MASTER IN CHAMBERS.   JANUARY 9TH, 1913.

SPITZER BROS. v. UNION BANK.

4 O. W. N. 594.

*Pleading—Particulars—Production of Books—Defective Affidavit—
C. R. 518.*

MASTER-IN-CHAMBERS, in an action to recover the proceeds of certain cheques the proceeds of which were alleged to have been wrongfully converted by defendants to their own use, made an order on defendant's motion for particulars but refused plaintiffs' counter-motion for the production by defendants of all books, etc., appertaining to the questions at issue between the parties.
Townsend v. *Northern Crown Bank*, 14 O. W. R. 727, distinguished.

The statement of claim alleges that during 1912 and two preceding years the bank " came into possession of certain cheques express orders and post office orders which were the property of the plaintiff—to which defendant acquired no right or title whatever (and) wrongfully collected amount of same and have refused to account or give any credit to plaintiff for the said cheques, etc."

" The total loss to plaintiff—so far as it can ascertain—has been the sum of $3,000."

The defendant before pleading demanded particulars of this definite sum of $3,000.

This was met by a motion by plaintiff for " production by defendant of all books, etc., appertaining to the questions at issue between the parties."

Thomas Moss, for the motion.

D. W. Saunders, K.C., contra.

CARTWRIGHT, K.C., MASTER:—The motion was supported only by an affidavit of plaintiffs' solicitor. The absence of one by an officer of the plaintiff company is not to be commended. After stating the facts out of which the present claim arose, he says that plaintiff has " a certain number of the cheques," but that " the majority are in the possession of the drawees, who refuse to turn them over to the plaintiff, and there are a further number of cheques which the plaintiff has not been traced (sic)." (It may be assumed that this means " has not been able to trace.")

The affidavit then proceeds in violation of Consolidated Rule 518 to say: " I am informed and verily believe " with-