

Held, upon motion by the plaintiff, that there had been mistrial, and the plaintiff was entitled to a new trial.

Under the above section the defendants were only entitled to four peremptory challenges between them, and, inasmuch as the plaintiff took the objection at the time, he had not waived his right to complain by proceeding with the trial.

Aylesworth, Q.C., for the motion.

Clute, Q.C., *contra*.

Common Pleas Division.

Div'l Court.]

[June 24, 1893.

NUNN v. BRANDON.

Libel—Defendant claiming privilege for fear in incriminating himself—Evidence of publication.

In an action for libel, it was claimed that the defendant had, as a correspondent of a newspaper, furnished several items which included one reflecting on the plaintiff. In his examination for discovery, defendant, while admitting he was a correspondent at T., could not say whether he was the only one; that he did not remember sending any of the items, but might possibly have sent some; but did not think he had sent the one complained of; that he had, since the publication, an interview with the editor with reference thereto, but refused to answer whether he had discussed the item complained of, for fear, as he said, of incriminating himself. At the trial he said he had since ascertained that there were other correspondents at T.; and on being pressed as to the item complained of, after some hesitation, said he did not furnish it.

Held, this did not constitute any evidence of publication to go to the jury.

The trial judge, in his charge, after referring to the defendant's refusal to answer on his examination for discovery, and to his reason for refusing, told the jury that they might draw the inference as to what the trial answer would have been.

Held, misdirection and that no inference adverse to the defendant should have been drawn from his refusal to answer.

G. H. Watson, Q.C., for the plaintiff.

Wallace Nesbitt for the defendant.

Div'l Court.]

[Dec. 30, 1893.

SOLMES v. STAFFORD.

Foreign judgment—Motion to enter judgment under Rule 739—Variation of judgment in foreign tribunal after motion—Right to enter judgment as varied—Judgment entered under Rule 757.

After a motion was made to enter judgment, under Rule 739, in an action on a judgment recovered in British Columbia for a breach of covenant to convey certain lands, the endorsement on the writ herein claiming the amount found to be due by the judgment and interest from the date of the finding an appeal