

HON. MR. JUSTICE MIDDLETON.

FEBRUARY 12TH, 1913.

## YOLLES v. COHEN.

4 O. W. N. 819.

*Attachment—Order for—Setting Aside—No Corroborative Affidavits  
—9 Edw. VII., c. 49, s. 4—Irregularity.*

MIDDLETON, J., set aside an attachment order issued by the Master in Chambers upon the ground that the requirements of the Statute 9, Ed. VII., c. 49, s. 4, had not been complied with as no affidavits corroborative of that of the applicants had been filed.

Motion by defendant to set aside an attachment order issued on the 5th February, 1913, by the Master in Chambers.

Cohen, for the motion.

MacGregor, for the plaintiff.

HON. MR. JUSTICE MIDDLETON:—Upon the argument of this motion it clearly appeared that the plaintiff's proceedings were very faulty. The defendant is not in a position to avail himself of the defects appearing, as his own practice is not above reproach. His notice of motion does not comply with rule 362, in that it does not point out or mention any of the irregularities complained of.

I deal with the motion upon one ground only. The statute 9 Edw. VII., ch. 49, sec. 4, provides that the order may be made upon an affidavit by the plaintiff and upon the further affidavit of two other persons that they are well acquainted with the defendant, and have good reason to believe, and do believe, that he has departed from Ontario with intent to defraud, etc.

The application was here granted by the Master upon the plaintiff's own affidavit, without the necessary corroborative affidavits. There are, I think, made by the statute a condition precedent to the making of the order. The plaintiff now files affidavits, but I do not think this can help him. As the applicant is himself irregular, and has made no affidavit of merits, I think this affords justification for setting aside the order, as I do, without costs. This will be without prejudice to any application that the plaintiff may make for a similar order; but as counsel for the defendant stated that his client was returning to the city to-day, the order should not be made upon stale material.