

Longley, J.]

WALLACE v. DAVIS.

[Dec. 24, 1907.]

*Practice—Order—Power of amendment.*

When an order is inadvertently drawn in such a way as not to carry out the judgment of the Court, the Court has power to amend it so as to make it conform to the terms of the judgment.

The solicitor whose want of care has made the application for amendment necessary will not be allowed costs of the application.

*O'Hearn*, for plaintiff. *Kenny*, for defendant.

Laurence, J.]

HUBLEY v. HUBLEY.

[Jan. 7.]

*Deed—Delivery—Presumption.*

Defendant engaged a Crown land surveyor, who was also a justice of the peace, to prepare a plan and description of a lot of land owned by defendant and to draw a deed of the same to his son. The deed was written and executed by defendant and his wife in the presence of the justice who took the wife's acknowledgment of dower and the attestation of the witness and returned the deed to defendant. Defendant's son married plaintiff and erected a house on the lot of land and occupied it with plaintiff until shortly before his death. There was evidence to shew that the deed was read over by the son and his wife in defendant's presence and that defendant agreed to record it, but did not do so and retained possession of the deed until after his son's death when he destroyed it. In an action by plaintiff on behalf of herself and her infant child, claiming a declaration that the lands described in the deed were conveyed by defendant to his son and were the property of the son at the time of his death,

*Held*, that the retention of the deed by defendant under the circumstances mentioned was not sufficient to rebut the presumption of delivery.

*Mellish*, K.C., and *Kenny*, for plaintiffs. *Mackay*, K.C., for defendant.