solicitor stated that the information was obtained that he might advise the defendants as to their liability for damages arising from the accident, and that it had been used for such purpose and no other. The defendants' affidavit of documents did not claim privilege for these documents, but denied the possession of any documents relating to the matters in question; but it was admitted that the affidavit of documents had been prepared under misapprehension of the facts, and that these documents were in the possession of the defendants.

Held, that the court need not, under these circumstances consider whether the examination of H. could be received to contradict the affidavit of documents, but should look at the matter as if the documents had been set out and privilege claimed for them; and that upon the statements of H. and the solicitor the documents were not privileged and should be produced.

Wheeler v. *LeMarchant*, 17 Ch. D. 675, and *Westinghouse* v. *Midland Ry. Co.*, 48 L. T. N. S. 462, followed.

Aylesworth, for the defendants.

Shepley, for plaintiff.

C. P. Div. Ct.] [March 12.

DOBIE v. LEMON.

Judgment by default—Setting aside—Security—Disposal of property—Interest.

The plaintiff claimed $923.13, the balance of an account, and interest thereon, and signed judgment for default of an appearance upon the special indorsement of his writ of summons for $1,253.

The defendant moved to set aside the judgment, swearing that he had failed to enter an appearance owing to a misapprehension, denying positively that he owed the plaintiff anything, and alleging that he at one time owed him $250, but that it had been satisfied by the plaintiff taking one A. as his debtor instead of the defendant, and further, that if the debt had not been satisfied by A. it was barred by the Statute of Limitations. No affidavit was filed on behalf of the plaintiff verifying the debt, and the arrangement as to substituting A. was not denied. A local judge set aside the judgment, but only on the terms that the defendant should give security for or pay into court the sum of $250.

Held, that if upon an application by the plaintiff, under Rule 80 or Rule 324, for leave to enter judgment, such a defence had been sworn to, and such circumstances had appeared, the application would not have been granted, and payment into court of security would not have been exacted from the defendant as a condition of his being allowed to defend; there is no substantial difference between the case where a party seeks the right to defend before judgment signed, and the case where the judgment has been signed on account of a slip or misapprehension, and the defendant makes out a case, giving him the right to defend; and therefore terms should not have been imposed upon the defendant. The disposal by the defendant of his property liable to execution since the service of the writ of summons upon him was not a matter to disentitle him to relief that otherwise could not properly have been denied him.

Reumachs v. *Mesquita*, 1 Q. B. D. 418, followed.

Semble, if the defendant's statements were true the plaintiff would not have been entitled to interest on the amount of his claim, and the judgment would have been irregular.

Aylesworth, for the plaintiff.

C. J. Holman, for the defendant.

Boyd, C.] [March 14.

FRASER ET AL. v. JOHNSTON ET AL.

Jury notice—Equitable claims—Demurrer.

Where the plaintiffs claimed specific performance of a contract to supply them with milk for a cheese factory upon certain terms, and in the alternative damages, and the defendant asked for rectification of the contract, a jury notice was struck out.

Held, that where a party seeks equitable relief to which he is not entitled, the opposite party should, unless in a very clear case, demur, instead of attacking the pleading indirectly by asking to have a jury.

Bingham v. *Warner*, 10 P. R. 621, commented on.

Hoyles, for defendants.

Holman, for plaintiffs.