

DUNN v. DOMINION BANK—HOLMESTED, SENIOR REGISTRAR, IN CHAMBERS—OCT. 7.

*Writ of Summons—Special Endorsement—Statement of Claim Delivered as well—Irregularity—Setting aside—Form 5—Rules 56, 111, 112, 127—Amendment—Affidavit Filed with Appearance—Statement of Defence—Practice.*—The plaintiff issued a writ of summons endorsed with a claim for several sums of money which, he alleged, the defendants “held and received” to his use, but which they had wrongfully withdrawn from and improperly charged to his account, purporting to be the amounts of cheques which, as he alleged, were forgeries. There was a specific statement in the endorsement as to each amount. The writ purported on its face to be “specially endorsed.” The claim endorsed was, notwithstanding the allegations regarding the alleged forgeries, in substance a claim for “money had and received”—a claim which may properly be specially endorsed (see Form 5). The defendants accepted the writ as a specially endorsed writ, and filed an affidavit with their appearance, as required by Rule 56. Rule 111 provides that “where the writ is specially endorsed such endorsement shall be treated as a statement of claim and no other statement of claim shall be necessary.” Notwithstanding this Rule, the plaintiff filed a new statement of claim. This second statement of claim the defendants move to strike out. The motion was heard before the Senior Registrar, sitting for the Master in Chambers. The learned Registrar said that what the plaintiff had done was in effect to file two statements of claim; and that was a practice which was not warranted by the Rules. Where a plaintiff specially endorses his writ, that constitutes his statement of claim, and he is not at liberty to deliver any other statement of claim without leave. After a defence has been filed, he may amend the endorsement, and, if need be, file an amended statement of claim under Rule 127; but he cannot, before defence, deliver a new statement of claim or amend the endorsement on the writ without the leave of the Court. In the present case the new statement of claim appeared to be a mere reiteration of the special endorsement, and no reason was suggested why it should be allowed, even as an amendment. Therefore, the order should go as asked striking it out, and the defendants should have the costs of the motion in any event of the action. The defendants asked for an extension of time for filing a defence, or that the affidavit filed might be ordered to constitute the defence. There was nothing in the