

1879.
Nov. 14.
—
Uppington vs.
Saul So omon
& Co.

the order applied for, he cited *Folkard on Libel and Slander*, 4th ed., pp. 504, 507; *Metropolitan Saloon Omnibus Co. vs. Hawkins*, 4 H. & N. 146.

Jacobs, in reply, stated this was not in the nature of a fishing application. Access to the documents was required for the purpose of pleading accurately, the defendants having a general knowledge only of their contents. Interrogatories were allowed in England in cases of slander the same as in any other action (*Archbold's Prac.*, 12th ed., pp. 1, 437). He was surprised any difficulty should be raised.

DE VILLIERS, C.J., said:—The Court has only to do with the legal question, and upon that question there can be no doubt that this application ought to be refused with costs.

STOCKENSTRÖM, J., was of the same opinion.

Application refused accordingly with costs.

[Plaintiff's Attorneys, FAIRBRIDGE, ARDERNE, & SCANLEN.]
[Defendants' Attorneys, REDELINGHUIS & WESSELS.]

EQUITABLE FIRE ASSURANCE AND TRUST COMPANY *vs.*
WAINWRIGHT.

Provisional Sentence.—Mortgage Bond.—Non-payment of Interest.

Provisional sentence refused on a mortgage bond claimed to be due by reason of non-payment of interest, payable half-yearly on certain fixed days, one of which days had passed without any payment of interest, but a half-year's interest not having accrued by such day.

1879.
Nov. 20.
—
Equitable Fire
Assurance &
Trust Co. *vs.*
Wainwright.

The defendant had executed a mortgage bond in favour of the plaintiffs, dated the 4th June, 1879, for the sum of £500, bearing interest at the rate of six per cent. per annum, "payable half-yearly, on the thirtieth of June and thirty-first of December in each year," to be reckoned from the date of the bond. The bond contained the condition that unless the defendant should pay "the said half-yearly interest," on the day that it fell due, the principal and arrears of interest should be considered as legally claimed and due, without

notice. No interest having been paid on the 30th June, 1879, the defendant was now sued for the whole amount of the bond and interest.

Innes, for the plaintiff, prayed provisional sentence, and contended that as the defendant had allowed one of the dates fixed for the payment of interest to pass without making any payment, there had been a breach of the condition of the bond, and the full amount was now recoverable.

The defendant made default.

DE VILLIERS, C.J., said :—Without expressing any opinion as to what my views might be in the principal case, I am of opinion the Court cannot now grant this application for provisional sentence. The bond stipulates that interest shall be payable half-yearly on the 30th June and 31st December in each year; and the condition under which the plaintiff sues expressly provides that unless the defendant shall pay the said half-yearly interest on the day it falls due, the principal may be claimed. Interest may have accrued between the 4th and 30th June, but there was not a half-year's interest payable on the latter date. For these reasons provisional sentence must be refused.

DWYER, J., and STOCKENSTRÖM, J., concurred.

Provisional sentence refused accordingly.

[Plaintiff's Attorneys, REID & NEPHEW.]

GROBBELAR'S TRUSTEE vs. GROBBELAR'S EXECUTORS.

Executor Testamentary: Removal of.

Three executors testamentary were appointed by the last will of one G. One of the executors died, a second became insolvent, and the third left the Colony. The Court refused to remove the surviving executors, there being no proof that they had refused to act or were incapable of performing their duties.

The late Mrs. Grobbelar by last will appointed three executors, one of whom has since died, a second had become insolvent, and the third had left the Colony. The testatrix had been possessed of certain landed property, which still

1879.
Nov. 20.

Equitable Fire
Assurance &
Trust Co. vs.
Wainwright.

1879.
Nov. 20.

Grobbelar's
Trustee vs.
Grobbelar's
Executors.