

Application was made to the judge of the County Court to set aside the judgment so entered, and for leave to come in and defend. The only affidavit read in support of the application was that of defendant company's solicitor which contained the following paragraphs: (a) "The said defendant company have a good defence to this action, and unless the said judgment is opened up great injustice will be done the defendant company herein." (b) "The said plaintiff has no cause of action herein, as I am advised and believe, and the said defendant company are not indebted to the said plaintiff, as in said statement of claim alleged." (c) "As will appear by the defence herein the defendant company deny that they are indebted as alleged, and claim that the plaintiff did not on her part fulfil the conditions of the contract alleged to have been made, and which forms the ground of action herein." The judge of the County Court having granted the application the plaintiff appealed.

Before the passage of the Judicature Act (R.S. 4th series, c. 94 s. 75) a defendant seeking to set aside a judgment entered for default of appearance and plea, was required by satisfactory affidavits to "account for his non-appearance, and disclose a defence upon the merits with the particulars thereof." Under the present practice by O. 27, R. 14, "Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or a judge upon such terms as to costs or otherwise as such Court or a judge may think fit."

Held, that the affidavit made by defendant's solicitor who did not profess to have any personal knowledge, except as he was advised and believed, and who while referring to the proposed defence did not undertake to verify the particulars of it, was not sufficient to justify the County Court Judge in setting aside the judgment.

Held, also, that the affidavit was bad under O. 36, R. 4, as containing matter that the solicitor making it was not able of his own knowledge to prove, and not giving the grounds of his belief.

Per TOWNSHEND, J., McDONALD, C.J., concurring, GRAHAM, E.J., dissenting that following English decisions on a rule in the same terms as O. 27, R. 14, nothing short of an affidavit showing merits would entitle the defendants to come in and defend, or would justify the Judge to whom the application was made in permitting them to do so.

W. E. Roscoe, Q.C., for appellant. *F. Mathers*, for respondent.

Full Court.]

BURRIS & RHIND.

[Jan. 11.

Duress—Threats of criminal proceedings—Deed so obtained set aside.

The defendant, W.R., conveyed his farm to his sister C. as security for the sum of \$450, advanced by her from time to time to assist him in paying off his obligations. The offer of the security was made in connection with a request for a further advance, which was given. Plaintiff, to whom W. R. was indebted, on learning of the conveyance of the land, saw W. R., and told him that the transaction was a fraudulent one, and that he had been guilty of a criminal offence, the punishment for which was the penitentiary, and threatened to take proceedings against him unless he at once took steps to procure a