

order should be made, except the other creditors, whose dividends would be lessened if the plaintiff established his claim.

It was contended, however, by counsel for the assignee: (1) that the order should not be made until a prima facie case was made out, which he argued has not been done; (2) that the plaintiff's claim sounded in damages, and was not provable as against the assignee; and (3) that no sufficient excuse for failure to apply before the expiration of the 30 days had been shewn.

The learned Judge was unable to agree that the order should be withheld on any of these grounds. The claimant swore that he had a meritorious claim against the debtor for a large sum, arising out of various transactions. There was no reason to suspect, much less to assume, that the claim was fictitious or unfounded. Part of the claim might sound in damages, and as such might not be provable, but the Court which tried the action would determine that. It was true that the claimant has not shewn that he could not have applied for this order before the 30 days expired, but it must be remembered that he had an action pending against the debtors, and in that action he had some ground for thinking that the assignee might be added as a party defendant. He served his notice of motion to add the assignee in that action before the 30 days expired, but the motion was not heard until after, when it was dismissed without prejudice to the present application being made: see *Jarvis v. O'Hara* (1919), ante 72.

In all the circumstances, the order asked for should be made. The action against the assignee might be begun at any time within 10 days from this date.