bond filled in his behalf is one executed by two persons, but not by the defendant, which bond, after reciting the proceedings in the court below, is conditioned that the defendant shall abide by the decision of the Court of Queen's Bench. The only construction I can give to secs. 67 and 68 of cap. 15, as amended by the 27 Vic, is to read the first part of sec. 67 as if it stood thus: "In case any party to a cause, *or any party being a beneficial plaintiff in a cause, not named in the record, suing in the name of another* in the common law side, in any of the County Courts, is dissatisfied, &c., the judge, at the request of such party, &c., shall stay the proceedings for a time not exceeding four days, in order to afford the party time *to execute* and perfect the bond required to enable him to appeal the case." And the 68th section, as amended, stands: "In case the party willing to appeal gives security to the opposite party, by a bond executed by two sureties, &c., the judge of the County Court, at the request of the party appellant, shall certify," &c After a consideration of the two clauses with the Amending Act, I cannot bring myself to either of the conclusions contended for by Mr. Moss, or that the intention of the legislature was to dispense in every case with the execution of the bond by the appellant, or that such is the construction to be given to the statutes, nor can I see that the legislature intended to make any other change in the practice, other than that of avoiding the strict application of the effect of the words, "any party to a cause," at the beginning of the 67th section, and extending these words to apply to and include the beneficial plaintiff, in cases where the party suing is only a nominal plaintiff. The two sections, as amended, are far from being clear and unambiguous, and as suggested by the learned Chief Justice of Upper Canada, in *Tozer q. t.* v. *Preston*, we may hope that all doubts as to the effect of these two clauses will be set at rest by an explanatory act. Mr. Moss pressed that the appeal should be allowed to stand, as since the application, a proper bond had been executed, and that judgment in the court below had not been entered, but as it did not appear that the learned judge had allowed the bond, I did not think that the application could be entertained.

Rule absolute to strike out the appeal.

Campbell v. Kempt, formerly Campbell v. Kempt and Corbett.

Service of rule nisi for new trial—R. G., Mich. T., 27 Vic. —Style of cause.

A rule *nisi* for a new trial was moved on 20th May, and issued on 22nd May, but not served till the 25th May, too late for its argument during the then Easter Term. It was accordingly, on 27th May, enlarged till the next term. On an application made in this court to set the rule as de. it was held that the delay in the service of the rule to so late a period in the term that the usual four days could not elapse before shewing cause, was not ground to sustain the application.

An objection to the style of the cause after an alleged entry of a *nolle prosequi*, overruled.

[P. C., M. T., 1865.]

Hector Cameron, in Easter Term, 28 Vic., obtained a rule *nisi* calling on the defendant to shew cause on the first day of the then following term (Trinity), why a rule *nisi* for a new trial, entitled in the original cause, granted by the Court of Common Pleas during the same term of Easter, should not be set aside and rescinded on the following grounds:

1. That the rule was not served until the 25th day of May, although granted on the 20th, and not being returnable on the first or any other day of the then next term.

2. That the rule was improperly styled in the suit of the plaintiff against both defendants, although a *nolle prosequi* had been entered of record against the defendant Corbett before such rule was granted.

Mr. Cameron filed his own affidavit, showing that the rule for a new trial was served in his office, as agent for the plaintiff's attorney, on the 25th of May, and also stating that a *nolle prosequi* had been entered of record at the trial of the cause as to defendant Corbett. The copy of the rule filed by Mr. Cameron was dated as though issued on the 22nd of May.

In Michaelmas Term last, *C. S. Patterson* showed cause, filing an affidavit of the defendant's attorney, to the effect that this action was commenced in the county of Victoria: that the writ of summons issued from the office of the deputy clerk of the Crown at Lindsay, in which office the subsequent proceedings in the cause were all filed, and that he made a search on the first day of September last, when he found all the papers filed in the cause, and that no *nolle prosequi* was entered in the cause or filed in the office. It appeared also, that on the 27th May, the last day of Easter Term, the rule *nisi* for a new trial was enlarged until the first day of Trinity Term, and on the same day Mr. Cameron obtained his rule in this court.

Morrison, J.—No case was cited to me, nor can I find any authority for making this rule absolute on account of the non-service of the rule *nisi* for a new trial before the 25th of May, or on the ground of delaying the service of the rule to so late a period in the term that the usual four days could not elapse before shewing cause, and I take it that the practice is now settled by our rules of Michaelmas Term, 27 Vic. Those rules were drawn up for the purpose of preventing parties delaying the argument of such rules, and the third rule was framed for the purpose of limiting the period in which a rule for a new trial had to be served after being granted, and that rule entitled the opposite party on or after the 5th day, if not served, to enter a *ne recipiatur*

As to the second objection, the cases of *Wafe* v. *Taylor et al.*, 9 U. C. Q. B. 609, and *Luckie* v. *Gomperty*, C. & M. 56, are authorities in favour of the defendant Nothing is here shewn as to the entry of the *nolle prosequi*, except that something was done at the trial, while it appears, from a search made in the proper office long after this application, that no entry or proceeding in the nature of a *nolle prosequi* discharging the defendant Corbett has been filed. I am, therefore, of opinion this rule should be discharged.

Rule discharged.