law; that is, without having such a license as made the act of sale legal. Under these circumstances, I see no way in which they can be prejudiced by the form of the conviction, whatever it may be, even though it be in terms for selling without a license contrary to 32 Vic. cap. 32; and I therefore discharge the summonses with costs, to be paid by the respective applicants, Watts and Emery, to the parties called upon to show cause.

Application refused with costs.

SINCLAIR v. CHISHOLM.

Special endorsement.

A writ of summons was specially endorsed for interest on the balance of an account, and for protest charges on an unaccepted draft.

Held, that the endorsement was right as to the interest, but not as to protest charges.

Bank of Montreal v. *Harrison*, 4 Prac. R. 331, explained.

[Chambers, Sept. 15, 1870.—*Mr. Dalton.*]

This was a motion to set aside a judgment for irregularity.

The writ of summons was specially endorsed for the price of

20,000 bushels of wheat.....	$24,600 00
Less paid.....	23,977 00
Balance	623 00
Expense of draft protested..	1 32
	$624 32

And the plaintiff claimed interest on the latter amount from the 1st June, 1870.

Judgment was signed on default of appearance for the $624 32, and interest.

It was objected that the interest and the expense of protest were not properly the subject of a special endorsement.

Harrison, Q. C., showed cause.

Dr. McMichael contra.

MR. DALTON.—First as to the interest. *Smart* v. *The Niagara Railway Co.*, 12 U. C. C. P. 404, is exactly in point, to show that this endorsement is warranted as to the interest. The Chief Justice says (p. 406), "It has become so settled a practice to allow interest on all accounts after the proper time for 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." That case governs this, though it is true that upon a reference to the Master, he could not allow the interest on such a claim, though a jury could give it.

Then as to the claim for the expense of protest. It is to be observed that this protest is for non-acceptance, and is very like the noting referred to in *Rogers* v. *Hunt*, 10 Ex. 474. The plaintiff could only recover this item upon a special count, showing a contract to accept, authorising his draft, and is in the nature of unliquidated damages. It is not like the case of a special endorsement for the amount of a bill or note, and for the expenses of protest for non-payment, in which case the endorsement of the cost of protest would be good: Con. Stat. U. C. cap. 42, sec. 14.

The case of *The Bank of Montreal* v. *Harrison*, 4 Prac. Rep. 331, when examined, is really a decision, so far as the present point is concerned, that the plaintiff might appropriate payments in a particular way, and nothing more. I have referred to the judgment papers, and the endorsement is simply for $391 11, the balance due on a bill of exchange, which was surely good.

I do not think it can possibly be held that this sum of $1 32 could be specially endorsed, nor can it be waived.

The judgment must be set aside, upon payment of 5*s.* costs—the defendant to bring no action.

ENGLISH REPORTS.

CROWN CASES RESERVED

THE QUEEN v. WARBURTON.

Conspiracy—Combination to do a civil wrong—Attempt to defraud partner by falsifying accounts.

On an indictment for conspiracy, it is not essential that the combination should have been to do an act which, if done by one alone, would have been a criminal offence, but it may be enough that it would have effected a civil wrong.

The prisoner and L. being partners, the prisoner gave notice for a dissolution of the partnership. On the dissolution, an account was to be taken, and the property to be divided in certain proportions between the prisoner and L. The prisoner agreed with W. (who was manager of a branch of the business) and P. to make it appear, by documents purporting to have passed between W. and P., and by entries in the partnership books made by W., that P. was a creditor of the firm, and that certain partnership property was to be withdrawn and handed to P., so as to be divided between the prisoner W. and P., to the exclusion of L.

The prisoner was indicted for conspiracy with W. and P. to cheat and defraud L. The facts upon which the indictment was founded took place before the passing of 31 & 32 Vic. cap. 116, which makes a partner who steals partnership property liable to conviction as if he was not a partner.

Held, that the agreement was a conspiracy, for which the prisoner could be convicted.

[C. C. R., 19 W. R. 165.]

Case stated by Brett, J.

The prisoner, James Warburton, was tried before me at the summer assizes held in 1870, for the West Riding of Yorkshire and Leeds, upon a charge of conspiracy. The indictment charged, among other counts, that the prisoner had unlawfully conspired with one Joseph Warburton and one W. H. Pepys, by divers subtle means and devices, to cheat and defraud the prosecutor, S. C. Lister.

It appeared in evidence that the prisoner and Lister were, in 1864, in partnership, and carried on a part of the partnership business at Urbigau in Saxony, by there selling patent machines; that the prisoner had given notice, according to the terms of the partnership agreement, for a dissolution of the partnership between himself and Lister; and that upon such dissolution an account was to be taken, according to the partnership agreement, of the partnership property; and that according to it, such property would be divided, on such dissolution, in certain propor-