Bamberg v. Solomon.

(Feb. 18, 1857.)

Summons to show cause was taken out by defendant's attorney, why defendant, who was a prisoner in close custody, should not be discharged upon entering a common appearance in the said action, upon ground that the plaintiff did not declare against said defendant before the end of the Term, next after the time, when said defendant was arrested, and upon ground that two Terms had elapsed since the said arrest, and that the plaintiff had not declared against said defendant.

McMichael, for defendant, moved summons absolute.

Richards, J., granted an order for a *Supersedeas*; defendant to be discharged on entering a common appearance.(a)

Vance et al v. Wray.

Order to change venue in action of Replevin.

Action of Replevin is not local, unless it is brought to recover a distress—14 & 15 Vic., cap. 64, sec. 5. Wrong spelling of party's name is not sufficient ground for refusing an order, when it is "*idems sonans.*"

(Feb. 20, 1857.)

This was an action of Replevin, brought by plaintiffs, to recover a yoke of oxen from the defendant.

The venue was laid in the county of York, one of the united counties of York and Peel, and defendant's attorney took out summons to show cause why the venue should not be changed to the county of Simcoe, and moved summons absolute this day.

Carroll, for plaintiffs, opposed summons on ground of defendant's name being spelt "Rae," instead of "Wray," in the writ of summons, declaration, and all other papers on behalf of plaintiffs, and also in defendant's appearance.

Richards, J., thought this objection immaterial, (as it was "*idem sonans*") and granted an order to change the venue on the ground that the cause of action arose in the county of Simcoe, and not in the county of York, and that the witnesses on both sides resided in Simcoe.

(Reported for the Law Journal and Harrison's Common Law Procedure Act, by C. E. English, Esquire, B.A.)

Baxter et al v. Dennie.

Practice—Writ of Attachment, service of—Absconding debtor.

Writs of Attachment must be served on the nearest friends of the absconding debtor, and a copy put up in the office of the Deputy Clerk of the Crown of the county where he resided.

(Feb. 21, 1857.)

This was an application, under the 45th sec. C. L. P. Act, 1856, for the allowance of the service of a writ of Attachment on Dennie, (an absconding debtor) or for direction as to what proceedings would be considered suitable service, on affidavits to the effect following:—

1. That the defendant resided and carried on the business of a dry goods merchant and general grocer at Bath, in the county of Addington.

2. That the father and brother of the defendant reside about four miles beyond the said village of Bath.

3. That the defendant has left Upper Canada: that his present whereabouts is unknown, and that he is supposed to have gone to the Western States.

4. That before his departure he made a general assignment of his personal property to one Griffith for the discharge of certain trusts therein mentioned.

5. That the said assignee now resides in the village of Napanee, and is aware of this process; also, an affidavit of the Sheriff of the united counties of Frontenac, Lennox and Addington, that the defendant has absconded, and that every reasonable effort has been made to effect personal service of the writ of Attachment on him, but without effect.

Richards, J., I will grant an order that the writ be served on the father and assignee of the defendant, and that a copy be put up in the office of the Deputy Clerk of the Crown for the united counties of Frontenac, Lennox and Addington; and if the defendant do not put in special bail within fifteen days after such service the plaintiff shall be at liberty to proceed in the action; all other papers requiring service, to be served in the same way.

Stephen et al v. Dennie.

Practice—Absconding debtor—Service of writ of Attachment.

An affidavit to support an application for the allowance of service of writ of Attachment should state what efforts have been made to effect personal service.

(Feb. 21, 1857.)

Jackson applied to have the service of the writ of Attachment allowed, on the efforts previously made to effect personal service, or for direction as to what proceedings would be considered sufficient service under the circumstances, on an affidavit of the Sheriff of the united counties of Frontenac, Lennox and Addington, to the following effect:—

1. That he had received a duplicate of the writ of Attachment for service on 4th February instant.

2. That the defendant absconded from Upper Canada on 28th November last, and that after diligent search and enquiry having been made by him, no information can be obtained as to the place whither he has fled.

3. That every reasonable effort had been made to effect personal service of said writ on the defendant, but without effect.

Richards, J.—I cannot make any order whatever in the matter, the affidavit being wholly insufficient.

Affidavits in these applications should show as far as possible:—

1. Where the defendant resided, and what was his business or profession when in the Province.

2. What property (if any) he has in the Province, and in whose hands it is.

3. Whether he has any (and if any, what,) friends or relations residing in the Province or elsewhere.

4. That the defendant has not put in special bail to the action.

5. *What* specific efforts have been made to effect personal service on the defendant, and to discover his whereabouts.

Trust and Loan Co. U. C. v. Elison et al.

Practice—Irregularity—Amendment.

In ejectment defendant may amend his appearance, if filed without the notice required by 224th section C. L. P. Act, 1856.

(March 1, 1857.)

Action of Ejectment. The claimant applied to set aside the appearance entered, on the ground that no notice of the nature of the defendant's title or claim to the premises, had been filed pursuant to the 224th section C. L. P. Act.

(a) N. R., 100.