

SECOND DIVISIONAL COURT.

APRIL 14TH, 1916.

AUGUSTINE AUTOMATIC ROTARY ENGINE CO. v.
SATURDAY NIGHT LIMITED.

Libel—Company—Allegations of Fraud—Discovery—Defences—Fair Comment—Particulars—Examination of Officer of Plaintiff Company—Relevancy of Questions—Financial Condition of Plaintiff Company—Discretion—Questions of no Practical Consequence—Discouragement of Appeals.

Appeal by the plaintiffs from an order of BOYD, C., 9 O.W.N. 478, reversing in part an order of the Master in Chambers, 9 O.W.N. 453, and requiring the president of the plaintiffs, an incorporated company, to attend for further examination for discovery and to answer questions which he refused to answer upon his examination as an officer of the plaintiffs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

I. F. Hellmuth, K.C., and W. J. Elliott, for the appellants.
G. M. Clark, for the defendants, respondents.

RIDDELL, J., read a judgment in which he described the alleged newspaper libel upon which the action was brought, and summarised the pleadings, the principal defence being what is known as "fair comment." The plaintiffs were exploiting a new and improved engine; the newspaper article complained of attacked the plaintiffs and their president as promoters of a fraudulent scheme. Particulars of the defence of fair comment were ordered and furnished.

Having regard to the pleadings, the defendants had to meet (after publication proved): (1) the charge that the words employed had the special meaning alleged in the innuendo; (2) the charge that the words were actionable in themselves; and the defendants had to prove: (3) the truth of the facts alleged in his defence; and (4) that their comment was fair.

Having these issues in mind, the learned Judge said, it seemed to him that the appeal could not succeed except as to some minor and unimportant matters.

The learned Judge took up one by one the questions which were objected to and directed by the Chancellor to be answered.

One objection was, that the officer should not be obliged to give the financial status of the company. The defendants, in the article, stated that the stock was almost worthless; and pleaded comment in good faith and without malice. The truth or falsity