

C. L. Cham.]

MORRIS V. LESLIE—WALLACE V. ACRE.

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our lord the King in capite,\* in Aylesbury, in the County of Bucks, by the serjeanty of keeping all the distresses made for the King's debt by the summons of the Exchequer.

The manor of Banbury was held by the Bishop of Lincoln, by the serjeanty of one hundred and forty hens, and one thousand three hundred eggs.

All the bondmen (servi) of Chakendon, in the County of Oxford, for the service of mowing, were to have of the lord one ram of the price of eight-pence at least, and every mower was to have a loaf of the price of a half-penny; and they jointly were to have a cartload of wood, and a cheese of the price of fourpence, and a certain quantity of small beer. And every yard-land was to have six tods of grass, and half a yard-land three tods.

The Barons Furnival held Fernham, in the County of Bucks (now called Franhm Royal), by the service of finding their sovereign lord the King, upon the day of his Coronation, a glove for his right hand, and to support his right arm the same day, whilst he held the regal verge or sceptre in his hands.

At the Coronation of King Henry IV. Sir Thomas Neville, Lord Furnival, by reason of his manor of Furneham, with the Hamlet of Cere, which he held by the curtesie of England, after the decease of his wife, the Lady Joane, gave to the King a glove for his right hand, and sustained the King's right arme so long as he bare the sceptre.—*Oxford Journal*.

## ONTARIO REPORTS.

### COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

#### MORRIS V. LESLIE.

*Prochein amy*—Security for costs.

1. An application to remove the next friend of an infant plaintiff on the ground of insolvency, or to stay proceedings till security for costs is given, must be made promptly after declaration served, according to the rule in ordinary cases when security for costs is applied for.
2. When the court has appointed the natural guardian of the infant as next friend, and it appears probable that no one else can be found to act in time for the assizes, and no imposition has been practised upon the court in making such appointment, such next friend will not be removed nor will he be ordered to give security for costs although in destitute circumstances.

[Chambers, September 21, 1869.]

An order was made on the 1st September, 1869, to admit Margaret Morris, mother of the plaintiff, to prosecute the action as her next friend. This order was served on defendant's attorney along with the declaration on the 4th September. After allowing the time for pleading to expire the defendant delivered a summons to plead several matters upon which an order was obtained on 16th September. The pleas were served on the 18th September, and on the same day issue was joined and notice of trial was served just in time for the Belleville Assizes.

\* Capite was a tenure held of the King immediately.

On the 21st September the defendant obtained a summons calling on the plaintiff to show cause why the appointment of the above named *prochein amy* should not be revoked, and why all proceedings herein should not be stayed until a responsible person be appointed as *prochein amy* in his stead, or why all further proceedings herein should not be stayed until such next friend should give to the defendant security for his costs herein; upon the ground that the said *prochein amy* is not a responsible person, and not in solvent circumstances, and not good for defendant's costs herein.

J. A. Boyd shewed cause. He filed affidavits detailing the proceedings, and in which it was alleged, that compelling the plaintiff to give security for costs would be equivalent to preventing her from prosecuting the action, and that in any event she could not get such security in time for the approaching Assizes. He contended,

1. That the delay in making the application had been too great: See Rule of Court, No. 23, *Harrison's C. L. P. Act* 603; *Fogo v. Pypher*, 3 P. R. 309; *Somers v. Carter*, *Id.*, 328; *Adshead v. Upton*, 22 U. C. Q. B. 430; *Torrance v. Gross*, 2 P. R. 55; *Morgan v. Helles*, 1 P. R. 363; *Wainwright v. Bland et al.*, 2 C. M. & R. 740, (per Alderson, B.)

2. Insolvency of the *prochein amy* is not established here, and even if established, she is the natural guardian, and no other person can be had to act: *Lees v. Smith*, 5 H. & N. 632; *Adair on Costs*, pp. 10, 11; *Watson v. Frazer*, 8 M. & W. 660; *Morgan & Davey on Costs*, 254; *Duckett v. Satchwell*, 12 M. & W. 779.

The following authorities were cited in support of the summons: *Arch. Prac.*, 12th ed., p. 1242; *Lees v. Smith*, 29 L. J. Ex. 294; *Mann v. Berthen*, 4 Moo. & P. 215.

GALT, J.—The summons must be discharged on both grounds.

*Summons discharged.*

#### WALLACE V. ACRE.

*Ejectment*—Vacant possession—Setting aside writ.

A writ of ejectment was issued against the defendant, who (as was alleged by the plaintiff and not denied by the defendant) claimed to be owner of the land in question. The possession was vacant; and it was not shewn that the defendant was last in possession.

Held, that the defendant was entitled to have the writ set aside without disclaiming title.

[Chambers, Sept. 23, 1869.]

This was a summons calling on the plaintiff, amongst other things, to shew cause why the writ of summons in ejectment herein, copy and service thereof, and praecipe therefor, or some or one of them, should not be set aside with costs, on ground that said defendant was improperly made a defendant.

The facts antecedent to the bringing of this suit appear in *Livingstone v. Acre*, 15 Grant 610, and *Acre v. Livingstone et al.*, 26 U. C. Q. B. 282. The defendant in this suit had brought an action of ejectment against the plaintiffs and the said Livingstone, to which they appeared, Wallace limiting his defence to one-half, and Livingstone to the other. An order was subsequently made directing their appearances to be withdrawn, and