should not pay the costs of, and incidental to an order for his examination, and of and incidental to his examination thereon.

Holman moved the summons absolute. There is no reason, except that it has not been the practice, why the order for the examination should not, in the first instance, be made with costs, and if it be shown, as it is here, that the examination enabled the judgment creditor to collect his debt, there can be no possible reason why the order for costs should not be made now.

Haggart, contra. A Judge in Chambers has no jurisdiction to make an order.

MR. DALTON.—If there were any jurisdiction to make an order such as is asked, I should most certainly do so in this case; but the statute gives no power, nor can I find any case in which such an order has been granted in Chambers. I believe I have known judges direct a judgment debtor, who has been examined, to pay the costs of his examination, but only on applications to commit, where an order against him is by way of punishment, and not as a matter of right to the judgment creditor. As to this direct application for costs, there is no authority in the Statute—nor outside of it, so far as I know—to make the judgment debtor pay them. I discharge the summons, but without costs.

Order accordingly.

BUILDER V. KERR.

Attachment of debts—Affidavit—Filing nunc pro tunc.

Held, 1. That an affidavit to obtain an attaching order must be made by the execution creditor or his attorney; an affidavit made by a managing clerk is insufficient.

2. That where the debt attached was still in the hands of the garnishee, and still in *statu quo*, the judgment creditor should be allowed to file a proper affidavit *nunc pro tunc*.

3. That an attaching order will not be set aside for irregularity on the argument of the summons to pay over, but only on a substantive application.

[MR. DALTON—April 15.

An attaching order and summons to pay over were granted in this case.

On the return of the summons,

Aylesworth, for the garnishee, showed cause. Sec. 307, C. L. P. A. (Rev. Stat.) requires the affidavit on which an attaching order issues, to be made by the judgment creditor or his attorney. This affidavit is made by a managing clerk and is therefore insufficient.

MR. W. READ (Read & Keefer), contra.

The affidavit is sufficient. It has been decided that an affidavit under the A. J. Act to obtain an order to examine is sufficient if made by a managing clerk. I ask leave to file an amended affidavit now.

Aylesworth in reply. In the A. J. Act the word "agent" is used, which does not occur in this section. The judgment creditor cannot now file an amended affidavit. Both the attaching order and the summons must be discharged.

MR. DALTON.—I think that, to comply with the Act, the affidavit should have been made by the judgment creditor or his attorney, and therefore the affidavit filed is not sufficient. In looking through the cases, I found none in which the attaching order has been set aside, except on a motion expressly made for that purpose, and I think it cannot be attacked on showing cause to the summons to pay over. At all events, as the money in dispute here is still in the hands of the garnishee, and the relation of the parties remains unchanged, I shall give the judgment creditor leave to file a proper affidavit now, and make the summons absolute.

Order accordingly.

CLARK V. CLIFFORD.

County Court case directed to be tried at Assizes—Notice of trial—Irregularity.

Held, that where a County Court case was ordered to be tried at the sittings of Assize and Nisi Prius, a notice of trial given under the order, but not in accordance with the terms of the order, must be moved against in the County Court.

[MR. DALTON—April 19.

An order had been made under the A. J. Act, sec. 32, that this case should be tried at the sittings of Assize and Nisi Prius for a certain county. The plaintiff having given notice of trial for the next sittings, the defendant moved against it as being too short notice by the practice of the Court, and by the terms of the order for trial in the County Court.

Holman shewed cause. The application should be made to the County Court Judge, and not here: sec. 34.

Watson, contra. Sec. 34 gives the County Court Judge power only to entertain motions to postpone the trial, not to set aside the proceedings for irregularity.

MR. DALTON.—This is a County Court case. I have, therefore, no jurisdiction over it, unless it be given by the statute. Any application against the notice of trial as being given too late should be made to the County Court.

Summons discharged, without costs.