

on the following day, pursuant to an appointment given on 1st September. The statement of claim was delivered on 19th June.

The plaintiff probably thought he might get down to trial at the Cornwall Assizes commencing on 24th instant. Otherwise it was inconvenient to have examination for discovery before the statement of defence was delivered: see *Barwick v. Radford*, 7 O. W. R. 237.

The statement of defence in the 2nd paragraph denies the allegations contained in the statement of claim, and proceeds as follows:

3. On the evening of the 3rd of January, 1906, a barn belonging, as the defendant believes, to the plaintiff, was totally destroyed by fire, and in this barn was a large quantity of hay belonging to the defendant's father, which was totally destroyed by this fire and was uninsured.

4. The defendant says that if he ever spoke or used any language concerning the plaintiff in reference to the said fire, what he said was nothing more than a mere expression of belief or opinion made honestly and without malice.

The plaintiff moves to strike out paragraphs 3 and 4 as embarrassing.

It is clear from the decision in *Rassam v. Budge*, [1893] 1 Q. B. 571, that the motion must succeed, as it is impossible to say what these paragraphs mean. If the defendant wishes to set up privilege or to plead in mitigation of damages, he must do so plainly. If he denies that he used the words alleged or words substantially the same, he must be content with the 2nd paragraph.

The paragraphs must be struck out, and the defendant, if he desires to do so, must amend within 10 days.

The costs of the motion will be to plaintiff in any event.

SEPTEMBER 17TH, 1906.

DIVISIONAL COURT.

LAKEFIELD PORTLAND CEMENT CO. v. E. A.
BRYAN CO.

*Summary Judgment—Rule 608—Action for Money Demand
—Effect of Delay—Payment into Court.*

Appeal by defendants from order of Judge of County Court of Peterborough granting summary judgment under