

C. L. Cham.]

SYNGE v. ALDWELL—REG. v. ALSOP.

[Eng. Rep.]

modelled: that the application was immediately after the first irregular step: that it was not necessary for the defendant to apply immediately after appearance, as it was not to be assumed that the plaintiff would proceed irregularly: that the appointment of next friend could not relate back so as to give validity to previous proceedings, and that the practice in suits by infants when pleadings were filed, was to set aside the proceedings by him after appearance when no next friend had been appointed. He cited *Doe d. Roberts v. Roberts*, 6 Dowl. 556; *Doe d. Selby v. Alston*, 1 T. R. 491; *Major v. McIntire*, Sm. & Bat. 273; *Byrne v. Walsh*, 5 Ir. L. R. 217; *Grady v. Hunt*, 3 Ir. C. L. R. 522.

HAGARTY, C. J. C. P., held, that the notice in question must be set aside, and if costs had been asked for, with costs. It was clear that the infant had the right to issue and serve the writ without the appointment of a next friend, but he could take no further step in prosecution of the suit without such an appointment. The practice which prevails in ordinary actions by infants must apply to actions of ejectment since the Common Law Procedure Act, and in these cases the authorities referred to shewed that any proceeding taken by an infant after appearance, without the intervention of a next friend would be set aside for irregularity if promptly moved against. He did not feel pressed by the language of *Richards, J.* referred to, as it might well be that the defendant could have moved for security after appearance and yet have his remedy open of moving to set aside the first proceeding irregularly taken by the infant. The plaintiff in this case having procured the appointment of a solvent next friend, it will not be necessary to deal with his application for security.

Order accordingly.

SYNGE v. ALDWELL.

Law Reform Act, sec. 18—Withdrawal of issue to enable plaintiff to give notice for jury.

The plaintiff obtained a summons, asking amongst other things, to be allowed to withdraw his replication joining issue, and take the same off the files, and file a similar replication with a notice requiring a jury. The joinder of issue had been filed after the Law Reform Act came into force.

GWYNNE, J., gave the leave required.

ENGLISH REPORTS.

REG. v. ALSOP.

Perjury—Corroborative evidence—Materiality.

Upon the trial of C. for perjury, committed in an affidavit, proof was given that the signature to the affidavit was in C.'s handwriting, and there was no other proof that he was the person who made the affidavit. The prisoner was then called, and swore that the affidavit was used before the taxing master; that C. was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was C.'s.

Held, that the matters sworn by the prisoner were material upon the trial of C.

[C. C. R. 17 W. R. 621.]

Case reserved by the Recorder of London at

the February Session of the Central Criminal Court, 1869.—

The defendant was at this session convicted before me of wilful and corrupt perjury committed by him in the evidence which he gave before me at the preceding session of this court upon the trial of one James Coutts, for perjury.

Coutts was indicted for perjury, committed in an affidavit made by him in a cause of *Kelsey v. Coutts*, and which affidavit had been afterwards made use of before the master upon the taxation of the costs in the said action.

Proof was given that the signature to the affidavit was in the handwriting of Coutts, but no other proof was given that he was the person who had made the affidavit, the commissioner who administered the oath being unable to identify him. The case of *R. v. Morris*, 1 Leach, 50, was referred to.

The present defendant, John Alfred Alsop, was then called, and swore that the affidavit in question was used before the taxing master upon the adjourned taxation, and that the defendant Coutts was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was the affidavit of James Coutts. The indictment against the present defendant Alsop alleged that it was a material question upon the trial of the said James Coutts, whether the said James Coutts was present on the 14th of November before the master on the taxation of the said costs.

And whether or not on the said 14th of November the said affidavit was used and read in the presence of Coutts.

And whether or not on the occasion of the taxation of the said costs it was stated publicly in the presence and hearing of Coutts that the affidavit was his.

Upon the trial it was objected that the above-mentioned matters were not material questions for inquiry upon the trial of Coutts, as the particulars sworn to related to matters occurring subsequently to the making of the affidavit, and were tendered merely as collateral proof that the affidavit had been made by Coutts, and that the only matter material for inquiry was the truth or falsehood of the statements contained in that affidavit.

The opinion of the Court for the Consideration of Crown Cases Reserved is requested whether the above-mentioned matters were material to the issue involved in the trial of Coutts, and whether the conviction should stand or be reversed.

The defendant was admitted to bail with sureties for his appearance at the session next after the judgment of the Court is pronounced upon these points.

Poland, for the prisoner, submitted that inasmuch as the identity of the person making the affidavit was established by proof of his handwriting (*R. v. Morris*, 1 Leach, 50, 3 Russ. 92), the evidence of the prisoner given subsequently was collateral and immaterial. [*Waddy*, for the prosecution—At the trial the identity of Coutts was not made out, and then it was that the prisoner supplemented the proof of it.] [BRETT, J.—The jury may have disbelieved the witnesses who gave evidence as to the handwriting.] LUSH, J.—The prisoner's counsel must go to the extent