allowed were served at a quarter to four p.m. of that day. In the meantime judgment was signed at twenty-nine minutes to eleven, or thereabouts.

The defendant then obtained a summons calling on the plaintiff to shew cause why the judgment signed for want of a plea to the plaintiff's declaration herein, and the execution issued thereon, and proceedings subsequent to said judgment should not be set aside with costs for irregularity, in that the said judgment was signed too soon, as the defendant had the whole of the day in which his summons for security for costs and for leave to plead several matters were disposed of in which to file his pleas; or why the said judgment should not be set aside on the merits, and in the meantime all proceedings were stayed.

The following cases were cited in support of the summons:—*Abernethy* v. *Patton*, 6 Scott 586; *Wells* v. *Secret*, 2 Dowl. 447; *Beazley* v. *Bailey*, 16 M. & W. 58; *Spenceley* v. *Shouls*, 5 Dowl. 582, and other cases referred to in Ch. Arch. (1856) 245, 1602, 1605.

English, for plaintiff, referred to Ch. Arch. 9th Ed. 214, 1503; *Bebb* v. *Wales*, 5 Dowl. 458; *Glen* v. *Lewis*, 20 L. J. Ex. 71, 81; *Hughes* v. *Walden*, 5 B. & C. 770.

Morrison, J.—I regret that I must make the summons absolute, as the impression made on my mind upon an examination of the case is, that the summons obtained for staying proceedings until security for costs was given was taken out for the purpose of delaying the plaintiff and throwing the case over the last Belleville Assizes. If the only summons pending was the one for leave to plead several matters, and the time for pleading had expired when the Judge had disposed of the application, the plaintiff's judgment would, I take it, have been regular, unless the time for pleading had been enlarged. (See *Glen* v. *Lewis*, 8 Ex. 132.) But the case is different with respect to the application for security for costs and staying the proceedings. It is quite clear that upon the return of that summons the plaintiff's proceedings were stayed, and, as held by Lord Tenterden in *Hughes* v. *Walden*, 5 B. & C. 770, and which is the leading case, the defendant had, as a reasonable time, the whole of the day on which the rule was disposed of to take his next proceeding. In *Mengens* v. *Perry*, 15 M. & W. 537, which was a case of a summons for particulars of plaintiff's demand, the decision in the case of *Hughes* v. *Walden* was followed as the rule and practice, and both of these cases were adhered to in *Evans* v. *Senior*, 4 Ex. 818. Here the judgment was signed on the day the applications were disposed of, and upon the strength of these authorities I must hold that the judgment was signed too soon.

It was pressed very strongly by Mr. English and supported by the affidavit of the plaintiff's attorney, that the application for security for costs was not a *bona fide* one, but an abuse of the right to make such an application, and to throw the plaintiff over the assize, and that in such case the summons would not operate as a stay, as said in Chitty's Arch., 1595, 9th ed. I have not before me either the grounds upon which that summons was obtained or how disposed of. If the plaintiff desires it, I shall, as in the case of *Bebb* v. *Wales*, 5 Dowl. 458, refer it to the Master to report whether or no the summons was taken out *bona fide*, and if not, the summons will be made absolute upon payment of costs. If the plaintiff's counsel does not take that course the summons will be absolute, but without costs.

Purdy v. Rowlands.

Irregularity—Style of case.

Writ of summons in Queen's Bench, *T. H. B. Purdy* v. *Rowlands*. Declaration by mistake in Common Pleas, *J. F. H. Purdy* v. *Rowlands*. Motion to set aside declaration for irregularity is properly made on affidavits entitled as in latter cause.

[Chambers, October 16, 1868.]

A writ of summons was sued out in the Court of Common Pleas, from the office of a Deputy Clerk of the Crown at the suit of T. H. B. Purdy, to which the defendant appeared. The declaration filed and served was by mistake entitled in the Queen's Bench, and at the suit of John T. H. Purdy, and mis-recited the date of the issue of the writ, whereupon the defendant obtained a summons entitled in the same manner as the declaration, calling on the plaintiff to shew cause why the declaration filed herein, the copy and service thereof, or some or one of them, should not be set aside for irregularity, with costs, on the grounds:—

1. That no writ of summons was ever issued, or if issued, served in this action, to ground the said declaration.

2. That this action was not commenced by writ of summons, as required by the statute on that behalf, the first proceeding of any kind taken herein being the filing of the said declaration.

And why, in the meantime, all further proceedings should not be stayed.

O'Brien shewed cause, and objected that the motion was made, and that the affidavits filed in support of it were entitled in the wrong cause, there being, according to the contention of defendant, no suit in court as that entitled in the Queen's Bench, and that if the declaration is anything it is an irregular declaration in the suit in which defendant appeared, viz., in the Common Pleas.

Osler, contra, referred to *Ross et al.* v. *Cool et al.*, 9 U. C. C. P. 94.

Draper, C. J., held that the motion was properly made, and made the summons absolute.

Order accordingly.

CHANCERY CHAMBERS.

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

Eastman v. Eastman.

Practice—Re-taxation of costs.

[Chambers, 26th Sept., 1868.]

Henderson moved for an order to re-tax the bill of costs of plaintiff, or rather that the taxation should be opened, and that he should be allowed to attend before the Master. He stated in support of the motion, that he did not impeach the regularity of the proceedings upon the taxation, but