

but the terms were not complied with. On the 26th August he wanted to vary terms; that summons was dismissed.

*Mr. Rees*: What was dismissed? Do you mean that one motion was partly dismissed and not dismissed?

*Mr. Bloxam*: No, the time was extended to the 2nd September to hear motion to vary certificate. On the 26th August motion was made to strike out a part; the rest remained on to the 22nd September; the terms were not complied with.

*Mr. Rees*: When was the motion to vary the order?

*Mr. Bloxam*: On the 2nd September.

*Mr. Rees*: You state that the order was dismissed by Mr. Justice Johnston on the 2nd December—that application was discharged?

*Mr. Bloxam*: Yes; because the order was not complied with.

*Mr. Rees*: What was done on the 26th August?

*Mr. Bloxam*: The motion was to vary order by striking out a part.

*Mr. Rees*: What was done with that?

*Mr. Bloxam*: It was discharged.

*Mr. Rees*: Then, only the motion taken out by Ell to vary order was dismissed on the 26th August?

*Mr. Bloxam*: No.

*Mr. Rees*: What summons was taken out by Ell to vary that?

*Mr. Bloxam*: Mr. Ell took out a summons or served notice of motion to vary order made on the 5th of August by striking out the part referring to giving security or paying the money in part.

*Mr. Rees*: He asked to vary the order in that way?

*Mr. Bloxam*: Yes.

*Mr. Rees*: When was the motion made by Ell to vary order?

*Mr. Bloxam*: On the 26th of August.

*Mr. Rees*: When was it dismissed?

*Mr. Bloxam*: On the 26th of August.

*Mr. Rees*: Then, it was heard and dismissed on the 26th of August?

*Mr. Bloxam*: Yes.

*Mr. Rees*: Is this the order dismissing it [reading order, *vide* Appendix No. 5]?

*Mr. Bloxam*: That is not the order.

*Mr. Rees*: Was any other order made?

*Mr. Bloxam*: No.

*Mr. Rees*: Then, why did you sign it with the seal of the Court?

*Mr. Bloxam*: According to the judgment the time was extended to the 2nd of September, to hear motion to vary certificate and security for costs.

*Mr. Rees*: On the 5th of August application to vary certificate was extended to the 2nd of September for the purpose of hearing Ell's application to vary certificate?

*Mr. Bloxam*: Yes.

*Mr. Rees*: Ell then filed notice of motion to vary that order of the 5th?

*Mr. Bloxam*: Yes, by striking out a part.

*Mr. Rees*: Was that the only motion that Ell filed to vary the order?

*Mr. Bloxam*: I cannot tell you that. I do not know of any other notice of motion filed by Ell to vary order of the 5th of August.

*Mr. Rees*: Then the motion made by Ell to vary order was heard on the 26th?

*Mr. Bloxam*: To vary order by striking out a part.

*Mr. Rees*: Was there any other motion to vary order?

*Mr. Bloxam*: I do not know whether there was or not.

*Mr. Rees*: You do not know whether any other motion was made by Ell?

*Mr. Bloxam*: No.

*Mr. Rees*: Now, was the one which you do know of heard and dismissed on the 26th of August?

*Mr. Bloxam*: A previous one stood over.

*Mr. Rees*: I am not speaking about a previous one.

*Mr. Bloxam*: That is the only one I know of.

*Mr. Rees*: Then, the only motion to vary order was heard and dismissed on the 26th August?

*Mr. Bloxam*: That was by striking out a part of it. On the other one the terms had not been complied with.

*Mr. Rees*: Was the application of the 2nd September to vary order of the 5th August?

*Mr. Bloxam*: Yes.

*Mr. Rees*: Where is that shown in any of the documents?

*Mr. Bloxam*: In Judge Johnston's notes [*vide* Appendix No. 16].

*Mr. Rees*: To vary certificate the time was extended from the 5th August to the 2nd September, on certain terms; that was the application that came on on the 2nd September.

*Mr. Bloxam*: Yes, it practically was then the order of the 2nd September; payment into Court had not been made, and it was dismissed.

*Mr. Rees*: But the application to vary order made on the 5th August was dismissed on the 26th August?

*Mr. Bloxam*: Yes.

*Mr. Rees*: Was any other order made on the 2nd September than the order refusing or dismissing Ell's motion to vary certificate?

*Mr. Bloxam*: There was a judgment according to Judge Johnston's note [note read, *vide* Appendix No. 16].