

ST. CLAIR v. STAIR—MASTER IN CHAMBERS—JAN. 30.

*Security for Costs—Libel and Slander Act, 9 Edw. VII. ch. 40, sec. 12—Affidavit—Cross-examination on—Insolvent Plaintiff—Defence on the Merits—Good Faith—Two Actions by same Plaintiff against Different Defendants—Consolidation—Stay.*]—Motion by the defendants (other than the defendant Stair) for an order, under the Libel and Slander Act, 9 Edw. VII. ch. 40, sec. 12, requiring the plaintiff to give security for the applicants' costs of the action, which was for libel. The fact that the plaintiff was not possessed of property sufficient to answer costs, if unsuccessful, was not denied; and the Master said that it remained to consider whether the defendants had shewn, at least *prima facie*, that they had a good defence on the merits, and that the statements complained of were published in good faith. The affidavit of the defendant Rogers, on which the motion was based, was insufficient under the decisions in *Greenhow v. Wesley*, 1 O.W.N. 1001, and *Duval v. O'Beirne*, 3 O.W.N. 513; but the defendant Rogers was cross-examined at great length, under sub-sec. 3 of sec. 12, upon his affidavit: see ante 645; and the plaintiff contended that the cross-examination shewed that the defendants had not a good defence on the merits, that the publication was not in good faith, and that the statements complained of might imply a criminal charge against the plaintiff. The Master referred to *Odgers on Libel and Slander*, 5th ed., pp. 7, 455, 665; *The Queen v. Holland*, 4 Q.B.D. at p. 46; *Smyth v. Stephenson*, 17 P.R. 374, 376; and said that the motion must be dismissed; costs to be costs in the cause, as the merits were not now properly in question.—The plaintiff, having brought another action for acts alleged to have been committed since those complained of in the first action, moved to have the first action stayed until after the second should have been disposed of, or to have the two actions consolidated, and to be allowed to use in the second action the depositions taken in the first action. The Master said that, as there were not the same defendants in both actions, it was plain that none of these courses could be taken against the will of any of the defendants; and they did not consent. As to a stay of the first action, the plaintiff, if so advised, could let it rest, and leave the defendants to move to expedite it if aggrieved. If both actions proceeded in the usual course, the plaintiff could set them down together for trial, and make application to the trial Judge to try them together or give directions to save expense and time. Motion dismissed, with costs to the defendants in the cause. M. H. Ludwig, K.C., and A. R. Hassard, for the defendants. W. E. Raney, K.C., for the plaintiff.