

Q.B. Div'l Court.]

[June 13.

GRAHAM, *v.* TEMPERANCE AND GENERAL LIFE INSURANCE COMPANY OF  
NORTH AMERICA.

*Discovery—Action for account—Discretion—Preliminary trial of right to  
require account—Rule 655.*

Whenever discovery is sought in aid of an issue which must be determined at the hearing, the plaintiff is entitled to it to help him prove the issue ; but where it is sought in aid of something which does not form part of what he must prove at the hearing, but is merely consequential to it, the right is not absolute, but discretionary, until the plaintiff has established his fundamental right at the hearing.

Where the plaintiff claimed a declaration of the right of himself and all other persons insured in the temperance section of the defendant company to the profits earned by that section, payment thereof, and an account and apportionment thereof,

*Held*, that upon the mere statement of the plaintiff in pleading that he was the holder of a policy entitling him to share in certain profits of the company, and without any proof of the statement, the court, in its discretion, should not require the company to produce and lay open to him all their books of account and the papers relating to them ; but it was a proper case in which to permit the defendants to apply, under Rule 655, for an order for a preliminary trial of the plaintiff's right to require an account, and to postpone discovery of the books until after such trial.

*C. D. Scott* for the plaintiff.

*W. H. Blake* for the defendants.

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WILLIAMS *v.* LEONARD.

*Amendment—Rule 444—Hardship—Defence—Bills of Sale Act—Chattel mortgage—Description—Sufficiency.*

Under Rule 444 an amendment should be allowed at any stage of the proceedings if it can be made without injustice to the other side ; and there is no injustice if the other side can be compensated by costs.

*Stewart v. North Metropolitan Tramways Co.*, 16 Q.B.D. 556, applied and followed, notwithstanding the difference in the English Rule.

And, *semble*, a matter of mere hardship should not govern the question of granting or refusing an amendment.

And where, in an action to recover possession of a chattel, the defendants, who were subsequent *bona fide* purchasers for value without notice of the plaintiff's purchase, were at the trial refused liberty to amend their defence by setting up the provisions of the Bills of Sale Act, which amendment would have called for no additional evidence, a Divisional Court allowed it upon appeal.

Judgment of *ROSE, J.*, reversed.

A chattel mortgage purported to transfer the goods described in the schedule, all of which were upon the premises of the mortgagor in a city, described by street and lot. The schedule described certain machinery upon