

ments, and transfers referred to in the 5th sub-clause of paragraph 3 of the statement of claim," confining the plaintiff at the trial to the particulars which he should deliver pursuant to the order, and directing that in default of delivery of the particulars the sub-clause should be struck out without further order.

The plaintiff was the assignee for the benefit of creditors of B., and the action was to set aside, either as fraudulent against creditors or as fraudulent preferences, certain securities alleged to have been given by B. to the defendants.

In sub-clauses 1 to 4 particulars were given of certain of the securities which were impeached. Sub-clause 5 stated that B. also executed other conveyances, assignments, and transfers to the defendants.

W. Laidlaw, K.C., for the plaintiff.

F. Arnoldi, K.C., for the defendants.

MEREDITH, C.J., said (after consultation with other Judges who approved his view) that the appeal raised a somewhat important point of practice, whether such an order should be made as was made by the Master, or an order allowing the plaintiff to have discovery from the defendants' officers before the statement of defence was delivered, and requiring him to deliver particulars after discovery had been obtained. The practice given effect to by the Master appeared to be an inconvenient and cumbrous one, as applied to a case in which a plaintiff was unable to give the particulars until he had had an opportunity of examining the defendant within whose knowledge the particulars wholly lay. . . . To permit the plaintiff to have discovery now and to require the particulars to be delivered after the discovery is had, does no injustice to the defendants, and avoids the necessity of an amendment of the statement of claim, and does not put the plaintiff, as he is put by the Master's order, in such a position that he may never be able to get the discovery necessary to enable him properly to frame his pleading. . . .

[Reference to *Gordon v. Phillips*, 11 P. R. 540; *Miller v. Harper*, 38 Ch. D. 110; *Waynes Merthyr Co. v. D. Radford & Co.*, [1896] 1 Ch. 29.]

Order varied by directing that the plaintiff be at liberty to examine for discovery; the examination to take place within 10 days, and the time for delivery of particulars to be one week after discovery obtained. Costs of the appeal to be costs in the cause.