charge of forgery, which was the charge for which the accused stood committed.

Robt. A. Harrison shewed cause, and submitted that the only jurisdiction which a judge in Chambers had to bail on such a charge was either on writ of *habeas corpus* or under Con. Stat. Can., cap. 102, s. 63, and that the latter statute requires a notice to the committing magistrate, and that the copy of information, examination, &c., should be certified close under the hand and seal of the convicting magistrate, which had not been done in this case, and so he argued that there was no jurisdiction to bail the accused.

J. B. Read, contra, referred to the County Attorneys' Act, Con. Stat. U. C, cap. 106, which now provides that the County Attorney shall receive all informations, &c., which the magistrates and coroners are hereby required to transmit to him. He also referred to s. 9 of the Act, which provides that the county attorney shall be "the proper officer" of the court to receive depositions where a party is committed to trial.

Adam Wilson, J.—The committing magistrate must make a proper return of the informations to the County Attorney. After this has been done he cannot transmit such proceedings to the Clerk of the Crown, nor can he deliver the packet containing the same to the person applying therefor, because he has delivered the proceedings to the County Attorney, as he was bound, in whose custody they are and must afterwards remain.

I think in favour of liberty I shall make the order to bail upon the transmission and certificate of the County Attorney.

It would unquestionably be better to have this matter specially provided for by legislation, although it is not impossible now for the committing magistrate still to transmit a certified copy close under his hand and seal.

Order accordingly.*

Randall v. Bowman et al.

Execution on judgment on specially endorsed writ before time limited in the C. L. P. A. sec. 55—An irregularity, when an abuse of the process of the court—Waiver—Assignment for benefit of creditors—Right of assignee to move to set aside execution.

A writ of *fieri facias* issued on a judgment on a specially endorsed writ before the expiration of eight days from the last day for appearance, is an irregularity, and if knowingly issued, an abuse of the process of the court.

Defendants, who were in business, knowing that the writ had been irregularly issued, said on the day after the issue of execution, that they would not mind the issue of the writ if they were only allowed to keep their store open for the remainder of the week, to which the sheriff assented and made arrangements for so doing: *held* not to be a waiver of the irregularity in the issue of the execution.

Quære, Can debtors, who, being unable to pay their debts in full before the issue of execution, called a meeting of their creditors with a view to an assignment under the Insolvency Act, waive an irregularity in the issue of execution, whereby one of their creditors gains an advantage over the general body of creditors?

Five days after the issue of execution, and four days after the conversation above mentioned, the debtors made an assignment for the general benefit of creditors under the Insolvency Act: *held* that the assignee in conjunction with the debtors, were the proper parties to move to set aside the execution

[Chambers, March 4, 1865.]

J. A. Boyd obtained a summons calling on the plaintiff to shew cause why the writ of execution against the said defendants' goods and chattels, issued upon the final judgment signed herein, on or about the 21st day of February, instant, and now in the hands of the Sheriff of Waterloo, should not be set aside with costs, on the grounds that the same was prematurely sued out upon said judgment before the expiration of eight days from the last day for appearance; and on the grounds that proceedings in insolvency had been commenced prior to the institution of this action and the issue of such writ.

And why the said sheriff should not be ordered to abandon possession of the said defendants' goods, and deliver up to the defendants or their assignees, the money made by him under said execution, with leave to file the said assignee's affidavit on the argument.

The affidavits filed on moving the summons shewed that on the 10th February last, defendants gave notice calling a meeting of their creditors with a view to an assignment of their effects under the Insolvency Act; that on 11th February, plaintiff in this cause issued and served upon defendants a writ specially endorsed for the amounts of severally promissory notes made by defendants, and held by plaintiffs; that on the 21st February, final judgment was entered in default of an appearance; that on the same day a writ was issued against the goods and chattels of defendants, and on the next day placed in the hands of the sheriff, who at once made a levy; and that on the 27th of February, defendants made an assignment of their effects to F. J. Jackson, under the Insolvency Act of 1864, at whose instance as well as on behalf of defendants, the application to set aside the writ was made.

On the return of the summons, an affidavit of the assignee was filed pursuant to the leave given in the summons, merely mentioning the date of the assignment, and stating that he had as well as defendants, authorised the application to set aside the writ.

Robt. A. Harrison shewed cause. He filed an affidavit of the plaintiff's attorney wherein it was sworn that execution was issued on the 21st February, by the special instructions of plaintiff, that word was sent to deponent by one of the defendants not to issue the execution for at least a couple of days after the plaintiff should recover judgment herein, to which the deponent made no reply, but issued execution on the day judgment was entered, and placed the same in the sheriff's hands; and before execution was issued in a certain other suit of a relative of the defendants, one Henry B. Bowman, against Peter Jacob Heins, one of the defendants, which last mentioned judgment deponent believed was fraudulent and collusive; that on the morning of the day after the writ of execution was placed in the sheriff's hands, deponent met Israel D. Bowman, one of the defendants, who told deponent that execution was issued herein eight days sooner than the law allowed, if they defendants objected to it, to which deponent replied that the judgment recovered herein was all for money lent by plaintiff to them, and that if they could set aside the execution, deponent did not think

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* See page 142.