

against the judgment was made to the full court in British Columbia, and the judgment varied by reducing the damages, giving some additional costs, and directing the land to be reconveyed on payment of the judgment, judgment in accordance therewith being entered in the British Columbia court. The Master who had stayed the motion pending the appeal thereupon made an order directing judgment to be entered for the plaintiff for the amount of the judgment as varied, and interest from the date of the commencement of the action here, which was affirmed on appeal to a Judge in Chambers.

Held, on appeal to the Divisional Court, that the order to enter judgment could not be supported, because it was an order to enter judgment for a debt not claimed by the endorsement on the writ; but as no defence was shown, the court permitted the application to be turned in a motion for judgment, under Rule 757, and directed judgment to be entered for the plaintiff.

The right to claim interest as liquidated damages considered.

An objection raised that the defendant was not bound by the proceedings in the British Columbia court was overruled. It appeared that the defendant had entered an appearance there and defended the action.

Aylesworth, Q.C., for the plaintiff.

Allan Cassels for the defendant.

Div'l Court.]

[Dec. 30, 1893.]

WILSON v. FLEMING.

Covenants—Dependent or independent—Mortgage.

The proviso for payment in a mortgage made by defendant was that the mortgage was to be void on payment of \$3,250 and interest. Then followed the usual printed short form covenant for payment, to which was added in writing the words, "But before proceeding upon the covenant the mortgagee shall realize upon the lands mortgaged, and that the mortgagor shall then be liable only to the amount of \$600, or such lesser sum as will, with the net proceeds from the lands, make the \$3,250 and interest." The last clause in the mortgage, also added in writing, was that "in no event shall the personal liability of the mortgagor on his covenant exceed \$600."

Held, that the defendant was not to be subject to any liability until the lands were realized upon and the result showed a deficiency, and then only to the extent of \$600.

W. Douglass, Q.C., for the plaintiff.

E. D. Armour, Q.C., for the defendant.

Div'l Court.]

[Feb. 9.]

REGINA v. LATHAM.

Municipal corporations—Express wagons—By-law licensing, authorizing rates fixed thereby to be altered by agreement—Ultra vires—55 Vict., c. 42, s. 436 (O.).

A by-law passed under s. 436 of the Consolidated Municipal Act, 1892, 55 Vict., c. 42 (O.), for licensing express wagons, authorized the alteration by agreement of the rates fixed thereby.