

Chan. Cham.]

BENNET V. SPRAGUE—ROGERS V. CROOKSHANK, &c.

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CHANCERY CHAMBERS.

(Reported by Mr. CHARLES MOSS, Student-at-Law.)

BENNETT V. SPRAGUE.

Next friend—Married woman—Stay of proceedings.

A defendant in a suit cannot act as the next friend of the plaintiff, a married woman. Proceedings were stayed until another next friend should be appointed.

[Chambers, 22nd March, 1867.]

The bill was filed by the plaintiff, a married woman, by J. W. M., her next friend, against several defendants, one of whom died intestate during the progress of the suit. J. W. M. obtained letters of administration to the deceased's estate, and was added as a party defendant to the suit, by order of revivor.

Another defendant thereupon moved for an order to stay all further proceedings in the cause until the plaintiff appointed another and proper next friend.

Moss, in support of the motion, cited *Payne v. Little*, 13 Beav. 114; *Anon.* 11 Jur. 258, and argued that the former case was exactly in point and must govern this.

Hodgins, for the plaintiff, relied upon the language of Lord Cranworth in *Elliot v. Ince*, 7 DeG. McN. & G. 475; 3 Jur. N. S. 597; and also cited Jarman's Pr. 20. He asked leave to sue in *forma pauperis*, if the present application should be granted.

THE JUDGES' SECRETARY.—I think I must follow *Payne v. Little*, and stay proceedings until the plaintiff appoints a new next friend. The application for leave to sue in *forma pauperis*, must be the subject of an independent motion.

ROGERS V. CROOKSHANK.

Affidavit on production—Insufficiency of.

[Chambers, Nov. 29, 1867.]

This was an application to take an affidavit on production off the files for insufficiency. The affidavit was a printed copy of the form in Schedule K. to the orders, and referred to documents in the various schedules annexed, but no documents were set out in the schedules.

THE JUDGES' SECRETARY.—I direct the affidavit to be taken off the files with costs. I cannot but disapprove of the want of care evinced in its preparation. No solicitor ought to have permitted his client to swear to it. The late V. C. Esten on several occasions expressed his strong disapprobation of the use of printed forms where the facts are not easily capable of being adapted to them.

SAME V. SAME.

Omission of addition or description of deponent in affidavit—Irregularity—Costs.

An affidavit should contain the description or addition of the deponent, or, if made by a plaintiff or defendant, should show that he is such plaintiff or defendant.

An affidavit on production made by W. R., not stating any description or addition or otherwise shewing that he was a party to the suit, was ordered to be taken off the files, but as the omission was a mere slip, the order was made without costs, and leave was granted to re-file the affidavit.

[Chambers, Dec. 11, 1867.]

T. H. Spencer moved to take the affidavit of the plaintiff William Rogers, on production of documents, off the files for irregularity, on the grounds:

1. That it did not appear that defendant was the plaintiff.

2. That there was no addition or description to deponent's name.

He referred to 1 Dan's Prac. p. 827; Taylors Orders, p. 132; and *Crockett v. Bishton*, 2 Mad. 446.

Bain, contra, contended that the affidavit having been made and filed in obedience to the order to produce served by defendant, must be presumed to have been made by plaintiff. The third paragraph of the affidavit shewed that it must have been made by a party. There was only one William Rogers a party to the suit, and the bill shews his residence and description. There was no case in point cited in support of the application, and in the case of *Sprague v. Henderson* (unreported upon this point) V. C. Esten overruled a similar objection. He cited *Fisher v. Coffey*, 1 Jur. N. S. 956, and asked leave in case the affidavit was held bad to re-file it.

THE JUDGES' SECRETARY.—The affidavit must be taken off the files, but the omission being a mere slip, the order is without costs. I grant leave to re-file the affidavit.

BOLSTER V. COCHRANE.

Motion by plaintiff to reinstate bill—Plaintiff residing out of jurisdiction—Security for costs of motion.

[Chambers, Dec. 9, 1867.]

This was a motion by the plaintiff to set aside a consent to the dismissal of the bill, and the order of dismissal made thereon, on the ground that the consent was obtained by fraud. The plaintiff resided out of the jurisdiction of the court.

S. H. Blake for the defendant, asked that the plaintiff might be ordered to give security for the costs of the motion before it was entertained by the court.

THE JUDGES' SECRETARY ordered that security to the amount of \$100 should be given before the plaintiff could be allowed to proceed with his motion.

DENISON V. DENISON.

Entitling papers on motion to set aside bond for security for costs of appeal—Prior irregularity by party objecting to irregularity—Estoppel.

The papers and affidavits used on a motion to set aside a bond for security for costs of appeal from the Court of Chancery, should be entitled in that court.

The fact that a party objecting to an irregularity has himself committed a similar irregularity, which in a measure led to that objected to, does not estop him from taking the objection.

[Chambers, January 7, 1868.]

F. Holmsted moved the disallowance of the bond for security for costs of appeal filed by the plaintiff.

R. Sullivan, contra, objected that the notice of motion and the affidavits proposed to be read on the motion were entitled in the Court of Error and Appeal, whereas they ought to have been entitled in the Court of Chancery. Until the