

by paying \$200 into Court. On the 10th June at 5.30 p.m. the plaintiffs notified defendants' solicitors that they had complied with the order. Defendants' solicitors at once telegraphed to their agent at Sault Ste. Marie to file a statement of defence which had been in his hands for a week awaiting instructions. The telegram was received at Sault Ste. Marie at 10.15 a.m. on 11th June. In the course of the forenoon the agent for defendants' solicitors attended at the office of the local registrar to file the statement of defence, and found that the pleadings had been noted closed about an hour before.

C. A. Moss, for defendants.

W. E. Middleton, for plaintiffs, contended that Rule 1204 must govern, and that as soon as security was given the stay was removed.

THE MASTER.—I think the motion must be allowed. As I read the Rules applicable to this question, as soon as the order was issued on the 8th, a stay took place. Service of notice of payment into Court was not made until after 4 p.m. on the 10th, which was only equivalent to service on the 11th. If I were obliged to take that position, I would hold that defendants had all the 12th on which to file their defence. At any rate plaintiffs acted prematurely in noting the pleadings closed at 10.10 a.m. on the 11th. To hold otherwise would render nugatory the direction in Rule 1207 requiring service of notice of payment into Court. The reason of this is plain. The party taking out the order is entitled to a reasonable time to ascertain if this has really been done or not, and been done correctly, as well as to proceed with due diligence in the action; and for that purpose he should at least have one day. Otherwise, and if the contention of plaintiffs is correct, cases of unnecessary hardship might constantly be occurring. . . . It would be idle to direct service of a notice unless it was to have some effect.

The motion must be allowed, and plaintiffs must pay the costs of their experiment in any event.

MACMAHON, J.

JUNE 19TH, 1903

TRIAL.

CARPENTER v. PEARSON.

Promissory Note—Action on — Defence — Misrepresentations—Stock Transactions—Margins—Absence of Fraud.

Action to recover \$1,446.58, balance due on a promissory note made by defendant, dated 15th May, 1901, for \$1,600,