

nor was any argument based on it. It was conceded that the motion could succeed only on the ground that both actions were substantially those of the present plaintiff. In plaintiff's affidavit filed in answer to this motion, he stated that the first action was his action, brought on his instructions, but, by mistake, in the name of his father.

J. W. McCullough, for defendant.

S. B. Woods, for plaintiff.

THE MASTER held that it was equitable that the defendant should have the costs of the first action paid, or security for costs of the second with a stay until security given or costs paid. The defendant was certainly being harrassed a second time at the instance of the same person for the same cause of action. If any hardship must fall on one of two innocent persons, the person whose action caused the difficulty must not complain if he had to bear it. It certainly should not be thrown on defendant, who was not responsible for the mistake. The following authorities were referred to:—Rule 1198 (d); *May v. Werden*, 17 P. R. 530; *Re Payne*, 23 Ch. D. 288; *Martin v. Earl Beauchamp*, 25 Ch. D. 12; *McCabe v. Bank of Ireland*, 14 App. Cas. 413; *Re United Service Association*, [1901] 1 Ch. 97.

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SEPTEMBER 19TH, 1903.

C.A.

REX v. NOEL.

*Criminal Law—Evidence—Right of Prisoner's Counsel to Re-examine Witness—Statement to Crown Counsel on Cross-examination—Voluntary Statement—Repetition of Conversation.*

The prisoner was convicted before MEREDITH, C.J., at the Assizes at Ottawa, in May, 1903, upon an indictment, under the provisions of the Criminal Code, for shooting at one Larocque with intent to commit murder, and was sentenced to five years' imprisonment in the penitentiary.

A motion was made on his behalf to this Court for leave to appeal as on a reserved case, and two objections were taken to the proceedings before and at the trial. The first was as to the constitution of the grand and petit juries; and the second was as to the refusal of MEREDITH, C.J., to allow the prisoner's counsel to re-examine a witness named Pepin, who was called for the prisoner.