

attention to the fact that he was not acting for or in communication with the defendant, as was done in *Watt v. Barnett*, 3 Q. B. D. 184; or he might have moved as an officer of the Court to advise the Court that an error had been committed in ordering service upon him as the defendant's solicitor, as was done in *The Pomerania*, 4 P. D. 195. And, even if not an officer of the Court, I think it is competent for a person served as agent of defendant to move the Court to set aside the service if he is not an agent: *Doremus v. Kennedy*, 2 Gr. 657.

But here the motion is by the solicitor acting for the defendant; he swears that he applies on the defendant's behalf, and the motion is made "on behalf of the above defendant." He, as solicitor acting for the defendant, has no *locus standi* because that implies that he is in communication with the defendant and has the right, or has been instructed, to represent him. Instead of applying as *amicus curiæ*, he applies as agent of the defendant. The Court will not set aside substitutional service if it appears, or can fairly be inferred, that the defendant has notice of what was going on. Such notice is here to be inferred from the form of the application and of the affidavits, as well as from the fact that a person called Taylor was making some inquiries about this motion during its pendency.

Altogether I think it best to affirm the Master's conclusion not to disturb the order for substitutional service, and let the plaintiff proceed at his own risk.

No costs of application or appeal to either party.

BOYD, C.

NOVEMBER 9TH, 1903.

CHAMBERS.

RE OGLE.

*Infant — Custody — Rights of Father — Agreement with Uncle — Costs.*

Motion by Abraham Stirling, the uncle of Goldie Florence Ogle, an infant of eight years, on the return of a *habeas corpus* and on petition, for an order as to the custody of the infant, who was handed over when a year old to the applicant by the father under a written agreement. The father afterwards took possession of the child.

D. L. McCarthy, for applicant.

J. J. Warren, for the father.