Unless the service was made on some of the officials specified in the order, the plaintiff had no right to an order *pro confesso*, except such as he had before the order was promulgated.

*Smart*, for the plaintiff, argued that the affidavit was in the form given by the court, except so far as it was varied in accordance with the orders of February, 1865. He could now, if permitted to file a further affidavit, shew clearly that a proper office copy had been served. Service upon a director was good service upon the company under the act of incorporation, and authorized the order *pro confesso*. If the order was set aside it ought to be without costs: *Davis* v. *Barrett*, 7 Beav. 171.

*Moss* in reply. The order *pro confesso* must be upheld, if at all, upon the materials upon which it was granted. The answer of the company was ready for filing, and could have been filed on the 11th had not the order been obtained, and if the order had been refused on the 10th, as it would have been if the attention of the court had been called to the omission in the affidavit, the answer would have been filed before a proper affidavit could have been obtained. The present order should be granted with costs if granted at all. The order *pro confesso* was taken very unnecessarily, inasmuch as the plaintiff was aware from a letter from the company's solicitor, put in by plaintiff on this application, that the company intended to answer, and if the service upon the President was recognized as the first valid service upon them, the answer was not due till the 11th.

The Judges' Secretary.—I decline to permit a further affidavit to be filed. The plaintiff had ample notice and knew that the service was questioned, and should have come prepared to support it. I think the order *pro confesso* should be discharged with costs. There was really no evidence of the defendants having been served with an office copy of the bill, even had service upon the director been good service upon the company for the purpose of enabling the plaintiff to obtain this order, which it was not. Service upon him would not enable the plaintiff to take the bill *pro confesso* under the order of 1857.

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(*Reported by* J. W. Fletcher, Esq., *Barrister-at-Law.*)

### Upper Canada Mining Company v. Attorney-General.

*Practice—Style of cause where bill dismissed as against one defendant.*

Where the plaintiffs bill of complaint was dismisssed against one of the defendants only, and a motion to dismiss for want of prosecution was subsequently made by the other defendants, a technical objection that the style of the cause of the notice of motion was incorrect (the name of the defendant as against whom the bill was dismissed appearing therein) was overruled.

*S. H. Blake*, on behalf of the defendants, the Wallace Nickel Mining Company and others, moved for an order to dismiss the plaintiffs' bill for want of prosecution.

*Moss* appeared for the plaintiffs and objected to the motion, on the ground that the notice was not in the correct style of the cause. The bill had been already dismissed as against the defendant Metcalf, who therefore was out of court; his name consequently should not appear in the style of the cause in any proceeding taken since the order dismissing the bill as against him. He had no longer any interest in the suit—to retain his name in the style of the cause would be useless and might mislead.

*Blake*, in reply, said that the practice had heretofore been to retain the name of a defendant in like cases where the bill had been dismissed.

The Judges' Secretary having taken time to consider, delivered the following judgment—

I overrule the objection. There are advantages in keeping the style of this cause as it originally stood. Where the bill is amended and the name of a party struck out, there are generally amendments in the body of the bill also. Here it would appear from the body of the bill that Metcalf is a party, and yet his name would not be in the style of the cause. *Barry* v. *Croskey*, 2 J. & H. 136, shews that where a defendant demurs successfully, he has a right to have his name struck out of the style of the cause, but he must make an application for this purpose.

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### Miller v. Hill.

*Practice—Striking name of person improperly made a plaintiff out of style of cause—Costs.*

Where the plaintiff's solicitors made a person a party plaintiff without being instructed by him in that behalf, his name was, at the instance of such person, ordered to be struck out of the proceedings in the cause as a party plaintiff therein, with costs of the motion to be paid by the solicitors.

The bill was filed by the alleged directors of the Mutual Fire Insurance Company of Clinton, and the said Insurance Company, against certain persons now or at all events formerly directors of the said Company. The plaintiffs claimed to be the legally elected and acting directors; and one Stephen Haney, who had been a former director, as it was alleged, was included in their number. Steplen Haney, however, had given no instructions to the plaintiffs' solicitors to file a bill on his behalf, and had not in fact been consulted about the matter. He did not think the plaintiffs were right in filing said bill, and contended that he and the defendants were the legal directors of the company, and that the course of the plaintiffs was improper and illegal.

*S. H. Blake*, on behalf of Haney, moved, on notice, for an order to strike his name out of the bill and proceedings, with costs to be paid by the solicitors personally.

*Hoskin*, contra.

The Judges Secretary made the order, saying that the solicitors must pay the costs in so plain a case.

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## ENGLISH REPORTS.

### HOUSE OF LORDS.

### Xenos and Another *v.* Wickham.

*Execution of Deed.*

[16 W. R. 38.]

The main question in this case was whether a certain deed had been duly executed. A deed