ST. CLAIR v. STAIR—KELLY, J., IN CHAMBERS—SEPT. 18.

*Appeal—Leave to Appeal to Appellate Division from Order of Judge in Chambers—Discovery—Affidavit on Production.*]—Application by the plaintiff for leave to appeal from the order of FALCONBRIDGE, C.J.K.B., in Chambers, 4 O.W.N. 1580, allowing an appeal by the defendants, the "Jack Canuck" Publishing Company Limited from an order of the Master in Chambers, 4 O.W.N. 1437, requiring the defendant company to file a further and better affidavit on production. To support his application, the plaintiff relies on two grounds: (1) that the claim of privilege for the documents in question was defective and insufficient in law; and (2) that the dates of the reports (the documents referred to) and the names of the authors should have been given. KELLY, J., said that the application was not sustainable on the latter ground. In the schedule to the affidavit on production, the documents were described as "a quantity of reports fastened together, numbered 1 to 77 inclusive, initialled by this defendant." This fell clearly within the authority of the three cases cited in the judgment of the learned Chief Justice of the King's Bench, namely: Taylor v. Batten (1878), 4 Q.B.D. 85; Bewicke v. Graham (1881), 7 Q.B.D. 400; and Budden v. Wilkinson, [1893] 2 Q.B. 432. In the last-named of these cases, where the description of the documents was to the same effect as used here, the Court adopted the principle of decision laid down in Taylor v. Batten, "that the object of the affidavit is to enable the Court to make an order for the production of the documents mentioned in it, if the Court think fit so to do, and that a description of the documents which enables production, if ordered, to be enforced, is sufficient," and held the affidavit in that respect to be sufficient. Following these cases, the reports mentioned in Rogers's affidavit were sufficiently identified.—On the other ground, however, the learned Judge thought it desirable that the leave asked for should be granted. The plaintiff relied upon Swaisland v. Grand Trunk R.W. Co., 3 O.W.N. 960, where Mr. Justice Middleton expressed the view that the claim for privilege should have been more clearly and specifically stated, and that the affidavit should have stated that the reports there referred to were provided solely for the purpose of being used by the defendants' solicitors in the litigation, etc. The rule requiring the use of the word "solely" was not of universal application; and, while it might be argued that the present case was distinguishable from Swaisland v. Grand