

and so may the fact that a fellow workman is in charge of a particular branch of business in such wise that his assistants are required to conform to his way of doing things and ordering things to be done ; and held, that the evidence in this action was such that the jury might have found such a case to have been established, and there must be a new trial.

Elgin Myers, Q.C., and *W. J. Clark*, for the plaintiff.

Fullerton, Q.C., for the defendant.

MACMAHON, J. {
In Chambers. }

[Sept. 25, 1895.]

MULHOLLAND *v.* MISENER.

Discovery—Examination of parties—Adultery—Compellable witness—R.S.O., c. 61, s. 7.

Motion by the plaintiff, in an action for damages for alienation of wife's affections, to compel the defendant to attend for examination for discovery.

Held, that under R.S.O. (1887), c. 61, s. 7, the parties to a proceeding instituted in consequence of adultery are competent but not compellable witnesses.

McLaughlin v. Moore, 10 P.R. 326, distinguished.

Motion refused.

W. S. McBrayne for the plaintiff.

D'Arcy Tate for the defendant.

ROSE, J.]

[Dec. 4, 1895.]

Common Pleas Division.

RE MCCABE *v.* MIDDLETON.

ANCIENT ORDER OF UNITED WORKMEN—Garnishees.

Division Courts—Garnishee proceedings—"Cause"—"Action"—Jurisdiction.

A garnishee summons in a Division Court may be issued out of the division in which the garnishee lives or carries on business, notwithstanding the cause of action did not arise and the primary debtor does not reside or carry on business therein.

A garnishee proceeding under s. 185 of the Division Courts Act is an "action" or a "cause" within the meaning of section 87.

Hobson v. Shannon, 26 O.R. 554 ; *Re McLean v. McLeod*, 5 P.R. 467, and *Re Tipling v. Cole*, 21 O. R. 276, referred to.

Tytler, for the primary creditor.

Armour, Q.C., for the primary debtor.

Totten, Q.C., for the garnishees.

[This case was argued before the Divisional Court on January 10th, 1896, and now stands for judgment.—ED. C. L. J.]