Woolly v. Tweble.

Irregularity—Enlargement of Summons—Service of Summons.

In general there must be a true copy of a summons granted in Chambers served on the opposite party; at least there must be nothing calculated to mislead in the copy served.

Irregularities in technical applications, where there are no merits, cannot in general be remedied. An enlargement of a summons will not be granted for the purpose of remedying them in such cases.

(14th August, 1857.

Action of Ejectment.—*Blevins*, on the part of the Plaintiff, applied to set aside the Appearance entered, &c., for irregularity, on the ground that the notice of claim filed with the appearance and served, was not *directed* to the Plaintiff, as required by the Statute (though it was regular in every other respect).

A summons was granted and signed by Robinson, C. J.; but in making the copy served the name "Harrison" (the Co. C. Judge) was subscribed thereto, instead of "Robinson," as shown by the opposite party, who therefore refused to appear to the summons, he happening to be in Chambers on other business.

Blevins urged—that the summons should be made absolute, on the ground, as he contended, that a true copy of the summons need not be served, but it is sufficient that the opposite party have due notice of the application, which it was evident he had in this case. 2nd. If this notice be not deemed sufficient, then he applied for an enlargement, for the purpose of *re-serving* it.

Robinson, C. J., decided against him on the first ground, and as the application was purely technical and had no merits whatever to be considered—*Held*, that the party making it should be held strictly to the regularity of his own proceedings; and that if he should happen to make a slip, as was done in this case, it ought not to be overlooked.

Mitchell v. Dobson.

Insolvency—Final Discharge—Repealing of Statute.

The *fraction* of a day is never taken into consideration in determining the operation of a Statute.

If an order is obtained under a Statute which is repealed by another Statute the same day the order is made, the repealing Statute will be held to operate from the first part of that day, and overrule the order.

Jarvis (*S. M.*) applied to set aside the writ of *fi. fa.* issued in this case, and all proceedings thereon, on the ground that the defendant had obtained his final discharge under the Statute as an Insolvent Debtor, after judgment had been signed but before execution issued in this cause.

McDonald, for the plaintiff, replied that there is some doubt whether all the discharges obtained under the Insolvent Debtors' Act, 1856, are valid and final, or will operate as a complete discharge of all previously existing claims. He contended that as the final order for defendant's discharge was made, in this case, on 31st March last, the day on which the Statute repealing the above Act received the consent of the Crown, and came into operation, the fraction of a day could not be taken into consideration in determining the time of the operation of a Statute of Parliament; and that as every Statute takes precedence of all other transactions on the day on which it comes into operation, this order was invalid (*a*).

Jarvis replied that the final order was signed at one o'clock, and the Repealing Act assented to at four o'clock, P. M., on the same day, and that the Statute could not, in its operation, revert back and vitiate this order.

Burns, J., refused the order on the ground that a fraction of a day is never taken into consideration, in fixing the time of the operation of a Statute.

Bank of Montreal v. Yarrington.

Garnishee—Application—Costs.

A Judgment Creditor will not be allowed the costs of a Garnishee Application, either against the Judgment Debtor or the Garnishee.

The usual Garnishee order and summons had been granted in this cause, and no one appearing on behalf of the Garnishee at the return day of the summons, the judgment creditor applied for an order for the garnishee to pay over the amount of the judgment debt, *together with* the costs of the application to be tried by the master.

Robinson, C. J., granted an order for the garnishee to pay over the amount of the judgment debt, but declined to order costs, on the ground that this is a special provision for the accommodation of the creditor, and therefore it is sufficient for him to receive the designed benefit by paying for it. A judgment creditor is not entitled to put the debtor to additional cost, by availing himself of a special provision of this kind instead of pursuing the ordinary method. He said if any authority were shown for giving costs, he would re-consider it.

Leviscompte, Exrs., &c., v. Percel.

Ejectment—Service of Writ—Judgment for want of Appearance.

Where a landlord applies to be allowed to enter judgment in ejectment, for want of appearance, against a tenant who has absconded and cannot be personally served—the action being on a power to reenter for non-payment of rent—he must, if possible, produce the lease and show that he is entitled to re-enter.

(August 5, 1857.)

This was an action of ejectment, and *A. R. Dougall* moved for an order that the claimants (plaintiffs) might be allowed to enter judgment for want of appearance by defendant, and tax costs, pursuant to the Statute. (C. L. P. A. 1856.)

The affidavit produced shewed that the action was to dispossess a tenant on account of a forfeiture of the term by non-payment of rent. And it was sworn that the defendant had abandoned the premises and the country, leaving the dwelling house on the premises locked up and secured.

It was also sworn that the writ had been served by nailing up a copy, with notice of plaintiff's title, on the door of the house; that it remained up some days and was then torn down by some one unknown.

Robinson, C. J.—The method of proceeding is pointed out by sec. 263 C. L. P. Act, 1856; and I do not see the occasion for an order to enable plaintiff to enter judgment after such service as this clause authorises, and as has been made in this case when defendant does not appear—though there is an obscurity, or rather an inconsistency, in that respect, in the clause.

If I make any order to allow judgment to be entered, which, according to one part of the clause, seems to be contemplated, I must be satisfied as to the lessor's power to re-enter; and I should see the lease, if it can be produced (*a*).

IMPERIAL STATUTE.

21 Vic., Cap. LIV.

An Act to make better Provision for the Punishment of Frauds committed by Trustees, Bankers and other Persons intrusted with Property.

(August 17, 1857.)

Whereas it is expedient to make better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Trustees fraudulently disposing of property guilty of a misdemeanor.*—If any person being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or purposes, or shall, with intent aforesaid, otherwise dispose of or destroy such property or any part thereof, he shall be guilty of a misdemeanor.

2. *Bankers, &c. fraudulently selling, &c. property intrusted to their care, guilty of misdemeanor.*—If any person being a banker, merchant, broker, attorney or agent, and being intrusted for safe custody with the property of any other person, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use such property or any part thereof, he shall be guilty of a misdemeanor.

(*a*) Regina v. Edwards, 9 Exchr. 32 & 628; Latless v. Holmes, 4 T. R. 660; The King v. Biers, 1 Adol. & E. 327.

(*a*) The lease was afterwards produced, and upon that and the affidavit annexed to it, the order was made.