

In a case where partnership, agency, etc., are in controversy, many questions which might be relevant on the final disposition of the cause, will be held premature and not material until the questions of partnership and agency are decided.

Order made allowing certain interrogatories, and striking out others.

R. L. Borden, Q.C., for plaintiff.

W. B. Ross, Q.C., for defendant.

MEAGHER, J., }
In Chambers. }

[April 14.]

RICHMOND, C.B., ELECTION PETITION.
FLYNN *v.* GILLIES.

Extension of time for service—Services of order for exhibiting original or certified copy—Whether necessary—Failure to do so does not invalidate service—Irregularity in signing order—Effect not given to—Affidavit—Requirements as to swearing—Certificate of Commissioner—Inference from.

An order was made in this case extending the time for service of the petition twenty days beyond the prescribed period. The service of the petition was now attacked because, as was alleged, the order extending the time was not properly signed, and, in the second place because the original or an authenticated copy of the order was not exhibited to the respondent at the time the service was made.

Held, that such exhibition of the original, or an authenticated copy of the order, was unnecessary. But, assuming that a change was made in this respect by Order 65, R. 1,

Held, also, that failure to comply with the terms of the rule did not make the service of the order invalid.

The irregularity complained of in connection with the signing of the order was the use of a wrong initial in signing the name of the prothonotary and Clerk of the Court. It was not clear, as a matter of fact, whether or not the name was signed incorrectly in this respect, but admitting the existence of the mistake,

Held, that effect should not be given to the objection, as the order appeared to be regular in all other respects, and the fact that it was granted by the Court clearly appeared.

It was further objected that the affidavit verifying the petition was not regularly sworn, as the petitioner in swearing to the affidavit had merely held up his right hand, instead of taking the oath on the Book in the regular way.

Held, that this objection, if sustained, would have been fatal, it not appearing that the petitioner belonged to the class of persons permitted to affirm, or be sworn in any other than the regular way.

Held, also, that the taking of the affidavit having been certified by the Commissioner, in the absence of clear proof to the contrary, it must be assumed to have been regularly sworn.

F. T. Congdon, for petitioner.

W. B. A. Ritchie, Q.C., for respondent.