

Chan. Cham.] ARCHIBALD V. HUNTER—READ V. SMITH—SMITH V. HENDERSON. [Chan. Cham.]

sought a re-taxation of said costs on the ground that through inadvertence no person attended upon the taxation in the interests of his clients. The taxation appeared regular, and no particular items of the bill, as taxed, were objected to, but he thought on a re-taxation he could succeed in having the bill further taxed down. The application was supported by an affidavit, showing the facts.

Donovan, contra This motion is irregular. An application of this nature must be by way of petition, and not on notice of motion. The application, even if technically proper, cannot succeed, as no merits are shown. No particular items of the bill are pointed out as exorbitant or erroneous—no improper conduct is alleged.

Re Catlin, 18 Beav. 598, was cited.

THE JUDGES' SECRETARY.—I must refuse this motion. No improper items being pointed out in the bill, as taxed, I can grant no relief.

ARCHIBALD V. HUNTER.

Practice—Amending bill of complaint after expiry of 28 days from filing of answer.

[Chambers, 2nd Oct., 1868.]

In this suit the defendants had filed their answer; the plaintiffs had taken out and served order to produce, but only two of the defendants had filed their affidavits on production. More than twenty-eight days had elapsed since the filing of the last answer; the plaintiff was not, therefore, entitled to an order of course to amend.

S. H. Blake, on behalf of the plaintiff, moved, on notice, for an order giving the plaintiff liberty to amend the bill in certain particulars, or as he might be advised. He read the order to produce, with admission of service thereof, and produced a certificate of the state of the cause, showing that the defendant Fairweather had not filed his affidavit on production. He contended that the plaintiff could not safely amend without production by all the defendants, and that as they had not all produced, the plaintiff was entitled to the order asked. He submitted that order 81 did not apply in this case. The plaintiff was compelled to make this application through the default of the defendants. He put in an affidavit showing that it was desired to amend the bill, and that this could not prudently be done until all the defendants had produced. Under the general orders the court had power to make the order he asked, and he submitted the order in its terms should be as wide as possible.

Chadwick, contra, contended that the plaintiff had not shown diligence in compelling production by the defendants, and that he was therefore not entitled to the order asked. The plaintiff might have moved to commit Fairweather for non-production, and have made him produce before the twenty-eight days had expired. He cited *Crawley v. Poole*, 1 W. & M. 66.

THE JUDGES' SECRETARY.—I think the plaintiff should have leave to amend his bill generally. It is sworn that he could not amend until after the defendants had complied with the order to produce, and although two of them filed their

affidavits in April, the third, appearing by the same solicitor, did not file his until September. The wording of the order as to allowing amendments after the expiry of twenty-eight days from the filing of the answer, does not, I think, stand in the way of my giving the plaintiff such an order. The power of the court to extend the time for doing any act is expressly saved by the general orders, and I am only putting the plaintiff in the position he would have been in had the defendants all obeyed the order within the proper time. The costs should be costs in the cause. I do not give them to the defendants, as their default has rendered the application necessary, and I do not give them to the plaintiff, as he did not take active steps to enforce the production.

READ V. SMITH.

Practice—Allowance of Error and Appeal Bond.

[Chambers, 5th Oct., 1868.]

In this suit the defendant, Smith, had filed his petition of appeal to the Court of Error and Appeal, and had filed the usual bond, and now moved for its allowance.

Fletcher, contra, contended that under order 28 of the Error and Appeal orders, this motion was unnecessary. The practice in Chancery was to serve a notice of filing the bond upon the solicitor of the opposite party, and if the bond be not moved against by the respondent within fourteen days from the service of such notice, it stands allowed without any motion.

THE JUDGES' SECRETARY dismissed the motion with costs.

SMITH V. HENDERSON.

Practice—Carriage of decree.

[Chambers, Oct. 14, 1868.]

McGregor, on behalf of the defendant, moved for the carriage of the decree on the ground that the plaintiff had not taken the decree into the Master's office, although more than fourteen days had elapsed since the said decree had been passed and entered.

Fletcher, for the plaintiff, admitted the fact that the decree had not been taken into the Master's office within the fourteen days, but contended that under order 211 of the General Orders this motion was unnecessary. Under that order the defendant, without leave of the court or notice to the plaintiff, might assume the carriage of the decree. It was formerly necessary, under order 42, sec. 1, of the recently repealed orders, to apply, on notice, in Chambers, for the carriage of a decree, but the new order had made a change in the practice in this respect.

THE JUDGES' SECRETARY.—I think under General Order 211 that this motion is unnecessary. The motion must, therefore, be dismissed with costs.