

the two referred to, considered by themselves, would justify the conclusion of the Referee. But there is another line of cases which shews that in given circumstances there may be some defined right of discovery open to a contributory. These cases are referred to in Whitworth's Case (1881); 19 Ch. D. 118, 120.

In this case, the liquidator refused to enter upon the examination proposed by the contesting contributories. It was for the Referee then to determine whether the right to examine should be entrusted to the applicants to any extent or with what limitations. The Referee knows more about the condition and facts of the case than the appellate Judge. The Referee should consider the application in the view that the contributories may have a claim to invoke the aid of sec. 117: see *Re Penysflog Mining Co.* (1874), 30 L.T.R. 861; and in other aspects the application should be dealt with by him.

No costs of the appeal.

MASTEN, J., IN CHAMBERS.

NOVEMBER 10TH, 1915.

BERLINER GRAMOPHONE CO. v. POLLOCK.

Appeal—Order of Judge in Chambers—Leave to Appeal from—Rule 507, cl. 3 (b)—Patent for Invention—Validity—Pleading—Defence and Counterclaim—Jurisdiction of Supreme Court of Ontario—Patent Act, R.S.C. 1906 ch. 61, secs. 34, 35, 38, 45—Judicature Act, R.S.O. 1914 ch. 56, sec. 3.

Motion by the plaintiff company for leave to appeal from an order of BOYD, C., in Chambers, affirming an order of the Master in Chambers, granting leave to the defendant to set up a defence or counterclaim attacking the present validity of the plaintiff company's patent on the grounds of illegal importation and non-manufacture.

R. C. H. Cassels, for the plaintiff company.

Casey Wood, for the defendant.

MASTEN, J., said that if the motion rested exclusively on the grounds argued before the Chancellor, the motion should fail, for he was unable to see that the defendant was at present a licensee of the plaintiff company.

It seemed, however, that the jurisdiction of the Supreme Court of Ontario to determine whether or not a patent had be-