

CARTWRIGHT, MASTER.

MARCH 19TH, 1909.

CHAMBERS.

MILLS v. SPECTATOR PRINTING CO.

Libel—Pleading—Statement of Defence—Indictment of Another Person for the same Defamatory Writing—Pleading in Bar—"Embarrassing" Pleading—Rule 298—Striking out.

Motion by plaintiff to strike out paragraph 10 of the amended statement of defence in an action for libel.

John King, K.C., for plaintiff.

Featherston Aylesworth, for defendants.

THE MASTER: — Paragraph 10 sets out that plaintiff caused a bill of indictment for defamatory libel in respect of the words set out in paragraph 3 (A) of the statement of claim in this action, to be laid before the grand jury at Hamilton against one Robinson, on which he was tried and acquitted, and that by reason thereof the plaintiff is barred and cannot prosecute this action.

It might be sufficient to dispose of this motion to point out that Robinson is not a party to this action, so that the doctrine of *res judicata* cannot apply. But, even if Robinson were defendant in this action, such an acquittal would be no bar to a civil proceeding for the same cause: Odgers on Libel and Slander, 4th ed., p. 570; although he continues, "It is inadvisable to bring such an action except under very special circumstances." He does not apparently contemplate laying an indictment while a civil action is pending.

"The meaning of 'embarrassing,' as used in the Rule (298) is, bringing forward a defence which the defendant is not entitled to make use of:" per Armour, C.J., in *Stratford Gas Co. v. Gordon*, 14 P. R. at p. 414.

It follows that this paragraph 10 must be struck out with costs to plaintiff in any event. The time for reply will run only from this date.