

although unrecorded. This is all the information he would have received if the mortgage had been recorded. The notice to him was sufficient as against himself; but he was acting for the attaching creditor and to secure his interests. He was in fact his servant or agent, and the authorities cited show that his knowledge was the knowledge of the creditor.

Unless either party elects a trial by jury, there must be
Judgment for the plaintiff.

MALONY v. WADDLE.

{ MARCH 13,
1875.

In action of debt on judgment, an account on which a right of action existed in favor of the defendant, at the date of the writ on which the judgment is founded, may be filed in set-off.

DEBT upon a judgment recovered at the April term, 1874, of the supreme judicial court, by Annie Malony against Peter Waddle. The writ is dated May 4, 1874. The defendant asked leave to file a set-off, embracing certain items of account against the plaintiff, all of which accrued before the writ was sued out in the original action. Leave was granted by the court, to which the plaintiff excepted.

E. B. S. Sanborn, for the plaintiff.

Barnard, for the defendant.

CUSHING, C. J. No suggestion has been made of any circumstance which takes this out of the ordinary practice under the statute.

LADD and SMITH, JJ., concurred.

The exception

Must be overruled.