In re Glasse v. Glasse.

No affidavit necessary to obtain a summons to change an attorney.

[Sept. 25, 1856.]

In this case *J. Dempsey* obtained from *Burns J.* a summons to change the attorney of the plaintiff from J. Bolton to R. Dempsey, without an affidavit. Rule 4. Finlason 520, note.

Kane v. Kane.

Defence in ejectment informal under 224th section—Summons granted to set it aside and enter judgment—Defendant allowed to amend on payment of costs.

[Sept. 30 & Oct. 3.]

This was an application to be allowed to enter final judgment in ejectment, on the ground that the appearance was informal in not having filed along with it the necessary notice required by the 224th section. Service of the writ had been on defendant's wife, and the application was made under R. 92.

Burns, J., granted a summons to set aside the defence and enter judgment.

No cause could be shown to the summons, but the defendant was allowed by *Burns, J.*, on payment of costs, to amend his defence.

Brown v. Benniger.

Upon a summons to show cause, an order granted for the oral examination of defendant under the 193rd section, where the plaintiff had other means of satisfying his claim besides attachment of debts.

[Sept. 30, Oct. 1.]

An application having been made to *Richards, J.*, for an *order* orally to examine the defendant under the 193rd section, a summons only was granted.

Jackson now showed cause.—The summons ought to be discharged, as the plaintiff was only prompted by vexatious motives in applying for it, and could, if he wished, satisfy his claim without having recourse to any oral examination, which only intended to be resorted to by the Act where other attempts to recover satisfaction failed. In this case also the defendant had been arrested, and the arrest operated as a satisfaction of the debt. Then the plaintiff could have proceeded against the lands of the defendant. The defendant had filed an affidavit stating that lands were conveyed to him, and that he was ready to convey them to the plaintiff.

A. Crooks, contra.—The arrest was no satisfaction of the debt, (see Act of 47) and as long as the judgment was not satisfied the plaintiff was at liberty to proceed under the 193rd section. Defendant in his affidavit plainly admits that certain debts are coming due. [*Jackson*—Mr. Justice Hagarty decided that debts not due, but about to become due, could not be attached.] Mr. Justice Hagarty's decision applied only to liabilities; and the words of the 194th section "owing or accruing" shows that debts *in futuro* as well as *in presenti* are liable to attachment. All the remedies provided by the Common Law Procedure Act are concurrent if necessary, and are intended to facilitate the speedy recovery of debts.

Burns, J.—In this case the summons must be made absolute. The order, however, is only as to the defendant's examination, and does not decide anything in reference to what debts are or are not attachable.

Green v. Horton.

The Venue must be laid in the first instance in the county where the writ of Summons is sued out, when it is sued out of a deputy office.

[Oct. 1, 1856.]

Jackson obtained a summons to set aside the declaration on the ground that the writ of summons was issued from the office of the Deputy Clerk of the County of Elgin, and the Venue was laid in Middlesex. The action was on a promissory note.

Carrall, for the plaintiff, had no cause to show.

Burns, J., in setting aside the declaration, observed that he was not aware of anything in the Common Law Procedure Act to change the practice in this respect. In the first instance the venue, according to the old practice, should be laid wherever the writ was sued out, when it is sued out of a deputy office; and as no cause is shown, I suppose it is conceded that such is the practice still.

Housen v. Stickles.

Practice—25th Section.

[Oct. 1, 1856.]

For the defendants a summons was obtained, calling on plaintiff's attorney to declare the residence and occupation of the plaintiff, and to file in the proper office his warrant or authority to prosecute the action.

The attorney, in showing cause, filed an affidavit stating that the plaintiff was dead, but that he was unaware of it until after action commenced; also, that since action commenced one Ira Shibley had called on him and stated that he was authorised to pay the debt—that he did pay part of it, and promised the rest.

Under these circumstances Burns J. discharged summons without costs.

Allan v. Skead.

Order for reference under 143rd section—Practice.

[Oct. 2, 1856.]

This was an action on a promissory note, in which the writ of summons had been issued under the old practice. There was no appearance, and interlocutory judgment had been signed. The proceedings had been carried on in a Deputy Clerk's office.

Burns, J., granted a summons to refer the matter to the County Court Judge, in order to ascertain the amount of damages under the 143rd section.

Nimmo v. Welland.

Affidavit in support of a summons under 193rd section need not state that defendant has debts due to him.

[Oct. 3, 1856.]

A summons for the examination of the defendant having been granted under 193rd section,

J Dempsey showed cause. The affidavits on which the application was grounded was insufficient, as they did not state that there were any debts due to the defendant.

Burns, J.—That is exactly what the defendant wishes to discover by the examination. The summons must be made absolute.

Gifford v. Johns.

An order of reference of a bill of costs between attorney and client granted on the ex parte application of defendant.

[Oct. 4, 1856.]

This was an application on the part of defendant to grant a reference to the master of a bill of costs between attorney and client. Defendant's affidavit stated that the case had been tried at last Cobourg assizes, when the plaintiff had been nonsuited.

Burns, J., granted an *order*.

Street v. Proudfoot.

Interrogatories will not be allowed to be put for the discovery of matters on which to found a plea, but must be in support of pleas already pleaded.

[Oct. 3 & 4.]

S. M. Jarvis, for the defendant, obtained a summons to administer interrogatories to the plaintiff under the 176th section.

Paterson showed cause. The action was one of dower. The interrogatories were all framed with a view of discovering