

therefore of opinion that the plaintiff was not entitled to recover for the work which he had done. I feel clear that the case of *Whitaker v. Dunn* (1), to which reference has been made, was the case which as counsel I argued in the Court of Appeal, and in which the Court dismissed the appeal on the ground that the case was concluded by *Munro v. Butt*. (2)

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SUMPTER

v.

HEDGES.

Collins L.J.

Appeal dismissed.

Solicitor for plaintiff: *Sydney R. Letchford*.

Solicitor for defendant: *G. E. Philbrick*.

E. L.

[IN THE COURT OF APPEAL.]

STEPHENSON v. GARNETT.

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Feb. 2.

Practice—Staying Action—Frivolous and vexatious Action—Interlocutory Application in County Court—Subsequent Action in High Court raising same Question.

In an action in a county court judgment was recovered for a sum of money and costs, but before the costs were taxed the plaintiff agreed, on a representation of the poverty of the defendant, to accept a smaller sum than that for which judgment had been given, and executed a deed releasing the defendant from the judgment debt and costs. Subsequently the plaintiff carried in his bill of costs, and applied to the county court judge for an order to tax, upon the ground that the release had been obtained by misrepresentation. The judge, after hearing evidence, found that the execution of the deed had been obtained by misrepresentation, and made an order that the costs should be taxed, and should be paid together with the balance remaining due under the judgment. The defendant in that action thereupon brought the present action in the High Court for a declaration that he had been released from the judgment debt and costs, and for an injunction to restrain further proceedings to enforce payment thereof:—

Held, that as the question raised in this action was identical with that decided by the county court judge upon the interlocutory application, and had been decided by a court of competent jurisdiction, the action ought to be stayed as frivolous and vexatious and an abuse of the process of the Court.

APPEAL from an order of a judge at chambers reversing an order of the district registrar at Leeds.

(1) 3 Times L. R. 602.

(2) 8 E. & B. 738.

C. A. The defendant in the present action sued the plaintiff in the
1898 Leeds County Court and recovered judgment for 45*l.* 16*s.* 6*d.*
STEPHENSON and costs to be taxed; but, before the costs were taxed, he
v. agreed to accept 25*l.*, payable by instalments, in settlement of
GARNETT. the judgment debt and costs, and executed a deed whereby, in
consideration of the payment of 25*l.* by instalments, he released
the plaintiff from the judgment debt and costs, and covenanted
not to tax the costs nor to take any proceedings under the
judgment so long as the instalments were regularly paid.

The release was executed in consequence of representations made by or on behalf of the plaintiff as to his poverty.

The instalments were duly paid; but the present defendant shortly afterwards carried in his bill of costs for taxation upon the ground that he had since discovered that the release had been obtained from him by misrepresentation. The registrar of the county court referred the matter to the judge, to whom application was accordingly made for an order directing the registrar to tax the costs. The plaintiff was present when the application came on for hearing, and the judge, after hearing evidence, came to the conclusion that the release had been obtained by misrepresentation, and directed the registrar to tax the costs, and ordered the plaintiff to pay the amount of the taxed costs, and the balance of the judgment debt, by instalments.

A judgment summons was issued against the plaintiff for non-payment of an instalment, and the county court judge made an order of commitment against him.

The plaintiff thereupon commenced an action in the High Court, claiming in his statement of claim—(1.) a declaration that the defendant had released him from payment of the judgment debt and costs; and (2.) an injunction to restrain the defendant from continuing proceedings or commencing or prosecuting any other proceedings to enforce payment thereof.

The defendant took out a summons that the action and all proceedings therein should be stayed, and the statement of claim struck out, on the ground that they were frivolous and vexatious and an abuse of the process of the Court. The

district registrar made an order to that effect which Phillimore J. at chambers rescinded.

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The defendant appealed.

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Longstaffe, for the defendant. The plaintiff is estopped from alleging that this deed is binding on the defendant. That question was raised before the county court judge and determined by him. The judge had jurisdiction under s. 67, sub-s. 8, of the County Courts Act, 1888 (51 & 52 Vict. c. 43), to set aside the deed; and s. 9 gives him the same jurisdiction as a judge of the High Court in chambers would have in an action in the High Court. A judge of the High Court would have jurisdiction to make an order upon summons similar to that made in the county court in this case: *Eden v. Naish*. (1) Even if an action to set aside the deed is the proper mode of proceeding, the plaintiff, not having taken the objection before the county court judge, cannot now take it: *Gilbert v. Endean*. (2) A plea of *res judicata* would therefore succeed, and the Court will on that ground stay or dismiss the action as frivolous and vexatious: *Macdougall v. Knight*. (3) Even if there is no estoppel, the Court will not allow the plaintiff to raise again the same question which the county court judge has already determined: *Reichel v. Magrath* (4); *Macdougall v. Knight* (3); *Remington v. Scoles*. (5) Upon one or other of the above grounds the Court ought to stay the action as frivolous and vexatious and an abuse of the process of the Court.

[*Innell v. Newman* (6) and *Rawstorne v. Gandell* (7) were also referred to.]

Compston, for the plaintiff. The county court judge had no jurisdiction upon an interlocutory application to decide whether the deed of release was valid or not. That issue ought to have been raised in a separate action to set aside the deed: *Gilbert v. Endean*. (2) The plaintiff is not estopped from relying upon this deed. There was no issue as to its validity properly raised before the county court judge. There was merely an

(1) (1878) 7 Ch. D. 781.

(4) (1889) 14 App. Cas. 665.

(2) (1878) 9 Ch. D. 259.

(5) [1897] 2 Ch. 1.

(3) (1890) 25 Q. B. D. 1.

(6) (1821) 4 B. & A. 419.

