L. R. 5 C. P. 542; *Covert* v. *Robertson*, 31 U.C. Q. B. 256; *Herr* v. *Douglas*, 4 Prac. R. 102.

H. J. Scott in support of the motion. This is not such a writ as can be especially endorsed. It is not alleged that the defendant was even a British subject, and the writ described him as without the jurisdiction. If a foreigner, he could not have been served at all: C.S. U.C. cap. 22, sec. 45. Form A No. 1, and A No. 3, are expressed to be for use according to the defendant "*resides* within the jurisdiction," or "*resides* out of Upper Canada." It is not necessary for the defendant to attack the writ: *Hesketh* v. *Fleming*, 24 L. J. N.S. Q.B. 255.

Mr. Dalton thought that the signing final judgment under such circumstances was irregular, and set aside the judgment.*

Ballantyne v. Campbell—Ballantyne v. Martin.

Held, that under sec. 35, Con. Stat. U.C. cap. 22, read with sec. 37, if the bail render their principle to the sheriff of the county in which the action is brought they are entitled to have an *exoneretur* entered on the bail piece, and it is immaterial whether the render be before or after judgment.

[June 21.—Mr. Dalton].

This was an application to stay proceedings in the first suit which was against the sureties in a bail bond, and to enter an exoneretur on the bail bond in the second suit.

The principal had been rendered to the sheriff of the county in which the action had been brought, and the sheriff to whom the writ was directed in consequence returned the writ *non est inventus* before the return day. Judgment was entered against the principal, and the sureties sued before the time limited for returning the writ.

S. Smith shewed cause. After judgment C. L. P. Act sec. 37, should be complied with, and the render should be to the sheriff to whom the writ was directed, and the defendant should have pleaded the render and not have applied in a summary way.

Osler in support of the summons. Sec. 35 and 37 should be read together. The render can be to either sheriff. The writ was returned too soon, and the action commenced before the return day.

Mr. Dalton thought that the render might be made either to the sheriff of the county in which the action was brought, or to the sheriff to whom the writ was directed, and that the action on the bond was brought too soon. An order was made to stay proceedings in the first case and to enter an exoneretur on the bail bond in the second case.

Mitchell v. Mulholland.

Prohibition—Division Courts.

Held, that Con. Stat. U.C. cap. 19, sec. 117, giving the judge power to grant a new trial within fourteen days is only directory, the Court having an inherent power to grant a new trial at any time.

[June 29.—Morrison, J.]

This was an application for a writ of prohibition directed to the Junior Judge of the county of York, and the opposite parties in a Division Court suit, restraining them from proceeding to trial under an order for a new trial made by the Judge, the application having been made after the expiration of fourteen days from the former trial.

D. B. Read, Q.C., supported the summons.

Morrison, J. thought that the section was only directory, and that the judge had power to grant a new trial at any time.

Summons discharged.

CHANCERY CHAMBERS.

Alexander v. Watson.

Notice of motion—Admission of service—Time.

Where a notice of motion was served after four o'clock and service was admitted as of that day, no objection having been taken until the motion was moved in Chambers,

Held, that the admission of service precluded the party served from raising the objection.

Held also, that when the motion is for a better affidavit on production, two days notice is sufficient.

[May 9.—Mr. Stephens].

Motion for a better affidavit on production.

D. Black objected that a four days notice of motion was required: *Abel* v. *Hilts*, 6 Chy. Ch. 122. The service was made after four o'clock on Friday, and Sunday does not count.

D. M. McDonald in support of the motion contended that the objection could not be taken as it had been waived by the admission of service.

The Referee—I think the admission of service having been given without any objection to the hour at which it was served, and no objection having been afterwards taken until the argument of the motion, it must be held to have been served on the day on which service was admitted. I think also that where

* This case has been appealed. It was argued before Morrison, J., and stands for judgment.