this application. I do not see how this statement thus made was calculated to be of any service to the plaintiff; the way in which it is made is not likely to keep up kindly feelings between professional gentlemen practicing in the same town. No particular grounds seem to be referred to in the affidavit as justifying the belief expressed, though no doubt the person making the affidavit entertained such belief. If the facts stated in the affidavit justify the inference, it will generally be better to place that inference before the court as a matter of argument and conclusion to be drawn from facts rather than as a fact in the affidavit, which the deponent swears he believes.

Summons discharged without costs.

McGregor v. Small.

Examination of insolvent debtor—Effete order.

An execution creditor cannot examine a judgment debtor on a stale order which has been partially acted upon.

[Chambers, March, 15, 1869.]

On the 26th of February, 1867, an order was made for the examination of the defendant touching his estate and effects before the deputy clerk of the Crown, for the County of Frontenac. Upon this an appointment was a few days afterwards made, which was served on the defendant together with the order. An arrangement was subsequently made between the parties for the payment of the judgment debt by instalments, and though some of the debt was paid pursuant to such arrangement, the defendant made default in his promises of payment, and execution was issued for the balance due, the result of which was an interpleader issue to test the right of a claimant to the goods seized, which was still pending. On the 10th of March, 1869, the plaintiff obtained from the deputy clerk of the Crown, and served on the defendant, another appointment for the 12th of March, 1869, on the order of the 26th of February, 1867.

The defendant then obtained a summons to shew cause why the order of the 26th of February, 1867, and the last appointment thereunnder, or the said appointment alone should not be set aside on the ground that the said order was effete and lapsed, a previous appointment having been made thereon, and that it had been waived by delay.

Osler shewed cause. The first appointment was never acted upon, and the proceedings were stayed at defendant's request and for his benefit, and he cannot be heard now to object to proceedings on this order. There is no time limited within which those orders can be acted upon.

O'Brien contra, the order has been acted on and is effete. This attempted proceeding would, if successful, give the plaintiff a new order for the examination of the defendant, without giving the latter an opportunity of shewing cause why he should not be examined. The circumstances of the case may have so changed that a judge would not grant an order for examination. There is, in fact, an interpleader issue about to be tried, which may result in the payment of the debt, and the object sought to be gained by this examination, viz., to obtain evidence for the execution creditor in the interpleader suit is not a legitimate object.

He cited *Jarvis* v. *Jones*, 4 Prac. R. 341.

Richards, C. J.—The defendant cannot in my opinion be examined on an appointment under an order more than two years old, and which has been partially acted upon. This appointment must be set aside, but I give no costs.

ENGLISH REPORTS.

Reg v. Alsop.

Perjury—Corroborative evidence—Materiality.

Upon the trial of C. for perjury, committed in an affidavit, proof was given that the signature to the affidavit was in C.'s handwriting, and there was no other proof that he was the person who made the affidavit. The prisoner was then called, and swore that the affidavit was used before the taxing master; that C. was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was C.'s.

Held, that the matters sworn by the prisoner were material upon the trial of C.

[C. C. R. 17 W. R. 621.]

Case reserved by the Recorder of London at the February Session of the Central Criminal Court, 1869 —

The defendant was at this session convicted before me of wilful and corrupt perjury committed by him in the evidence which he gave before me at the preceding session of this court upon the trial of one James Coutts, for perjury.

Coutts was indicted for perjury, committed in an affidavit made by him in a cause of *Kelsey* v. *Coutts*, and which affidavit had been afterwards made use of before the master upon the taxation of the costs in the said action.

Proof was given that the signature to the affidavit was in the handwriting of Coutts, but no other proof was given that he was the person who had made the affidavit, the commissioner who administered the oath being unable to identify him. The case of *R.* v. *Morris*, 1 Leach, 50, was referred to.

The present defendant, John Alfred Alsop, was then called, and swore that the affidavit in question was used before the taxing master upon the adjourned taxation, and that the defendant Coutts was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was the affidavit of James Coutts. The indictment against the present defendant Alsop alleged that it was a material question upon the trial of the said James Coutts, whether the said James Coutts was present on the 14th of November before the master on the taxation of the said costs.

And whether or not on the said 14th of November the said affidavit was used and read in the presence of Coutts.

And whether or not on the occasion of the taxation of the said costs it was stated publicly in the presence and hearing of Coutts that the affidavit was his

Upon the trial it was objected that the above-mentioned matters were not material questions for inquiry upon the trial of Coutts, as the particulars sworn to related to matters occurring subsequently to the making of the affidavit, and were tendered merely as collateral proof that the affidavit had been made by Coutts, and that the only matter material for inquiry was the truth or falsehood of the statements contained in that affidavit.

The opinion of the Court for the Consideration of Crown Cases Reserved is requested whether the above-mentioned matters were material to