

advance is made on all the other shipments. Nor is it suggested in his letter of 1st December, 1911, that he is absolved by losses from making advances; although the letter of the respondents' solicitor, to which it is an answer, distinctly claimed the remaining advances as a right. His suggestion of arbitration, too, is hardly consistent with the appellant's present position.

Taking all the circumstances into consideration, I think the appellant has failed to shew enough to satisfy an Appellate Court that the judgment is so erroneous that it should be set aside.

The judgment should be affirmed, and the counterclaim formally dismissed. The learned trial Judge was correct in deducting the number of barrels shewn to grade as No. 3.

The respondents should have the costs of the appeal. I think there should be no costs up to and including the trial; as the litigation has been induced either by the carelessness of both parties in the making of their contract, or, if the view of the learned trial Judge is adopted, by a deliberate intent on both sides to leave the terms of the contract at large until they should be determined by a Court.

HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MAGEE, HON. MR. JUSTICE MACLAREN, J.J.A., and HON. MR. JUSTICE LEITCH agreed.

HON. MR. JUSTICE KELLY.

SEPTEMBER 18TH, 1913.

ST. CLAIR v. STAIR.

5 O. W. N. 28.

Discovery—Further and Better Affidavit on Production—Privilege—Grounds of—To be Set Out Specifically—Dates and Authors of Reports—Not Compulsory to Give—Sufficient Identification Necessary—Appeal—Leave to Granted.

KELLY, J., gave plaintiff leave to appeal from judgment of Falconbridge, C.J.K.B., 24 O. W. R. allowing appeal of defendants, "The Jack Canuck Publishing Company, Limited," from judgment of the Master-in-Chambers ordering the said defendant to file a further and better affidavit on production.

Swaisland v. Grand Trunk Rv. Co., 3 O. W. N. 960, considered.

Application for leave to appeal from an order of the Chief Justice of the King's Bench of July 4th, 1913, 24 O. W. R. allowing an appeal by the defendant, the Jack Canuck Publishing Co., Ltd., from an order of the Master in Cham-