v. *Shore*. 2 O. S. 314; *Whitehead* v. *Phillips*, 2 B. & Ald. 585.

John Wilson, J.—This application has been resisted, I think, on a misapprehension of the terms used in reference to the perfecting of bail, and the manner in which it is done.

The courts will stay proceedings, when by reason of a breach of the condition of a bail bond, a suit has been brought upon the bond, either at the suit of the defendant, the sheriff, or the bail, if the defendant has been rendered, or bail has been perfected. The plaintiff does not deny this, but contends that bail has not been perfected.

It is conceded, that the C. L. P. A. left the practice relating to bail just as it was before that Act.

In our courts, the practice differed from the practice in England, so far as the 2 Geo. IV., 2 Sess., the 4 Wm. IV. and our own rules changed it, and it is now regulated by the Rules of Trinity Term, 1856.

The long established course of practice has been to put in bail as was done here. The bail piece had an affidavit of the due taking thereof, and where intended to be perfected, it was accompanied with affidavits of justification. After it had been filed, notice of all this was given, as has been done here. The plaintiff was at liberty to except. If he did so without good reason, he had to pay the costs, if with good reason, the defendant had to pay them; but the object of excepting to bail, was to compel them to justify. If they had justified, nothing was gained by excepting to them. Nor was justification or allowance necessary where the object was to surrender the defendant.

The case of *Hodgson et al.* v. *Mee*, 3 Ad. & El. 765, is not like this, but it has settled the new practice on the points there under discussion on the analogy of the old.

The King v. *Wilson*, 3 Dowl. 255, recognizes the practice, that it is necessary before a motion to set aside proceedings against a sheriff is made, that bail should justify.

Here the defendants have put in and perfected the bail, which the plaintiff has confounded with the allowance of it.

The proceedings will be stayed on payment of the costs to be taxed in the suit on the bail bond, up to and including the 6th day of December, when this application was made.

Summons absolute.

See *Call* v. *Thelwell*, 3 Dowl. 443; 1 Chit. Ar. Pr. 9 Ed. 760–7; Lush Pr. 646; Rules of Trinity Term, 1856, Nos. 69, 72, 81, 83.

CHANCERY CHAMBERS.

(*Reported by* Mr. Charles Moss, *Student-at-Law.*)

Cameron v. Upper Canada Mining Co.

Unstamped affidavit of service of office copy of bill—Service of bill on corporation—Order pro confesso on such service—Order of court of 1857 *in such cases.*

The affidavit of service of an office copy of the bill should shew that the copy so served was stamped with the stamp of the Registrar's or Deputy Registrar's office in which the bill is filed.

A plaintiff cannot obtain an order *pro confesso* against a corporation *ex parte* under the orders of 1857 relating to orders *pro confesso* against corporations, unless the bill was served upon some of the officers of the company specified in the order, even although the Act incorporating such corporation makes it competent to the plaintiff to serve process upon a director.

[Chambers, January 16, 1868.]

The act incorporating the Upper Canada Mining Company provides, that it shall be competent for any party to a suit to which the company is a party to serve process upon the company by serving the president, secretary or any director in any place, or by leaving it at the head office of the company.

The bill in this cause was alleged to have been served upon a director on behalf of the company on the 5th December, and was subsequently served upon the President on behalf of the company on the 14th December.

On the 10th January the plaintiff obtained an order *pro confesso*, *ex parte*, against the company upon an affidavit of the service upon the director. The affidavit was not stamped with the stamp of the Registrar's office, though stating that the office copy served was stamped with a stamp similar to that in the margin of the affidavit.

Moss moved to set aside the order *pro confesso* for irregularity on the grounds:

1. That no proof of service of an office copy the bill upon the company was produced or filed upon the application for the said order.

2. That the affidavit of service filed on said application did not shew that any copy of the said bill stamped with the stamp of the Registrar's office, was served upon the said director or the said company.

3. That the said order was unauthorized, having been obtained upon proof (if any) of service of an office copy of the bill upon a director of the said company only.

As to the first and second objections, he argued that no service of a duly stamped office copy of the bill upon any person on behalf of the company was shewn. The orders require that each office copy of a bill shall be stamped with the stamp of the office of the Registrar of Deputy Registrar with whom the bill is filed; and if the attention of the court had been drawn to the fact that the affidavit produced did not shew that such was the case with the copy served upon the director, the order would not have been granted.

As to the third objection, he contended, that even if the service upon the director had been duly proved it would not authorize the taking of the bill *pro confesso* against the company under the order of 1857. The act of incorporation was passed long before that order was promulgated. The order was intended to meet the difficulty raised in cases such as that of *Counter* v. *Commercial Bank*, 4 Grant 230, where an order *pro confesso* could not be obtained even when service had been effected upon the President and Cashier of the Bank. And it provides that upon service of the bill upon a corporation, by personally serving any of certain specified officials, an order *pro confesso* may be obtained *ex parte*. But a director is not one of the individuals specified in the order, and it is distinctly shewn that the director here served does not occupy any of the positions in the company mentioned in the order.