

upon defendants undertaking to pay all the additional expense properly arising from the change to the plaintiff.

J. J. Drew, Guelph, for plaintiff.

G. H. Kilmer, for defendants.

MEREDITH, J., allowed the appeal and restored the venue to Guelph. Costs in the cause.

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CARTWRIGHT, MASTER.

OCTOBER 24TH, 1903.

CHAMBERS.

BOLSTER v. BOOTH.

*Judgment — Amendment — Ex parte Application — Changing Personal into Proprietary Judgment — Rescission of Order Giving Leave to Amend.*

Motion by the defendants to rescind an order made by the Master in Chambers, on the ex parte application of plaintiff, on 19th March, 1903, allowing plaintiff to amend the writ of summons and statement of claim nunc pro tunc, and without service upon defendants, by alleging thereon that one of the defendants was a married woman and had separate estate at the time she entered into the covenant sued on, and by claiming judgment against her separate estate, and also allowing plaintiff to amend the judgment so as to make it a judgment against her separate estate.

The covenant was contained in a mortgage deed dated on the 1st June, 1892. The action was begun on 10th November, 1902. Defendants filed a statement of defence on 5th December, 1902. Shortly afterwards an order was made striking out the defence and permitting plaintiff to sign judgment against defendants for the amount due upon the covenant. There was no reference in any of the proceedings to separate estate. Defendants were husband and wife.

The order for amendment first came to the knowledge of defendants on 27th April, 1903, and this motion was launched on 6th May, 1903.

A. W. Ballantyne for defendants.

W. R. Smyth, for plaintiff.