RUDALL v. HURD ET AL.

Satisfaction Piece—Signature of plaintiff dispensed with—Rule 64, T. T.—20 Vic., 1856.

Plaintiffs' signature to the Satisfaction Piece, as required by Rule 64, T. T. 1856, will be dispensed with, and his attorney in the cause be authorised to acknowledge satisfaction, upon so being shown that the attorney is authorised by plaintiff to arrange the claim, and that the delay in obtaining plaintiff's signature will be prejudicial.

(Dec. 17, 1856.)

L. W. Smith applied for an order dispensing with the signature of the plaintiff to the Satisfaction Piece, as required by Rule 64 of Trinity Term, 20 Vic. 1856.

The affidavit of *Smith* showed that he had acted as plaintiff's attorney in this cause, and had issued an execution against the lands of defendants; that he had also since acted for plaintiff, who resides in England, in proving his claim against defendant Hurd, upon his judgment in this cause, as an Incumbrancer in a certain foreclosure suit in Chancery against said Hurd; that he (deponent) had been applied to by the solicitor of Hurd to discharge the judgment in this cause upon being paid the same; that Hurd's solicitor informed deponent that he was prepared to satisfy the judgment, if the same could be immediately discharged; that deponent is fully authorised by the plaintiff to collect the amount of the said claim, and to take all necessary steps therefor—in further proof of which he referred to a letter received by him from plaintiff, and now produced, dated "London, 27th June, 1856," authorising him (deponent) to act for plaintiff in arranging this claim; and that it is desirable that deponent should be allowed to sign the Satisfaction Piece, without delaying to send the same to England for plaintiff's signature.

HAGARTY, J., granted an order "that the signature of the plaintiff to the Satisfaction Piece in this cause, as required by Rule 64, Trinity Term, 1856, be dispensed with; and that the attorney for the plaintiff in this action be authorised to acknowledge satisfaction of the judgment in this cause."

RIDLEY v. TULLOCK.

Removal of suit from Division Court by Certiorari—13 & 14 Vic., cap. 53, sec. 85.

A suit will be removed by *certiorari* from a Division Court to one of the Superior Courts, upon its being shown that questions of law as to the application of the Statute of Limitations will arise in the trial.

[Dec. 17, 1856.]

Jackson, for defendant, applied under 13 & 14 Vic., cap. 53, sec. 85, for an order for a writ of *certiorari* to remove this suit from the First Division Court of the county of Hastings, to the Court of Queen's Bench.

The affidavit of defendant showed that the whole amount of the account sued on is £29 10s. 6d., but plaintiff abandoned the excess so as to sue in the Division Court; that the whole debt sued for, except ten shillings, appeared by plaintiff's particulars to have been contracted more than six years next before the Summons was issued herein; that defendant gave notice of his intention to plead the Statute of Limitations, and on the trial the Judge ruled that the claim being a running account, the last items of which were obtained within the six years, it did not come within the Statute of Limitations, and accordingly gave judgment for plaintiff; that he, defendant, obtained a new trial; that he has never promised to pay any part of plaintiff's claim within six years next before the issuing of said summons; that questions of law as to the application of the Statute of Limitations to bar plaintiff's claim, are likely to arise on the trial; and that he owes no part of plaintiffs claim, and is advised and believes that he has a good defence on the merits.

HAGARTY, J., granted the order, quoting the wide words of the Division Courts Act, 13 & 14 Vic., cap. 53, sec. 85, but expressing strong doubts as to the general sufficiency of the grounds alleged.

MCKELLAR v. GRANT.

Endorsement on Fi. Fa.—Certificate of Judgment—Concurrent writs of Execution.

The costs of a certificate of judgment may not be endorsed on a *Fi. Fa.* The costs of a concurrent writ will not be disallowed unless it be shown that it was issued merely to make additional costs.

[Dec. 17, 1856.]

This was an application by *Carrall* to reduce the amount endorsed on the *Fi. Fa.* by £2 10s. taxed off the bill of costs on revision of taxation, the amount charged for certificates of judgment—and the charge for one of the two concurrent writs of execution issued.

The plaintiff showed cause, and showed on affidavit that he had reason to believe that defendant had personal property in both the counties to which writs were issued.

HAGARTY, J.—The taking out and registering certificates of judgment was for plaintiff's own security, and he may not endorse the costs thereof on his execution. The case of *Wilt v. Lai et al*, 1 C. Rep. 216, decided that point. As to the charge for concurrent writs, I would not disallow the costs of a concurrent writ, unless it was very clearly shown that it was issued oppressively for the purpose of making additional costs, which does not appear to have been the case here.

Order absolute as to the £2 10s., and the charge for certificates, with costs.

TOPPING ET AL v. SALT.

Garnishee—Attachment of Debts—C. L. P. Act, 1856, sec. 194.

Semble, that debts of amounts within the jurisdiction of Division Courts will not be attached by the Superior Courts, under sec. 194 of C.L.P. Act, 1856.

[Dec. 18, 1856.]

The plaintiff had obtained an order from BURNS, J., attaching a number of debts, varying from £10 to 10s., due from certain persons to the defendant, and calling upon the garnishees to show cause why they should not pay these debts to the plaintiffs.

Some of the garnishees not having appeared nor paid the amounts due by them into Court, plaintiff asked for an order that execution should issue.

HAGARTY, J.—I have consulted the other Judges of the Court of Common Pleas, and as at present advised, and until a decision of one of the Courts in Banc shall have settled the practice, or some English decision be pointed out, it is considered that we ought not to grant orders attaching small debts, a list of debts like those in this case. The carrying out such a practice would have the effect of bringing into the Superior Courts innumerable suits which are far within the jurisdiction of the Division Courts, and increasing costs to a startling amount. No limit can be named at present. The Judges will probably come to some general understanding on the subject.