

CARTWRIGHT, MASTER.

FEBRUARY 10TH, 1906.

CHAMBERS.

MONYPENNY v. GOODMAN.

*Constitutional Law—Criminal Code, sec. 534—Intra Vires—
Civil Action for Same Cause as Criminal Prosecution—
Motion to Stay Action.*

Motion by defendant to stay proceedings, on the ground that defendant was being proceeded against criminally in respect of the same matters as were alleged against him in this action, and that sec. 534 of the Criminal Code, which assumes to allow a civil action to proceed in such circumstances, is ultra vires of the Dominion Parliament.

W. A. Henderson (Robinette & Co.), for defendant.

W. E. Raney, for plaintiffs.

J. R. Cartwright, K.C., for the Attorney-General for Ontario.

The Minister of Justice for Canada was not represented, though duly notified pursuant to sec. 60 of the Judicature Act.

THE MASTER:—The argument for the motion was, that, as the effect of sec. 534 is to enlarge the rights of plaintiffs in civil actions, its enactment by the federal parliament is an infringement of sub-sec. 13 of sec. 92 of the B. N. A. Act. It was contended with some plausibility that such an enactment was a violation of the opening words of sec. 92, "In each province the legislature may exclusively make laws in relation to matters coming within the classes" afterwards enumerated. This argument was supported by reference to sec. 94 of the Constitutional Act, as defining the only way in which the federal power could effectively deal with civil rights, and that all such legislation must be confirmed by a provincial enactment.

It was contended on the other side that the enactment in question was clearly a matter of criminal law. The previous rule, it was said, was based on the fact that in England (until