QUEEN'S BENCH.

Weekes v. Wray.

Practice—Order to proceed—"Three days after service"—How time to be reckoned—C. L. P. Act, 1852, sec. 17.

A plaintiff obtained an order to proceed "three days after service of a copy of the order at defendant's residence, as if personal service of the writ of summons had been effected upon the defendant," and signed judgment on the third day.

Held, that this was irregular, as the order must be taken to give the defendant three days in which to appear.

[Q. B. Jan. 27,—16 W. R. 399.]

This was an application for a rule calling on the defendant to shew cause why an order setting aside proceeding herein for irregularity should not be set aside.

The facts appeared to be that the plaintiff applied on the 18th December at judge's chambers and obtained an order under section 17 of the Common Law Procedure Act, 1852, "that three days after service of a copy of this order at defendant's residence, the plaintiff be at liberty to proceed in this action as if personal service of the writ of summons had been effected upon the defendant."

A copy of this order was left at the residence of the defendant on Friday, the 20th December, and on the Monday following the plaintiff's attorney signed judgment in default of appearance. Later in the day the defendant entered an appearance and applied to a master for and obtained an order to set aside the judgment signed in the cause, writ of *fi. fa.*, and any other writ or writs for irregularity. This order was confirmed by a judge on appeal from the master's decision.

J. O. Griffiths for the plaintiff, now applied for a rule *nisi* to set aside this latter order. He contended that the first order was a permission to the plaintiff to proceed on the third day after service of the copy at the defendant's residence, and that, therefore, the judgment signed on the Monday was regular, and ought not to have been set aside.

F. Brandt appeared to shew cause in the first instance, but was not called on.

The Court were of opinion that the three days after the service of the order were given to the defendant in which to appear, so that the plaintiff could not sign judgment until the expiration of the time mentioned, and they accordingly refused the rule.

Rule refused.

COMMON PLEAS.

Culverhouse v. Wickens.

Garnishee—Payment into court on judge's order—Lien—17 & 18 Vic. cap. 125, s. 63, 65—12 & 13 Vic. cap. 106, s. 184.

A judgment creditor obtained a garnishee order to attach a debt owing to the judgment debtor for work done by him as a solicitor. The garnishee disputed the amount of the debt as being excessive, and a judge allowed him further time to tax it, on his paying £25 into court. The debt was taxed at £27 10s. The day after the £25 was paid into court, the judgment debtor registered a composition deed under the Bankrupt Act, 1861, of which the garnishee subsequently had notice.

Held, that the effect of the payment into court under the judge's order was the same as that of payment under the 63rd section of the Common Law Procedure Act, 1854, and was a discharge to the garnishee as against the judgment debtor.

Held also, that the judgment creditor had a lien on the money paid into court under the 184th section of the Bankruptcy Act, 1849.

[C. P. Jan. 17,—16 W. R. 402.]

Lumley Smith moved, on the part of the garnishee, for a rule calling on the plaintiff, the judgment creditor, to shew cause why the garnishee order should not be rescinded, and all proceedings taken thereon stayed, and why the garnishee should not take out the sum of £25 which he had paid into court, on the ground that since the order the judgment debtor had executed a composition deed. The affidavits shewed the following facts:—The plaintiff, Culverhouse, had formerly been clerk to the defendant Wickens, an attorney; and Clark, the garnishee, was indebted to Wickens in a bill of costs arising out of certain Chancery proceedings conducted for him by Wickens as his solicitor; but this debt was disputed by Clark, on the ground of the unreasonableness of the amount. Judgment having been obtained by Culverhouse against Wickens for £72 12s. 4d., and remaining unsatisfied, Smith, J., on the 7th December last, made a garnishee order, attaching the debt from Clark to Wickens, or so much thereof as should be sufficient to satisfy Culverhouse after the bill had been taxed. On the 23rd December, Byles, J., made an order on the payment into court by Clark of £25, extending the time for taxation by fourteen days. The bill of costs when taxed amounted to £27 10s., more than one-sixth having been struck off. On the 26th December Wickens executed a deed of composition with his creditors under the 192nd section of the Bankruptcy Act, 1861. By this deed all his creditors granted him to the 31st December, 1868, to pay their respective claims in full. There was no *cessio bonorum*, but the deed was made pleadable in bar as a release, and contained a reservation of securities; and he obtained a certificate of discharge and registration thereunder. The £25 was paid into court on the 30th December, and the deed was registered on the 31st. On the 2nd January an order was made allowing Clark to set off the costs of the taxation, and on the same day Wickens served Clark with notice of the composition deed, and that he was to pay him and not the judgment creditor. The following cases were cited:—*Murray* v. *Arnold*, 3 B. & Sm. 287; *Wood* v. *Dunn*, 14 W. R. 84, 1 L. R. Q. B. 77; and in Error, 2 L. R. Q. B. 73, 15 W. R. 184.

Bovill, C. J.—As regards the application relating to £25, I think there is no ground for the interference of the Court. Under the 63rd section of the Common Law Procedure Act, 1854, money owing by the garnishee to the judgment debtor must be paid into court, or a judge may order execution to issue to levy the amount, and the effect of that provision and of the language of the 65th section, is, that such a payment or execution is a valid discharge to the garnishee against the judgment debtor. The fact that here payment had been made by order of a judge makes no difference. Then on taxation the debt was reduced to £27 10s.; but the result is that there was a valid payment so far as the garnishee is concerned of the £25, and within the meaning of the Act of Parliament; and if so there is no ground for the application as regards that sum. But, further, there would be a lien of the judg.