

\$353," was a good, specially indorsed claim on the part of C.; and an endorsement on promissory notes made by defendant, giving dates, amounts, and times when payable, and adding "and assigned to the L. H. C. Co., one of the plaintiffs herein," was a good claim specially indorsed as to the L. H. C. Co., though the way in which that company became assignee was not detailed, there being no suggestion that they were not the legal holders.

Upon a motion for summary judgment under Rule 739, it appeared by affidavits that the plaintiff company were mortgagees of the claims, and the liquidator transferee, subject to the co-plaintiff's claims.

Held, that the affidavits showed that the special endorsement was not in conformity with the facts, and therefore failed to verify it, and no amendment could be permitted upon the motion; nor could judgment be given, in accordance with the special endorsement, as to one part in favor of the liquidator, and as to the other in favor of the company.

MEREDITH, J., dissented.

A. R. Lewis, Q.C., for the plaintiffs.

F. A. Anglin, for the defendant.

ARMOUR, C.J., STREET, J., }
FALCONBRIDGE, J. }

[Jan. 22.]

SMITH v. LOGAN.

Judgment—Appearance—Default—Tender—Notice.

On the day after the last day for appearance to a specially indorsed writ, the plaintiff's solicitor attended before the officer of the Court to enter judgment for default. The officer proceeded to enter it and was engaged in entering it but the stamps had not been affixed, when the defendant's solicitor came in with an appearance, which he tendered to the officer, informing him what it was. The officer, however, disregarded the appearance, and completed the entry of the judgment.

Held, per ARMOUR, C.J., that the judgment was regular; for the officer, being seized of the business of entering the judgment, was not obliged to give it up to attend to the appearance.

Per FALCONBRIDGE, J., that the appearance, if received after the time limited, and without the notice required by Rule 281, would be something which the plaintiff's solicitor would not be bound to regard, if he had made search in due time and found no appearance.

Per STREET, J., that by the tender of the appearance in the presence of the plaintiff's solicitor, the officer was stayed in his right to enter judgment, and the judgment which he proceeded to enter was irregular; and he could not proceed again to enter judgment, even if no notice of appearance were served, until the time for service, that is, the whole of the day of appearance, had expired.

Aylesworth, Q.C., for the plaintiffs.

W. H. Blake, for the defendant, Wilson.

(Leave to appeal granted 31st January, 1896.)