

facts and circumstances, the gist of which was that the pipe mentioned in the statement of claim was so laid, or caused to be laid, by the plaintiffs, or by some one on their behalf, and not by the defendant; and also made therein allegations of a malicious course of conduct towards the defendant, affording reasons for the probability of the truth of the defence.

The thirteen paragraphs containing these allegations were moved against by the plaintiffs as embarrassing and irrelevant.

*Held*, that an embarrassing pleading under Rule 423 is one which brings forward a defence which the defendant is not entitled to make use of; but here the defendant was entitled to make use of the defence set up, and there was nothing in the paragraphs tending to prejudice or delay the fair trial of the action.

It might be that evidence of the course of conduct of the plaintiffs alleged by the defendant could not be permitted to be given; but that was a question for the trial judge, and not one to be determined upon a motion to strike out pleadings except in a plain case. Even if it was unnecessary to plead this course of conduct, that did not make the pleadings embarrassing.

The court should not hesitate to interfere with the discretion exercised in chambers where the defendant has been thereby deprived of his right to set up a defence which he is entitled to make use of.

Remarks on verbosity in pleading.

*Glass v. Grant*, 12 P.R. 480, approved.

*W. H. Blake* for the plaintiffs.

*Idington, Q.C.*, for the defendant.

[Q. B. Div'l Court.]

PALMER v. LOVETT.

*Attachment of debts—Proceeds of sale of land—Interest of judgment debtor in, as tenant by the curtesy—Disclaimer of interest—Security for costs—Garnishing proceeding—No power to order.*

A judgment debtor, having a supposed interest as tenant by the curtesy in certain land, joined in a conveyance thereof by his daughter to a purchaser, in which it was recited that he was entitled to that estate. His judgment creditor thereupon attempted to garnish the purchase money in the hands of the solicitor who acted for the judgment debtor's daughter,

and the daughter claimed the whole of the purchase money, while the judgment debtor made no claim upon it. It also appeared that he never had claimed, and now expressly disclaimed any interest as tenant by the curtesy, and had joined in the conveyance at the instance of the solicitor for the purchaser, who was also the solicitor for the judgment creditor.

*Held*, that the money in the hands of the solicitor could not be garnished by the judgment creditor.

*Per ARMOUR, C.J.*: Assuming that the judgment debtor was tenant by the curtesy of the land sold, upon its sale he became entitled only to a life use of the purchase money, and this use could not be reached by garnishee process in the manner attempted.

*Per STREET, J.*: There is no debt due from the solicitor to the judgment debtor, nor can it be said that the moneys in the hands of the former are subject to any trust in favor of the latter, nor that any claim on his part affecting them exists. If he had an interest in the lands, he, in effect, released it to his daughter without any consideration, and the money is hers unless the release to her should be set aside as voluntary and a fraud upon his creditors.

The judgment creditor obtained an attaching order, which was set aside by the local judge who granted it; the judgment creditor then appealed to a Judge in Chambers unsuccessfully, and had given notice of a further appeal to a Divisional Court when his proceedings were stayed by an order of the Master in Chambers requiring him to give security for costs on the ground that he was insolvent and was proceeding for the benefit of another.

*Held*, that the order for security could not be sustained; the judgment creditor was not proceeding by either action or petition; and there was no authority for ordering security.

*Re Rees*, 10 P.R. 425, overruled.

*Bartram* for the judgment creditor.

*Middleton* for the garnishee and the claimant.

BOYD, C.]

[Feb. 7.]

MURRAY v. "MAIL" PRINTING COMPANY.

*Discovery—Libel—Examination of officer of newspaper publishing company—Editorial writer—Disclosure of facts.*

In an action against a newspaper publishing company for libel contained in an article written