

C. L. Cham.]

CORRIGAN v. DOYLE—IN THE MATTER OF L. F. LANGS.

[Insol.]

not declare in vacation, that he had until the end of vacation in which to do so.

Osler shewed cause. The stay of proceedings applies only to the adverse proceedings of the other side, and the summons having been discharged the plaintiff was compelled to take the next step in the cause on the same day, or obtain further time to do so: *Mengens v. Perry*, 15 M. & W., 537; *Vernon v. Hodgins*, 1 M. & W., 152; *St. Hanlaire v. Byam*, 4 B. & C., 970; *Hughes v. Walden*, 5 B. & C., 770; Ch. Prac., 12 Edn., 224, 1591.

The plaintiff had no further time to declare, in consequence of the last day falling in vacation. The statute and rule of court apply only to pleadings after declaration: *Reg. Gen. No. 9*; C. L. P. Act, sec. 83.

Smith, contra. The plaintiff had the same time to declare after the summons was discharged as he had when it was returnable; the rule as to taking the next step on the day it was discharged applied only to the case of a defendant; at all events, as the last day for declaring, according to the defendant's own admission fell in vacation when it was impossible for the plaintiff to declare regularly, he necessarily had until the end of vacation in which to do so: *Crooks v. Dickson*, 10 U. C. L. J. 153; *Ryley v. Parmenter*, 2 U. C. L. J. N. S., 268; Arch. Prac. 12 Ed. 1591, 1602; *Mengens v. Perry*, 15 M. & W. 537; *Wood v. Nichols et al.*, 3 U. C. L. J., N. S., 205; *Abbott v. Hopper*, 8 Dowl. 19; *Trego v. Tatham*, 9 Dowl. 379.

MORRISON J.—I am of opinion that this application must be discharged. It appears that on the 13th June last the defendant gave the plaintiff the usual notice requiring the plaintiff to declare within eight days, otherwise judgment of *non pros.* On the 18th June the plaintiff obtained a summons for further time to declare until the 22nd August. On the return of the summons on the 19th it was enlarged, and was subsequently enlarged by both parties until the 28th July, when it was discharged with costs, proceedings during the enlargements being stayed. At the time the application was made the time for declaring would expire on the 21st of June. On the 29th July, the day after the summons was discharged, the defendant signed judgment. The plaintiff contends that this judgment is irregular, upon the ground that, in effect, when it was signed the time to declare had not expired; that as the plaintiff had two days' time when his summons was granted, he had at least such two days after it was disposed of, and as it was disposed of in vacation, he had until the second day after the 21st August to declare; in other words, he contends that whether his application was granted or dismissed, as it was, with costs, he obtained the time, or rather one day more than the time he asked for. With respect to the stay of proceedings during the pendency of the application, and upon which Mr. Smith, for the plaintiff, rested a good deal of his argument, cases may arise in which a stay may apply to the proceedings of both plaintiff and defendant, but I take it as a general rule that it only applies to the adverse proceedings of the plaintiff or defendant, as the case may be, and whose proceedings it is the object of the applicant to stay or prevent. Here the plaintiff obtained the

summons, and the proceeding to be stayed was the entering a judgment of *non pros.* by the defendant so soon as the eight days expired, and the stay could only be applicable to that proceeding. The summons was discharged with costs after the time for declaring had elapsed, and if the plaintiff was entitled to any time to declare, it would be only the whole of the day on which the summons was discharged: *Mengens v. Perry*, 15 M. & W. 538. The defendant entered his judgment of *non pros.* the day after the application was dismissed, and it was not contended that the defendant could not sign the judgment in vacation. Under these circumstances, as the plaintiff had disabled himself, through his own application to file a declaration on the day the summons was discharged, it being in vacation, he ought to have applied to the learned Judge for relief, but I may assume, as the Judge dismissed with costs his application, asking for time until the day after vacation, that he would not have relieved the plaintiff, for, in that case, he would only, in another way, be granting to the plaintiff his original application. I do not think that the plaintiff should be permitted to profit by his own improper application for time, and through it obtain all that he asked, although it was discharged, as already stated. He was not entitled to be, with respect to time, as said by Bayley, J., in *St. Hanlaire v. Byam*, 4 B. & C. 970, in a better condition by reason of his own rule improperly obtained.

Summons discharged with costs.

INSOLVENCY.

IN THE COUNTY COURT OF THE COUNTY OF NORFOLK.

IN THE MATTER OF LYMAN F. LANGS, AN INSOLVENT.

Insolvency—Composition and discharge—Unnecessary for creditors to prove debts to enable them to execute deed of Schedules conclusive—Confirmation refused.

[Sinece, October 28th, 1868.]

This was an application to confirm the discharge of the insolvent under a deed of composition and discharge.

Tisdale for the insolvent.

Ansley for the non-releasing creditors.

The facts of the case fully appear in the judgment of

WILSON, Co. J.—By a deed of assignment bearing date the 22nd day of August, 1867, made under the Insolvent Act of 1864, the insolvent voluntarily assigned his estate to A. J. Donly, the official assignee for the County of Norfolk. Annexed to the deed of assignment is a schedule of creditors of the insolvent, and the amount of his indebtedness to them individually, duly sworn to by him. Amongst other scheduled creditors appeared the names of Leonard Sovereign, John and Eliabim Langs, and Charles Lyons, to whom, as appeared by the schedule, the insolvent was indebted as follows:—

To Leonard Sovereign, for Rent.....	\$445 00
“ “ “ Note.....	250 00
“ “ “ Do.....	75 00

\$770 00