

contentions as to the basis upon which payment should be made. The defendants also pleaded the Statute of Frauds.

The order of reference was made at the instance of the defendants and against the protest of the plaintiffs.

All the cases shewed that a wide meaning should be given to the words "matters of account" in sec. 65; and the words are wide enough to warrant a reference in this case—the sole matter in issue being the amount of water taken and the price that should be paid.

The course adopted seemed convenient, as there would probably be much evidence of detail before the amount of water actually taken would be ascertained. The value of the water taken could easily be ascertained, upon well-understood principles applicable where the tort is waived and the wrongdoer is called upon to pay the value of the thing taken upon the implied contract.

The statute, as it now stands, differs from the corresponding provision in the Common Law Procedure Act, and authorises a reference of the whole action when the question in dispute consists wholly or partly of matters of account—the earlier Act permitted the question of account only to be referred.

The appeal should be dismissed; costs to the defendants in the cause.

*Appeal dismissed.*

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FIRST DIVISIONAL COURT.

APRIL 23RD, 1918.

\*HAYS v. WEILAND.

*Libel—Discovery—Examination of Defendant—Disclosure of Name of Person to whom Printed Copies of Libellous Document Given—Destruction of Original—Material Fact—Power to Compel Disclosure.*

Appeal by the plaintiff from an order of MEREDITH, C.J.C.P., in Chambers, refusing to compel the defendant to answer certain questions on his examination for discovery in this action.

The appeal was heard by MACLAREN, MAGEE, and HODGINS, JJ.A., and KELLY, J.

R. S. Robertson, for the appellant.

W. Lawr, for the defendant, respondent.