

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

MAY 16TH, 1910.

*MORLEY v. PATRICK.

Libel—Discovery—Person Libelled not Named—Examination of Defendant — Questions as to Person Intended — Defence of Privilege—Malice.

An appeal by the defendant from an order of SUTHERLAND, J., of the 24th March, 1910, upon a motion by the plaintiffs heard at London, directing the defendant to attend at his own expense for re-examination for discovery and answer certain questions which he refused to answer upon his former examination, and to pay the plaintiff's cost of the motion in any event.

The action was for a libel said to be contained in a letter written by the defendant to the husband of the plaintiff. The defences were: (1) a denial of all the allegations of the statement of claim; (2) that, if the words were written and published as alleged, it was without malice and upon a privileged occasion.

The defendant, on being examined, admitted the authorship of the letter, but, under advice of counsel, refused to answer several questions put to him by counsel for the plaintiff.

The questions which SUTHERLAND, J., ordered him to answer were the following:—

"34. By 'lady friend' in this letter you meant the plaintiff in this action, Thomas Morley's wife?"

"113. Did you intend when you wrote that letter that Morley should understand who you meant?"

"114. Do you know now who you meant,"

"115. Did you ever say on any occasion who it was Denham had made these statements about?"

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and MIDDLETON, JJ.

G. S. Gibbons, for the defendant.

P. H. Bartlett, for the plaintiff.

The judgment of the Court was delivered by MEREDITH, C.J., who said the order was rightly made and should be affirmed; re-

* This case will be reported in the Ontario Law Reports.