

Province of British Columbia.

SUPREME COURT.

Full Court.]

OPPENHEIMER v. SPERLING.

[June 12.

*Practice—Writ of summons—Action against foreign firm.*

Appeal from judgment of IRVING, J., dismissing summonses by defendant Horne-Payne to set aside writs.

Sperling, Garbutt, and Horne-Payne, were residents of England and members of the firm of Sperling & Co., which firm carried on business in England only. Plaintiffs issued two writs (neither of which was for service out of the jurisdiction) in respect of the same cause of action, one being addressed against the firm and also against Sperling, Garbutt, and Horne-Payne individually and the other against the three individuals only. The writs were served on Horne-Payne while on a visit to British Columbia, and he entered conditional appearances and applied to have both writs set aside and (in the alternative) as to the second action that it be dismissed as vexatious.

*Held*, 1. The name of the firm was wrongly inserted and should be struck out of the first writ;

2. The plaintiffs should elect as to which action they would proceed with.

Before the hearing of the appeal the respondents gave notice that they were content that the name of Sperling & Co., should be struck out of the writ.

*Held*, that the appellants were entitled to the costs of appeal up to the time of the service of the notice and the respondents of the costs subsequent.

*McPhillips*, K.C., for appeal. *Davis*, K.C., contra.

Full Court.] MACAULAY v. VICTORIA YUKON TRADING CO. [June 25.

*Practice—Special indorsement—Action on judgment—Interest till judgment liquidated demand.*

A claim for interest "until payment or judgment" is not a claim for a liquidated demand within the meaning of Order III., r. 6, except where the cause of action is in respect to negotiable instruments in which case the interest is by s. 57 of the Bills of Exchange Act deemed to be liquidated damages.

Interest claimed under a statute cannot be the subject of special indorsement unless it is stated in the indorsement under what Act the interest is claimed.