ground that it was brought in the name of "J. W. Lang & Co." as plaintiffs, not being the name of an existing firm or partnership, but simply the name in which J. W. Lang carried on business, Osler, J.A., set aside their judgments with costs. *Mason* v. *Mogridge* was distinguished, not only on the ground that it dealt with an application for summary judgment, but also because the real name of the plaintiff did not appear in the style of cause. The words "& Co.," following the plaintiff's name in the style of cause, were regarded as mere surplusage; but, even if not, the case was thought to be clearly one for amendment on proper terms, that is, on payment of costs if anyone was shewn to be prejudiced by the amendment. On the latest recurrence of the mistake made in *Lang* v. *Thompson* (*b*), the defendant's counsel consented to the issue of an order for amendment, nunc pro tunc.

Narrowed as was the scope of such precedents as *Mason* v. *Mogridge* when read in the light of *Lang* v. *Thompson*, our courts have gone further; and, in the Division Court case of *Fairles Milling Co.* v. *Dempster* (*c*), upheld the right to amend in an action where a plaintiff, suing in a trade name other than her own, sought judgment for a debt.

These Division Court actions furnish apt illustrations of the High Court Practice, for although the Division Courts Act contains no provision similar to Consolidated Rule 231, enabling a person who carries on business under a partnership style to be sued under that style, there is no provision in the procedure of either court for suing in the firm name on behalf of one carrying on business in a name other than his own.

It appeared at the hearing of *Fairles Milling Co.* v. *Dempster* that the name in which the action was brought was the trade name of Margaret Fairles. When leave to amend was asked, it was objected fo the defence that as there was no plaintiff entitled to sue, the court could not make an order for amendment commencing the action in the name of a plaintiff entitled to sue, and thus institute a new action by order instead of by summons. The Division Court judge allowed the amendment, and judgment was

(*b*) *Percival* v. *Mumm* (unreported).

(*c*) Tenth Division Court (York), 1901.