

MIDDLETON, J., IN CHAMBERS.

APRIL 9TH, 1912.

D. v. W.

Evidence—Examination of Witness upon Pending Motion for Particulars—Attempt to Obtain Discovery as to Matters in Question in Action—Irrelevancy—Abuse of Process of Court.

Motion by the plaintiff for an order directing Bertha Alice D. to answer certain questions asked her upon her examination as a witness on a pending motion, and, in default, committing her to the common gaol for contempt.

W. T. J. Lee, for the plaintiff.

G. M. Clark, for the defendant.

C. A. Moss, for Bertha Alice D.

MIDDLETON, J.:—The action is brought by D.E.D. for \$50,000 damages said to have been sustained by reason of the defendant having procured Bertha Alice D., the plaintiff's wife, to desert him and to live in adulterous intercourse with the defendant.

The defendant, in addition to denying the charges made against him, says that, if the said Bertha Alice D. did at any time cohabit with him, the defendant, and absent herself from the home of the plaintiff, this was done with the consent and connivance of the plaintiff, and for the purpose of carrying out a conspiracy between the plaintiff and his said wife, for the purpose of placing the defendant in a false and compromising position, so as to enable the plaintiff to obtain money from him.

The plaintiff has served notice of motion returnable before the Master in Chambers for particulars of the acts upon which the defendant relies in support of the allegations that the plaintiff connived at the relation between the defendant and his wife, and for particulars of the conspiracy between the plaintiff and his wife, and the times when and places where and the acts upon which the defendant relies in proving such conspiracy.

In support of this motion the plaintiff has filed no affidavit of his own, but seeks help from the examination of his wife as a witness.

The wife, on being served with a subpoena, attended with counsel, and protested against the examination sought; and, after being sworn, answered some preliminary questions; but, as soon as it became apparent that the examining counsel intended to in-