

than \$100; and this statutory provision must be most strictly complied with: *Handley v. Franchi* (1866), L.R. 2 Ex. 34; *Bennett v. Dawson* (1828), 4 Bing. 609; *Hughes v. Brett* (1829), 6 Bing. 239; *Townsend v. Burns* (1832), 2 Cr. & J. 468; *Archbold*, 14th ed., p. 1465; *Bullock v. Jenkins* (1850), 20 L.J.Q.B. 90.

On this branch of the case, the plaintiff had failed to comply with the requirements of the statute. He had not sworn to anything which shewed the cause of action. He simply stated his instructions to his solicitor to sue for \$10,000, and exhibited the writ and statement of claim. The amount of damage sustained was not shewn, and no facts were given upon which the Judge could form any opinion. Upon this ground, the order must be vacated as having been made improvidently and contrary to the statute.

Rule 217 gives a Judge power to rescind any ex parte order. *Daner v. Busby* (1871), 5 P.R. 356, must be read in the light of the practice introduced by this Rule in 1888. See *McNabb v. Oppenheimer* (1885), 11 P.R. 214.

The order in question was also liable to attack upon the defective nature of the material in so far as it attempted to shew an intention to abscond.

All ex parte motions call for the fullest disclosure upon the part of the applicant. A number of material facts were not disclosed to the Judge when he made the order.

The order should, therefore, be vacated and all proceedings under it set aside. The Sheriff should be protected as to all things done by him, as the order was valid on its face. Costs to the defendant in any event.

KELLY, J.

FEBRUARY 19TH, 1917.

NEVEREN v. WRIGHT.

Mortgage—Covenant for Payment—Exchange of Properties—Agreement—Liability for Proportionate Part of Prior Mortgage—Covenant of Mortgagees to Protect Mortgagor—Separate and Distinct Covenants—Assignment of Mortgage—Notice of Sufficiency—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 49—Assignment by Plaintiff and Reassignment pendente Lite—Rule 300—Abatement.

Action to recover the amount which the defendant covenanted to pay, by a covenant contained in a mortgage-deed executed by him on the 15th October, 1913.