

*Held*, following *Zierenburg v. Labouchere* (1893), 2 Q.B. 183, and the cases cited in *Odgers on Pleading* (2nd ed.) 102, that in an action for defamation where defendants justify, they must either in their plea or by particulars give specific instances of plaintiff's misconduct and full information concerning them.

*Held*, also, following *Roche v. Patrick*, 5 P.R. 210, and considering the words of R.S.O., c. 57, s. 10, it has not "been made to appear to be in the interests of justice, or that it will promote a fair trial," to change the venue.

Motion to change venue dismissed, costs in cause to defendants.

Motion for particulars allowed with costs to plaintiff in the cause.

*W. H. P. Clement*, for plaintiff.

*W. Davidson*, for defendants.

MOSS, J. A.]

[May 13.

REGINA *v.* BALLARD.

*Criminal law—Election of trial by jury—Re-election—Mandamus to sheriff to bring prisoner before County Judge—Criminal Code—55 & 56 Vict., c. 29, ss. 766, 767 (c).*

Where a prisoner charged with arson before a County Judge elects to be tried by a jury, even though his election is made under a mistake or qualified by the words "at present" being used, and is remanded under s. 767 of the Criminal Code, to gaol to await such trial, there is no duty upon the sheriff to notify the Judge a second time under s. 766, or to bring the prisoner again before him to enable him (the prisoner) to re-elect to be tried by the Judge, and a mandamus will not be ordered to compel him so to do.

*Rowell*, for the motion.

*Cartwright*, Deputy Attorney-General, contra.

MEREDITH, C.J.]

[May 13.

LAKE OF THE WOODS MILLING CO. *v.* APPS.

*Summary judgment—Rule 744—Application of—Special ground for relief—Fraudulent preference.*

An unopposed application for summary judgment under Rule 744, made the day after the service of the writ of summons, in an action against a trader upon a bill of exchange, was refused. It was sworn, among other things, that the defendant had fraudulently transferred his business and property to certain persons; but the Court considered that the plaintiffs would not be prejudiced by the action being allowed to proceed in the ordinary way.

*Leslie v. Poulton*, 15 P.R. 332, and *Molsons Bank v. Cooper*, 16 P.R. 195, applied and followed.

*Arnoldi*, Q.C., for the plaintiffs.

(This decision was followed by *FALCONBRIDGE, J.*, on the 15th June, 1897, upon a similar application in the case of *Collins v. Graham*.)