

1849.

Meyers
v.
Robinson.

want of answer, on the ground that the plaintiff had endorsed on the copy of subpoena served, the notice directed by the 75th order to be given, namely, "that unless an appearance be entered, an appearance will be entered for you; and if you do not answer the said complainant's bill at or before the expiration of twenty-eight days, &c., you will be considered as confessing the truth of the matters alleged in the said bill of complaint, and a decree will be made and enforced against you." An appearance was accordingly entered by the plaintiff, for the defendant, and no answer having been filed, he proceeded, by attachment, to compel one, and not to take the bill *pro confesso*, a course of proceeding which it was submitted was clearly irregular.

Mr. *Macara* contra. This practice has been pursued in some other cases, so that if the court should now be of opinion that the proceeding is irregular, it is not a case in which to charge the plaintiff with costs.

23rd November.—The judgment of the court was delivered by—

Judgment.

ESTEN, V. C.—In the case of *Meyers v. Robertson*, the suit has proceeded on the 75th order. The subpoena bore the usual endorsement and was personally served. An appearance was entered by the plaintiff for the defendant, and the answer not having been put in, an attachment was issued. The application is to set aside this attachment. We think it would be highly unjust to permit an attachment to issue after service of a subpoena with such an endorsement, and therefore that this attachment must be set aside, but without costs, as it appears that some cases have occurred in which such attachments have been allowed.

Per cur.—Attachment set aside without costs.

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W.C., has the copy placed, sheriff, estate c by the portion he claim A decree perpetual; of the es the elder The agent estate to attorney lands so which he parts paid The defend order, pri report if should be to pay the Held per cur enquire a maining in prejudice Blake, Cham make was the ultima But held also, that relief the court in before the l for costs. Held, also, th the affidavil liability of The affidavits omitting an sufficient. Semble—that to the court make use of should be st aware to wh

The facts pronounced unnecessary.

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