

KELLY, J., IN CHAMBERS.

APRIL 14TH, 1916.

***DUNN v. PHILLIPS.**

Practice—Specially Endorsed Writ of Summons—Unnecessary Delivery of Statement of Claim—Statement Treated as Amendment of Endorsement—Rules 111, 127—Costs.

Appeal by the defendant from an order of a Local Judge dismissing a motion by the defendant to set aside a statement of claim delivered by the plaintiff.

A. E. Langman, for the defendant.
Grayson Smith, for the plaintiff.

KELLY, J., in a written opinion, disposed of the point of practice raised by the appeal. Rule 111, he said, provides that, where a writ of summons is specially endorsed, the endorsement may be treated as a statement of claim, and no other statement of claim shall be necessary. Here, the claim endorsed was for the recovery of possession of land; the plaintiff held it forth as a special endorsement, by using the form appropriate for that kind of endorsement, and for the present purpose it must be so considered. While a further statement of claim was unnecessary, the plaintiff was entitled, under Rule 127, to amend the claim specially endorsed on the writ. The statement of claim objected to was not a mere reiteration of the claim endorsed on the writ—which was the case in *Dunn v. Dominion Bank* (1913), 5 O.W.N. 103—but set forth facts and particulars, not mentioned in the endorsement, helpful to a proper submission and understanding of the claim, and such as would reasonably have been embodied in such an amendment as is permitted by Rule 127.

The new document should be treated as an amendment of the endorsement—the word “amended” being added. Subject to this, the appeal should be dismissed without costs.