

FALCONBRIDGE, C.J.

FEBRUARY 27TH, 1902.

WEEKLY COURT.

PADGET v. PADGET.

*Practice—Appearance—Limited Appearance—Submission to Judgment
—Irregularity—Motion for Judgment.*

Motion (heard at Ottawa) by plaintiff to set aside, as irregular, the appearance entered by defendant, or for leave to sign judgment for the declaration asked for in the indorsement on the writ of summons, with costs, and to proceed with the plaintiff's claim for damages, as indorsed on the writ, or to discontinue the action as to the claim for damages, without costs. The indorsement on the writ was for a declaration that certain lands (described), being the lands intended to be devised to the plaintiff by the will of John Padget, but erroneously described therein, were absolutely freed and discharged from the conditions and obligations to which they are subjected by the will in favour of the defendant, and absolutely freed and discharged from all bequests, legacies, and other payments charged thereon by the will in favour of the defendant; and for damages against the defendant for wrongful refusal to execute a quit-claim deed of the lands, when tendered to him for execution. The appearance entered by the defendant was limited to that part of the plaintiff's claim which asked for damages against the defendant and for costs. The appearance also stated as follows:—"Without admitting that the plaintiff is entitled to the declarations asked for in the writ of summons herein, the defendant will make no objection to the making of the declarations asked for, and the defendant is also willing to execute a quit-claim deed in favour of the plaintiff of the lands devised to the plaintiff by the last will. . . ."

W. A. D. Lees, Ottawa, for plaintiff.

J. I. MacCraken, Ottawa, for defendant.

FALCONBRIDGE, C.J.—There is no authority whatever in the Rules or in the practice for an appearance limited as is this one, in an action of the character disclosed in the indorsement of the writ of summons. The appearance will, therefore, be set aside and judgment entered for the plaintiff (except as to the claim for damages) with costs. The defendant may have leave to file a proper appearance on payment of costs of this motion. But the motion was really