

TAYLOR, C.J.]

[June 4.

HECTOR *v.* CANADIAN BANK OF COMMERCE.

Practice—Production of documents—Appeal from the referee.

The question in dispute on this application was whether the defendants could be required to file a further and better affidavit on production. In the affidavit filed they set out in a schedule a number of documents which they produced, and in another schedule a number of documents which they objected to produce. Amongst these were the books of the bank, consisting of deposit, and other ledgers and letter books, and the reason for refusing production of these was stated to be that the books are in daily use at Brantford in Ontario, and could not be produced without great inconvenience and interruption to the bank's business, but the solicitor for the bank offered to give the plaintiff's solicitor copies of all the accounts in these books which relate to the matters in question.

Held, that the plaintiff should be satisfied with this.

Defendants also objected to produce letters that had passed between the managers at Brantford and Winnipeg, giving as a reason that they were privileged communications relating solely to the said bank's case and defence, and did not concern the plaintiff's case.

Held, following *Coombe v. Corporation of London*, 1 Y. & C. 631; *Bewicke v. Graham*, 7 Q.B.D. 400; *Budden v. Wilkinson*, (1893) 2 Q.B. 432; *Morris v. Edwards*, 23 Q.B.D. 287, 12 App. Cas. 309, that such an affidavit is conclusive against the opposite party, and the Court will not order a production or inspection of the documents claimed to be protected, unless it can be proved out of the mouth of the party by whom it is filed, or by his admissions, that the affidavit is untrue.

Documents are sufficiently described in an affidavit on production if the Court is thereby enabled to make an order for their production in case it becomes necessary: *Taylor v. Batton*, 4 Q.B.D. 85.

Appeal dismissed with costs.

Mulock, Q.C., for plaintiff.

Perdue, for defendants.

Province of British Columbia.

SUPREME COURT.

DAVIE, C.J., MCCREIGHT, J., }
WALKEM, J.

[May 11.

MCADAM *v.* HORSEFLY HYDRAULIC MINING CO.

Contract—Inspection.

Appeal from decision of Walkem, J., reported ante p. 169, dismissed with costs.

Wilson, Q.C., for appellants.

McNeill, for respondent.