

OCTOBER 22ND, 1902.

DIVISIONAL COURT.

PEOPLE'S BUILDING AND LOAN ASSOCIATION v.
STANLEY.

Execution—Judge's Order for Costs—Direction for Set-off—Service of Allocatur—Issue of Execution—Production of Original Order or Office Copy.

Appeal by defendant from order of LOUNT, J., dismissing defendant's application to set aside a writ of *fi. fa.* against defendant's goods for interlocutory costs under a Judge's order, upon grounds of irregularity appearing below.

The appeal was heard by BOYD, C., STREET, J., MEREDITH, J.

W. H. Bartram, London, for defendant.

D. W. Saunders, for plaintiffs.

BOYD, C.:—Strict practice requires that when execution is issued upon a Judge's order, the order itself or an office copy thereof should be produced to the officer, unless that officer has official custody of the books of the Court wherein the order has been entered. In such case he may act upon the copy of the order served, after verifying its correctness by reference to the record in his custody. Where the officers are distant, *i.e.*, one officer issues the order and another issues the execution, then proper evidence of the existence and contents of the order should be laid before the officer who issues process. It is customary in the central office at Osgoode Hall, where all the officers are together, that one should refer to the other, and a copy of an order served may be acted upon when the officer has the means at hand of verifying its correctness. So in the Weekly Court at London, where an order is issued and entered by the clerk at the weekly sittings, it is competent for the auxiliary officer who issues execution thereon, *i.e.*, the deputy registrar, who is in easy touch with the other officer, to satisfy himself that the copy served is accurate. In the absence of evidence and in face of the fact that it is not disputed that the copy is right, the Court on this motion will infer that *omnia rita esse acta*.

I think that the appellant has a right to complain in strictness that deduction was not made from the costs last taxed against him, if the company's solicitor intended to issue execution therefor, and for this reason I would agree with the result arrived at by my brother Meredith.

STREET, J.:—I concur.