

LATCHFORD, J., IN CHAMBERS.

MAY 3RD, 1918

HAYS v. WEILAND.

Libel—Discovery—Examination of Defendant—Disclosure of Name of Person to whom Printed Copies of Libellous Document Given—Re-examination of Defendant—Refusal to Answer—Motion to Commit—Forum—Order for Further Attendance—Costs.

Motion on behalf of the plaintiff for an order to commit the defendant for refusing, upon his re-examination for discovery on the 29th April, 1918, to answer certain questions, especially question numbered 53 put to him upon his former examination for discovery, and certain proper questions relating to the subject-matter of question 53.

R. S. Robertson, for the plaintiff.

W. Lawr, for the defendant.

LATCHFORD, J., in a written judgment, said that objection was taken that the motion should have been made, not in Chambers, but in Court.

It was stated by counsel for the plaintiff, and not disputed, that the formal judgment of the Appellate Division directed the amendment of an order made by the Master in Chambers. The present application appeared, therefore, to be based upon the order of the Master in Chambers as amended, and was in the proper form.

The learned Judge said that he had had an opportunity, since the motion was argued, of perusing the reasons for the judgment of the Appellate Division—23rd April, 1918—not yet reported (noted ante 146). It was stated in the reasons that the name of the person to whom the defendant delivered copies of the matter alleged to be libellous “may be illuminating and indicate the purpose underlying the secrecy observed and may even destroy the present defence and aggravate the damages. It might also tend to mitigate them if it turned out that the respondent (the defendant) was misled or inveigled into what he did by his friend.”

The purpose of question 53 was to have the name of the person referred to disclosed, and the Appellate Division had determined that the defendant was bound to make such disclosure. He had refused to do so.

The proper order to make now is one requiring him to attend at his own expense for re-examination as to the name of the person to whom he delivered copies of the document on the publication of which the action was based. Perhaps now that the matter had