

C. L. Ch.] HERON V. ELLIOTT ET AL.—THE QUEEN V. CHAMBERLAIN ET AL. [C. L. Ch.]

On the same day Mr. Pardee caused a notice of appearance, styled in the same manner as the appearance, i.e. in the cause against the persons named in the writ to be served on the plaintiff's attorney, and on the same day filed a notice of title styled in like manner and addressed to the plaintiff's attorney, to be filed in the office of the deputy clerk of the Crown, but not served.

Robt. A. Harrison shewed cause. He adverted to the fact that Con. Stat. U. C. cap. 27, s. 9, declaring that any person not named in the writ, may, by leave of the court or judge, "appear and defend," on filing such an affidavit as therein mentioned, in no manner professes to regulate the form or style of the appearance. He next referred to Rule 93, Har. C. L. P. A. 635, which declares that "where a person not named in the writ of ejectment has obtained the leave of the court or a judge to appear and defend, he shall enter an appearance according to the C. L. P. A. entitled in the action against the party or parties named in the writ as defendant or defendants, &c." Thereupon he argued that the appearance in this cause was strictly regular and that to entitle them as contended for by plaintiff would be irregular. He pointed out that in *Haskins v. Cannon et al.*, 2 U. C. Pr. R. 334; *Peebles v. Lottridge et al.*, 19 U. C. Q. B. 628, no reference whatever was made by counsel or court to this rule of practice, and therefore that these cases should not be taken as establishing any different rule. He cited Chit., 9 Edn. 536, as supporting his contention. He also argued that the notice of appearance and notice of title were both correctly entitled, and that where persons not named in the writ of ejectment are allowed to appear and defend it is unnecessary to serve notice of title (Con. Stat. U. C. cap. 27, s. 8; Rule 93 *supra*; *Fairman v. White*, 24 U. C. Q. L. 123.) He contended that plaintiff's summons was incorrectly entitled, and that in any view the summons must be discharged, and as moved with costs, if discharged, must be discharged with costs (*Willer v. Hall*, 1 Dowl. N. S. 703; *Becket v. Durand*, 6 U. C. L. J. 15.)

F. A. Read, contra, argued that Rule 93 is inapplicable to the case of a landlord appearing in lieu of his tenant, that in such case the appearance must be in the cause styled against defendants actually appearing as the real defendants (*Haskins v. Cannon et al.*, 2 U. C. P. R. 334; *Peebles v. Lottridge*, 19 U. C. Q. B. 628; *Adhead v. Upton*, 22 U. C. Q. B. 429.) That the notice of appearance and notice of title were under any circumstances incorrectly entitled (*Thompson v. Welch*, 3 J. C. L. J. 133; *Harper v. Loundes*, 15 U. C. Q. B. 430) and that the latter like a pleading should at least have been served (Rule 122, Har. C. L. P. A. 650; Con. Stat. U. C. cap. 22, s. 112, 122; *Watkins v. Fenton et al.*, 8 U. C. C. P. 289.)

ADAM WILSON, J.—The 53rd rule referred to by Mr. Harrison is as follows:—"When a person not named in the writ in ejectment has obtained leave of the court or judge to appear and defend he shall enter an appearance according to the C. L. P. Act, 1856, entitled in the action against the party or parties named on the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's attorney, or to the plaintiff if he sues in person."

The form in Chitty's Forms, 9 Edn. 536, is precisely to the same effect.

A. B., plaintiff,	} D. A., attorney for L. L., appears for him as landlord, &c., &c.
against	
C. D. and E. F. defendants.	

And the notice of such appearance is entitled in the same manner, page 537.

The defendant's proceedings are therefore in my opinion sufficiently regular in form in the appearance, notice of appearance, and notice of title.

After the appearance and notice no doubt the person or persons admitted to defend must be named in the issue books, nisi prius record, &c., and therefore I hold that the plaintiff's summons entitled *not* in the name of the original defendants, but in the name of the landlords who have been substituted for the original defendants is regular, because that is now the proper cause pending and the proper style of it (*Peebles v. Lottridge*, 19 U. C. Q. B. 628.)

It does not appear by the statute that the appearance or a copy of it is to be served upon the plaintiff's attorney, and if so, the notice of the defendant's title, when there is one which is to be filed with the appearance, need not be served. The statute only requires that the notice limiting the defence to part of the property claimed should be served. I do not think the appearance in this action though substantially answering the place and purposes of a plea is a pleading within Rule 132, which requires pleadings to be served. It is provided by s. 16 of the Ejectment act that in case an appearance be entered the claimants or their attorney may without any pleadings make up an issue, &c. This summons must therefore be discharged with costs.

Summons discharged with costs.

THE QUEEN V. CHAMBERLAIN ET AL.

Bail in criminal cases—Copies of information, examination &c., how certified—Con. Stat. Can., cap. 102, s. 63.

Held, that where a prisoner makes application to a judge in Chambers to be admitted to bail to answer a charge for an indictable offence, under Con. Stat. Can., cap. 102, s. 63, the copies of information, examination, &c., may be received, though certified by the County Crown Attorney and not by the committing justice.

[Chambers, March 2, 1865.]

On 21st February last, defendant Chamberlain caused a notice to be served on the agent of the Attorney General to the effect that on the next day, at the hour of ten o'clock in the forenoon, an application would be made to the presiding judge in Chambers at Osgoode Hall for the admission to bail of the defendant Chamberlain to answer the charge for which he stood committed; and further, that certified copies of the depositions, &c., on which such application would be made had been brought from the office of the Clerk of the Crown into Chambers by judge's order for the purpose of the application.

The depositions, which were certified by the Clerk of the Peace in and for the county of Oxford, under the seal of the Court of Quarter Sessions in and for that county, disclosed the