(7) (1846) 15 M. & W. 304.

C. A. interlocutory application to tax the costs, and the question of
 1898 the validity of the deed came collaterally in question. There
 STEPHENSON is therefore no estoppel: *Duchess of Kingston's Case*. (1) The
 v. county court judge not having had jurisdiction to determine
 GARNETT. the question, the Court will not exercise its inherent jurisdiction to stay the action as vexatious and an abuse of the process of the Court either upon the ground of estoppel or otherwise.

Longstaffe replied.

A. L. SMITH L.J. In my opinion the learned judge at chambers ought to have exercised the inherent jurisdiction which he undoubtedly possesses of staying the action on the ground that it is frivolous and vexatious and an abuse of the process of the Court. I do not rest my decision upon the ground that the matter is *res judicata*, for I do not think it can be said that it is. I put my decision on the ground that the identical question raised in this action was raised before the county court judge upon an application for an order to tax the costs of the action in the county court, and was heard and determined by him. The county court judge had jurisdiction to hear and determine the question upon that application, and it is perfectly clear from the evidence before him that the question there was the same as that now raised in this action, namely, whether the deed of release was obtained by fraud. The plaintiff was present at the hearing before the county court judge, and had every opportunity of putting forward his case. The judge heard evidence upon the question and decided it. The issue now sought to be raised in this action has been determined by a court of competent jurisdiction, and the cases of *Reichel v. Magrath* (2) and *Macdougall v. Knight* (3) shew that it would be an abuse of the process of the Court to allow a suitor to litigate over again the same question which has been already decided against him. Though the Court ought to be slow to strike out a statement of claim or defence, and to dismiss an action as frivolous and vexatious, yet it ought to do so when, as here, it has been shewn that the identical question

(1) (1776) 2 Sm. L. C. 10th ed. p. 713.

(2) 14 App. Cas. 665.

(3) 25 Q. B. D. 1.

sought to be raised has been already decided by a competent court. The order of the learned judge must therefore be reversed, and the order of the district registrar restored.

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CHITTY L.J. I am of the same opinion. I do not rest my judgment on the ground that the question is *res judicata* in the strict sense of that term. The jurisdiction which we are now exercising is the inherent jurisdiction of the Court to prevent frivolous and vexatious litigation which the Court considers to be a mere abuse of its process. A county court judge has jurisdiction over his own judgments, and the judge in this case heard evidence as to whether or not the release was obtained by fraud, and the plaintiff was present at the hearing, though he was not assisted by counsel or solicitor. The question raised before the county court judge was identically the same question as that raised in the present action. The judge had jurisdiction in equity under s. 67, sub-s. 8, of the County Courts Act, 1888, to deal with this deed of release on the ground of fraud. He determined that question, and his determination can be explained only on the ground that the release was obtained by fraud. In *Gilbert v. Endean* (1) there was a decree by consent in favour of the plaintiff, and subsequently a compromise was come to by which the plaintiff agreed to accept a smaller sum by reason of the defendant's poverty. Malins V.-C. heard a motion for leave to enforce the decree, upon the ground that the compromise was obtained by misrepresentation, and he gave leave, thus in effect setting aside the compromise. This Court affirmed his decision, holding that, though the proper mode was to proceed by action to set aside the compromise for fraud, yet as the Vice-Chancellor had jurisdiction over the original judgment, and as the parties had by their conduct consented to the Vice-Chancellor hearing the motion, objection could not subsequently be taken that the motion ought not to have been heard. That case shews that the county court judge had jurisdiction over his own judgment. Then came the decision in *Remington v. Scoles* (2), which proceeded upon the ground, not that the matter was *res judicata*, but that the defence was a sham one. The defendant, therefore, ought to

(1) 9 Ch. D. 259.

(2) [1897] 2 Ch. 1.

C. A. succeed on this application. The jurisdiction, which is a
 1898 summary one, ought to be exercised with great caution ; but
 STEPHENSON in this case the affidavits, which are unanswered, disclose a
 v. clear case of fraud, the plaintiff not having denied in any par-
 GARNETT. ticular the evidence against him. For these reasons I think
 Chitty L.J. that the appeal should be allowed.

COLLINS L.J. I am of the same opinion. I agree that there is a difficulty in bringing this case within the doctrine of *res judicata*. It is very difficult to say that an interlocutory proceeding, whereby leave to proceed with the taxation of costs under a judgment was obtained, could be made the foundation of a plea of *res judicata* in an action to enforce the covenants in the deed. It would be very difficult to bring this case within the principles enunciated by Knight Bruce V.-C. in *Barrs v. Jackson* (1), principles which are untouched by the reversal of his decision by the Lord Chancellor. (2) But I think we are at liberty to look at what happened before the county court judge ; and when I do so I am satisfied that he had jurisdiction to deal with the deed of release upon the application before him. The judge did deal with it and set it aside, and it seems to me that ss. 9 and 67 of the County Courts Act, 1888, gave him jurisdiction to deal with it. Both parties attended before him, and the deed in question was invoked by the plaintiff as an answer to the claim for taxation. The judge heard the evidence and adjudicated upon the question raised. The very same question which is raised in this action was decided by the judge, and that lets in the inherent jurisdiction of the High Court, as appears from the cases which have been cited to us, to stay the action as frivolous and vexatious and an abuse of the process of the Court. In my opinion we are properly exercising that jurisdiction in this case.

Appeal allowed.

Solicitors for plaintiff : *Bell, Brodrick & Gray, for Wormald & Atkinson, Leeds.*

Solicitors for defendant : *Ward, Bowie & Co., for Walter & E. H. Foster, Leeds.*

(1) (1842) 1 Y. & C. C. C. 585.

(2) (1845) 1 Phill. 582.