

Meredith, C.J., Falconbridge, J.] •

[April 23,

SYDNEY CHEESE AND BUTTER ASSN. v. BROWER.

Discovery—Action for account—Denial of right—Production of books—Prejudice.

To an action by an incorporated association of cheesemakers against the president and salesman for an account of all moneys received by him for or on behalf of the plaintiffs for three years past, and the application thereof, and for delivery up of all books and documents in his possession belonging to the plaintiffs, and for an account of profits made by the defendant, one of the defences was that the defendant undertook the sale of the plaintiffs' cheese as a part of his own business, and that it was expressly agreed that he should not be called upon to divulge the names of the persons from whom he received orders, or give any other information touching his business or the account of sales or the bank account in connection with his business, and when examined for discovery he objected to produce his books and documents showing sales and prices realized and persons to whom sales made, because, as he alleged, that would in effect give the plaintiffs what they sought in the action before they had established their right to it, which was expressly contested.

Held, that, as the fiduciary relationship existing between the parties was practically admitted, the position of the plaintiffs in seeking accounts and inquiries was not exactly like that of a plaintiff whose right depended on his establishing a case for them at the hearing. The defendant set up an extraordinary agreement, the probability of establishing which was not very great, and this was an element in determining the matter in the exercise of a sound discretion. The plaintiffs were, therefore, entitled to the discovery.

Shepley, Q.C., for defendant. *A. Hoskin*, Q.C., and *S. Masson*, for plaintiffs.

Boyd, C.]

BELL v. WILSON.

[April 30.

Costs—Slander—Verdict for \$1.

Where, in an action of slander, the jury returned a verdict for the plaintiff for \$1, the trial judge refused to deprive the plaintiff of costs, his conduct not having been reprehensible, and the small verdict being explained by the condition of the defendant at the time the words were uttered.

A. C. Shaw, for plaintiff. *Watson*, Q.C., for defendant.