

so long as he remains within the jurisdiction of this Court, and until the infants respectively attain the age of twenty-one years; but subject to such order as this Court may hereafter see fit to make.

I make no order as to costs.

MIDDLETON, J., IN CHAMBERS.

JANUARY 6TH, 1914.

REX v. DAVEY.

*Appeal—Leave to Appeal to Appellate Division from Order of Judge in Chambers Quashing Magistrate's Conviction—Refusal of Application.*

Motion by the prosecutor for leave to appeal from the order of Lennox, J., quashing a conviction: ante 464.

H. E. Rose, K.C., for the prosecutor.

E. E. A. DuVernet, K.C., for the defendant.

MIDDLETON, J.:—I am by no means satisfied with the conclusion at which my learned brother has arrived; but this alone is not sufficient to justify granting leave to appeal. The matter involved is trivial: the payment of a small fine. The difficulty arises from the carelessness of the magistrate and the prosecutor in failing to see that the agreement as to the admission of evidence taken in the other prosecution (if in fact made) was properly recorded. If such an agreement was made—and I am inclined to think that the defendant's testimony and other evidence, notwithstanding denial by the accused, shew that it was—then the miscarriage, if miscarriage there was, is the result of the carelessness of those charged with the conduct of the prosecution and the trial; and, if the result is to impress the necessity of care in having understandings of the kind in question reduced to writing, much will be gained.

I therefore refuse the application, but give no costs.

Having taken this view of the merits of the application, I have not considered the question raised by Mr. DuVernet as to whether there is now any right to appeal, even by leave.