

make an order such as was made in that case. What machines the defendants had made and what sales, or whether they had made any, must be within the knowledge of the defendants. If they had done none of these things, they could safely plead to that effect. Then, with the case at issue and discovery made, it would be open to them to amend their defence as they might see fit. The motion should be dismissed; costs in the cause. The defendants to plead in eight days. Leave reserved to apply for further particulars after discovery, if desired. The case might be put on the peremptory list two weeks after being set down, so as to have a trial before vacation. Grayson Smith, for the defendants. Britton Osler, for the plaintiffs.

JAMIESON MEAT CO. v. STEPHENSON—BRITTON, J.—APRIL 30.

Partnership—Failure to Establish—Money Claim—Assignment of Interest in Business—Attack by Creditors—Disclaimer by Assignee—Judgment—Costs.]—Action against two defendants, Stephenson and Spragg, for the price of meat supplied to the "Savoy Café" at Cochrane. The plaintiffs alleged and attempted to prove that the café was being run or carried on by the defendants as partners. Stephenson and Spragg both denied that any partnership ever existed between them in this café business. The plaintiffs' claim was admitted by Spragg as against the café, and, therefore, against Spragg, as he alone, as he contended, carried on the business. The learned Judge said that the question was entirely one of fact, and, upon the evidence, he must find that the defendant Stephenson was not a partner, and that the plaintiffs did not supply meat upon his credit.—The plaintiffs also attacked an assignment made by Spragg to Stephenson on the 18th January, 1912, purporting, in consideration of \$1, to assign to Stephenson all Spragg's interest in the restaurant business known as the Savoy Café, the stock in trade, furniture, goodwill, etc. The real consideration was, that Stephenson agreed to pay certain liabilities of the restaurant. The plaintiffs alleged (by amendment) that the assignment was void as a preference to Stephenson. The defendant Stephenson said, at the trial, that he would not accept the interest of the defendant Spragg in the property mentioned, upon the terms under which it was given, and he had no desire to prejudice the creditors of Spragg or to prejudice his own claim. The learned Judge said that, in regard to this claim, the judgment should be, with the consent of Stephenson, that,