

MASTER IN CHAMBERS.

FEBRUARY 24TH, 1913.

REGAN v. McCONKEY.

4 O. W. N.

Pleading—Reply—Motion to Strike out—Embarrassment—Function of Reply Considered.

Motion to set aside a reply as embarrassing or to have same amended. The action was brought for breach of a contract to employ defendant at a certain wage. The defence, in effect, was that plaintiff was incapacitated by illness from such employment and that defendant was, therefore, justified in terminating the same.

Plaintiff, in his reply, set up that the main consideration for the contract was not the agreement to perform the services specified, but the sale of a business, formerly owned by plaintiff, to defendant, for a certain price.

MASTER IN CHAMBERS, *held*, that the reply in question was not only proper, but necessary, as shewing the real contention between the parties.

Hall v. Soc, 4 Ch. D. 341, and

McLaughlin v. Lake Erie, 2 O. L. R. 151, referred to.

Costs in cause.

Motion to set aside, or have amended the reply delivered herein upon the grounds of embarrassment.

H. S. White, for defendant.

H. E. Irwin, K.C., for plaintiff.

CARTWRIGHT, K.C., MASTER:—Prior to 11th April, 1908, the plaintiff and defendant were in partnership as merchant tailors, as "Regan & McConkey."

On that day, they entered into an agreement, whereby the plaintiff sold all his interest in the assets, good-will, etc., of the firm to the defendant for \$4,000, which has been paid as agreed. By this agreement plaintiff covenanted "to perform the duties, and do the work of a cutter" for the defendant for a period of ten years, at a weekly wage of \$40. The defendant agreed to employ the plaintiff as above, reserving only "his right to dismiss (plaintiff) from his employ, in the event of his being negligent in his duty, or disobedient to the proper orders of the" defendant.

All went on smoothly until plaintiff fell ill—a contingency not apparently in the contemplation of the parties, and not expressly provided for in the agreement in question.

It is common ground that plaintiff was ill on 18th May 1912, and was dismissed by defendant on that date, and paid up to 25th May. The statement of claim alleges these facts,