

BOYD, C.]

[March 27.

MURRAY v. BROWN.

*Discovery—Criminal conversation—Particulars—Affidavit of denial—Examination of plaintiff's wife—R.S.O., c. 61, s. 7.*

In an action of criminal conversation, after pleading and examination of the plaintiff for discovery, particulars of the matters complained of should not be ordered except upon a full and satisfactory affidavit of the defendant showing his innocence and ignorance of the ground of complaint, and an affidavit merely stating, "I deny that I ever debauched, assaulted, or alienated the affections of the plaintiff's wife," is not sufficient.

*Keenan v. Pringle*, 28 L.R. Ir. 135, followed.

In such an action there is no power, having regard to R.S.O., c. 61, s. 7, to order the examination of the wife for discovery as to the alleged acts of adultery.

*M. G. Cameron* for the plaintiff.

*C. J. Holman* for the defendant.

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[March 27.

SWAIN v. MAIL PRINTING CO.

*Security for costs—Libel—R.S.O., c. 57, s. 9—Merits—Privilege—Defence.*

On the application, under R.S.O., c. 57, s. 9, for security for costs in an action of libel, the judge is not to try the merits of the action. If it appears on the affidavits filed by the defendants that there is a *prima facie* case of justification or privilege, and that the plaintiff is not possessed of property sufficient to answer costs, the statute is satisfied, and security should be ordered; it is not for the judge to pass upon disputed facts disclosed in conflicting affidavits filed against the application.

*DuVernet* for the plaintiff.

*Swabey* for the defendants.

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[March 27.

MORROW v. McDOUGALD.

*Evidence—Foreign commission—Material on application for—Staying trial.*

Where an application for a foreign commission is made before issue joined, and it is not certain what the issues will be, the party applying must disclose the nature of the evidence to be given by the foreign witness, that the court may gauge whether it is likely to be material and necessary.

*Smith v. Greey*, 10 P.R. 531, explained.

And where issue had been joined two months before the sittings for which the plaintiff gave notice of trial, and the defendant applied five days before the sittings for a commission to examine a foreign witness upon an affidavit simply stating that the witness was necessary and material, and he was advised and believed he could not safely proceed to trial without his evidence, and, while