The plaintiffs do not apparently rely on this bar to the defendant's proceedings, as their demurrer does not object to the avowry on this ground, and in their pleas they actually traverse the fact *of the rolls being returned as alleged in the avowry.*

We cannot, however, pass over the statement, fatal as we deem it to the defendant's justification.

Judgment for the plaintiffs on demurrer.

COMMON PLEAS.

(Reported by E. C. Jones, Esq, *Barrister-at-Law, Reporter to the Court.)*

Smart v. The Niagara and Detroit Rivers Railway Co.

Special endorsement—Summons—Balance on account stated—Interest.

Held, that an endorsement on a writ of summons as follows "1861, Dec 31st To balance of account due and owing by the within named defendants at this date for work and labour done and performed by the plaintiff for the defendants at their request, and for moneys paid by the plaintiff for the defendant at their like request, $5,950 47," with the usual claim for interest from that date, was a sufficient endorsement to entitle the plaintiff to sign judgment on default of appearance, and on a motion to set aside the judgment, &c, the indulgence was granted on payment of all costs, and giving security for the debt.

D. B. Read, Q.C, obtained a rule to show cause why the judgment signed in this cause should not be set aside with costs, on the ground that the claim of the plaintiff, as endorsed on the writ of summons, is not such a claim as might be specially endorsed on such writ so that final judgment could be signed thereon, and because such judgment was obtained without the knowledge of the defendants, their officers, attorneys or agents, and in breach of faith and violation of certain promises made by the plaintiff to the president of the said railway company, and that the plaintiff has or had no right of action against the defendants for the sum sued for, or for which judgment is signed, or any part thereof, the same not being due by the defendants to the plaintiff, and because the defendants have a good defence on the merits and on grounds disclosed in affidavits and papers filed, or why the defendants should not have such relief on grounds disclosed in affidavits and papers filed without imposing the terms of giving security for the amou . of the judgment and costs as required by an order made in this cause on the 24th June, 1861, by the Hon. Mr. Justice Richards.

He moved on the affidavits used on the application in Chambers, all of which on both sides were before the court.

On hearing the parties at Chambers, an order was made on the 24th June, 1862, by Richards, J., that the judgment and all subsequent proceedings in this cause be set aside on the defendants giving security to the satisfaction of the deputy clerk of the crown at Woodstock for the amount of the said judgment, within four weeks from the date of that order, and upon payment of the costs of the said judgment and subsequent proceedings, and of opposing that application, within the said time, and upon payment of the costs of any action brought by the above-named plaintiff on the said judgment; and this order was without prejudice to an application being made next term to the full court to set aside the said judgment and all subsequent proceedings if the defendants should not take advantage of the terms of that order, proceedings in this cause being stayed during the above limited period of four weeks, and also being stayed in any of said actions on said judgment for the said time.

The special endorsement on the writs was as follows: "1861, Dec. 31. To balance of account due and owing by the within named defendants at this date, for work and labour done and performed by the plaintiff for the defendants and at their request, and for moneys paid by the plaintiff for the defendants at their like request. $5,950 47.

"The plaintiff claims interest on £1,487 12s. 4d. from the 31st day of December, 1861, until judgment. *N.B.* Take notice, &c., and the sum of £5 for costs."

Beard showed cause to the rule, referring to *Standing* v. *Torrance*, 4 U. C. L J. 235; *Rodway* v. *Lucas*, 10 Ex. 667; *Hodsoll* v. *Baxter*, 1 E. B. & E. 884, C. L. P. Act, 48 sec.; *Knight* v. *Pocock*, 17 C B. 177; *Bayntun* v. *Satchell*, 17 C.B. 383; *Maltby* v. *Murrells*, 5 H. & N. 819; *Bank of Upp r Canada* v. *Vanvochis*, 2 U.C. Prac. Rep. 383; *Hawkins* v. *Hessell*, 12 M. & W. 777; *Leigh* v. *Baker*, 2 C. B. N. S. 367; *Mearns* v. *Grand Trunk Railway Co.*, 6 U. C. L. J. 62.

Read, Q C., contra, cited *McKinstry* v. *Arnold*, 4 U.C. L. J. 68; *Ball* v. *Whitney*, 11 U.C. C. P. 240; *Rogers* v. *Hunt*, 10 Ex. 474.

Draper, C. J.—I agree with the view taken by my brother Richards, of the right of the plaintiff to sign judgment for want of an appearance, the writ having been specially endorsed with a claim of a balance of an account for work and labour. This, as expressed, appears to me a liquidated demand. There might be more question as to the claim for interest, but it has become so settled a practice to allow interest on all accounts after the proper time of payment has gone by, and particularly upon the balance of an account which imports that the accounts on each side are made up and only the difference claimed, that I do not think we should treat the claim for interest as vitiating the special endorsement: and I feel the less inclined to interfere because the objection is patent on the face of the roll, and a writ of error will therefore lie, as in *Hodsoll* v. *Baxter*, E. B. & E. 884, where Watson, B., observes that the intention of the legislature was to comprehend all cases except claims for unliquidated damages; and further, because there seems to me to have been a want of attention amounting to indifference or even neglect, to the plaintiff's repeated applications, and a careless mode of dealing with letters and papers, which has created uncertainty in the leading affidavits filed on the part of the defendants, and which deprives them of much of that weight which might otherwise have been given to them. And apart from this consideration, these affidavits, when examined in connexion with those of the plaintiff, fail to satisfy me that the neglect to appear to the writ, and to make whatever defence the company have, is at all answered or accounted for.

As to the terms of the order, they are no more than just to the plaintiff, because as to the costs the defendants ought to pay them as a condition of indulgence; and as to security, it is not suggested that there will be the slightest difficulty in procuring it, and it is the only mode of preserving to the plaintiff the advantage he has obtained in the event of its finally appearing that he has a right to recover.

I think the order should, however, be so far varied as to give the defendants fourteen days further time from this day to fulfil the conditions imposed, and with that direction I think the present rule should be discharged, the defendants to pay the costs of the rule.

Per cur.—Rule discharged.

Modeland et al. v. Maguire.

Apprentice—Partnership—Dissolution of—Release of apprenticeship by—Pleading.

The declaration claimed damages by reason of the defendant's son, who was bound to plaintiffs under articles of apprenticeship, absenting himself.

Pleas, 1st. *Non est factum.* 2nd. That before breach of the covenant the defendants dissolved partnership.

Upon demurrer, *held* bad, for not shewing that the apprentice was bound to the defendants as partners, and that by a dissolution it would render the service impossible, and thereby cancel the obligation.

The declaration alleged that the defendant by his deed bearing date the 18th of August, 1856, covenanted to and with the plaintiffs that John Maguire his son, an infant under the age of twenty-one years, should well and faithfully serve the plaintiffs as an apprentice to the trade or calling of a waggon maker, and that the said John Maguire should not absent himself from the service of the plaintiffs for the period of three and one-half years from the 18th day of August, 1856.

Breach, that the said John Maguire did wrongfully absent himself from the service of the plaintiffs during the period last aforesaid, for a long time, to wit, for the space of twenty months, contrary to the terms of the said covenant.

1st *plea.*—*Non est factum.*

2nd *plea.*—The defendant says that at the time the said deed was made the plaintiffs were partners in the business of waggon makers, and as such carried on the said business. And the defendant further says, that before any breach of the said covenant the said plaintiffs dissolved partnership, and were no longer engaged in the said business as partners, and therefore the said John Maguire could not serve them as apprentice, as in the said covenant provided.