PRACTICE UNDER THE JUDICATURE ACTS; BEING REPORTS OF POINTS OF PRACTICE ARISING UNDER THE JUDICATURE ACTS, 1873 AND 1875, DECIDED IN JUDGES' CHAMBERS

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DECIDED IN JUDGES' CHAMBERS.

EDITED BY

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ADDENDA.

THE following notices have been posted in Judges' Chambers since Nov. 1, in addition to No. XXVIII. in the Reports.

PENDING BUSINESS.

HIGH COURT OF JUSTICE.—NOTICE.

In order to save the expense and inconvenience of separate applications for directions as to the form and manner of procedure in actions commenced before the 1st Nov. inst., the Judge sitting at chambers hereby directs—1. That where no declaration has been delivered the action shall be continued according to the ordinary course of the High Court of Justice, as if it had been commenced in that court. 2. That in all other cases the action shall be continued up to the close of the pleadings according to the practice of the court in which it was brought, and afterwards according to the provisions of the Judicature Acts, subject, however, to an order, at the instance of either party, to proceed at any stage according to the course prescribed by those Acts.

Judge's Chambers, Nov. 2, 1875. (By order.)

COSTS OF INSPECTION.

Where an order for the inspection of documents is made under Order XXXI., rules 17 and 18, the costs of the application and of the inspection shall be costs in the cause (unless otherwise ordered), the cost of 4*d.* per folio for copies of documents being paid by the party inspecting.

(By order of the Sitting Judge.)

December 20, 1875.

JUDGES' CHAMBERS.

Nov. 2 *and* 5.

(Before LUSH, J.)

RAMSDEN *v.* BRRARLEY.

Interrogatories—Discovery—Action for libel—Judicature Act 1873, *s.* 24; *s.* 22, *sub-s.* 7—6 *&* 7 *Will.* 4, *c.* 76, *s.* 19.

Any information which, before the passing of the Judicature Acts, could have been obtained in Equity by filing a bill of discovery, can now be obtained by interrogatories in any cause before the High Court of Justice, although the cause may have been entered for trial before the Judicature Acts came into operation.

THIS was an action by the plaintiff against the publisher of the *Standard* newspaper, for an alleged libel in that paper; and the present application to his Lordship was for leave to administer interrogatories to the defendant. The interrogatory which was objected to, and which, as will be seen, was allowed by the learned Judge, is as follows:—Were you, on the 22nd Nov. 1874, the printer or publisher, or both, of the *Standard* newspaper?

W. P. Macdonald appeared for the plaintiff; *Warburton Pike* for the defendant.

Nov. 5.—LUSH, J.—The question in this case is whether the plaintiff is entitled to an order for administering interrogatories to the defendant for the purpose of discovering whether he was or was not, at a given date, the printer and publisher of the *Standard* newspaper. The action, which is for an alleged libel in that paper, was brought many months ago, and was entered for trial at the sittings after last Trinity Term, but not having been reached, it stands in the list of remanets for trial at the present sittings. The defendant's plea is "Not Guilty." Whether the plaintiff could have obtained permission to put this interrogatory from the Court of Queen's Bench, under the law as it stood up to the 1st Nov. inst., is at least doubtful. She was advised that she could not, and she did not therefore make the application. But she clearly had the right to a discovery in equity by virtue of 6 & 7 Will. 4, c. 76, s. 19, which is still in force (see 32 & 33 Vict. c. 24), and which enacts, "That if any person shall file any bill in any court for discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matter relating to the printing or publishing of any newspaper,

in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compelled to make the discovery required; provided always that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in the proceeding for which the discovery was made." The plaintiff did not avail herself of the remedy thus provided, by reason, as she alleges, of her inability to bear the expense of it. It must be taken, upon the statement made to me, that she has a difficulty in proving the fact that the defendant was the printer and publisher, and that the discovery sought will enable her "more effectually" to carry on her action. The questions are, first, the general one—Can a plaintiff in an action brought in the High Court of Justice have the benefit of this enactment by any form of proceeding in the division to which the action belongs; and, second, if it could be granted in such an action, can it and ought it to be applied to an action brought and entered for trial before the Judicature Acts came into operation? I cannot entertain a doubt upon either of these questions. As to the first, the Court of Chancery no longer exists as a separate tribunal. It has become a constituent part of the High Court of Justice, each division of which is invested with equal authority and with the entire jurisdiction of the whole court. The 24th section of the Act of 1873 was designed to meet such cases as this. It enacts in sub-sect. 7: "That the High Court of Justice, in any cause or matter pending before it, shall have power to grant and shall grant all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim, properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided." The proceeding by bill of discovery, pointed out by the Act of Will. 4, has also been abolished; but the Judicature Acts were not intended to abolish, nor have they the effect of abolishing the right of discovery which it gives. That right still exists. The procedure substituted by the Acts for the bill of discovery is an action in the High Court; but that, by the hypothesis, has been already brought. By the express language of the section just quoted, the remedy is to be granted as a proceeding in that action, and in order to carry out the policy of the Act, it must be granted by that Division of the High Court which has seisin of the cause, so as to "avoid multiplicity of legal proceedings." To hold that the suitor must go elsewhere for it would be to defeat the primary objects of the

