

a distinct and single issue cannot be taken, and in such cases it has always been the practice to strike out pleas manifestly false. 4 Ex. 400, and 14 Q. B. 418 are cases of this kind. The cases are numerous. A single instance will show how far the Courts have gone, and how much the falsity of the plea has influenced the mind of the Court beyond all other considerations. In *Smith v. Hardy*, 8 Bing. 435, to debt on a judgment, the defendant pleaded a release under seal, which had been destroyed by accident. The Court allowed the plaintiff to sign judgment on an affidavit that the plea was false, but it will be observed that here the plea was good in form and substance.

The present case, as it seems to me, stands clear from all these. I am not asked to try the truth of the plea upon affidavit, and it is not necessary to say that I could act upon the most conclusive and indisputable evidence, out of the cause itself, of its falsity. As to two of the defendants, they are not active in the defence. The defendant, Beattie, alone instructed the defence; and in his examination in this suit he says, in effect, the defendants owe the plaintiff all he claims, that the plea is false, to his knowledge, and was pleaded for delay. Then, if I can look at this examination (and why should I not), what is there to try? And when we read of sham pleas, false in fact, what are such if this be not? All the difficulties which occur in such cases as I have cited seem to be removed by the fact that there is nothing left to try; and to allow the defendant to force the plaintiff to the expense and delay of proving at a trial that which the defendant himself asserts, in this cause, to be the truth, is to be passive where action is required, to allow the forms of law to be abused in the face of the court, and that which was meant solely for a defendant's protection to be perverted to inflict the merest injustice upon the plaintiff.

The Irish cases I have been referred to show that the Courts there are much more ready to act in striking out a false plea than the Courts in England; indeed, they treat a plea that is plainly false as necessarily a sham plea.

I therefore make the summons absolute, to set aside the plea, and for leave to the plaintiff to sign final judgment.

Order accordingly.

NOTES OF RECENT DECISIONS.

ABERNETHY V. BEDDOME.

Satisfaction piece—Signing before Attorney in the United States.

[February 25, 1874—MR. DALTON.]

In this case a satisfaction piece was executed before a practising attorney in the United States, and the attorney's affidavit made before a notary public. Order applied for to enter same on roll.

Held, that signing before a practising attorney in the United States is a sufficient compliance with Rule 64, and order accordingly.

ELMSLEY V. COSGRAVE.

Examination under A. J. Act Sec. 24—Clerk's affidavit for order.

[March 10, 1874—MR. DALTON.]

In this case, the affidavit for order to examine under A. J. Act was made by managing clerk of attorney, and stated, "I am familiar with all the proceedings in this suit."

Held, that although a managing clerk's affidavit is sufficient under the statute, still it must state that he has some particular charge of the suit.

MCCRUM V. FOLEY.

Amendment under A. J. Act—Penal action.

[March 11, 1874—MR. DALTON.]

This was a penal action against a magistrate. The notice required by section 10, Con. Stat. U. C. cap. 128, stated that the plaintiff intended bringing his action in one of the Superior Courts, while the writ was issued in the other. On an application to amend under the A. J. Act:

Held, that under the statute these forms could not be departed from, and that it could not be amended as if merely formal.

QUEEN EX REL. O'REILLY V. CHARLTON.

Amendment under the A. J. Act—Quo Warranto proceeding.

[February 24, 1874—MR. DALTON.]

In this case, the fact of the relator being a candidate or a voter, who had voted or tendered his vote as required by sec. 181, 36 Vict. cap. 48, was omitted in the relation, but was contained in one of the affidavits filed.

Held, that the fact being already before the court, the relation could be amended under the A. J. Act.