which had been cut on land owned by A., but which he discovered had been cut on Crown land adjoining A.'s lot, and on which defendant had a license from the Crown to cut. There were no lines run between the lots in question, and on the trial the issue was as to the title to the land on which the wood was cut, defendants' counsel stating that he would not object to the Justice's jurisdiction on the ground of the title to land coming in question. Defendant, subject to objection, gave evidence of his license to cut without producing the license. The Justice found that the wood was cut on the Crown land, but gave a verdict for the plaintiff for the amount of the note, less $4, deducted for stumpage. Defendants' counsel, on review, relied solely on the ground that the Justice having found that the wood was cut on the Crown land on which defendant held a license to cut there was no consideration for the note.

Held, that the evidence of the license being improperly estimated defendant had failed to make out a good defence, but that there must be a non-suit on the ground of the title to land coming in question, notwithstanding the agreement of the parties that the question should be tried by the Justice.

C. E. Duffy, for plaintiff. *C. W. Beckwith*, for defendant.

North-West Territories.

SUPREME COURT.

WESTERN ASSINIBOIA JUDICIAL DISTRICT.

Richardson, J.] WOLF *v.* KOCH. [Nov. 4, 1897.

Practice—Judicature ordinance—Default judgment— Order dispensing with production of original writ—Endorsement of service of writ—Motion to set aside judgment—Irregularity.

Judgment in default of appearance. Material: Affidavit of bailiff dated Feb. 4th, 1895; of service on defendant at his residence; of copy of writ and statement of claim annexed to affidavit. On an affidavit of sheriff that bailiff had informed him he served original instead of copy of writ, an order, dispensing with production of original was made on April 6th, 1895, date of judgment, by Judge in Chambers was tried according to s. 30, sub-sec. 11 of the Judicature Ordinance. Original writ was not annexed to affidavit of bailiff; but copy writ bearing no endorsement signed by him, but merely an unsigned endorsement in handwriting of sheriff.

Affidavits filed on behalf of defendant deposed that he never resided at alleged place of service, that he was never served with writ or copy, and that he first became aware of proceedings by seizure by sheriff Sept. 21st, 1897, under writs of execution issued April 6th, 1895.

Held, that the weight of evidence showed non-service, that no affidavit of service had been filed in compliance with s. 80 of Jud. Ord. since the affidavit required was one of facts within deponent's own knowledge, and that affidavit of sheriff did not remedy defect in bailiff's affidavit, that Rule 15 of Order 9 of Rules of Supreme Court, England, 1883, is applicable in N.W.T. and