

marriage, Mary Pask, at the request of the defendant, acted as his housekeeper, on the representation that he would devise to her certain real estate, and that consequently she received no wages; that after their marriage the plaintiffs, at the request of the defendant, continued to live with him on the property mentioned until dispossessed by him in August, 1903, and during that time defendant paid nothing for his board; and that George Pask, at the request of the defendant and with his consent, and on the distinct understanding that the property belonged to the plaintiff Mary Pask, expended in repairs to the defendant's house \$771.72.

The prayer for relief was by the plaintiffs jointly for \$1,575.72, made up as follows; \$600 for wages due Mary Pask, \$204 for board of defendant for 17 months, and \$771.72 for repairs.

J. M. Ferguson (Denton, Dunn and Boulton), for defendant.

G. H. Kilmer, for plaintiffs.

THE MASTER.—The claim for wages due Mary Pask before marriage, and the claim of the husband for repairs, are plainly two distinct causes of action vested in different plaintiffs. There is no allegation in the statement of claim as to the charge for defendant's board amounting to \$204, shewing which of the plaintiffs make this claim, or whether it is joint.

The terms of Rule 185 are in themselves plain. They have been interpreted by the Courts in England in *Stroud v. Lawson* [1898] 2 Q. B. 44; *Universities v. Gill*, [1899] 1 Ch. 55; *Waller v. Green*, [1899] 2 Ch. 696; *Ellis v. Duke of Bedford*, [1899] 1 Ch. 494, [1901] A. C. 1. See *Odgers on Pleading*, 5th ed., pp. 25, 26.

The Rule is said by Stirling, J., in the second case, p. 60, to be as laid down by Chitty, L.J., in *Stroud v. Lawson* (p. 52), "that the right to relief alleged to exist in each plaintiff should be in respect of or arise out of the same transaction, and also that there should be a common question of law or fact in order that the case may be within the rule." And in that case Vaughan Williams, L.J., says (at p. 54): "The two conditions (above mentioned) are *not* alternative."

Applying this principle, it seems clear that the claims of Mary Pask for wages and of her husband for repairs, assuming them to be maintainable, cannot properly be joined in the same action. What common question of law or fact has to be determined for the success of these two claims? If the plaintiffs had brought separate actions, could the defendant