

accruing due upon the note, to apply on the judgment, and restraining the garnishees from paying out the moneys otherwise and from parting with the note.

*Hyam v. Freeman*, 35 Sol. J. 87, followed.

*C. J. Holman* for the plaintiff.

*Middleton* for the defendant.

BOYD, C.]

[Oct. 10.

WEISER *v.* HEINTZMAN.

*Discovery—Defamation—Examination of defendant—Privilege—Criminating answers—R.S.O., c. 61, s. 5—56 Vict., c. 31, ss. 2, 5 (D.).*

The Ontario statute as to evidence, R.S.O., c. 61, s. 5, limits the scope of all preliminary examinations for discovery or otherwise in civil actions.

*Jones v. Gallon*, 9 P.R. 296, followed.

It has not been affected by s. 5 of the Dominion statute, 56 Vict., c. 31, which, by necessary constitutional limitations, as well as by express declaration (s. 2), applies only to proceedings respecting which the Parliament of Canada has jurisdiction.

The language used in the previous decision in this case, 15 P.R., at p. 260, *sub fin.*, is too broadly expressed, in the absence of concurrent Ontario legislation. And therefore a defendant, upon his examination for discovery in an action for defamation, cannot, even since the coming into force of 56 Vict., c. 31, be compelled to answer questions which may tend to criminate him.

*Tytler* for the plaintiff.

*Kilmer* for the defendant.

MACLENNAN, J.A.]

[Oct. 11.

CANADIAN BANK OF COMMERCE *v.* TINNING.

*Judgment—Effect of—Creditors' action—Settlement.*

Before judgment in an action by a creditor, on behalf of himself and all other creditors, to set aside a fraudulent conveyance, the actual plaintiff may settle the action on any terms he thinks proper, and no other creditor can complain; but where judgment has been obtained by the plaintiff, it enures to the benefit of all creditors, and the defendants cannot get rid of it by settling with the actual plaintiff alone. If they should do so, any other creditor would be entitled to obtain the carriage of the judgment and to enforce it; and if, upon appeal from the judgment, the actual plaintiff refused to support it, the court would give the other creditors an opportunity of doing so before reversing it.

*W. H. Blake* for all parties.