

the plaintiff for 25*l*. Against this judgment the defendant appealed.

The Court (Wright, J., and Kennedy, J.) held that it was a good defence at common law to a claim on the original debt to plead that the negotiable instrument given in payment or part payment of that debt was outstanding in the hands of a third party at the commencement of the action, and that there was no rule entitling the plaintiff to amend this defect in the course of the action; but the defect could be cured here by Davis bringing a fresh action, and there was in any case no defence as to 5*l*.

Appeal withdrawn on terms.

LONDON, 3 July, 1897.

Before WRIGHT, J.

HUNT v. HUNT (32 L.J.)

*Husband and wife—Separation deed—Molestation—Covenant against
— Vexatious proceedings.*

Before Wright, J., at Nisi Prius without a jury.

In 1880 the plaintiff had executed a deed of separation with her husband, the defendant, by which they had agreed to live apart, with mutual covenants against molestation by either. In 1896 the defendant went to Texas, and shortly afterwards commenced proceedings for a divorce in the District Court of El Paso on the ground of desertion by his wife previous to the date of the execution of the deed. In pursuance of these proceedings he caused a notice to be served on the plaintiff in England of his statement and of his intention to apply for a commission from the District Court to take the depositions of witnesses in England. The plaintiff brought this action for damages for breach of his covenant against molestation by the defendant, and for an injunction against him or his agents taking any steps in England to carry on the proceedings in the District Court of El Paso.

Wright, J., held that in the case of British subjects who had been married under English law, and subsequently separated under a deed, it was *prima facie* unjustifiable for one party without good cause shown to take proceedings for a divorce in a foreign country, and that under the circumstances here disclosed the defendant's conduct was vexatious, and amounted to a breach of his covenant against molestation.

Judgment for the plaintiff and for an injunction.