

RECENT ENGLISH PRACTICE CASES.

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(Collected and prepared by A. H. F. LEFROY, ESQ.)*

WERDERMANN V. SOCIETE GENERALE D'ELECTRICITE.

*Imp. O. 16, r. 13. O. 28, r. 1—Ont. O. 12, r. 15 (No. 103). O. 24, r. 1. (No. 189).**Demurrer for want of Parties.*

Since the Judicature Acts there is no such thing as a demurrer for want of parties. The proper course is to take out a summons under O. 16, r. 13 (Ont. O. No. 103), to have the necessary party or parties added.

Nov. 11, C. of A., 30 W. R. 33.

Appeal from the decision of Bacon, V.C. It was argued for the demurrer that to demur for want of parties could be done before the Acts: *Deni v. Turpin*, 9 W. R. 548, and that as the rules do not say it shall not be done in future, the old practice holds good.

JESSEL, M. R.—As the old practice is preserved where unaffected by the Act or Rules, it is important to consider what are the provisions with regard to demurrer under the new practice [His Lordship read *Imp. O. 28, r. 1 (Ont. O. No. 189)*]. In that rule, it is true, there is no specific power given of demurring for want of parties. The subject, however, was not forgotten, for a different remedy is given elsewhere in the event of necessary parties not being joined. *Imp. O. 16, r. 13 (Ont. O. No. 103)*, lays down what is to be done if it is desired that such parties should be added. The effect of that rule is that a person who would formerly have demurred for want of parties has had nothing to do but to take out a summons under the rule. The practice of proceeding by demurrer, is, therefore, no longer available.

LUSH, L. J.—I am entirely of the same opinion. *Imp. Ord. 28, r. 1 (Ont. O. No. 189)*, defines a demurrer, and shows it is a mode of challenging the pleadings of the opposite party on some point of substance. The points there mentioned are the only points which can be now taken on the demurrer. It can only raise a point of substance on the ground that the opposite party does not show what he professes to show.

LINDLEY, L. J., concurred.

Appeal dismissed.

[*Imp. O. 16, r. 13, and Ont. O. No. 103, are virtually identical; and Imp. O. 28, r. 1, and Ont. O. No. 189, are identical.*]

EMDEN V. CARTE.

Imp. O. 30. Ont. O. 26.

Payment into court by defendant, and defence of non-liability—Right of plaintiff to take money out.

Where a defendant denies liability, but pays money into Court, and pleads the sum paid in is enough to satisfy plaintiff's claim, were his contention right, the plaintiff may obtain payment out under *Imp. O. 30, r. 3 (Ont. O. No. 217)*, and may either under rule 4 (*Ont. No. 218*) accept it in satisfaction of his claim, and tax his costs and sign judgment for the costs so taxed, or may go on with his action for the purpose of recovering more; and whether the plaintiff succeeds or not in recovering more, or even fail; altogether in establishing that the defendant is under any liability, he will be entitled to retain the money so taken out of Court.

[Nov. 3, C. of A.—45 L. T. 328.]

JESSEL, M. R., in the course of his judgment said with reference to this point of practice:—

"The first question to be considered is, what is the real character of money as regards property when it has been paid into Court in an action by a defendant, who at the same time denies entirely his liability to the plaintiff? Of course it is obviously inconsistent to say, on the one hand, 'I admit I am liable to you for so many hundreds of pounds;' and on the other to say, 'I deny my liability altogether.' But, though inconsistent, that is a mode of pleading which is now permissible under the Judicature Act, and as has been pointed out by the late lamented Thesiger, L. J., in *Berdan v. Greenwood*, L. R. 3, Ex. Div., 251, it is quite intelligible that a man may say, 'I am under no liability to you, but I am willing to pay you a sum of money if you abandon your claim.' And that mode of pleading enables a defendant so to say. But, when he pays it, the legal consequences, as gathered from the judgment of Thesiger, L. J., are exactly the same as if the defendant's pleading had contained nothing but an unqualified admission of liability. The plaintiff has a right to take the money out

*It is the desire of the compiler to make the above collection of cases a complete series of all current English decisions, illustrative of our new pleading and practice, under the Supreme Court of Judicature Act.