

This rule required that Boulton should have served Randall with a notice that on a certain day he would apply to a Judge for an order referring the claim to the Master of the Court to settle the amount of the judgment.

Another rule read as follows:—

“It is ordered that in future the note or bond is to be produced for the inspection of the Judges when a motion is made before referring them to the Master”.

The observance of these rules would have given Randall notice of what was being done and there is always the possibility that he might have been able to protect himself or arrange a satisfactory settlement. While no doubt he was liable on the bond for £100, his liability on the note for £25, given under the circumstances related above, was very arguable. It should be remembered also that Boulton had a mortgage as collateral security for the £100 indebtedness and Randall might have arranged a sale of this mortgage or been able to realize some money on it with which to pay Boulton.

Another rule required:—

“That from and after the end of this term the Clerk give no further writ of execution on a judgment by default on any bond without an order of Court in term time or the fiat of a Judge in vacation”.

This rule had not been observed by Mr. Boulton so that clearly the writ of execution had been improperly issued. Mr. Stewart on his motion dwelt on the non-observance of these requirements, and argued that the judgment had been therefore improperly obtained, and should be set aside, and further that, even if the judgment was held to be valid, that the writ of execution had been improperly issued, and therefore should be rescinded, and everything done pursuant to it declared a nullity.

He also made objection to the Court having any power to make a rule such as the one which Boulton acted on, as has been explained in a previous chapter, on the ground that he was contravening the Statute; that where the Statute gave the Court power to make rules, it was only to regulate the practice where the Statutes had omitted to do so, but in this case there was no such omission, as the Statute required the defendant to be served eight days before the judgment could be signed. The rule limit-