

other upon the amendment of 1904 (putting an end as it does to the conflict which existed in the Courts as to the true meaning of the words of the original section), i.e., that more evidence would be required by plaintiff to establish his case than is mentioned in the amending section.

The position taken by defendants that the agreement between the parties was that defendants should pay only \$67.50 per annum, and that they had actually paid all they had agreed or were liable to pay, makes it clear that the \$69 paid to Dunnett cannot be and was not considered a payment on account of the annuity.

In many cases a doubt may occur whether a particular transaction amounts to a payment or a set-off, but in general "the distinction between the two is quite plain. A payment is a sum expressly applicable in reduction of the particular demand on which it is made; that demand is therefore reduced by the extent of the payment. To constitute a payment, the transaction must have the assent of both parties, and for such payment no action is maintainable; while a set-off is a separate and independent demand which one party has against the other, and in respect of which he is as much a creditor of the other as that other is of him, and for which he can as well maintain a separate action as his creditor can for his demand." In re Miron v. McCabe, 4 P.R. 171, 174, per Wilson, J. In that case plaintiff sued on an account originally for \$236.55, giving credit for \$169.07½, leaving \$67.47½. In the \$169.07½ was included the sum of \$155.15 paid him by defendant on account. A sum of \$42 had been paid by defendant to one G. upon the written order of the plaintiff, and the plaintiff swore at the trial that had he known of the payment of this sum his claim would have been reduced to \$25.47½. The learned Judge held that the \$155.15 was a payment: he does not hold that the \$42 was a payment or that another account the defendant had against the plaintiff of \$13.92 was a payment. He does not in so many words say that either is not a payment, but he goes on: "This latter sum (\$13.92) is, I presume, a set-off, but, leaving that out of consideration, there is the full claim of \$236.55 reduced by payments amounting to \$155.15, leaving a balance claimed of debt or account of \$81.40 and so not exceeding \$100. The Division Court had, therefore, clearly jurisdiction in the matter."

The distinction between a payment and a set-off is, I think, well shewn in the definition of Wilson, J.