

MEREDITH, C.J., held that the old practice is not superseded as to *præcipe* orders, and the common law practice is the more convenient practice, and the one which should be followed. *Bank of Nova Scotia v. Laroche*, 9 P.R. 503, *Caswell v. Murray*, 9 P. R. 192, and *Small v. Henderson*, 18 P. R. 314, referred to. Following that practice, the delivery of the defence was not a waiver of the right of defendant to a *præcipe* order, and the order was obtained in due time, as it was issued before issue joined. But in any aspect in which the question is looked at, the order in appeal was not open to the objection made to it.

Appeal dismissed with costs.

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STREET, J.

MARCH 4TH, 1903.

TRIAL.

REX v. MULLEN.

*Criminal Law—Application for Reserved Case after Conviction and Sentence—Statements of Jurors as to Manner of Arriving at Verdict.*

The defendants were tried before STREET, J., at Ottawa, on 21st January, 1903, and convicted of an assault occasioning actual bodily harm. They were represented by counsel, who was present when the jury returned their verdict, and who addressed the Judge on 24th January, 1903, for the purpose of obtaining a lenient sentence. The defendants were then sentenced.

On 27th February, 1903, G. S. Henderson, Ottawa, on behalf of defendant Murphy, asked the Judge to state a reserved case under sec. 743, sub-sec. 2, of the Criminal Code, upon an affidavit by the counsel for the defendants to the effect that one of the jurors was not in favour of the verdict of guilty, and so informed the deponent, but that he and another juror, who was also for an acquittal, were led to believe by other jurors and the constable in charge that ten were sufficient to convict.

STREET, J.—There is no ground upon which to state a reserved case. No question of law arose in the course of the trial. It would be contrary to principle to allow the statements of jurors even under oath to be used for a purpose such as was here proposed: *Jackson v. Williamson*, 2 T. R. 281. It would be an extremely dangerous practice to permit the verdict of a jury to be disturbed in the manner or for the reasons suggested. Application refused.