

The action was brought in the Supreme Court to recover damages for wrongful and excessive seizure and sale by the defendant of the plaintiffs' goods under certain chattel mortgages.

At the trial, the plaintiffs recovered \$1,250 damages; but, upon the defendant's appeal, a Divisional Court held that the damages had been assessed upon an improper basis, and referred the action to the Master for an assessment.

The Master awarded \$478.40 as damages—an amount admitted to be within the jurisdiction of a County Court.

The Divisional Court gave the plaintiffs their costs of the action up to and including the trial, to be paid forthwith after taxation. The damages to be assessed were directed to be paid forthwith after the confirmation of the Master's report.

J. M. Ferguson, for the plaintiffs.

H. H. Davis, for the defendant.

MIDDLETON, J., in a written judgment, said that the question was, whether Rule 649 applied. Had the judgment been for \$478.40, and not for an amount to be ascertained, then, according to *Jackson v. Hughes* (1910), 2 O.W.N. 15, the Taxing Officer was right. But Rule 649 does not apply to a case in which damages are uncertain and unascertained when the Court directs payment forthwith of the costs up to the trial. An order for immediate payment of costs without waiting to know the amount of damages to be paid is an "order to the contrary," within Rule 649.

The question was to be regarded as purely one of the applicability of the Rule—not one of intention.

Appeal allowed with costs.

KELLY, J.

FEBRUARY 5TH, 1917.

WOODBEEK v. WALLER.

Chattel Mortgage—Execution in Duplicate—Filed Instrument—Assignment of—Material Alterations in Duplicate Retained by Mortgagee—Assignment—References to Filed Instrument—References to Altered Instrument—Falsa Demonstratio—Seizure under Chattel Mortgage—Extension of Period for Payment—Breach of Covenant—Acceleration—Insecurity—Justification—Payment of Money into Court.

Action to restrain the defendant from dealing with the goods described in a chattel mortgage made by the plaintiff to one