

THE MASTER.—. . . Gordon v. Warren, 24 A. R. 44, and other cases cited, would be very instructive in a discussion as to whether Mrs. Booth had or had not separate estate on 1st June, 1892. At present, however, the only point for decision is whether the ex parte order was rightly made. I am obliged to hold that it was not. From the writ itself it appears that service was accepted by the solicitors for the defendants. Upon them, therefore, service of the amended writ and statement of claim could easily have been made. Very possibly no opposition would have been made to the judgment being amended as has been done. But, however that may be, I think that the defendant Mrs. Booth should have had an opportunity of deciding what course she would take in the matter. In Howland v. Dominion Bank, 15 P. R. 56 (approved and followed in Cairns v. Airth, 16 P. R. 100, at p. 104), it is laid down that on such applications as the present the existing state of things may be looked at and new evidence adduced to support or repel the motion. On the present motion the new material is the affidavit of Mrs. Booth negating the possession of separate estate at the time of the execution of the mortgage and the affidavit of defendants' solicitor. . . . The order must be set aside with costs, to be set off against the costs payable by defendant Mrs. Booth under the judgment in the action.

I cannot but think that an ex parte order to amend a judgment should only be made in respect of a clerical error or some defect of that character. . . .

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CARTWRIGHT, MASTER.

OCTOBER 24TH, 1903.

CHAMBERS.

# ROBINSON v. TRUSTEES OF TORONTO GENERAL BURYING GROUNDS.

*Pleading—Statement of Claim—Damages — Breach of Covenant—Necessary Allegations—Particulars.*

The statement of claim set out that plaintiff purchased from defendants and defendants conveyed to her a plot in a cemetery, wherein she buried her husband; that the rules, by-laws, and regulations of defendants were taken to be incorporated in their deeds; that by the rules of defendants it was enacted that no grave should be opened nearer than six inches from the boundary line of a plot; that plaintiff,