

without separate estate, a married woman is not required to give security for costs. The only person who could be plaintiff in the title was the wife, and her husband could not be joined as a necessary, or even proper, party. This case did not come within the class of cases where a nominal and insolvent plaintiff is put forward, while the substantial litigant keeps in the background in order to avoid liability for costs; and an order for security for costs was set aside.

C. J. Holman and *A. D. Cameron*, for the plaintiff.

Lynch Staunton, for the defendant.

Chy. Divisional Court.] [Dec. 21, 1887.

PIERCE v. PALMER.

Appeal—Waiver—Motion to extend time for complying with order appealed from.

By an order of Boyd, C., 12 P. R. 275, a motion by the defendant to set aside a judgment for irregularity was refused, but the defendant was let in to defend upon paying into court or securing \$700 within a month. The defendant moved for and obtained an order extending the time for paying the money in, and then appealed from the part of the order refusing to set aside the judgment for irregularity.

Held, that the defendant had waived his right of appeal from the order by obtaining an enlargement of the time for complying with it.

C. J. Holman, for the appeal.

Hoyle, contra.

Chy. Divisional Court.] [Dec. 21, 1887.

REID v. MURPHY.

Interpleader—Sale of goods—Sheriff's charges.

The decision of Proudfoot, J., 12 P. R. 246, was reversed on appeal.

After an interpleader order is made at the instance of a sheriff, the special jurisdiction of the court under the Act relating to interpleading arises, by which the writ of execution, as such, ceases to operate; and the sheriff, in selling the goods seized thereunder, acts not for the execution creditor, but for the court under the interpleader order. Where, therefore, a sheriff, under such circumstances, sold goods which were found by the event of an

interpleader issue not to have been the goods of the execution debtor, but of the claimant, and paid the proceeds into court less his charges for possession money and expenses of sale, etc.

Held, that he was not liable to refund to the claimant the amount deducted for such charges.

The claimant's remedy is to recover the amount of such charges from the execution creditor, which he can do in a summary way.

Miscellaneous.

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