

be plaintiff's costs in the cause, plaintiff to be subject to an undertaking to pay extra costs, not exceeding a fixed amount, due to the holding of the trial at A.

Robertson, in support of motion. *Mellish*, K.C., contra.

Longley, J.]

SMILEY v. CURRIE.

[Oct. 12.

Execution—Omission in recital—Action against sheriff for escape—Damages.

An execution which, in the preamble, recites the recovery of a judgment against . . . , and then proceeds, in the directory part to require the sheriff "to take the body of the said B. and commit unto our jail, in your bailiwick, etc.," is ample authority notwithstanding the omission of the name of the judgment debtor from the preamble, to justify the sheriff in holding him under the execution, and where the sheriff upon his own responsibility, though acting in good faith, under the impression that the execution is bad for the reason stated, allows the debtor to go, he will be liable to the execution creditor in damages as for an escape.

Where it appears from the evidence that the debtor is not a person of substance, and on account of his financial position is not likely to be in a position to pay, damages will be assessed accordingly.

Graham, for plaintiff. *W. C. Robinson*, for defendant.

Province of Manitoba.

KING'S BENCH.

Mathers, J.]

TIMMONS v. NATIONAL LIFE INS. CO.

[Sept. 21.

Practice—Examination for discovery—Particulars—Action for libel.

Action for libel. The defendants pleaded that the libel complained of was a privileged communication and set up certain