

Compliance with an order for security for costs by giving security under protest, and with notice to the opposite party that it was under protest, and proceeding in the action,

*Held*, not an acceptance of and acquiescence in the order which waived the right of appeal.

*Foy, Q.C.*, for the plaintiff.

*C. Millar* for the defendant, Haldane.

ROSE, J.]

[Jan. 28.]

MAHONEY *v.* HORKINS.

*Mortgage action—Appearance disputing amount claimed—Statement of claim not required—Præcipe judgment—Rule 718—Motion to Court for judgment—Rules 551 and 753.*

In a mortgage action for payment, foreclosure, etc., the defendant entered an appearance in which she stated that she did not require the delivery of a statement of claim, and added, "Take notice that the defendant disputes the amount claimed by the plaintiff."

*Held*, that the record was then complete, and that a statement of claim was unnecessary and irregular.

*Peel v. White*, 11 P.R. 177, approved and followed.

*Held*, also, that the case was not within Rule 718, and the plaintiff could not obtain a judgment on præcipe.

Upon motion to the Court upon the record as contained in the writ of summons and the appearance, an order was made under Rules 551 and 753, directing a reference to take the mortgage account, and directing that if the referee should find any amount due to the plaintiff, the plaintiff should have judgment according to the writ with costs.

*Douglas Armour* for the plaintiff.

*Masten* for the defendant.

Chy. Div<sup>l</sup> Ct.]

[Feb. 3.]

HEASLIP *v.* HEASLIP.

*Costs—Taxation—Appeal to Master under Rule 854—Order upon appeal—Further appeal from order, to Judge—Appeal from certificate of taxing officer—"Costs between solicitor and client"—"Costs as between solicitor and client."*

The decision of FERGUSON, J., 14 P.R. 21, affirmed.

*C. Millar* for the plaintiff.

*A. Hoskin, Q.C.*, for the defendant.

MANITOBA.

KILLAM, J.]

[Jan. 7.]

GRANT *v.* HUNTER.

*Trial of issue under Real Property Act—Insufficient evidence of identity of plaintiff's grantor.*

At the trial of an issue as to whether the plaintiff acquired by conveyance from the patentee an estate in fee simple as against the defendants, the defendants' counsel, at the request of the counsel for the plaintiff, produced the letters patent by which, after reciting that "Bernard Vivier, son of Michael Vivier, in his lifetime, of the Parish of St. Francois Xavier and Baie St. Paul, in the Province of Manitoba," had applied for the grant of the lands therein mentioned, and had been found entitled thereto, and that Bernard Vivier had since died intestate, leaving him surviving "Michael Vivier, of the said Parish of St. Francois Xavier and Baie St. Paul, his father, and sole heir-at-law," the lands were granted to Michael Vivier in fee simple.

The plaintiff produced a conveyance to her of the lands, purporting to be made by "Michael Vivier, of Edmonton, in the Northwest Territories of Canada, father and sole heir-at-law of Bernard Vivier, of the Parish of St. Francois Xavier, in the Province of Manitoba, deceased." This deed was executed by a marksman, the name being written as "Michel Vivier." At the trial a witness to this deed was called and deposed that he went for Vivier and told him plaintiff's husband wanted him to sign a deed. Witness did not know Vivier, and had never seen him before; he stated that Vivier knew nothing of the matter, or even that he owned the land, and told him that he had not sold it. Another witness stated he had known Bernard Vivier, but did not know whether he was then alive or dead; he did not know his father, but stated he knew a Michael Vivier, who formerly lived in St. Francois Xavier, but went to Edmonton in 1866. The defendants did not offer any evidence, but rested their case on the objection that there was not sufficient evidence of the identity of the plaintiff's grantor with the patentee.

*Held*, that the evidence was not sufficient to entitle plaintiff to recover. Plaintiff non-suited.

*J. S. Ewart, Q.C.*, and *C. W. Bradshaw*, for plaintiffs.

*H. M. Howell, Q.C.*, and *T. D. Cumberland*, for defendants.