and lessen trade competition, and had procured the holders of the notes sued on to transfer them to the plaintiff, and the plaintiff was suing thereon as trustee for such other persons.

Under his examination for discovery the plaintiff refused to answer questions as the names of the persons for whom he was acting as trustee, claiming privilege on the ground that to answer would tend to criminate him or render him liable to criminal prosecution under the above statute.

*Held*, that he was not entitled to the privilege, and must answer.

An order will not be made for substitutional service upon an officer of a litigant corporation of a subpoena and appointment for his examination for discovery.

A. Mills for the plaintiff.

F. E. Titus for the defendants.

MEREDITH, J.]

POPHAM v. FLYNN.

[May 18.

*Costs—Attempted examination of judgment debtor—Rule 1180.*

Under Rule 1180 the costs of proceedings to examine a judgment debtor may be allowed in the discretion of a court or a judge where the examination has not actually taken place.

And where the judgment debtor attended upon an appointment for his examination, procured an enlargement, and meanwhile, under force of the proceedings, paid the judgment debt;

*Held*, that he should be ordered to pay the costs of the proceedings.

J. A. MacIntosh for the plaintiff.

H. C. Fowler for the defendant

Q.B. Div'l Court.]

PORTER v. BOULTON.

[May 19.

*Evidence—Foreign commission—Application for—Evidence of party—Circumstances—Expense.*

Application for a foreign commission to take the defendant's evidence on his own behalf in England refused where the matters in question were complicated accounts between the parties arising out of transactions between them.