

WILBUR V. NELSON—MASTER IN CHAMBERS—NOV. 15.

*Pleading—Statement of Defence and Counterclaim—Action for Possession of Land—Assertion by Defendant of Right to Half Interest—Agreement with Plaintiff's Testatrix.*—Action to recover possession of house No. 14 Bellevue avenue and of the contents. The defendant by his amended statement of defence and counterclaim asked a declaration of his title to an undivided one-half interest in the Bellevue avenue house, and abandoned any claim to the contents. The plaintiff moved to have paragraphs 4 to 12 of this statement of defence and counterclaim struck out, as being irrelevant and embarrassing. In paragraph 3 the defendant alleged that the house in question was not the sole property of the testatrix, who assumed to devise it to her daughter, the plaintiff, the said testatrix having been the defendant's wife; that the house was paid for by the joint property and earnings of the defendant and the testatrix, so that, although the deed was taken in her name, he was entitled to an undivided half interest therein. This paragraph was not attacked. The next 9 paragraphs entered with minuteness and at some length into the dealings of the defendant, and his wife from the 30th April, 1879, to the 29th August, 1893, as tending to shew that all his earnings during that time were invested in other properties, which he at the latter date conveyed to his wife, on her promise to hold in trust for him and reconvey on request or devise the same by her will so as to protect him, if she died before reconveyance. It was further alleged that the plaintiff, for certain reasons, was able to induce her mother to make her will in breach of such agreements, though well known to her to have been made, and notwithstanding that the testatrix had assured him that she had made her will as agreed on, and especially had made such provision therein as would protect his rights in respect to this Bellevue avenue house. The Master said that it was not necessary to set out these facts, but it was an advantage to the plaintiff to be informed of the defendant's line of defence. There was not, in the Master's opinion, anything objectionable or embarrassing in these 9 paragraphs: *Stratford Gas Co. v. Gordon*, 14 P.R. 407, and cases therein cited, especially *Millington v. Loring*, 6 Q.B.D. 190. They contained statements of facts on which the defendant relied to establish his right to a half interest in the house in question. It would be for the trial Judge to say, when this evidence was tendered, whether or not it was to be received and to what weight it was entitled. The defend-