

MASTER IN CHAMBERS.

OCTOBER 8TH, 1912.

RICKART v. BRITTON MANUFACTURING CO.

4 O. W. N. 110.

*Pleading — Statement of Defence — Con. Rule 298 — Denial —
Non-payment of Interlocutory Costs.*

MASTER-IN-CHAMBERS struck out certain paragraphs of a statement of defence alleging non-payment of interlocutory costs awarded to defendants on ground that the non-payment of such costs was not a defence but a ground for moving to stay the action and refused to strike out certain other paragraphs alleging that plaintiffs were entitled to no relief in respect of their alleged trademark by reason of their illegal use of the word "registered" in violation of secs. 335 and 488 of the Criminal Code.

Stewart v. Sullivan, 11 P. R. 529, and *Wright v. Wright*, followed, as to first branch of case, and *Ont. & Minnesota v. Rat Portage L. Co.*, 22 O. W. R. 1; 3 O. W. N. 1078, 1182, as to second branch.

Costs of motion in cause.

The facts of this case are to be found in the report in 22 O. W. R. 81, 3 O. W. N. 1272.

The statement of defence was delivered on 10th September. The plaintiffs next day moved to strike out parts of paragraphs 3 and 5 and all of paragraphs 6, 7, 8, 9, and 13, on the usual grounds under Consolidated Rule 298.

J. G. O'Donoghue, for the plaintiffs' motion.

C. G. Jarvis, for the defendant, contra.

CARTWRIGHT, K.C., MASTER:—I noted on the argument that paragraph 13 was not objectionable at this stage, as it merely denied plaintiffs' right to the assistance of the Court. Paragraphs 6, 7, 8, and 9, set out the fact (which is not denied) that certain interlocutory costs awarded to defendants amounting in all to over \$230, have not been paid, and allege that by this default the plaintiffs have abused the process of the Court, and are thereby disentitled to any relief which might otherwise have been given to them.

The question of the effect of non-payment by a plaintiff of interlocutory costs was fully dealt with by the Common Pleas Division in *Stewart v. Sullivan*, 11 P. R. 529, approved in *Wright v. Wright*, 12 P. R. 42. It was there laid down that the remedy in such cases was by application to the Court for a stay until payment had been made. No doubt this course is open to defendants, if they think it likely to succeed.