

R. W. Co., 12 P. R. 273 ; Cuerrier v. White, 12 P. R. 571. The taxing officer is to make the necessary changes as to counsel fees in accordance with the decision upon the appeal. No costs of this motion. Defendant Ryckman to have two days' time to appeal. Plaintiff to have one day after defendant appeals to cross-appeal.

MACMAHON, J

DECEMBER 16TH, 1903.

CHAMBERS.

RE MAGER v. CANADIAN TIN PLATE DECORATING
CO.

Division Court—Judgment by Default—"Money Demand"—Claim for Money Obtained by False Representations—Prohibition.

Motion by defendants for prohibition to the 1st Division Court in the county of Waterloo and to the bailiff of that Court against proceeding under an execution against defendants, on the ground that the clerk of the Court wrongfully and without jurisdiction entered judgment for default of a dispute notice by defendants, the claim not being for a debt or money demand and not being specially indorsed as required by sec. 113 of the Division Courts Act. The claim was for "money received by defendants for the use of plaintiff, being money obtained from plaintiff by defendants by false representations, \$20, and interest thereon at 5 per cent., 50 cents." Section 113 provides that in actions for recovery of any debt or "money demand," where the particulars of plaintiff's claim with reasonable certainty and detail are indorsed on or attached to the summons, unless defendant leaves a dispute notice with the clerk, final judgment may be entered.

W. E. Middleton, for defendants.

W. Davidson, for plaintiff.

MACMAHON, J., held that the claim of plaintiff was a "money demand," being a demand for money had and received by defendants through an alleged fraudulent representation, and came within sec. 113, and no dispute notice having been left with the clerk, judgment was properly entered after the expiration of the time provided for leaving the same. Addison on Contracts, 10th ed., p. 429, Holt v. Ely, 1 E. & B. 795, Litt v. Martindale, 18 C. B. 314, and Robson v. Eaton, 1 T. R. 62, referred to. Motion dismissed with costs.