

Mathers, C.J.]

[Dec. 9, 1911.]

## WINNIPEG GRANITE, ETC., CO. v. BENNETTO.

*Discovery—Pleading—Statement of claim shewing no right to relief claimed against party examined—Refusal to answer questions—Assignment by A. to B. in trust for C.*

If the statement of claim does not state a case entitling the plaintiff to any relief against one of two defendants, an order should not be made compelling him to answer, on his examination for discovery, questions which would be relevant if a good cause of action had been disclosed.

The case alleged against the defendant McLaws was simply that the plaintiff company had assigned to him certain accounts and securities to be held by him as trustee for his co-defendant Bennetto as collateral security to a chattel mortgage which the plaintiff had given to Bennetto, and that Bennetto had collected through McLaws large sums of money upon such accounts and securities for which Bennetto had not accounted to the plaintiff. It was not alleged that McLaws had retained any of the moneys collected in his hands, or that the amount collected exceeded the amount necessary to discharge the mortgage.

*Held*, that, as the case was stated, McLaws was not a trustee for the plaintiff company and was not liable to account to them, and they had no right to complain because he had not done so, and no right to any relief against McLaws was disclosed. If it had been alleged in the statement of claim that McLaws had collected more than enough to satisfy the chattel mortgage and that the surplus was in his hands and that he had refused to pay it over, even though he had collected it as trustee for Bennetto, he would be a proper party to the action and the plaintiff would be entitled to relief against him: *Cooper v. Stoneman*, 68 L.T. 18.

*Stacpoole*, for plaintiff. *MacNeil*, for McLaws.

Robson, J.]

[Dec. 12, 1911.]

## SVEINSSON v. JENKINS AND WALLACE.

*Vendor and purchaser—Specific performance—Action by sub-purchaser against original vendor—Privity of contract.*

A purchaser of land from A., whose only title to the land is under an agreement of purchase from B., the owner, may, after default of A. in carrying out his contract with B., on notifying B., of his interest and tendering the full amount owing to him