motion as made under Rule 938, I think it is sufficiently clear that the testator's intention was to give James Charles an estate for life only, and thus prevent the application of the rule as to restraint on alienation where an estate in fee simple is given. No order as to costs, except that vendor pay costs of infants.

JUNE 16TH, 1902.

C. A.

MACLAUGHLIN v. LAKE ERIE AND DETROIT RIVER R. W. CO.

Leave to Appeal—Supreme Court of Canada—Contract—Construction of—Case not Involving Large Interests or Great Loss.

Motion by plaintiff for leave to appeal from judgment of Court of Appeal (1 O. W. R. 266).

The motion was heard by ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, JJ.A.

F. C. Cooke, for plaintiff.

A. W. Anglin, for defendants.

OSLER, J.A.—The question was simply one of construction of the contract between the parties and the ascertainment of the defendants' rights thereunder. On this point there was a difference of opinion, but none on the question whether the contract ought to be reformed—a point which was throughout decided adversely to the plaintiff.

That there was a difference of opinion is not of itself a reason for granting leave to appeal, certainly not where the question at issue is not one of large and general application—Fisher v. Fisher, 28 S. C. R. 494, and James v. Grand Trunk R. W. Co. (not reported), illustrates both aspects of this—or the action is not one involving large interests or great loss to the unsuccessful party.

Here, what is complained of does not involve any change in the appearance of the plaintiff's patented invention, and is an improvement on it from the defendants' point of view. And, whether an improvement or not, it belongs to and may be made use of by the plaintiff as part of his invention. There is no evidence that he suffers or is likely to suffer serious damage by what is complained of, and the action appears to have been brought more because of the plaintiff's objection to any change being introduced by the defendants in working his invention than for any other reason, unless, indeed, it were to enable him to get rid of his agreement altogether.