

MACMAHON, J.

NOVEMBER 13TH, 1902.

WEEKLY COURT.

KELLY v. SMITH.

*Interest—Claim for Price of Goods Sold—Interest not Claimed in
Writ of Summons—Report—Appeal—Items—Costs.*

Appeal by plaintiff from report of local Master at Sarnia in an action for the price of fruit and vegetables sold to defendants by plaintiff. The Master found that plaintiff was entitled to \$118.83 paid into Court and to a further sum of \$74.78.

A. Weir, Sarnia, for appellant, contended that interest should be allowed from the date of the issue of the writ of summons, and that certain items of his account were improperly disallowed or reduced by the Master.

G. H. Watson, K.C., for defendants.

MACMAHON, J.—With regard to the claim for interest, which has not been dealt with by the learned Master in his report, and in respect of which he was not asked to make any special report, the appeal fails. Mr. Weir supposed that the indorsement on the writ of summons claimed interest; but a reference to the writ issued shews that no claim for interest is made on the balance, which by the special indorsement appears to have been \$368.13. Had the claim been made, I should probably, in view of Irving v. Victoria Harbour Co., referred to in a note in Holmsted and Langton's Practice under the Judicature Act, p. 149, have sent the report back for a special finding.

The learned Judge then dealt with the other items in question on the appeal, and allowed the appeal as to one item of \$12, dismissing it as to all the others. The defendants having succeeded as to nine-tenths of the amount involved in the appeal, the plaintiff was ordered to pay nine-tenths of the costs.