

to his power to make the exchange, and declined to perform his contract on grounds, some of which were untenable, and also alleged fraud, which he failed to prove.

*T. W. Howard* for the plaintiff

*A. W. Burk* for the defendant.

Chy. Div'l Court.]

[Feb. 15.]

BENNETT v. EMPIRE PRINTING AND PUBLISHING CO.

*Security for costs—Libel—Newspaper—R.S.O., c. 57, s. 9—Criminal charge—Discretion—Appeal.*

The legislation in R.S.O., c. 57, s. 9, as to security for costs in actions for libel contained in newspapers, is unique, and the intention is to protect newspapers reasonably well conducted, with a view to the information of the public.

In a newspaper article published by the defendants the plaintiff was referred to as an "unmitigated scoundrel," and it was stated that he had endeavoured to ruin his wife by inciting another person to commit adultery with her.

*Held*, that this did not involve a criminal charge within the meaning of s. 9 (a).

The defendants did not contend that the grounds of action were trivial or frivolous; and it was conceded by the plaintiff that he had not sufficient property to answer the costs of the action.

The manager of the defendants swore to a belief in the substantial truth of what was published, and that it was so published in good faith, and without malice or ill-will towards the plaintiff.

*Held*, that, under these circumstances, an appeal from the discretion of a Judge in Chambers in reversing a referee's decision and ordering security for costs should not prevail.

*W. Stewart* for the plaintiff.

*H. Cassels* for the defendants.

STREET, J.]

[Feb. 23.]

BANK OF BRITISH NORTH AMERICA v. HUGHES.

*Writ of summons—Amendment—Time for appearance—Service—Judgment for default—Irregularity.*

A writ of summons issued for service out of the jurisdiction required an appearance thereto to be entered within eight weeks after service, inclusive of the day of service. The plaintiffs obtained an order shortening the time for appearance to ten days, not specifying whether inclusive or exclusive of the day of service, and amended the writ under the order by merely substituting "ten days" for "eight weeks." The writ as amended was served, and the order with it, on the 27th January. On the 6th February following judgment was signed for default of appearance.

*Held*, that the judgment was irregular; for the writ was not amended in accordance with the order, and the latter must govern; and according to its