be sustainable, unless the suit or action is commenced and the process for commencing the same served within the term of 6 months next after the first discovery of defalcation."

It was argued that, inasmuch as the statement of claim had not been delivered within the time limited by Con. Rule 243, the action was just as much dead as if it had not been begun within the 6 months. It was therefore said that the case was within the decision in Williams v. Harrison, 6 O. L. R. 685, 2 O. W. R. 1061, 1118, and cases cited there. What was said by Lord Esher, M.R., in Hewett v. Barr, [1891] 1 Q. B. 99, was especially relied on, viz., that amendments "ought not to be granted where they would have the effect of altering the existing rights of the parties," and that the order necessary here was in the nature of an amendment.

In the analogous case of Canadian Oil Works v. Hay, 38 L. T. 549, a similar motion was allowed under a Rule equivalent to Con. Rule 353. There the distinction was pointed out between such a case as Hewett v. Barr, supra, and one where it is only a matter of procedure over which the Court has complete jurisdiction: and the principle of Con. Rule 312 was applied. In the present case it is stated that the accounts were so badly kept by the bookkeeper that it required very careful and minute examination by skilled accountants to ascertain and prove the defalcations, which were alleged to amount to over $48,000. This was rendered more necessary by the fact that the bookkeeper has been twice acquitted on two of these charges of embezzlement from the plaintiff, and that a third indictment is thought to be still pending. If he had been convicted, it would have been a different matter. But, as it is, the plaintiff will have to establish very clearly the misconduct of his bookkeeper before he can hope to recover from the defendants on their guarantee bond.

I think the motion must be allowed, and that the statement of claim should be delivered this week.

As it is now over 7 months since the writ was issued, the costs of the motion will be to the defendants in any event.

The plaintiff was in default, and the defendants were not unreasonable in requiring an order to be made only after hearing what was to be said on the condition in the bond sued on, though, in my opinion, it has been complied with by commencing the action within the 6 months' limit, and serving the writ. If the writ had not been served within a year,