

Full Court.]

DEMPSTER v. FAIRBANKS.

*Suit by assignee of chose in action—Defective statement of claim—Amendment by trial judge—Costs.*

In an action brought by plaintiff as assignee of W. H. H. against defendant, the statement of claim read as follows: "That the said W. H. H. duly assigned the said debt to the plaintiff."

The trial Judge was of opinion that on the merits as disclosed by the evidence plaintiff was entitled to recover, but he sustained an objection made to the statement of claim under c. 61, viz., that it was not alleged that the assignment was made in writing, which was necessary to entitle plaintiff to sue in his own name, and gave judgment accordingly.

*Held*, that it was the duty of the trial Judge on the facts as found by him, to have made the amendment necessary to enable plaintiff to recover, and that as he had failed to do so, the case was clearly one for the interference of the Court.

Amendment ordered, and judgment directed to be entered for plaintiff with costs of trial, but no order made as to costs of appeal.

*W. F. MacCoy, Q.C., for plaintiff.*

*F. J. Congdon, contra.*

Full Court.]

MALZARD v. HAR.

*Interpleader—Evidence taken before commissioner—Same weight not to be attached to findings of Judge as if he had heard the witness personally—At same time substantial reason must be shown for reversing.*

The evidence on an interpleader issue was taken before a commissioner and afterwards submitted to the trial Judge, whose finding was in favor of the defendant.

*Held*, that under these circumstances the same weight was not to be given to the finding of the trial Judge as if the witness had been examined before him in open Court, the Court being in as good a position as the trial Judge to form an opinion as to the credibility of witnesses and the weight to be given to their evidence.

*Held*, per MEAGHER, J., RITCHIE, J., concurring, nevertheless that there must be some substantial reason for reaching a different conclusion, before the Court of Appeal would be justified in interfering with the finding of the trial Judge.

*Held*, also, that as no such reason had been shown in this case, the judgment appealed from should stand.

*R. E. Harris, Q.C., for plaintiff.*

*A. MacKay, for defendant.*