HODGINS, J.A., reading the judgment of the Court, said that the action was for libel, based on a pamphlet printed by the respondent, who pleaded only that the document was not capable of having nor intended to have the meaning attributed to it in the statement of claim. The pamphlet referred by name to the appellant, a member of the legal profession, who went to the front; and the innuendo was that he was (in the pamphlet) charged with both cowardice and unprofessional conduct.

Upon his examination, the respondent refused to disclose the name of the person to whom he gave the copies of the pamphlet after he had printed them—but he said that that person gave him the manuscript to print. The respondent admitted that he was told that the manuscript was secret, and that he destroyed it after printing it.

The true point involved in this appeal was, whether the fact or allegation that an answer might disclose the name of a witness was enough to warrant the refusal to answer.

The learned Chief Justice of the Common Pleas exacted an undertaking from the respondent that on the trial he would "admit publication by him of the printed paper containing the words complained of," and considered that, with such an admission, the appellant was not entitled to press for further answers.

Reference to Marriott v. Chamberlain (1886), 17 Q.B.D. 154, for the rule that, "if the name of a person is a relevant fact in the case, the right that would otherwise exist to information with regard to such fact is not displaced by the assertion that such information involves the disclosure of the name of a witness." There are two exceptions to this rule: (1) where it would be oppressive to require an answer; and (2) where the question is put for a purpose outside the action.

There would be nothing oppressive in compelling answers to the questions asked here; and the other exception was really applicable only to newspapers, as appeared from such cases as Gibson v. Evans (1889), 23 Q.B.D. 384.

There was no reason for extending the protection afforded to newspapers to the printer of a fugitive libel, who, after reading it, asks to be assured that it will lead to no trouble, then prints it, and destroys the manuscript.

The name of the person to whom the copies were delivered was a material fact, and should be disclosed: Massey-Harris Co. v. De Laval Separator Co. (1906), 11 O.L.R. 227, 591, 593; McKergow v. Comstock (1906), 11 O.L.R. 637, 643.

The appeal should be allowed with costs, including those of the order appealed from and the application for leave to appeal,