containing no provision that the principal should not be called in for five years.

On the 12th of August, 1870, default having been made in paying the interest due on the previous 25th of March, Simson issued a writ against the plaintiff, claiming £409 15s. 10d. for principal and interest then due, and £2 15s. for costs; and on the 17th of November, 1870, judgment was given in his favour for those amounts. On the 1st of December, 1870, the plaintiff filed his bill against Twyford and Simson, praying that Simson might be restrained from issuing execution; that Twyford might be decreed to specifically perform the agreement of the 24th of April, 1868, and that, if necessary, the mortgage deed might be rectified.

On the part of the plaintiff it was contended that the defendant Twyford had acted as his solicitor in all these transactions, and was bound consequently to see that the mortgage deed contained the stipulation agreed upon, that the principal money should not be called in for five years. The plaintiff further alleged that he had executed the deed without any perusal or explanation of its contents. On this point there was a direct conflict of testimony.

It appeared from the evidence that, besides failing to pay the interest punctually, the plaintiff had neglected to pay the ground-rent due to the superior landlord until great pressure had been put upon him.

Willcock, Q. C., and *Terrell*, for the plaintiff.—The defendant Twyford was plainly the solicitor of the plaintiff, and bound to protect his interests. The action was founded on a covenant which ought not to have been introduced into the mortgage deed. As the judgment ought never to have been obtained, it is not incumbent on the plaintiff to pay the amount recovered into court.

Kay, Q. C., and *E. T. Holland*, for the defendant.—Supposing that the clause contended for had been inserted, it would, of course, have been in the usual form, which provides that, if the mortgagor makes no default in paying interest, the mortgagee will not call in the money for a certain period: Davidson's Precedents, vol. 2, pt. 2, p. 539. Here default has been made, so that the mortgagee can no longer be restricted in the exercise of his rights. See *Edwards* v. *Martin*, 4 W. R. 219, 25 L. J. Ch. 284; *Burrowes* v. *Molloy*, 2 Jo. & Lat. 521; *Ex parte Rignold*, 3 Deac. 151. Again, this defence should have been pleaded in the action as an equitable plea; also the plaintiff has been guilty of delay in filing his bill.

Willcock, in reply.—An equitable plea cannot stand unless the court of law can work out all the equity, connected with the case: Kerr on Injunctions, p. 27. As to the defendant to an action pleading an equitable plea thereto, and its effect on his right to an injunction to restrain that action, see *Waterlow* v. *Bacon*, 14 W. R. 855, L. R. 2 Eq. 514.

Bacon, V.C., said that he regretted the conflict of evidence, but that, in his view, it would not be necessary for him to decide which evidence was the more credible. His decision turned on the terms of the agreement. A mortgage had been executed; an action had been brought, and judgment recovered for the principal and interest due on that mortgage security; and a bill had been filed to restrain the mortgagee from issuing execution and to enforce specific performance of the agreement. Assuming that the plaintiff was entitled to specific performance, and that, under a decree to that effect, a reference had been made to chambers to settle the mortgage deed in accordance with the agreement, the deed, as so settled, would of course have been in the usual form, and the stipulation that the principal money should not be called in for five years would have been worded in such a way as only to bind the mortgagee so long as the mortgagor punctually paid the interest. No cases were required to prove that the failure of a mortgagor to observe his covenants would release the mortgagee from restrictions which were conditional on the observance of those convenants. This was a very strong case. The security was a small house, held for a short term, and subject to a heavy ground rent. The safety of the mortgagee required punctual payment of the interest. According to the argument at the bar, the mortgagee was to be utterly at the mercy of the mortgagor, who might at any time fail to pay the ground rent, and cause the forfeiture of the lease. Had there been a decree for specific performance, no such provision as that could have been inserted in the deed. It seemed to him that the facts, appearing in this suit, might have been pleaded as an equitable plea to the action; and, though there was great weight in the argument that possibly a court of law could not on that plea work the complete justice sought to be obtained by the bill, yet he was clearly of of opinion that in that case the plaintiff ought at least to have filed his bill earlier. No injunction would be granted except on the terms of the plaintiff paying into court the whole amount which had been recovered on the judgment.

IRISH REPORTS.

COMMON PLEAS.

McMahon v. Irish North Western Railway Company.

Jurisdiction of Civil Bill Court—Costs—Common Law Procedure Act, 1856 (Ireland) (19 & 20 Vic., c. 102), s. 97—"Reside"—Railway Company—"Cause of action."

Section 97 of the Common Law Procedure Act, 1856 (Ireland), enacts that "if in any action of contract . . . where the parties reside within the jurisdiction of the civil bill court of the county in which the cause of action has arisen the plaintiff shall recover less than £20," he shall not be entitled to costs.

Held, that a railway company "resides" in every county in which it has a ticket office.

Held further, that "cause of action" means "entire cause of action," and therefore, where a contract made in county C. was broken in county M., in which the plaintiff and defendant resided, that the cause of action did not arise in county M. within the meaning of section 97 of Common Law Procedure Act (Ireland) 1856

[19 W. R 212.]

Motion by way of appeal from the taxation of costs in this suit, that the taxation of plaintiff's costs might be reviewed, and that plaintiff might be disallowed any costs of the proceedings in this cause. The action was brought in the Court