

Held, that the daughters took an estate in fee tail general, and that her husband was tenant by the curtesy.

M. D. Fraser for the plaintiff.

W. M. Davidson for the infant defendants.

N. W. Rowell for the adult defendants.

Practice.

ARMOUR, C.J.]

[Feb. 11.]

MUNRO & PIKE.

Summary judgment—Writ of summons—Special indorsement—Action on covenant in mortgage—Interest—Affidavit—Rule 739.

In an action to recover the amount due under a mortgage, the plaintiff indorsed upon his writ of summons particulars of his claim showing the date of the mortgage, the parties, the amount of principal and interest claimed, and the date when the interest fell due; also a statement that by the terms of the mortgage, in default in payment of interest, the principal became due, and that default in payment of interest had been made. Interest on overdue interest was also claimed, but no contract therefor was alleged.

Held, that the indorsement was not a sufficient special indorsement to support a summary judgment under Rule 739, in that it omitted the dates from which interest was claimed, and did not state a contract to pay interest upon interest; and that the affidavit in support of the motion could not be read with the indorsement so as to make it good.

Gold Ores Reduction Co. v. Parr, (1892) 2 Q.B. 14, followed.

Masten for the plaintiff.

R. B. Beaumont for the defendant.

COUNTY COURT OF THE COUNTY OF SIMCOE.

PRATT v. GRAND TRUNK R.W. CO.

CITY OF LONDON FIRE INS. CO. v. GRAND TRUNK R.W. CO.

Subrogation—Splitting of demand—Jurisdiction.

The plaintiff Pratt had a barn destroyed by fire, cause, as alleged, by sparks from a locomotive of the defendants. The property was insured in the City of London Insurance Co. for \$125, which amount they paid to the said Pratt, first having demanded and received from him an assignment or subrogation of his right of action against the defendants to that extent, who, they contended, being wrongdoers, should be held responsible for the loss.

The actions were brought to trial at the same time. Pratt, in his statement of claim, set forth the total loss and damages caused by the fire as amounting to \$335, recited the assignment or subrogation as aforesaid, and the payment to him of the \$125, and concluded in these words: "The plaintiff