

be more useful on a motion to amend the statement of claim than for the present purpose.

At present the action is based on the judgment. No defence surely can be more appropriate than that set up. If it can be proved, it will ensure a dismissal with costs, even if it does not result in a judgment for the defendant B. A. Cook as the result of the account which he asks for.

If the plaintiffs really wish to have the impeached conveyances set aside as preferential as to the mortgage and void as to the equity of redemption, and to ask for the usual reference for enabling all the creditors of B. A. Cook to come in and share equally, they may do so. In that case the order will dismiss the motion, with liberty to plaintiffs to amend as they may be advised—all costs lost or occasioned thereby, together with the costs of this motion, to be to the defendants in any event. If, however, the plaintiffs only desire to realize on their own judgment, there will be a simple dismissal of the motion, with the same disposition of the costs. The plaintiffs should make their election in a week. If they intend to rely on their judgment, it is unnecessary to allege other indebtedness to themselves or to others. If they really wish to make further claims and in respect to both to share with other creditors *pari passu*, then the appropriate relief, and that only, should be asked.

JANUARY 19TH, 1909.

DIVISIONAL COURT.

USSHER v. SIMPSON.

Broker—Purchase of Shares for Customer—Contract—Repudiation—Tender—Evidence—Letter Written “without Prejudice”—Delivery of Shares—Sufficient Number Kept on Hand—Principal and Agent—Damages—Indemnity.

Appeal by defendant from judgment of MACMAHON, J.,
12 O. W. R. 396.

G. H. Watson, K.C., and Grayson Smith, for defendant.

E. F. B. Johnston, K.C., and A. C. McMaster, for plaintiffs.