

This amendment will not in any way put defendants or either into the position that they or either of them must be injured. They will not be made liable upon the amended pleading unless the evidence warrants it, and plaintiff is entitled to be heard and in this action.

It was argued that the discretion of the local Judge, who refused leave, ought not to be interfered with. This is very different from the exercise of discretion at the trial by a trial Judge. At this stage of the proceedings, plaintiff should be allowed as of right, upon terms, to amend.

The appeal will be allowed, the order dismissing plaintiff's motion for leave rescinded, and plaintiff is to have the leave to amend as asked. Costs of motion to amend and of the amendment to be costs to the defendants in any event. Costs of this appeal to be costs in the cause. Defendants may re-examine plaintiff for discovery if they desire to do so, and plaintiff to attend at his own expense upon an appointment for such examination.

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ANGLIN, J.

NOVEMBER 20TH, 1906.

TRIAL.

McMURCHIE v. THOMPSON.

*Chose in Action—Voluntary Assignment of Fund to Wife of Assignor—Informality—Validity as Equitable Assignment,—Subsequent Assignment for Value—Priority—Notice to Holders of Fund—Executors—Oral Notice to One.*

An interpleader issue to determine whether defendant, a prior volunteer assignee, or plaintiffs, subsequent assignees for value, should be held entitled to the proceeds of the share of the deceased husband of defendant under the will of his father.

E. L. Dickinson, Goderich, for plaintiffs.

W. Proudfoot, K.C., for defendant.

ANGLIN, J.:—James Thompson sen., who died on 6th July, 1885, bequeathed to his son James (the late husband