

tenant appears and takes advantage of an adjournment made for the express purpose of meeting his objection, and then takes the chance of an adjudication upon the merits by the County Court Judge, he has effectively waived what he has himself treated as merely the irregularity which it seems in fact to be. In the absence of an English or Ontario case in point, *Smith v. Smith* (supra), a decision of the Supreme Court of Nova Scotia, should be followed rather than the judgment of Dubuc, J., in *Carley v. Bertrand*, 5 *Western Law Times* 158, notwithstanding the closer similarity borne by the Manitoba statute to our own Act. Moreover, in view of *In re Warbrick* and *Rutherford*, 6 O. L. R. 430, 2 O. W. R. 961, it must be deemed doubtful whether prohibition should under any circumstances be granted before the writ of possession has actually issued.

Motion dismissed with costs.

ANGLIN, J.

JULY 25TH, 1904.

CHAMBERS.

EDWARDS v. COOK.

*Summary Judgment—Rule 616—Pleading Disclosing no Defence—Motion for Judgment—Refusal—Discretion—Appeal.*

Appeal by plaintiff from order of Master in Chambers dismissing plaintiff's motion for judgment under Rule 616.

C. A. Moss, for plaintiff, contended that the statement of defence raised matters which disclosed no answer to his claim.

W. H. Blake, K.C., for defendant.

ANGLIN, J.—Rules 261 and 259 afford appropriate methods for disposing of such questions; and, in view of their provisions, Rule 616 was not intended and should not be used to fulfil this office. *Mellor v. Sidebotham*, 5 Ch. D. 342, referred to. The relief granted under Rule 616 is not a matter of right, but a matter for the exercise of judicial discretion: *In re Wright*, [1895] 2 Ch. 747, 750. That discretion the Master has exercised by refusing plaintiff's motion, and I should not interfere.

Appeal dismissed with costs to defendant in any event.