

*Held*, that this was irregular; the action should have been dismissed or discontinued as against her.

Upon the reference directed by the judgment, and in his report the Master continued the tenant as a defendant by original motion, and also added her as a party in his office by serving her with a notice to incumbancers, although she was not a subsequent incumbancer.

*Held*, that her name should be struck out, both as an original and added party, upon her appeal from the report, notwithstanding that she had not moved to discharge the notice served upon her. *Cowan v. Allen*, 26 S.C.R. 292, followed.

*J. H. Moss*, for defendant. *F. A. Anglin*, for plaintiff.

Boyd, C.]

GIBSON v. HIED.

[March 15.]

*Pleading—Statement of claim—Extension of claim in writ—Rule 244—Service by posting—Subsequent appearance—Waiver—Validating order.*

The claim endorsed on the writ of summons was for specific performance of an agreement for the purchase and sale of land. The statement of claim prayed cancellation of the agreement and possession of the land.

*Held*, a legitimate extension of the claim within Rule 244.

The defendant not having appeared within the proper time, service of the statement of claim was effected, pursuant to Rule 330, by posting up a copy in the proper office, after which the defendant entered an appearance and therein required the delivery of a statement of claim.

*Held*, that the defendant had no right to complain of the variation made in the extended pleading; and the order made upon a motion to set aside the statement of claim, allowing it to stand as of the date of the order, was the proper one. *Gee v. Bell*, 35 Ch. D. distinguished.

*A. Cecil Gibson*, for plaintiff. *W. R. P. Parker*, for defendant.

Meredith, C. J., MacMahon, J., Lount J.]

[March 19.]

THOMPSON v. TOWN OF SANDWICH.

*Municipal corporation—Public dock—Invitation to use—Loading goods on—Collapse—Liability.*

Under the authority conferred by s. 562 of the Municipal Act, R.S.O. c. 223, the defendants, a municipal corporation, built a dock on the Detroit river, and passed a by-law providing for the collection of wharfage fees from those using the dock, one item of the tariff of fees being ten cents per thousand for loading and unloading bricks; a period of forty-eight hours was allowed for removing freight placed on the dock, and fifty per cent. was to be added if that period was exceeded. The plaintiff unloaded 34,000 bricks from a vessel upon the dock, whereupon the dock, being by