

upon assets in the hands of the defendant Humble, as sheriff, in priority to the claim of defendant Green; and also an interpleader issue.

R. M. Dennistoun, Winnipeg, and P. E. Mackenzie, Kenora, for plaintiffs.

F. H. Keefer, Port Arthur, for defendant Mary Green.

J. F. MacGillivray, Kenora, for defendant John Smart.

ANGLIN, J.:—The plaintiffs are an incorporated company carrying on business in Winnipeg as wholesale grocers. The defendants William Smart and John Smart are sued as members of an alleged partnership. They carried on business as general merchants at Keewatin. The defendant Margaret Green is a judgment creditor of the defendant William Smart, and the defendant Humble is the sheriff of the district of Rainy River.

Upon the evidence adduced at the trial the following facts were found. The business carried on at Keewatin under the name of W. & J. Smart was the business of the defendant William Smart. The defendant John Smart, who is an infant, was not a partner in the business, but was the "J. Smart" whose name appeared in the firm name, under which the business was carried on. The defendant Margaret Green lent to the defendant William Smart—her son-in-law—the money for which she holds a judgment, to enable him to start in business; and a considerable part of the money advanced by her was paid by William Smart to the plaintiffs on the account for goods supplied by them to W. & J. Smart, for the balance of which they now seek to recover judgment.

In dealing with the plaintiffs and other wholesale merchants, William Smart represented that his brother John was his partner in the firm of W. & J. Smart. He obtained credit partly upon this representation. John Smart was cognizant that he was being held out by William as a partner in the business, and that his name was being put forward as that of a partner in advertisements and otherwise. He acquiesced to this course of holding out, and he conducted himself in relation to the business itself in many matters not as a mere employee, but as a partner or joint proprietor. His infancy was not known to the plaintiffs or to the other creditors of the business; but there is no evidence of any actual representation having been made that he had attained his majority.