

CONTEXT OF RETURN—PRACTICE—CERTIFICATION.

The return by a bailiff is authentic and all statements therein are presumed true, so far as they are not contested with the permission of the court in the manner laid down in art. 236, C.C.P.; and this procedure is imperative. Unless the defendant has suffered injustice or grave prejudice, from a copy of a writ not having been duly certified, such omission or irregularity does not give rise to an exception to form, especially if the defendant has appeared within the legal delays.

Quebec Heights v. O'Byrne, 20 Que. P.R. 238, 55 Que. S.C. 32.

EXCEPTION OF LIS PENDENS—SECOND ACTION SERVED AND RETURNED BEFORE A FIRST ACTION — TWO ACTIONS IN BOUNDARY C.C.P. 173, 1059—C.C. (QUE.) 504.

A court is not seized of a case until the writ and declaration are returned; but upon the action being returned the court becomes seized of the case from the date of the service, the return having a retroactive effect to that date. If an action in boundary has already been taken by the defendant, the latter may demand the dismissal of a second action taken by the plaintiff to the same effect.

Gignac v. North Shore R. Co., 15 Que. P.R. 395.

(§ III—58)—SETTING ASIDE—ANNULMENT.

In the absence of fraud and prejudice mere irregularities in the service of process will not give rise to cancellation, and such irregularities should be raised by intervention or opposition and not by petition to annul.

Savoie-Guay Co. v. LesLauriers & DeBrière Rose v. Savoie-Guay Co., 7 D.L.R. 205, 21 Que. K.B. 560.

IRREGULARITIES IN WRIT AND SERVICE THEREOF.

An objection on the ground that the address for service of the plaintiff endorsed on the copy of the writ served on the defendant was not within three miles of the place where the writ was issued as required by statutory rules, should be raised by a motion to set aside the writ itself and copy for service as well as the service and not by a motion to set aside the service alone which can be made only for irregularity in the method of service. [Anon, 1 Dow. Prac. Cas. 654, applied.]

Hilborn v. Reilly, 9 D.L.R. 671, 23 W.L.R. 147, 3 W.W.R. 858.

SERVICE ON FOREIGN COMPANY—DEFENDANT

—SERVICE ON MANAGER WHILE TEMPORARILY IN ONTARIO — COMPANY NOT CARRYING ON BUSINESS IN ONTARIO—RULE 23 — ISSUE OF WRIT WITHOUT LEAVE—ORDER SETTING ASIDE SERVICE ON COMPANY.

Macklin v. Imperial Warehouse Co., 16 O.W.N. 141.

FALSITY OF RETURN—PETITION IN REVISION OF JUDGMENT.

If an action has not been duly served, defendant may, by petition in revision, obtain relief without alleging or establishing that he has a good defence to the action. As in the case of an exception to the form, it is sufficient to allege nullity of service and falsity of the bailiff's return.

Grant v. Taylor, 12 Que. P.R. 315.

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