

IN THE COURT OF CHANCERY.

8th March, 1848.

Cumming

v.

Hallet.

Mr. ROBINSON for Defendant.

Mr. SOLICITOR GENERAL for Plaintiff.

THE MASTER OF THE ROLLS.

This is a motion to set aside the order of reference of exceptions to the defendant's answer for irregularity. It was argued with great perspicuity and conciseness.

The ground of the application is that the order of reference had not been taken out and served in due time.

By the practice the exceptions are to be referred after eight days, and within fourteen days after being served; and it has been contended that this rule has not been complied with.

The copy of exceptions, it seems, was served on the fifteenth December, and the order of reference was not obtained and served on the Master until the thirtieth, nor on the defendant's Solicitor till the seventh January following; it was therefore after the expiration of the time limited.

The application has been resisted on three grounds.

1st. That the rule relied on does not apply in this Province.

2nd. That the defendant should have moved to take the Report off the file, and is now too late after an order for amendment has been obtained.

3rd. That the objection has been waived.

On the first ground I am of opinion, that the Act for amending and regulating the Practice of the Court of Chancery, passed in 1839, introduced this Rule of Practice in this Court. I am also of opinion, that the time must be computed from the service of the copy of exceptions, and not from that at which the originals were filed with the Registrar.

In England the Clerks in Courts are for some purposes the officers of the Court, for others the agents of the parties, and therefore delivery to them is a mode of service on the party himself; but the Rule of Court which abolished Clerks in Court in this Country, and devolved on the Registrar the performance of part of their duties, only intended to provide for those cases in which the Clerk is the officer of the Court, such as filing papers, and others which are specified; but the Registrar can in no way be considered as representing either of the parties. I am of opinion, moreover, that when a copy of any original proceeding which requires to be filed with the Registrar is served on the opposite party, it does not lie in the mouth of the party serving it to set up that the original is not on file, but that the filing of the original is pre-supposed by the service of the copy.

2nd. On the second ground, I think that the practice referred to does not apply to a case like this, when the order of reference itself is alleged to have been too late.

3rd. The third ground is that of waiver. It appears that after the order of reference had been served on the Master, warrants were taken out on the first January to proceed on the fifth, but on that day an objection was made that no copy of the order of reference had been served; and on this ground the reference was not proceeded with, but new warrants taken out and served, and the matter came again before the Master on the twelfth.

On that day objection was made on the ground of the reference itself being too late, which was overruled by the Master, and then the defendant's Counsel objected that the exceptions were not in the words of the interrogatory. It is a rule with regard to setting aside proceedings for irregularity, that the party seeking to do so must state all his grounds at once, and the reason of that is that the opposite party is not to be put to expense by seeking to remedy or remove one objection while another and a fatal objection is kept in reserve. Now the only objection that seems to have been taken at the first meeting was not that the order itself was obtained too late, but only that a copy had not been served. If the whole of the objection had been then stated, it would not have been perhaps thought worth while to take out new warrants. It may be doubtful, therefore, whether any other objection could be afterwards urged.

Without, however, deciding this to be so, it seems that after this objection had been overruled, the defendant's Counsel raised a further objection, which it appears to me necessarily waived the former. The first objection went to prevent the Master going into the exceptions at all; but the second made it obviously necessary that the Master should examine them in order to pronounce whether it was well founded. It appears to me, therefore, that this amounted to a clear waiver of the objection relied on.

Motion referred.

NEW BRUNSWICK, IN CHANCERY.

Wednesday the third day of May, in the year of our Lord one thousand eight hundred and forty eight.

AT THE ROLLS.

In the matter of Elijah Sisson, a Bankrupt.

ON motion of Mr. Fisher, and on reading the Certificate of Bartholomew C. Beardsley, Esquire, the Commissioner in and for the County of Carleton of the Estates and Effects of Bankrupts, of the due conformity of the said Bankrupt, dated the twenty second day of February last, and the several Affidavits of George Connell, and of the said Bankrupt: It is Ordered, that the said Certificate be confirmed unless cause be shewn to the contrary on or before the first Tuesday in June next; and further ordered, that

this Order be published in the Royal Gazette on Wednesday the tenth day of May instant, and on each succeeding Wednesday until the said first Tuesday in June next.

By the Court.

D. LUDLOW ROBINSON, REGR.

NEW BRUNSWICK, IN CHANCERY.

