

judgment; costs in the cause. But, as a term, defendant must forthwith put in his defence and facilitate the progress of the action in every way. Plaintiffs are to be at liberty to move against the defence to be delivered as they may be advised, notwithstanding the dismissal of the present motion. It may be that under the British Columbia procedure it is not necessary to shew an original writ, even if demanded by a defendant. No other defence is suggested in defendant's affidavit affecting the validity of the judgment.

ANGLIN, J.

DECEMBER 6TH, 1904.

TRIAL.

### JOHNSTON v. BARKLEY.

*Res Judicata—Action to Set aside Assignment of Chose in Action—Previous Garnishee Proceeding in Division Court—Establishment of Validity of Assignment—Parties—False Evidence—Fraud—Costs.*

Action by a creditor of defendant Nora Barkley to set aside an assignment (dated 16th February, 1904) of her salary as a school teacher for 1904 to defendant Zenas Barkley, her father, as fraudulent and void.

J. Leitch, K.C., and J. A. C. Cameron, Cornwall, for plaintiff.

G. I. Gogo, Cornwall, for defendants.

ANGLIN, J.—. . . The only substantial defence is . . . res judicata, founded upon a judgment of the 3rd Division Court in Stormont, Dundas, and Glengarry, in a garnishee proceeding to which the present plaintiff and defendants were parties, plaintiff as primary creditor, defendant Nora Barkley as primary debtor, defendant Zenas Barkley as claimant under the . . . assignment. Upon the hearing of the garnishee summons in the Division Court the validity of this assignment was the question for determination. By suppressing material facts and by giving evidence that was wilfully false, the claimant succeeded in securing from the learned junior Judge an adjudication that the garnishees (the board of school trustees) were not indebted to the primary debtor. The primary creditor moved for a new trial. In dismissing this application the learned Judge expresses his opinion that defendant Zenas Barkley is thoroughly honest and that the assignment to him was made in perfect good faith. How such a conclusion was reached, even upon the partial statement of facts before the Division Court Judge,