

Eng. Rep.]

ROBINSON v. NESBITT.

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to appear by guardian in six days. *Re Jarman v. Lucas*, 5 C. B. N. S. 474, may also be referred to.

Nunn v. Curtis, 4 Dowl. 729 is an express authority for interfering on motion, instead of leaving the defendant to his writ of error.

I think all the proceedings after withdrawal of appearance must be set aside, but under the circumstances without costs. See Lush's Practice, Vol. 1, 232.

ENGLISH REPORTS.

COMMON PLEAS.

ROBINSON v. NESBITT.

CROW AND ANOTHER, *Approvers*; REEVES AND ANOTHER, *Garnishees*.

Mayor's Court—Attachment—Garnishee—Notice of equitable assignment.

An equitable assignment of property which is subsequently attached, bars the garnishment, though notice of the assignment has not been given to the garnishee before the attachment.

Watts v. Potter, 3 E. & B. 743, dissented from.
[16 W. R. 543, Jan. 31, 1863.]

It appeared that Robinson, the plaintiff, had brought three actions in the Mayor's Court against Nesbitt, the defendant, and attached certain railway shares which the latter had deposited by way of security for a loan, with Reeves and Whitburn the garnishees. There were three attachments made respectively on the 6th, the 7th, and the 10th of August, 1867, being the days on which the actions were entered. It seems that £2,700 Consols had been purchased in the name of the defendant, as trustee under the marriage settlement of Frederick Alfred Crow, one of the approvers, and that the defendant, in breach of trust, had sold out this sum and employed the proceeds, or a large part of them, in paying calls on ninety-seven Riga and Dunaberg Railway shares, of which he was possessed, and which previously to June, 1867, he had deposited with the garnishees as security for a loan of £700 advanced by them to him and one Gurney. Mr. Malleeson, the approver's solicitor, having learnt that the defendant had dealt with the Consols as above stated, insisted upon the shares being transferred to him, and on the 7th June, 1867, before the date of the attachments, or any of them, obtained the following order from the defendant:—

"Please to deliver my ninety-seven Riga and Dunaberg Railway shares to Mr. Malleeson Dated 7th June, 1867. "P. R. NESBITT.

"Messrs. Reeves & Whitburn."

The garnishees had no notice of this order till the 16th August, which was after the last of the attachments. They then, on repayment of the sum advanced, gave up sixty-seven of the shares to Malleeson, retaining the others to answer the plaintiffs attachment. In respect of these latter shares the approvers, on the 22nd August, entered a bill of proof, and, the plaintiff having appeared thereto, delivered their probation as follows:—

The said approvers, by John Nesbitt Malleeson, their attorney, say that before the said goods and chattels, being thirty shares in the Riga and

Dunaberg Railway Company, numbered 16,671 to 16,700, being in the hands and custody of William Reeves and Charles Whitburn, were, or any part thereof was, attached and defended, &c., as aforesaid, to wit, on the 15th day of June, 1867, the defendant, Pearce Rogers Nesbitt, agreed with the said approvers that the said shares, which were, and are, shares transferable by delivery, should or might be received and held by them (after satisfaction of a certain lien thereon of the said William Reeves and Charles Whitburn, which lien has since been fully satisfied and discharged by the said approvers, to wit, on the 16th of August, 1867) as security for the replacing or making good by the said Pearce Rogers Nesbitt of certain Three per Cent Consolidated Bank Annuities, to wit, £1,357 19s 3d. Three per Cent Consolidated Bank Annuities which have not, nor has any part thereof, hitherto been replaced or made good, and whereof the said Pearce Rogers Nesbitt has been possessed upon certain trusts, and which then ought to have stood in his name in the books of the Governor and Company of the Bank of England in trust for the said approver, Frederick Alfred Crow, for his life, and after his decease upon trust for the benefit of the said approver, Emma Maria Crow, her executors, administrators and assigns, and which said trust fund had been before then sold and disposed of by the said Pearce Rogers Nesbitt, in breach of the said trust, and the proceeds of such sale applied in the payment of calls on the said shares. And the said defendant then transferred the property of the said shares, subject to the said lien, to the said approvers, *whereof the said William Reeves and Charles Whitburn had notice before any of the times when the said goods, chattels and shares were or any part thereof was, attached as aforesaid.* And the said goods, chattels, and shares so attached as aforesaid were not, nor was any part thereof, the goods, chattels, or shares of the said defendant when attached as aforesaid, and then were the goods, chattels and shares of the said approvers. And the said approvers claim to be admitted to prove the premises according to the custom of the City of London.

Replication.—And the said plaintiff in person, as to the probation of the said approvers, says that the defendant Pearce Rogers Nesbitt did not agree with the said approvers in manner and form as alleged by the said approvers in their said probation, but, on the contrary thereof, the said goods, chattels and shares so attached as aforesaid, were and are the proper goods, chattels and shares of the said defendant, and are not the property of the said approvers; and this the plaintiff prays may be inquired of by the country, &c.

Joinder of issue.

The question was tried in the Mayor's Court on the 29th of November, when the learned Recorder was of opinion that as no notice of the equitable assignment of the shares to the approvers had been given to the garnishees before the attachments, there was no vesting of the property in the approvers so as to bar the garnishment, and the plaintiff had a verdict.

Atkinson having obtained a rule, pursuant to leave reserved, to set aside the verdict and enter it for the approvers.