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PURCELL v. DOUGLAS.

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of the same intelligence and talent as those who conduct newspapers in London, it is an evil incident to the improvement we have made in Chancery practice in printing documents that they are more easily circulated than they used to be: and, as to those Hampshire papers, I would rather abstain from pronouncing an opinion until I hear more of the particular case in which you have to answer the affidavit. Mr. Giffard, from which it appears that the affidavits got into the Hampshire paper from merely reprinting the documents published by you. I shall consider whether that is a case in which the motion ought to be made at all. I postpone all the cases about the Hampshire papers. With regard to the *Morning Post*, I think I must make the printer pay the costs. He will be indemnified no doubt. The printer is the person who is brought up in many of these cases. In the celebrated case of "Junius's Letters," State Tr. xx. 895, Mr. Woodfall was the printer, and was not the person who supplied the information. But the article in the *Morning Post* goes beyond, merely representing the article as extracted from the *Pall Mall Gazette*. From what that article states, it is clear they must have been in communication with some person who was wishing to make what Lord Hardwick calls an improper attempt to prejudice the case before it was heard. No doubt they may have thought it fair, that as they stated the evidence on one side, they should state what they understood was to be produced on the other. It only shows how unfortunate it is that they should have a notion that they ought to print anything at all when the case is in embryo, and in such a stage that one side only has filed affidavits which have not been read before the Court. As to the *Morning Post*, I make them pay the costs; as to the *Times* and the *Morning Advertiser*, it is enough to say that there will be no costs on either side.

IRISH REPORTS.

CHANCERY.

PURCELL v. DOUGLAS.*

Practice—Pleading—Inconsistent pleas—Pl-a puis darrein continuance—Plea in bar of further maintenance of the action—Common Law Procedure Act (Ireland), 1853, ss. 55, 72, 73.†

A plea, purporting to be a plea of set-off, is bad if it omit to aver the defendant's willingness to set off the amount against the plaintiff's claim.

A plea *puis darrein continuance* will be set aside if pleaded without the affidavit required by the 73rd section of the Common Law Procedure Act (Ireland), 1853, or an order of the Court, in the absence of such affidavit.

A plea in bar of the further maintenance of the action will not be allowed along with traverses going to the entire cause of the action.

The plea of payment mentioned in the 58th section of the Act above quoted is a plea of payment before action of the entire sum claimed.

[15 W. R. 1019. C. P. (Ir.) July 1.]

This was an application to set aside a plea as embarrassing.

The action was brought to recover a sum of £94 6s. 6d., money had and received, and due on accounts stated. The defendant pleaded a traverse of each cause of action, and also a fur-

ther defence to the entire, which was in the following terms:—As to £33 17s. 6d., part of the said sum of £94 6s. 6d., defendant says that before the commencement of this suit the plaintiff was, and still is, indebted to the defendant in a sum equal to the said sum of £33 17s. 6d., for work and labour done and performed. And as to the sum of £60 9s., being other part of the said sum of £94 6s. 6d., defendant says that the plaintiff ought not further to maintain his action in respect of the said sum of £60 9s., because the defendant says that after the commencement of this suit, and since the last pleading in this action was pleaded, defendant satisfied and discharged the said sum of £60 9s. by payment thereof in manner hereon endorsed.

E. Gibson, in support of the motion.—The portion of the plea which deals with the sum of £33 17s. 6d. is defective, because, commencing as a plea of set-off, it omits the usual and necessary averment that defendant is willing to set off that sum against an equal amount of plaintiff's claim. The part of the plea which deals with the sum of £60 9s., is either a plea of accord and satisfaction, in which case it should aver our acceptance of the money, but it does not; or it is a plea of *puis darrein continuance*, in which case it should comply with the provisions of the 73rd section of the Common Law Procedure Act of 1853, requiring an affidavit that the matter of the plea arose within eight days next before the pleading of such defence, unless the Court shall otherwise order; here there is no such affidavit, and no such order: or, lastly, it is a plea in bar of the further maintenance of the action, in which cases it cannot stand along with the traverses which go to the entire cause of action: *Suckling v. Wilson*, 4 Dowl. & L 167.

O'Donnell, in support of the plea.—The averment that the defendant is willing to set-off the £33 17s. 6d. against an equal portion of the plaintiff's claim is merely formal, and its omission will not vitiate the plea if it be otherwise evident that such is the purport and intention of the plea. The part of the plea which deals with the sum of £60 9s. is not a plea *puis darrein continuance*; it is therefore not subject to the provisions of section 73 of the Article; it is a plea to the further maintenance of the action, governed by section 72. Such a plea may be pleaded along with a traverse of the entire cause of action; section 58: *Cook v. Hopewell*, 11 Ex. 555. 4 W. R. 291; *Henry v. Earl*, 8 M. & W. 228; *Suckling v. Wilson*, *ubi sup.*, is inapplicable to the present system of pleading.

E. Gibson, in reply.

GEORGE, J.—The first part of the third plea purports on the face of it to be a plea of set-off, and, in my opinion, it is clearly bad, as omitting the averment of the defendant's willingness to set off the amount. The remainder of the plea appears to me to purport to be a plea *puis darrein continuance*; its terms are precisely those which should be used in such a plea. If it be a plea *puis darrein continuance*, it is open to the objection of not fulfilling the requirements of the 73rd section of the Common Law Procedure Act of 1853. It is argued, however, by the counsel for the defendant, that it is a plea to the further maintenance of the action, governed by the 72nd section, and sanctioned by the 58th. The latter

* Before *GEORGE, J.*, sitting in Consolidated Chamber.

† Corresponding to the 84th, 63th, and 63th sections of the 15 & 16 Vict. c. 76.