

amend his declaration as to the defendant Strange, by adding thereto the words, "*and the said defendant, Strange, did not pay the said note.*"

(10th Nov.)—*Jackson* showed cause. The declaration does not follow the form prescribed by the C. L. P. Act, 1856, nor does it disclose any cause of action against the endorser by merely alleging that the note was presented and dishonored.

HAGARTY J.—I think the word "*dishonored*" applies equally to maker and endorser, and clearly infers that the note was not paid, and that therefore the declaration is good: as against the maker it is certainly sufficient. I will set aside the demurrer as to the maker, and leave the question as to the endorser to be argued in Term: because, although I think Mr. McMichael will succeed "on the very right of the cause and matter in law," yet it is naturally to be supposed that in framing the forms given in the statute, all unnecessary allegations were omitted, and therefore that those contained therein are necessary; and I would not like to take upon myself, in the absence of any direct authority on the point, to set aside as frivolous a demurrer to a pleading which does not follow the form prescribed, especially as it may be plausibly argued that even in pleading the endorser is in no default till he refuse to pay after notice of dishonour.

Demurrer as to matter set aside with costs.

#### STREET V. CUTHERBERT.

Leave granted to administer interrogatories under 176th section before plea pleaded, leave to plead several matters being asked for in the same summons, and the interrogatories having particular reference to the pleas sought to be pleaded.

[Oct. 4, 1856.]

This was an application on a summons to plead several matters, and also to administer interrogatories to the plaintiff at the same time, under the 176th section. The action was one of dower, and the pleas sought to be pleaded by the defendant were:—

1st. *Ne unques seizin que dower.*

2nd. *Ne unques accouple.*

3rd. A release and assignment of dower.

The interrogatories sought to be delivered were as follows:

First—Have you at any time since the death of the late Timothy Street, made any disposition of or contract or covenant respecting your dower, or any claim or right of dower in to or out of any of the lands and tenements of which the said Timothy Street was seized? If yea! state particularly what disposition or dispositions, contract or contracts, covenant or covenants you have made of or respecting the same, what was the consideration therefor, when and with whom made and by what instruments, and the names of the witnesses thereto, and in whose possession, custody, control or power such instruments.

Second—Have you at any time since the death of the said Timothy Street, received any moneys, or securities for money, provision for your maintenance or other payment, satisfaction, compensation or equivalent for your dower, out of the lands in respect of which the said Timothy Street was seized, or any part thereof? If yea! state particularly such moneys, securities, payment, satisfaction, compensation or equivalent consideration, and from whom and in what account you received the same.

2

Third—Have you received, or accepted, or agreed to receive or accept any provision in lieu of dower, either made under the will of the said Timothy Street or by your son John Street, or by any person or persons whomsoever?

Fourth—Have you at any time since the death of the said Timothy Street, made or executed any release of action or other release whatsoever, with reference to your claims for dower, either to the said John Street or to any other person or persons whomsoever? If yea! state particularly when and whom such release or releases were made, the names of the witnesses thereto, and in whose possession, custody, control or power, the same.

Fifth—Was there not an arrangement made with you by John Street, either solely or in conjunction with others interested under the will of the said Timothy Street, or otherwise interested for the purpose of protecting those, &c., interested or protecting said estate from liability by reason of the covenants of the said Timothy Street, on account of any claims for dower which might be made by you on lands owned by said Timothy Street in his lifetime, and under which arrangement you released or assigned your claims for dower on behalf and for the benefit of those entitled to claims under such covenants, or having or being intended to have such effects? If yea! state particularly what such arrangement was, what was the consideration received by you thereunder, and what instruments, deeds or documents, were then made, required or executed by you, and who has in the possession, custody or control thereof, and to what lands the same has relation.

Sixth—Have you not given John Street or some other person or persons an interest in the claim for which this action is brought and does not the said John Street or other person prosecute and maintain this action either altogether or in part for his own immediate benefit, and on his behalf?

Seventh—To whom and for whose benefit was the benefit money or other consideration paid or given by John Douglas, Robert Mitten, John Mulbex, and others, who have compounded with you for your claims on some of the lands of said Timothy Street paid and given? Was not the whole or some part thereof paid to and received by John Street or some person other than yourself, and for his or their own personal benefit?

*Paterson* showed cause.

BURNS, J., in delivering judgment said: I perceive by reference to *Finlason* that Mr. Jarvis was quite right in *Street v. Proudfoot* in stating that interrogatories might be administered for the purpose of supporting a plea not yet pleaded; but in that case the order was rightly refused, because he did not at the same time apply for leave to plead some plea or pleas to which the interrogatories would have reference in the same summons. In this case it is different, as the defendant states, the pleas which he desires to plead and to support by interrogatories. I will therefore grant an order, but will so modify the interrogatories that they will in every part have precise reference to the pleas, and not be couched in general terms, which would be analogous to a fishing bill in equity. I will also grant leave to plead the three pleas. I had some thoughts at first that I ought not to grant leave to plead the third plea, but I have come to the conclusion that the proper