Acts. I am, therefore, of opinion that in the case supposed a plaintiff would be entitled to the discovery now sought, and that the appropriate form of remedy is by administering interrogatories. The protection accorded to the defendant by the Act of Will. 4 will attach to the answer which he makes to this interrogatory, as it would have attached to the answer to the bill of discovery. The second point is provided for by the 22nd section of the Act of 1873. By that section the High Court is to have "the same jurisdiction in relation to pending actions as if the same had been originally commenced therein," and it goes on to say that, "so far as regards the form and manner of procedure, such causes may be continued and concluded either in the same or the like manner as they would have been continued and concluded in the court from which they shall have been transferred, or according to the ordinary course of the High Court of Justice (so far as the same may be applicable thereto), as the Court may think fit to direct." It is clear that if the Judicature Acts had not passed the plaintiff might now have filed a bill of discovery, and no reason has been suggested why she should be deprived of the substituted remedy here. The defendant will not be in a worse position by being required to answer the interrogatory than he would have been if such a bill had been filed. I therefore direct that this action be continued according to the course of the High Court of Justice, and allow the interrogatory. As the trial may come on at the latter end of the next week, and as the question is one which will require no time, and will put the defendant to no inconvenience to answer, I must require him to file his answer on or before Monday next.

Solicitor for the plaintiff, *A. Howard.*

Solicitor for the defendant, *Riches.*

ERRATA.

No. XI.; *insert* after, (See No. XIX.)

No. XVI.; *insert*, after the words "deliver milk" in line 3, comma.

No. XIX.; *insert*, after the words "defendant's affidavit" in line 3, "(See No. XI.)"

No. XXI.; in lines 1 and 3 of judgment *for* "plaintiff" *read* "defendant," and in line 2 *for* "defendant" *read* "plaintiff."

No. XXVII.; in head-note *for* "18" *read* "12," and *for* "inspection" *read* "discovery," and in line 1 *for* "inspection" *read* "discovery."

No. XXVIII.; in last line *omit* the words "copy of the," and after last word *add* "with the notice (Appendix B, Form 4)."

No. XXX.; in head-note *for* "18" *read* "16."

No. XXXII.; in head-note *for* "inspection" *read* "discovery."

No. XXXVIII.; in head-note *for* "34" *read* "36."

No. XLV.; in line 1 of judgment after "H. *v.* M" *insert* "(10 H. L. C. 191; 33 L. J. 193, Ch.)," in line 5 of judgment *insert* "not" between "was" and "entitled," and in lines 10 and last of judgment *for* "claimant" *read* "execution creditor."

No. XLVI.; in line 8, *for* "lien" *read* "him."

No. LIII.; in line 2 of judgment *for* "abolish" *read* "encourage."

No. LX.; in head-note, between "Court" and "30," *insert* "Order VI rules."

No. LXXV.; in head-note *for* "interrogatories" read "discovery," and *for* "1" *read* "12."

No. LXXIX.; in head-note and line 3 *for* "XXVI." *read* "XXXI.," and *for* "12" *read* "4."

No. CXXVII.; in head-note *for* "1875" *read* "1873."

No. CXXX.; in line 1 and line 1 of judgment, *for* "Moncton" *read* "Moulton," in line 2 of judgment *for* "8" *read* "6."

No. CXXXVII.; in line 1 *for* "1879" *read* "1875."

No. CXLVII.; in line 2 *for* "pp. 87, 105," *read* "p. 46."

No. CLXXXIV.; *insert* in head-note after "XXXI.," "rule 12."