

fish in question in this action and the condition thereof, and were written with a view to obtaining information upon which to base their claim against defendant company and to lay before the solicitors of plaintiffs and the Wolverine Fish Co., Limited, to obtain advice as to the prosecution of this action. Said letters also contain information and advice from the Wolverine Fish Co., Limited, as to the treatment of said fish."

Before this affidavit was filed a motion was launched for a better affidavit, one having been already filed on 26th September.

Shirley Denison, for defendants, contended that the correspondence referred to in the 10th paragraph of the new affidavit on production was not privileged and should be produced.

G. H. D. Lee, for plaintiffs.

THE MASTER.—"The cases mainly relied on were *Wheeler v. LeMarchant*, 17 Ch. D. 675, and *Collins v. London General Omnibus Co.*, 5 R. 355. I think the motion must fail. In the first case *Jessel, M.R.*, says (p. 681), of similar documents, that they "no doubt are protected where they have come into existence after litigation commenced or in contemplation; and when they have been made with a view to such litigation, either for the purpose of obtaining advice as to such litigation, or of obtaining evidence to be used in such litigation."

In the other case *Wills, J.* (at p. 356) says: "I do not think it makes any difference whether at the time this document came into existence an action had been formally threatened or not. If the circumstances were such that no reasonable person could doubt that an action would follow, they might lay the foundation of privilege for a document such as this." And the case of *Southwark Water Co. v. Quick*, 3 O. B. D. 315, is cited as authority for this proposition. See *Bray's Digest of the Law of Discovery* (1904) at p. 14 (secs. 53, 54) and pp. 32 to 36, where all the important cases are collected and discussed.

The motion will therefore be dismissed. But, as plaintiffs admit that a further affidavit was necessary, the costs may be in the cause.