

Chy.Ch.] RAY V. MAAS—SEATON V. FENWICK—OLMSTEAD V. RUTHERFORD—RE WARMINGTON. [Ont.

the motion is for a better affidavit, two days notice is sufficient.

RAY V. MAAS.

Service—Delay.

Service of a bill of complaint will be set aside if made after the time limited, unless the delay is clearly and satisfactorily accounted for, and especially where it is shown that the defendant might be prejudiced by the delay.

[May 31.—MR. STEPHENS].

This was a motion to set aside the service of a bill of complaint. The service had not been effected within the time limited. The bill was filed in April, 1876, and the defendant was not served until May, 1877.

Howard, for plaintiff, read an affidavit stating that the defendant's residence was for some time unknown, that it had been necessary to amend the bill, and that there was no intention to delay, citing: *Bell v. Hastings*, 7 Beav. 592; *Dalton v. Hayter*, 7 Beav. 586; *Tugwell v. Hooper*, 10 Beav. 19. The defendants desired to compromise, and their last offer was made since the service of the bill.

Hoyles for defendant. The delay has not been sufficiently accounted for. The utmost diligence should be used in such a case. The lands in question are mining lands, and their value fluctuates. Fraud has also been charged.

The REFEREE.—I think the delay has not been sufficiently accounted for or excused. The residence of the defendant Maas has been known since September last, and the necessity for amendment since the same date, yet nothing was done for months, while the pleadings and examination of the parties show it to be a case where the plaintiff should use more than ordinary diligence rather than less. The order will go setting aside the service.

SEATON V. FENWICK.

Supplemental answer—Amendment—Limitations, Statute of.

The Court will allow a supplemental answer to be filed setting up as a defence the Statute of Limitations.

[June 5.—MR. STEPHENS].

This was a motion for leave to file a supplemental answer setting up a previous judgment and the Statute of Limitations.

H. Cassels for plaintiff. A supplemental answer will not be allowed except to state new facts which have come to the knowledge of the defendant since the filing of the answer. The defence must be meritorious. The defend-

ant is too late to be allowed to plead the Statute of Limitations: *Brigham v. Smith*, 3 Chy. Chamb. 313; *Percival v. Conely*, 14 Jur. 473.

Hoyles for defendant. The cases cited do not now apply. The Statute of Limitations is now considered a meritorious defence: *Manning v. Wilson*. (Dec. 22, '74 — V.C. BLAKE). Amendments are now allowed at any time: *Hamelin v. White*, 6 Prac. R. 120.

The REFEREE thought that the order should go giving the defendant leave to file the supplemental answer on payment of costs.

OLMSTEAD V. RUTHERFORD.

Recision of order—Next friend.

Upon a motion to limit the time for appointing a new next friend, and in default to dismiss the bill, the question as to the necessity of a next friend cannot be discussed; the original order must be first rescinded.

[June 5.—MR. STEPHENS].

This was a motion to limit the time for appointing a new next friend, and in default to dismiss the plaintiff's bill.

Muelonell, for plaintiff, submitted that there was no necessity for a next friend, 36 Vict. cap. 16, enabling a married woman to sue alone.

Hoyles for defendant.

The REFEREE—I think I cannot consider the point on this application. If the plaintiff's contention now is correct, he must take the necessary steps to get rid of the order which before he assented to; the order must go as asked.

RE WARMINGTON.

Executor—Guardian.

The Court will not make an order allowing payment of money by a guardian where the will gives him full power as executor to distribute the estate to the parties entitled, and the money is not in Court.

[June 2.—MR. STEPHENS].

This was a motion for an order authorising the guardian of one Joseph Warmington, to pay over to him his share of stock, he having come of age.

Hamilton in support of the application.

The REFEREE—The executor does not require the order of this Court, he has all the necessary authority under the will for payment to the parties entitled, as they attain their majority. The funds are not in Court nor is the estate being administered by the Court. I therefore think the order should not be made.