

3. That the judgment, if signed, was obtained by misrepresentation as to the service of the writ of summons.

4. That the order of 25th January, 1906, was made *ex parte*.

5. That he had a good defence to the action on the merits.

Upon the return of the motion the Master directed an issue to be tried. In the issue P. J. Green was made plaintiff, and Mary George, administratrix, defendant, and the issue was "whether or not the said P. J. Green is entitled to have the alleged judgment in this action set aside and vacated."

This issue was tried before BRITTON, J., at Pembroke.

W. R. White, K.C., and J. G. Forgie, Pembroke, for plaintiff in issue.

C. Millar and C. McCrea, Sudbury, for defendant in issue.

BRITTON, J.:—At the close of the evidence and argument I found the facts as follows:

1. The writ of summons, specially indorsed in form, was personally served . . . upon Green on 31st July, 1890.

2. That the alleged agreement on the part of George to give time to Green until he could pay the amount which Green owed to the firm of George and Green, and which Green assumed at the time of the dissolution of the partnership, provided only that Green would pay in instalments of not less than \$25 a month, was not proved. . . .

I now deal with the points reserved:

1. Objection that judgment was never signed and entered herein.

Mr. Williams, a student in the office of the solicitors for George, on 6th October, 1890, attended at the office of the local registrar at Pembroke, searched for an appearance, and, finding none, made an affidavit of non-appearance, filed it together with a bill of costs, which the local registrar taxed, and the original writ of summons, with an affidavit of personal service of a copy of it. And there was then written out the form of judgment as follows:

(Style of cause.)

"The 6th day of October, A.D. 1890. The defendant not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the said defendant \$2,411.84 and \$23.63 costs."