

C. L. Cham.]

SOWDEN ET AL., EXECUTORS, V. SOWDEN.

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words, and may be proved under not guilty. 1 do not, therefore, allow this plea.

His Lordship also refused to strike out any of the counts on the ground that the plaintiff was entitled to a separate count for each utterance of the alleged slander attempted on the same occasion.

The defendant then applied for leave to plead the general plea of justification to the 2nd and 3rd counts which was allowed.

Order accordingly.

SOWDEN ET AL., EXECUTORS, V. SOWDEN.

Particulars—Special Endorsement—Declaration.

A plaintiff is not limited in his declaration to the particulars of his cause of action specially endorsed on his writ of summons.

[Chambers, October 2, 1868.]

A. H. Meyers, for defendant, applied for a summons to set aside the declaration, copy and service, and notice to plead and service on the ground that the declaration contained counts on causes of action other than those stated in the special endorsement on the writ of summons, citing *Fromant v. Ashley*, 1 E. & B., 723, 22 L. J., N. S., Q. B. 237.

The writ in this case was specially endorsed. 1st. For \$180, being 18 months interest on a covenant contained in a mortgage to testator for \$2,000 (describing the mortgage). 2nd. \$300 on a promissory note, dated 4th May, 1863, made by one I., payable to the order of defendant and endorsed by him to testator. 3rd. \$55.74, being cost of a certain suit (particularly designated) paid by testator.

The declaration served contained five counts.

1st. For two years interest on the sum of \$2,000, mentioned in the covenant stated in the special endorsement, accruing in the life-time of the testator.

2nd. For one year's interest on the same covenant, accruing since the testator's death.

3rd. On a promissory note, dated 4th May, 1863, made by W. E. J., payable to defendant, or order, for \$300, and endorsed by defendant to testator.

4th. On a promissory note, dated 11th August, 1863, made by W. E. J., payable to defendant, or order, for \$300, and endorsed by defendant to testator.

5th. Common counts on causes of action accruing to testator.

To this declaration are attached particulars of demand on the common counts:—

Costs of suit, Sowden against testator, in his lifetime, and the defendant, on his promissory notes, declared upon in the third count.....	\$55 74
Fees paid to the Sheriff of the United Counties of Northumberland and Durham on making the money on execution in said suit.....	20 00
Interest on said sums from January, 1864, 20 00	

DRAPER, C. J.—The C. L. P. Act authorizes a plaintiff, in all cases where defendant resides within the jurisdiction of the court, and the

claim is for a debt or liquidated demand in money, arising on a contract, such as a promissory note or a bond or contract under seal for payment of a liquidated sum, to make a special endorsement of the particulars of his claim, which endorsement shall be considered as particulars of demand, and no further or other particulars of demand need be delivered unless ordered by a Court or Judge.

Unless the common counts no particulars need have been delivered with this declaration: *Brooks v. Fallar*, 5 Dowl., 361; *Dawes v. Anstruther*, 5 Dowl., 738. This is the general rule, though not without special exceptions.

But in this case the defendant asks to set aside the declaration, copy and service, and notice to plead and service—because the declaration contains counts on causes of action not stated in the special endorsement, and in support of this application he relies on the 15th sec. of the C. L. P. Act (Con. Stat. U. C., ch. 22.), which is like the 25th sec. of the C. L. P. Act of 1852, in England, and on the case of *Fromant v. Ashley*, 1 E. & B. 723. That case did not decide anything at all with reference to the declaration, nor indeed as to the delivery of fresh particulars, though it may be inferred that the court would have held that where the writ had been specially endorsed the plaintiff could not, without leave of a Judge, have delivered fresh particulars.

But the present application appears to go the length of asserting that if an action is brought and the writ of summons is specially endorsed, the plaintiff cannot declare for any other cause of action than that referred to in such endorsement.

I do not find any case so determining; *Fromant v. Ashley* certainly does not go that length, nor indeed relate to the declaration at all.

No doubt if the defendant had not appeared to this writ the plaintiff need not have declared, but might have signed judgment, at once, for any sum not exceeding the sum endorsed on the writ, and at the expiration of eight days from the last day for appearance might issue execution. Then the special endorsement would have bound him.

But the 15th section of the Act contemplates that, notwithstanding the special endorsement, no further particulars need be delivered unless ordered by a court or a judge.

The plaintiff need not, under the 2nd and 4th counts, have delivered particulars, nor do I think further particulars would have been ordered on the application of the defendant, simply because those counts state all that particulars need to state.

There appears to me to be neither reason nor justice in giving such an effect to the statute. I cannot think the Legislature meant to say to a plaintiff, if you endorse your writ specially, and, by the defendant appearing to contest your claim you are compelled to declare, you must declare only for what is stated in your special endorsement, and if you have any other demand which was due to you from the defendant when you began your action, you must begin another action to recover it, or lose it altogether.

I refuse the summons.

Summons refused.