not do directly—cross-examine upon an affidavit on production." It is quite plain that this is an *obiter dictum*, and not a decision—moreover, it would seem to be either a misprint or an inadvertence. Mr. Justice Moss was not dealing with an examination for discovery at all, but an examination for use upon a motion for a better affidavit. But whether *dictum* or decision, inadvertence or not, it is far from deciding that information which would otherwise be compellable on an examination for discovery becomes privileged if and when an affidavit on production is made and the information sought would contradict the affidavit—or if not contradict form a basis for a motion for a better affidavit. It is admitted that such document could be called for at the trial—and also (unless the affidavit on production interfered), at the examination for discovery.

I think the appeal should be dismissed with costs to the defendants in any event.

I must again express my astonishment at the attitude of the plaintiff, if his claim is honest.

HON. MR. JUSTICE MIDDLETON. MAY 18TH, 1912.

RE HART.

3 O. W. N. 1287.

Infant — Custody — Habeas Corpus — Application by Father against Maternal Aunt.

Father of a girl, aged 14 years, applied by way of *habeas corpus* for an order for the custody of his daughter, from her maternal aunt, who had cared for the girl since the death of her mother 8 years before.

MIDDLETON, J., *held* that, having regard to the father's rather unfavourable record and the welfare of the child, the application should be refused with costs.

Motion upon return of a writ of *habeas corpus* for delivery of an infant to her father.

R. D. Moorehead, for John Hart, the father.

T. A. Gibson, for Elizabeth Hyde-Powell, maternal aunt.

HON. MR. JUSTICE MIDDLETON:—On the return of this motion it became quite apparent that it was impossible to determine the matter upon affidavit evidence; and the parties