

peared to be a proper case in which to adopt the course pointed out in sec. 32 of the Judicature Act, R.S.O. 1914 ch. 56; and the motion should, therefore, be referred to a Divisional Court.

It was objected that the motion was not made within the time limited by the Municipal Act. The notice of motion was served on the 13th March, 1915, which was within a year from the passing of the by-law; the affidavits were made in due time, but, by somebody's bungle, were not filed until the motion was set down on the 20th March. Rule 298 provides that the affidavits shall be filed before the service of the notice of motion. Section 286 of the Municipal Act, R.S.O. 1914 ch. 192, requires that the application shall be made within one year after the passing of the by-law; but it was contended that the notice of motion must be validly and regularly served within that time.

The learned Judge said that copies of the affidavits had been demanded, affidavits in answer and reply had been put in, and cross-examination had taken place. He declined to give effect to the objection, referring to *Devlin v. Devlin* (1871), 3 Ch. Ch. 491; *Re Backhouse v. Bright* (1889), 13 P.R. 117; *Graham v. Sutton Carden & Co.*, [1897] 1 Ch. 761; *Bank of Hamilton v. Baine* (1888), 12 P.R. 439. The Rule which applied to this case was 184—not the Rule relating to an extension of time. There was an irregularity, but the proceedings were not void, and the irregularity should be ignored.

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MIDDLETON, J., IN CHAMBERS.

JUNE 30TH, 1915.

CREASOR v. BONSTELLE.

*Practice—Substituted Service of Writ of Summons—Service by Mailing—Service Effective from Date of Mailing—Judgment—Regularity—Mortgage Action—Stay of Proceedings under Mortgagors and Purchasers Relief Act, 1915—Condition of Payment of Nominal Sum for Costs.*

Appeal by the plaintiff from an order of the Master in Chambers setting aside the judgment in an action to recover mortgage-moneys.

E. H. Senior, for the plaintiff.

E. Meek, K.C., for the defendant.

MIDDLETON, J., said that the defendant made a mortgage calling for payment of interest and some small instalments of principal. On these falling due, the mortgagee brought this