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VEXATIOUS LITIGATION.

Whilst *bonâ fide* suitors are discouraged by the delay and expense of proceedings in the courts, the same causes are a powerful weapon in the hands of certain litigious persons, who endeavor by persistency to drive their opponents into giving that which the law refuses, or to satisfy their own ambition or personal spite against innocent people. Attempts have lately been made to check such proceedings, and in one case, at least, the attempt has proved successful. The powers of the Court to deal with these cases are not very extensive, and it is important to know exactly what they are.

1. By Order XXV. R. 4, R.S.C.: "In case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just." This rule has two defects: (1) It only applies when the pleadings themselves show that the proceedings are vexatious, and a party can generally so frame his pleadings as to avoid the operation of the rule. (2) An order made under the rule is itself subject to appeal, and there is nothing to prevent a defendant who seeks to get a frivolous action dismissed from being taken up to the House of Lords before he can finally get rid of his adversary.

2. But the Court has also an inherent power to prevent abuse of its process by staying vexatious actions, though not shown on the pleadings to be so. This power has been exercised in a variety of cases—for instance, where an action was brought against a clerk of the Petty Bag Office for not sealing a writ which he was not bound to seal: *Costro* v. *Murray*, 32 L. T. Rep. N. S. 675; L. Rep. 4 Ex. 213. One of the first cases of the kind arose out of an action brought for false imprisonment against Mr. Justice Mellor by a prisoner whom he had tried and sentenced. The action failed, and the plaintiff then brought an action for libel against Mr. Justice Mellor's solicitor in respect of the pleadings in the former action. The action was stayed on the ground that it was a gross abuse of the process of the court: *Jacobs* v. *Raven*, 30 L. T. 366. The leading case on the subject is the *Metropolitan Bank* v. *Pooley*, 53 L. T. Rep. N. S. 163; 10 App. Cas. 210. That was an action brought by a bankrupt, whose adjudication in bankruptcy had not been set aside, against the defendant for maliciously procuring the bankruptcy. The House of Lords ordered the action to be dismissed as frivolous and vexatious, and Lord Selborne says that, "Before the rules were made under the Judicature Act, the practice had been established to stay a manifestly vexatious suit which was plainly an abuse of the authority of the Court although, as far as I know, there was not at that time either any statute or rule expressly authorizing the Court to do it. The power seemed to be inherent in the jurisdiction of every court of justice to protect itself from the abuse of its own procedure." Perhaps the case that carries this principle furthest is *Ex parte Griffin*, 41 L. T. Rep. N. S. 415; 12 Ch. Div. 480, where the Court refused to make an adjudication in bankruptcy, although there was a good petitioning creditor's debt, and an act of bankruptcy had been committed, upon its being shown that the bankruptcy petition was presented, not with the *bona fide* view of obtaining an adjudication, but as a means of extorting money. And the Court will exercise this power, even where the facts are in dispute, if the Court is satisfied that allegations are made on altogether insufficient ground: *Lawrence* v. *Lord Norreys*, 59 L. T. Rep. N. S. 703.

But the most important application of this principle is that of restraining a party from taking any further proceedings except upon certain terms. This was first done in the cases of *Grepe* v. *Loam*, and *Bulteel* v. *Grepe*, 58 L. T. Rep. N. S. 100; 37 Ch. Div. 168. In these actions, numerous applications were made by some of the parties for the purpose of setting aside or varying the judgments previously obtained in the actions. Upon