FEBRUARY 19TH, 1903.

DIVISIONAL COURT.

LANZ v. MCALLISTER.

Patent for Invention—Infringement—Apple Syrup—Novelty —Burden of Proof.

Appeal by plaintiff from judgment of MACMAHON, J. (1 O. W. R. 455) dismissing the action, which was brought to restrain the defendant from infringing plaintiff's patented process for manufacturing apple syrup.

A. B. Aylesworth, K.C., for plaintiff.

E. P. Clement, K.C., for defendant.

THE COURT (MEREDITH, C.J., STREET, J.) dismissed the appeal with costs.

BRITTON, J.

FEBRUARY 20TH, 1903.

CHAMBERS.

BEDDELL v. RYCKMAN.

Discovery—Examination of Party—Action by Shareholder against Directors of Company for Discovery and Account—Fraud—Scope of Examination.

Appeal by defendant Cox from order of Master in Chambers (ante 86) directing the appellant to attend for re-examination for discovery and to answer certain questions.

W. H. Blake, K.C., for appellant.

W. R. Riddell, K.C. for plaintiff.

BRITTON, J., held that, unless an order should be made under Rule 472 for the determination of some issue or question in dispute before deciding upon the right to discovery, the order of the Master ought not to be interfered with. It would be difficult to select any one issue or question. It is true, the plaintiff's action is in part for discovery. And now, before there is any trial of the action, by this examination plaintiff is about to get a part at least of what he asks. This is somewhat anomalous: but the plaintiff says he requires the information for the purposes of the trial; that it may be most important in determining the issues. While the question whether the defendants, or any of them, were trustees or not does not depend upon the amount paid by any of them to the different companies, or upon what if anything, defendant Cox got for underwriting any of the preference shares, or what the Canada Cycle and Motor Company paid, it cannot be said, in view of the whole statement of claim, that defendant Cox ought not to answer. These answers may, in