

plaintiff to some measure of relief, but whether any and if so, to what extent relief should be granted can only be determined after the testimony on both sides has been adduced.

The defendants besides disputing the plaintiff's claims and putting her to strict proof set up that an order was made in liquidation proceedings pending against the defendants the Birkbeck Company that no action should be commenced against the company or its liquidator the defendants the London & Western Trust Co. without the permission of the Court and that no consent had been given to the bringing of this action.

At the opening of the proceedings at the trial the defendants' counsel raised the objection that no consent had been obtained. This was contested by the plaintiff who stated that if time was given she could produce the order granting permission to bring the action, and after some discussion the learned Judge was prepared to grant an adjournment to enable that to be done. The defendants' counsel then raised the objection as to the assignments and considerable discussion ensued and it is said that in the course of it the plaintiff admitted the fact of an assignment. But this is scarcely correct. She stated that a paper had been executed to her brother but never delivered and that any other assignment was not absolute but merely as security. In truth there was no proof by admission or otherwise of the execution of any assignment.

So far as appeared also any assignment was subsequent in date to the commencement of the action.

In any case the utmost effect that should have been given to the assignments supposing them to have been proved would have been to direct the case to stand over to enable the plaintiffs to procure the consent of the assignees to become co-plaintiffs or failing their consent, to make them defendants.

The plaintiff was placed at a disadvantage in meeting this objection which as already stated was not set up in pleading and no doubt if that fact had been pointed out to the learned Judge he would not have given effect to the objection without first giving the plaintiff an opportunity of meeting it in any manner—which she might be advised was proper.

As it was, a mistake was made for which no doubt the plaintiff was to some extent responsible, but the defendants