ence on the conduct of the relator in managing the contest, but I find him contesting it to nearly the end, and thus declaring that he was beaten, and allowing the return to be declared without protest or objection. I also find ten of the fourteen voters objected to proving clearly their right to vote and their ability to have taken the oath if desired so to do.

Perry had a majority of five; rejecting the four votes as to which no proof is offered, he would still have a majority of one and this without deducting from the relator's poll a voter named Dunbar, who is sworn to be under 21 years of age.

I do not notice the charge of bribery against the relator or his agents; the facts stated are very disgraceful to the parties concerned, if not contradicted or explained.

On the whole I do not feel that I should disturb this election; at most a mere error in judgment was committed, and I conceive the relator might at any time have prevented it by personally requiring the returning officer to administer the oaths.

I discharge the summons and order that each party shall pay his own costs.

Summons discharged.

JONES v. GREER.

Special endorsement—Irregularity—Appearances—Signing judgment.

In actions on *guarantee* the writ of summons may be specially endorsed according to the provisions of sec. 41 C. L. P. Act. *Illusory* appearances (i.e., when an address is given which is not sufficiently definite) cannot be treated as a *nullity*, and must be set aside before any other step in the cause is taken. The address of a defendant appearing in person need not be stated in a separate memorandum if it sufficiently appears in the body of the appearance.

(May 12, 1857.)

This was an action, commenced by a *specially* endorsed writ, on an agreement under seal whereby the defendant covenanted that one Joseph Corby should pay the plaintiff the sum of £100.

On 28th March last the defendant entered an appearance in person in the following words: "The defendant Edward Greer appears in person" (signed) "Edward Greer of the Township of Leeds"; and judgment was signed two days after for want of an appearance for the amount specially endorsed on the writ.

An application was made to set aside this judgment as irregular on the following grounds:

1. It was signed for want of appearance, when an appearance had been entered.

2. Because no declaration had been filed or served.

3. Because the special endorsement on which it was signed was not good, (the action being on a guarantee.)

Jackson, contra, showed cause. The Common Law Procedure Act, section 63, directs, "That every appearance by a defendant in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service, and if such address be not given the appearance shall not be received"; and rule 138 of the new rules made under this Act, directs that such address must not be more than two miles from the office of the clerk or deputy clerk of the Crown where the writ was sued out, and that if such memorandum be not left, or if such address or place be more than two miles from the said office then the opposite party shall be at liberty to proceed by sticking up all papers not requiring personal service in such office. Now the defendant has not complied with either of these regulations; he has left no *seperate memorandum* of his address whatever, as this rule of Court requires, nor does the statement in the appearance at all indicate any place where papers may be served, which is the object of the provision in the statute. Moreover the township of Leeds is, I suppose, about ten miles square, so that for all we know his place of residence may be much more than two miles from the office of the Deputy Clerk of the Crown. The statute directs that such appearances shall not be received, and the rule of Court alone referred to authorizes the plaintiff to proceed by sticking up in the office such papers as do not require personal service; therefore the plaintiff was entitled to treat this appearance as a nullity, and as the writ was specially endorsed, there were no further papers requiring service by sticking them up in the office or otherwise, and the plaintiff was right in signing judgment.

As to the special endorsement the defendant has not shown that the instrument sued on is a guarantee, and even if it were one of the very examples given by the statute of Special Endorsement is on a guarantee, and hence this endorsement must be perfectly good.

HAGARTY, J.—I consider this appearance is insufficient, though if the address of the defendant had been sufficiently stated in the appearance itself, I would hardly hold it a fatal objection that a separate memorandum was not filed, for the address is given for the information of the plaintiff that he may more conveniently serve his papers, and it can make but slight difference to him whether he receives this information from the appearance itself or from a separate memorandum filed with it. The safe course is to obey the directions and file the memorandum required—it may be irregular to omit doing so. I also think that the endorsement is quite regular and within the provisions of the statute, even though this instrument be exactly a guarantee, which does not appear to be the case, and that judgment might properly have been signed on it without filing or serving a declaration, if the plaintiff were entitled to treat this appearance as a nullity, and on this point, in my opinion, the whole questions turns.

It is true the statute expressly declares that appearances not conforming to its requirements shall not be received, but this appearance has been received and does give a kind of address of the defendant, though it is not sufficiently definite, in other words it is what the statute calls an *illusory* address, and notwithstanding the strong language of the statute and the still stronger language of the Rule of Court in that behalf, I am bound to think that as the statute in the latter part of the 63rd section makes express provision for cases where an *illusory* or fictitious address has been given; that the plaintiff was confined to the course then pointed out and had no right to treat this appearance as a nullity, but should have applied to a judge in Chambers to set aside the appearance, and for leave to proceed as in the statute directed.(a)

I must therefore set aside this judgment as irregular, but as the appearance is really bad, and as there has been some

(a) Har. C. L. P. Act. note u, to sec. 63.