

REASONS OF APPEAL.

The Plaintiff submits that the said Rule Nisi should have been made absolute for a new
 42 trial on the grounds stated in the said Rule for the following, among other reasons :

1. The Plaintiff's case was proved by proof of the award which the learned Judge of the County Court held to be sufficiently proven. The real controversy arose upon the evidence upon Defendant's right of set off, this set off depending upon the question of whether the Plaintiff had complied with the award, by tendering to the Defendant a security on the first day of October. The learned Judge held that there was no evidence of any tender of security, and that in any event the instrument said to have been tendered, was not a security within the contemplation of the award because unstamped. Upon these findings the case should under any circumstances have gone to the jury, and a non-suit was improper.
2. There was some evidence of a tender of the instrument in question on the first of
 43 October, in compliance with the award, and if such evidence was conflicting, that was for the jury, not for the Judge.
3. There was some evidence that the Defendant by his conduct waived the right to demand a strict tender of such security, which was also a question of fact for the jury.
4. It appeared by the evidence that the demand made in the evening by the Defendant was neither made in a reasonable manner nor at a reasonable time and place, and moreover the alleged refusal by the Plaintiff to then give the security was distinctly denied. There was, therefore, upon this point if material a conflict of evidence, and, therefore, a question of fact for the jury.
5. The objection to the instrument tendered urged by the Defendant at the trial, and
 44 upon which the learned Judge held in his favor was that it was not properly stamped. This objection is untenable for the following reasons:
 - (a) It was not taken when the instrument was tendered on the first of October, but the Defendant then objected only to the sureties after hearing their names, and to the manner in which it was drawn. He thereby waived all other objections.
 - (b) The Plaintiff was not bound to stamp the instrument tendered until the Defendant had expressed his willingness to accept it. Had the Defendant offered to accept the instrument, the Plaintiff could lawfully until the actual delivery to the Defendant have stamped it.
 - (c) The instrument was proved, read and put in by the Plaintiff at the trial as a promissory note without any objection being raised to the want of stamps by the Defendant, who first intimated this objection when at the close of the Plaintiff's case he