

minute: "Appeal in this case dismissed with costs to be taxed by the Clerk of the Peace within five days." No formal order was ever drawn up in pursuance of this minute, but the Clerk of the Peace afterwards taxed the costs and on his certificate at a subsequent sittings of the Court of General Sessions an order was applied for and obtained for the issue of a distress warrant, for the amount of such costs.

*Held*, that under ss. 88o (e) and 897 it was necessary for a formal order to be drawn up in pursuance of the above mentioned minute and that therefore there was no warrant or authority for the certificate of the Clerk of the Peace or for the order of the Court of General Sessions directing the distress warrant, and the same must be quashed.

Appeals from summary convictions and the costs payable in respect thereof are founded upon the statute law, and the provisions of the law regarding them in England and in this country are essentially different. In this country in view of section 88o (e) and (f) of the Criminal Code, the necessary formal order in pursuance of the above minute might be drawn up at a future sittings of the Court of General Sessions, which is a continuing Court, and the costs included therein nunc pro tunc if necessary; and the power to grant costs and determine what costs are just and reasonable is not with us as it is in England confined to the justices at the same general sessions at which the appeal is heard.

*Du Vernet*, for appellant. *J. H. Moss*, for respondent.

Armour, C.J., Street J.,] *APPLEBY v. TURNER*. [April 18.

*Judgment—Action on bond—Rule 580—Writ of summons—Special indorsement—Statement of claim—Service by posting—Rule 574—Motion for judgment—Assessment of damages.*

An action against the sureties in an appeal bond to recover the plaintiffs' costs of an appeal is in the nature of a claim for damages requiring assessment (see Rule 580), and a special indorsement of the writ of summons is inappropriate, and a judgment for default of appearance or default of defence is a nullity not curable by delay or acquiescence.

The defendants in this case not having appeared, the plaintiffs filed and posted up copies of a statement of claim, without filing the writ of summons and affidavit of service.

*Held*, that the posting of the statement could not, having regard to Rule 574, be treated as a service upon the defendants. But, even if it could be so treated, a motion for judgment thereon and an assessment of damages would be necessary. *Star Life Assurance Society v. Southgate*, 18 P.R. 151, followed.

*Hislop*, for defendants.