

As to parol demurrer, see Mackall's case, 6 Rep. 3, where the subject is much descanted on, and Watkins v. Worthington, 2 Bl. 509; Hammond v. Hammond, 2 Bl. 306; Campbell's case, 2 Bl. 209; Tessier v. Wyse, 3 Bl. 28.⁴

In Com. Dig. *supra*, it is said that where an infant commences an action, he must sue by *prochein ami* or guardian as the Court pleases, and in Tidd's Prac. 99 *et seq.* the method of obtaining the authority of the Court for the admission of the guardian or *prochein ami* is stated at large. The propriety of the formal admission of such *prochein ami* or guardian seems to be recognized in Davis v. Jacquin, before cited, where it is said that the power of appointing a guardian *ad litem* is incident to all Courts for the particular suit, upon the infant's personal appearance in Court, which only follows the general rule, that wherever a Court appoints a guardian for an infant he ought to be in person before it, and if the rule be dispensed with or disused in practice, some other mode of compliance with it is substituted. In Tidd's Prac. *supra*, it is laid down, that the defendant is not compellable to plead till such admission is obtained. Indeed the object of the Act seems to have been to permit any one to sue in behalf of the infant who was prepared to risk the expense, Co. Litt. 135 b, n. 1; and the Court ought to be satisfied of his assent, for an attachment will issue against him on non-payment of costs on demand, Tidd's Prac. *supra*; and see Pechey v. Harrison, 1 Ld. Raym. 232; but infant parties are, it is said, themselves liable for costs, Beames v. Farley, 5 C. B. 178; Lane's lessee v. Gover, 1 H. & McH. 459.⁵ However, it is said in Com. Dig. *supra*, that if the declaration says *per curiam specialiter admissus*, it is sufficient, though there be no admission on the roll, and there *are **123** many precedents which make the law in such case, 4 Rep. 53 b, for it shall not be error but only a misdemeanor in the agent employed in the cause. It is believed that here in practice the order is seldom obtained, the statement in the nar. being generally deemed sufficient if not objected to, but a question may sometime or other arise on it. If the infant sues by *prochein ami* or guardian, he cannot afterwards remove his guardian or disavow his *prochein ami*, though the Court may remove him at their discretion. And if a guardian be changed pending an action, the plaintiff ought to make an entry in the record noticing the change of guardians, Davis v. Lockett, 4 Taunt. 765. On obtaining his age, however, he may and indeed ought to appear and proceed by attorney, Stone v. March, Cro. Jac. 580; and see Tessier v. Wyse, 3 Bl. 28. In Equity if the *prochein ami* die during the suit, the Court will appoint another, Richards v Swann, 7 Gill, 366.

The *prochein ami* or guardian is admitted without inquiring whether the person admitted is the guardian of the person of the plaintiff, Davis v. Jacquin *supra*. In the case of the Mayor, &c. v. Norman, 4 Md. 352,

⁴ Tise v. Shaw, 68 Md. 1.

⁵ When suit is brought in the name of the state for the use of an infant, but not by next friend, it is too late after verdict to make the objection that the name of the next friend should have been inserted; but a judgment cannot be entered against the infant for costs. Annapolis R. R. Co. v. Hickox, 104 Md. 659; Albert v. State, 66 Md. 325.