

mortgage ceased to be valid as against creditors, and subsequent purchasers and mortgagees in good faith, in December, 1891, and that plaintiff was entitled to recover.

As to the question of jurisdiction, held that a person whose goods have been wrongfully taken and sold by another, and who waives the tort and adopts the sale, may recover from that other person the proceeds of the sale received by him to an amount not exceeding \$100 in the Division Court, the cause of action being the breach of an implied contract by the defendant to pay over the proceeds to the plaintiff, and within sec. 706 of the D.C. Act.

Judgment for plaintiff for \$100 and costs.

J. W. Kerr, plaintiff, in person.

E. C. S. Huycke for defendant.

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CHAMBERS. } [AUG. 3.  
FALCONBRIDGE, J.]

TRIPP v. PAGET.

*Solicitor—Witness Fee—Lapse of Certificate.*

Appeal from præcipe order changing solicitor for plaintiff, and from order of Master in Chambers allowing plaintiff to issue execution.

Held, that under the present practice there is no provision for payment of costs before granting the præcipe order changing a solicitor, see Rule 463 and cases cited in Holmsted and Langton, pp. 467-8. The fact that a solicitor does not take out his annual certificate would not prevent his getting costs as between party and party from the other side (Scott v. Daly, 12 P.R., 610).

Held, also, that when a solicitor has made an affidavit on a motion as to a question of fact, he is entitled only to the ordinary witness fee with subpoena for cross-examination; and if the subpoena and appointment are not only for his cross-examination or affidavit, but to give evidence on a pending motion, the opposing counsel is entitled to examine or cross-examine generally.

H. E. Caston claiming to appear for plaintiff.

C. E. Hewson for defendant.

J. F. Canniff for W. H. Hewson, solicitor for plaintiff under præcipe order.

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TRIAL COURT. } [AUG. 11.  
FALCONBRIDGE, J.]

FLINT v. HUNT.

*Title by Possession—Mistake of Title—Improvements.*

Action tried at Ottawa, brought to recover possession of lands. The defendant claimed title by possession, and in the alternative asked allowance for improvements as made under mistake of title. The learned judge finds, as facts, that the defendant's father was the tenant of plaintiff, and her predecessors in title, and that the defendant knew, or could have easily ascertained, that he had no title, and that no sufficient possession was proved.

Held that, where the case is that of a stranger building on land which he knows to be the property of another, there cannot be invoked in his aid any doctrine of equity apart from the statute, Ramsden v. Dyson, L.R., 1 H.L., 129, followed; and the statute does not apply where, as here, the improvements were not made under belief of ownership. Judgment to be entered for plaintiff for possession of land, with \$60 mesne profits, and full costs of action.

Hutcheson (Brockville) for plaintiff.  
Watson, Q.C., for defendant.

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TRIAL COURT. } [AUG. 11.  
FALCONBRIDGE, J.]

KUNTZ v. MESSNER.

*Fraudulent Preference—Antecedent Promise—Costs.*

Action brought by assignee for benefit of creditors of defendant Messner to set aside as fraudulent and void an assignment of mortgage dated November 17th, 1896, made by defendant Messner to defendant Kieffer, for the expressed considera-