

circumstances creating it. The plaintiff applied for an order for particulars of the privilege. Defendants, while not denying the plaintiff's right to the order, claimed the right to examine the plaintiff for discovery before furnishing particulars.

Held, following *Zerenberg v. Labouchere* (1893) 2 Q.B. 183, and *Beaton v. The Globe*, 16 P.R. 281, that, in an action for libel, the defendant has not the right claimed in this case.

Appeals from orders of the Deputy Referee, postponing the application for particulars until after the examination of the plaintiff for discovery and that the plaintiff should attend for such examination at his own expense, allowed with costs.

Dracon, for plaintiff. *Robson*, for defendant.

Mathers, J.]

FOLEY v. BUCHANAN.

[Sept. 21.

Practice—*Examination for discovery*—*Service of copy of appointment instead of original*.

The plaintiff's solicitor, desiring to examine the defendant for discovery, served upon his solicitor a copy of the examiner's appointment, relying on sub-rule (1) of Rule 391a, added to the King's Bench Act, R.S.M. 1902, c. 40, by 5 & 6 Edw. VII, c. 17, s. 2, and, upon defendant failing to attend on the appointment, obtained an order from the Deputy Referee directing the defendant to attend for examination at his own expense.

Held, on appeal from this order, that, as the sub-rule speaks of the service of an appointment upon the solicitor, service of a copy only of the appointment was not sufficient, without service also of a subpoena on the defendant personally under Rule 389, and that the order should be set aside with costs.

Myers v. Kendrick, 9 P.R. 363, follow 1.

Burbidge, for plaintiff. *Dracon*, for defendant.

Cameron, J.]

BROUGH v. McCLELLAND.

[Sept. 25.

Action—*Covenant of indemnity*—*Assignment of*—*Sale subject to unpaid purchase money*—*Liability of sub-purchaser*—*Implied contract*.

One Galbraith agreed in writing to purchase certain lands from the plaintiff and paid \$200 on account of the purchase