However this may be, the decree and vesting order deprive plaintiff of such legal right as he must shew to entitle him to an injunction, by displacing the only right he set up as the foundation of his application for that writ, and this makes it unnecessary to consider other and formidable objections to his succeeding.

Summons discharged, with costs.

See *Bacon* v. *Jones*, 4 M. & Cr. 433-6; *Attorney-General* v. *The Sheffield Consumers' Gas Co.*, 17 Jur. 677; *Dalgleish* v. *Jarvis*, 2 McN. & Gord. 231; *Gillings* v. *Symes*, 15 C. B. 362; *Hill* v. *Thompson*, 3 Mer. 622; *Spottiswoode* v. *Clark*, 2 Phil. 154; *Stephens* v. *Keating*, *Ib.* 333; *In re Birmingham Canal Co.*, 18 Ves. 515; *Barker* v. *North Staffordshire Railway Co.*, 12 Jur. 589.

Roszel v. Strong.

Bail—Exoneretur—Sufficiency of surrender—Power of judge in Chambers.

Held, 1. That under the C. L. P. A., s. 37, a judge in Chambers has no power to order an *exoneretur* to be entered on a bail piece unless he be "a judge of the Court in which the action is pending."

Held, 2. That a surrender made to the sheriff elsewhere than at the goal, so long as within the limits of his county, is sufficient for the purposes of that section.

[Chambers, August 24, 1865.]

Robert A. Harrison, on behalf of Eli Robins and Mathias Robins, special bail for the defendant in this cause, obtained a summons on reading a copy of the bail piece, certified by the clerk of the court having the custody thereof, the certificate of surrender under the hand and seal of office of the sheriff of the county of Lincoln, the affidavit of service of due notice to the plaintiff's attorney of such surrender, and other affidavits and papers filed calling on the plaintiff to show cause why an *exoneretur* should not be entered on the bail piece, and why thereupon the said bail should not be discharged, and why the proceedings, if any, in the action commenced by plaintiff against the bail, should not be stayed on payment of the costs of the writ and service thereof.

It appeared that the original action was commenced in the Court of Common Pleas; that defendant was arrested, and that on the 24th of October he put in special bail; that the special bail afterwards surrendered him to the sheriff of the county of Lincoln at St. Catharines; that the sheriff proceeded from Niagara, where the goal is situate, to St. Catharines, at the request of the bail, for the purpose of receiving their principal into custody, and that subsequent to the surrender the sheriff took fresh bail for defendant; and that an action had been commenced against the bail, and writ had been served.

W. Atkinson showed cause, and argued that no legal surrender was shewn; that the sheriff could not legally accept a debtor in discharge of bail elsewhere than at the county gaol, and that the bail, therefore, were not discharged, and so not entitled to an *exoneretur*. He referred to statutes 2 Geo. IV., cap. 1, s. 12; 4 Wm. IV., cap. 5, s. 1; 8 Vic., cap. 13, s 27; Con. Stat. U. C., cap. 24, s. 34; and to *Linley* v. *Cheeseman*, Dra. Rep. 55; *Blackman* v. *O'Gorman*, 5 U. C. L. J. 161.

Robert A. Harrison supported the summons, contending that the statute now in force (Con. Stat. U. C., cap. 22, s. 37) did not require the surrender to be at any particular place in the sheriff's bailwick in order to be valid; that the sheriff might refuse to receive the body of the debtor elsewhere than at the gaol, but that if he see fit to waive that privilege the surrender is in all respects valid, and if so, there is nothing to prevent the sheriff accepting fresh bail, or even permitting a voluntary escape, in which event, though the sheriff might be liable, the bail would still be discharged.

The summons was first argued before Draper, C. J., who on consideration declined to adjudicate, on the ground that he was not "a judge of the Court (C. P.) in which the action was pending, within the meaning of s. 37 of Con. Stat. U. C., cap. 22.

It was afterwards argued before Richards, C. J. (C. P.), who held the surrender sufficient, and made the summons absolute.

CHANCERY.

Re Hamilton.

Application by legatee to administer estate of deceased—General Order XV.—Notice of motion not referring to affidavits filed.

[December 18, 1865.]

This was an application under No. XV. of General Orders of 3rd June, 1853, on behalf of a legatee under the will of the deceased, for an order for the administration of the testator's estate.

Downey, for the executors, objected that the notice of motion did not shew that any affidavit had been filed.

Osler, *contra*, urged that under the wording of the General Order above referred to, and the form of notice of motion as given in schedule H to said order, it would appear that the order is to be granted on proof by affidavit of the service of the notice of motion, and on proof by affidavit of such other matter (if any) as the Court may require, and contended that it was therefore unnecessary to file any affidavit before serving the notice of motion.

Mowat, V. C.—On the day following said, that the practice of filing an affidavit or affidavits and referring thereto in the notice of motion was too firmly established to admit of alteration. The motion was therefore refused with costs.

Order accordingly.

ENGLISH REPORTS.

(*From Weekly Reporter.*)

CHANCERY.

Low v. Routledge.

Copyright—Alien—Colony, laws of—Residence.

An alien friend, coming into a British colony and residing there for the purpose of acquiring copyright during and at the time of the publication in England of a work composed by him, and first published in this country, is entitled to copyright in England in the work so published, though he may not, under the laws in force in the colony where he is residing, be entitled to copyright there.