

C. L. Cham.]

DE BLAQUIERE V. COTTE—COSSEY V. DUCKLOW.

[Chan. Cham.]

If I am in error on either point the application can of course be reversed in the full court.

In the meantime I discharge the summons, and as it was moved with costs I discharge it with costs.

Summons discharged with costs.

DE BLAQUIERE ET AL. V. COTTE ET AL.

Notice of trial—Irregularity.

A notice of trial was given for the 21st day of September instead of October. On an application to set it aside as irregular, the judge, though thinking the notice irregular, declined making an order to set it aside, preferring to let the parties proceed at their own risk.

Semble, that a notice intitled in the Queen's Bench "for the next sittings of this Court" was irregular.

[Chambers, October 21, 1867.]

Notice of trial intitled in the Queen's Bench was given in this cause "for the next sittings of this court, to be holden at the Court House in the Town of Woodstock, in and for the County of Oxford, on Monday, the 21st day of September, A. D. 1867. Dated the — day of — A. D. 186—," and was served on the defendants attorney on the 24th of September.

A summons was taken out on the 16th of October, calling upon the plaintiffs to show cause why the copy and service of the paper purporting to be a notice of trial, should not be set aside for irregularity, in that the notice was given for the trial of the cause on Monday, the 21st of September, and no assizes were to be held on that day.

The assizes were fixed for Monday, the 21st of October, and the alleged irregularity was in specifying September instead of October.

W. Sidney Smith, shewed cause.

C. S. Givens, contra.

ADAM WILSON, J.—The notice of trial is intitled in the *Queen's Bench*, and it is for the next sittings of *this Court*, to be holden at Woodstock. If the notice had been objected to upon that ground it would most likely have been held to be irregular, for the Court of Assize and *Nisi Prius* is quite a different Court from the Court of Queen's Bench, *Cross v. Lang*, 1 Dowl. 342. The only irregularity complained of in the summons is that the month is mistaken.

The notice would have been sufficient if it had been merely "for the next assizes to be holden at the Court House, in the Town of Woodstock, in and for the County of Oxford," without specifying any day, provided there had been a date to the notice, so that the particular sitting might have been clearly known, and perhaps it might have been sufficient even without the date, if the service or delivery can be considered as sufficiently indicating from what period the next assizes are to be computed or are to have relation; see *Henbury v. Rose*, 2 Str. 1237. The object of the notice is clearly and unequivocally to inform the party served, that the other party intends to proceed to trial at a certain time and place.

A notice of trial dated in Easter Term, 1856, for the second sittings in Easter Term *next*, was held to be sufficient, "next" being treated as surplusage, and it being considered that the defendant must have known that Easter Term of 1856 was meant, though he swore he thought it to be E. T., 1857, *Fenn v. Gunn*, 6 E. & B. 656.

It is said the defendant is not bound to return an irregular notice of trial, and that he does not waive any right by retaining it—that it is merely a matter of courtesy to return it, *Dernam v. Ibbotson*, 3 M. & W. 431, 6 Dowl. 547; but see *Brown v. Whiffall*, 8 Dowl. 592. Notwithstanding the service of the notice for the 21st of September, the plaintiff might, without withdrawing or countermanding that one, have served a fresh regular notice for the 21st of October, and proceeded upon it, *Tell v. Tyne*, 5 Dowl. 246.

I incline to think that in strictness the notice is irregular, but as the assizes take place this day, it will be better not to set aside the notice or service, but leave the parties to proceed at their own risk.

The summons came first before me on Thursday the 17th inst., but as I was engaged at the York Assizes, and was the only judge then in Town, I could not find time to dispose of the case before this day. If the defendants are inconvenienced by the lateness of my judgment, they have brought it on themselves by the delay in their application, whether purposely or not it is of no consequence to say.

I regret the delay on the plaintiffs' account, and I do all I can for them by not interfering with their proceedings, if they choose to run the risk of them. I granted the summons for only one ground of irregularity, but Mr. Givens said he mentioned the ground also as to the *sittings of this court*. I understood him to say his objections were the use of the word *sittings* in place of *assizes*, and not to the sittings of *this Court*. This being so, he should not on account of my misapprehension be prevented from relying on that ground if he have to move the full court hereafter, as he would be if he had not now taken the objection. —*Farmer v. Mountford*, 9 M. & W. 100.

I shall at present make no order.

CHANCERY CHAMBERS.

(Reported by J. W. FLETCHER, Esq., Barrister-at-Law.)

COSSEY V. DUCKLOW.

Practice—Printing bills of complaint—Taking off files for irregularity—Setting aside—Service—Costs.

Where the office copy of a bill of complaint served upon a defendant was not printed in accordance with the general orders of February 6, 1855, the service was set aside with costs.

It is irregular to move in Chambers to take a bill off the files because the prayer is unintelligible. Although the Registrar or Deputy Registrar may have filed a bill not printed in compliance with the orders of Court, a motion to take such bill off the files for such non-compliance is regular.

S. H. Blake on behalf of the defendant Peter Ducklow moved in Chambers that the bill of complaint filed in the cause at Stratford be taken from the files of the Court for irregularity upon the following grounds: that dates and sums were therein printed in words and not in figures; that it was not printed on paper of the proper size and in the kind of type required by the orders of Court; that the prayer is unintelligible, and that it does not appear what relief is sought thereby, or that the service of the said bill be set aside on the above grounds, and on the ground that in the prayer a foreclosure is asked for, whereas the office copy of the bill