

capias. The order for capias was entitled, "In the matter of an intended action," and defendant took out a summons entitled, "In the matter of an intended action" to set aside the writ of capias on many grounds; this summons was returnable by leave of IRVING, J., before him at Vancouver, and when the application came on to be heard, preliminary objections were taken that this application should be heard in Chambers at New Westminster, and further that the summons was in the matter of an intended action. The summons was dismissed on the ground that it was wrongly entitled.

On a second summons, issued and returnable at Vancouver, coming on to be heard, IRVING, J., held that under r. 52 he had power to give directions that it should be so issued and returnable. The plaintiff then objected that the undertaking to give security was sufficient to waive all irregularities in the proceedings, and that all the grounds as mentioned in the summons were merely irregularities.

*Held*, that the question whether or not the writ was a nullity was immaterial because by the giving of special bail the defendant waived his right to object to the writ.

*Gilmour*, for plaintiff. *Davis*, K.C., for defendant.

Walkem, J.]

[Feb. 21.

MACAULAY ? VICTORIA YUKON TRADING CO

*Practice—Special indorsement—Foreign judgment—Interest.*

Plaintiffs sued on a judgment recovered in the Territorial Court of the Yukon, and in the indorsement claimed interest at 5 per cent. per annum on the amount of the judgment to the date of the writ, and also from that date until judgment. No defence was filed, and plaintiffs signed judgment. Defendants now moved to set aside the judgment on the ground that the writ was not specially indorsed, inasmuch as the writ claimed was not a debt or liquidated demand.

*Held*, that the writ was specially indorsed.

It is not necessary in such an indorsement to state that the interest is due by statute.

*Lawson, jr.*, for the motion. *Cassidy*, K.C., contra.