

she was working, also some considerable distance from Beaverton. He also asserts something as to what was told to him afterwards by these girls; but that is not evidence.

To ask a finding of due service upon any such evidence is extremely unreasonable. According to the applicant's assertions, in the several affidavits made by him, he knew that the 24th July was the last day for service of the notices, and yet, although he seems to have had time enough, if his story be credited, to shew the notices to his son and to the two men engaged in digging a ditch, he was content to take his chances that each of these girls would effect service for him, and also prove the service.

It was the applicant's duty to have proved due service, if it were really effected, by these girls. If an affidavit could not be obtained, they might have been examined in the usual way. But no proof of that character has been made on this motion. The applicant seems rather to rely upon the result of his own carelessness as excusing him; when in fairness it ought rather to condemn him.

The magistrate McRae was examined by the applicant as a witness; and the girl to whom the notice was given to give to him, after that examination, made an affidavit at the applicant's instance, which, instead of relating what she did with the notice, and when, is confined to a circumstantial assertion that it was not on the 25th, but was on the 24th, that she got the paper.

It might, perhaps, upon the whole evidence, be found that this notice came to the hands of this magistrate on the evening of the 24th July; but that would not end the matter; for I am quite unable to find that service was effected on the other magistrate in time.

The magistrate McLennan, in his affidavit, asserts that the notice reached him on the 25th July; and his wife, in her affidavit, circumstantially corroborates him.

So that I must find that the provisions of the enactment limiting the time within which such a motion as this may be made have not been observed.

But it is contended that there has been a waiver of the objection: (1) in asking an enlargement of the motion; and (2) in demanding copies of the affidavits filed in support of it.

In regard to the delay, the entries in the official book shew that the adjournments were by consent; and it is admitted that, except in the first instance, they were almost, if not quite, all for the convenience of the applicant's solicitor, who went to England while the motion was pending.