

recovery by the plaintiff that he must shew a final termination in his favour of the prosecution of which he complains.

The learned Master of Titles tells me that he has never heard of any proceedings being taken under sec. 89, and I have not succeeded in finding any. . . .

The motion is, in my opinion, entitled to succeed, with costs to plaintiff in any event.

MULOCK, C.J.

MARCH 6TH, 1906.

CHAMBERS.

CHAMBERS v. JAFFRAY.

*Discovery—Libel—Examination of Defendant—Answers
Tending to Criminate—Privilege—Canada Evidence Act
—Attachment.*

Motion by plaintiff for an attachment against the defendant R. M. Jaffray for refusing on his examination for discovery to answer certain questions. The action was for libel alleged to have been published by defendants in a newspaper called the "Galt Daily Reporter;" and defendants in addition to other defences pleaded justification and fair comment.

J. B. Clarke, K.C., for plaintiff.

R. McKay, for defendant R. M. Jaffray.

MULOCK, C.J.:—On the argument plaintiff's counsel stated that the reason assigned by defendant R. M. Jaffray for his refusal was that the answers might tend to criminate him, and that the question for determination was whether defendant could be compelled to answer such questions.

Defendant's counsel acquiesced in this presentation of the case, resting his whole answer to the motion on the one single contention that in a libel action a defendant cannot be compelled to answer a question that may tend to criminate him.

The actual questions themselves were neither read nor discussed, and no exception was taken to the relevancy of any of them.