

should have costs upon the County Court scale only, and that the defendant should not set off costs. It might be otherwise if the amount awarded reached or nearly reached the limit of County Court jurisdiction. W. R. Meredith, for the plaintiff. O. L. Lewis, K.C., for the defendant.

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SCHMIDT v. SCHMIDT—MASTER IN CHAMBERS—NOV. 11.

*Pleading—Statement of Claim—Addition of Cause of Action not Endorsed on Writ of Summons—Rule 109—Alimony.*]—Motion by the defendant Schmidt for an order striking out part of the statement of claim as disclosing a cause of action distinct from the claim endorsed on the writ of summons. In the part of the pleading complained of, the plaintiff claimed alimony from the defendant Schmidt. In the endorsement on the writ the claim was to have it declared that a certain memorandum of agreement dated the 26th March, 1914, and made between the plaintiff and the defendant Schmidt, was not binding upon the plaintiff, as the execution of the said agreement by the plaintiff was obtained by duress and undue influence, and was contrary to public policy; and also to have it declared that a certain bond, signed by the plaintiff and by the National Surety Company, in pursuance of the agreement, was null and void, and, in the alternative, if it should be held that the plaintiff had committed a breach of the bond, that she be relieved from the penalty thereof, and for an injunction to restrain the defendant the National Surety Company from payment of the amount of the bond to the defendant Schmidt, and for an order declaring that the plaintiff was entitled to the custody of her infant children. The plaintiff relied upon Rule 109, providing that the plaintiff may "alter, modify, or extend his claim as endorsed upon the writ." The Master referred to *Muir v. Guinane* (1905), 6 O.W.R. 844, and said that the purpose of the writ of summons is to notify the defendant of the claim made against him so that he may know what course to pursue. If he desires, upon being served with a statement of claim, to invoke Rule 109, he must shew that he has been attacked on a ground of which the writ gave him no notice, and that his position has been altered for the worse. The defendant Schmidt had no notice of the intended action for alimony until served with the statement of claim. This was a distinct cause of action, and should be tried separately. The plaintiff must justify the joinder of a distinct cause