Wednesday the third day of May, in the year of our Lord one thousand eight hundred and forty eight.

AT THE ROLLS.

In the matter of Charles Bubar, a Bankrupt.

ON motion of Mr. Fisher, and on reading the Certificate of Bartholomew C. Beardsley, Esquire, the Commissioner in and for the County of Carleton of the Estates and Effects of Bankrupts, of the due conformity of the said Bankrupt, dated the twenty second day of February last, and the several Affidavits of George Connell, and of the said Bankrupt: It is Ordered, that the said Certificate be confirmed unless cause be shewn to the contrary on or before the first Tuesday in June next; and further ordered, that this Order be published in the Royal Gazette on Wednesday the tenth day of May instant, and on each succeeding Wednesday until the said first Tuesday in June next.

By the Court.

D. LUDLOW ROBINSON, REGR.

NEW BRUNSWICK, IN CHANCERY.

Wednesday the third day of May in the year of our Lord one thousand eight hundred and forty eight.

AT THE ROLLS.

In the matter of John Bubar, a Bankrupt.

ON motion of Mr. Fisher, and on reading the Certificate of Bartholomew C. Beardsley, Esquire, the Commissioner in and for the County of Carleton of the Estates and Effects of Bankrupts, of the due conformity of the said Bankrupt, dated the twenty second day of February last, and the several Affidavits of George Connell, and of the said Bankrupt: It is Ordered, that the said Certificate be confirmed unless cause be shewn to the contrary on or before the first Tuesday in June next; and further ordered, that this Order be published in the Royal Gazette on Wednesday the tenth day of May instant, and on each succeeding Wednesday until the said first Tuesday in June next.

By the Court.

D. LUDLOW ROBINSON, REGR.

NEW BRUNSWICK, IN CHANCERY.

Saturday the sixth day of May, in the year of our Lord one thousand eight hundred and forty eight.

AT THE ROLLS.

In the matter of William Connell, a Bankrupt.

ON motion of Mr. Fisher, and on reading the Certificate of Bartholomew C. Beardsley, Esquire, the Commissioner in and for the County of Carleton, of the Estates and Effects of Bankrupts, of the due conformity of the said Bankrupt, dated the seventeenth day of April last, and the several Affidavits of George Connell, and of the said Bankrupt: It is Ordered, that the said Certificate be confirmed unless cause be shewn to the contrary on or before the first Tuesday in June next; and further ordered, that this Order be published in the Royal Gazette on Wednesday next, and on each succeeding Wednesday until the said first Tuesday in June next.

By the Court.

D. LUDLOW ROBINSON, REGR.

NEW BRUNSWICK, IN CHANCERY.

Saturday the sixth day of May, in the year of our Lord one thousand eight hundred and forty eight.

AT THE ROLLS.

In the matter of Joseph Connell, a Bankrupt.

ON motion of Mr. Fisher, and on reading the Certificate of Bartholomew C. Beardsley, Esquire, the Commissioner in and for the County of Carleton of the Estates and Effects of Bankrupts, of the due conformity of the said Bankrupt, dated the seventeenth day of April last, and the several Affidavits of George Connell, and of the said Bankrupt: It is Ordered, that the said Certificate be confirmed unless cause be shewn to the contrary on or before the first Tuesday in June next; and further ordered, that this Order be published in the Royal Gazette on Wednesday next, and on each succeeding Wednesday until the said first Tuesday in June next.

By the Court.

D. LUDLOW ROBINSON, REGR.

NEW BRUNSWICK, IN CHANCERY.

Saturday the sixth day of May, in the year of our Lord one thousand eight hundred and forty eight.

AT THE ROLLS.

In the matter of Elisha Shaw, a Bankrupt.

ON motion of Mr. Fisher, and on reading the Certificate of Bartholomew C. Beardsley, Esquire, the Commissioner in and for the County of Carleton of the Estates and Effects of Bankrupts, of the due conformity of the said Bankrupt, dated the twenty second day of March last, and the several Affidavits of Lewis P. Fisher, and of the said Bankrupt: It is Ordered, that the said Certificate be confirmed unless cause be shewn to the contrary on or before the first Tuesday in June next; and further ordered, that this Order be published in the Royal Gazette on Wednesday next, and on each succeeding Wednesday until the said first Tuesday in June next.

By the Court.

D. LUDLOW ROBINSON, REGR.