

Ir. Rep.]

RUTLEDGE V. DAVIES—DIGEST OF ENGLISH LAW REPORTS.

this; and therefore this is not a new case. There can be no reason for doubting the propriety of that case as decided by the Vice-Chancellor Kindersley either in point of principle or justice.

IRISH REPORTS.

RUTLEDGE V. DAVIES.

Pleading—Defence confessing part of a plaintiff's demand without bringing amount into court—Practice.

A defence confessing part and traversing the residue of the plaintiff's demand, in an action for a liquidated sum, is good, although the amount so confessed is not brought into court.

Tudor v. Furlong, 16 W. R. 981, followed.

[18 W. R. 929.]

Motion on behalf of the plaintiff that the defence filed in the cause be set aside.

The declaration contained the ordinary *indebitatus* counts, and the endorsement of particulars claimed £138 6s. 8d. for board, lodging, and other necessities supplied to the defendant.

The defence was—

The defendant appears and takes defence to the action of the plaintiff, and as to so much of the causes of action in the declaration contained as relate to the sum of £28 6s. 8d., parcel, &c; the defendant admits the plaintiff's claim, and hereby confesses the plaintiff's cause of action as to the said sum; and as to the residue of the causes of action the defendant says that no board, lodging, &c., &c., was provided by the plaintiff for the defendant as alleged.

James Murphy, Q.C. (*Keogh* with him), for the motion.—This plea is embarrassing. A plea confessing part of the plaintiff's demand without bringing the amount so confessed into court was held bad in *Defries v. Stewart*, 11 Ir. C. L. App. 18; and *Monahan*, C.J., says in that case, "we cannot allow this defence, as the result would be to alter the practice of the court, and to render the payment of money into court unnecessary in such cases." In *Dunsandle v. Finney*, 10 Ir. C. L. 171, an action was brought for £116 16s. rent under a lease; and the defendant, taking "defence to the action," pleaded as to parcel of the sum claimed in the first count of the summons and plaint certain matters in bar concluding, "and, therefore, he defends the action;" and it was held by the Court of Exchequer that the defence was embarrassing as being in form pleaded to the entire cause of action, and not confessing in terms the portion left unanswered. *Tudor v. Furlong*, 16 W. R. 981, will be relied on by the defendant. In that case the Court of Queen's Bench decided that a defence confessing part and traversing the residue of the plaintiff's demand was good, although the amount so confessed was not brought into court. *Defries v. Stewart*, is, however, a direct authority for this motion, and this court will not be bound by the decision of the Queen's Bench in *Tudor v. Furlong*, as it has intimated in some recent cases. If this motion be refused it will have the effect of doing away altogether with the necessity of paying into court.

Carton, for the defendant.—The rule is now clearly established by *Tudor v. Furlong*, that a

plea of confession is the same as a plea of payment into court, and this defence is good.

Keogh in reply.

MONAHAN, C.J.—We are of opinion that this motion must be refused, notwithstanding the case of *Tudor v. Furlong*. We think that this motion was rightly brought forward, as a difference of opinion has existed for some time between this court and the Queen's Bench on this important question of pleading. It is true that this court in a very recent case refused to be bound by the decision of *Tudor v. Furlong*, but we have now changed our opinion, and in deference to the views entertained by the Queen's Bench, and by the Chief Baron in the case of *Dunsandle v. Finney*, in some of the observations which he makes in his judgment, we now hold that this plea is good. A plea confessing part of the action is the same as if the defendant had paid money into court to that portion of the plaintiff's demand, and the plaintiff had marked judgment for that sum. We, therefore, refuse this motion, but without costs.

Motion refused.

DIGEST.

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FOR FEBRUARY, MARCH AND APRIL, 1870.

(Continued from page 196.)

MALICE.—See SLANDER.

MARRIAGE SETTLEMENT.

A., after his marriage to B., settled lands in trust, after their death, for such persons and uses as A. should by will appoint, and in default of appointment "for all and every the . . . children" of A. "But" (after some intervening clauses) "if there should not be any child begotten by A. on B.," then for A. absolutely. B. died, leaving four children. Then A., reciting his intent to give up his interest and forego his power, by a new deed granted to the old trustees his life-estate in trust for his four children, made a voluntary covenant with said trustees that he would not make any will whereby the new trusts might be defeated, and released them from the old trusts. Later, A. married C., by whom he had seven children, and died leaving all his property to C. for life, remainder to her children. Held, that A.'s covenant, &c., with the old trustees wholly released A.'s power, and that the children of both marriages took equally under A.'s first settlement, by the clause "for all, &c., the children of A."—*Isaac v. Hughes*, L. R. 9 Eq. 191.

See LIMITATIONS, STATUTE OF, 1; POWER, 1, 4; VOLUNTARY CONVEYANCE.

MARRIED WOMAN.—See HUSBAND AND WIFE.