inhabitancy. A referene to *Dalton's Office of Sheriffs: title Sheriff's Courts*, p. 384, and *title Sher-*[79]*iffs Torne*, p. 388 will show, that in the County Court, (an ancient Court of Civil Jurisdiction between party and party,) the Common Law held constructive inhabitancy and residence sufficient to support the jurisdiction of the Court: though in the Sheriffs Torne, (a Criminal Court) none were compellable to appear for the lands; "for this suit to the Sheriffs Torne, Lords Leet is a suit Royal, or which is always by reason of the person and not of any land," whereas in the Court of Civil Jurisdiction, the County Court, as well as the Hundred Court, (carved out of the County Court,) "all the *inhabitants* within such liberty or hundred, *by reason of their tenements* there, shall be attendant, and one suit to the hundred." There are certain cases in which liability to jurisdiction is a privilege of the debtor, as where he is exempted from the jurisdiction of a general remote Court, as to certain limited claims, and subjected thereby to an inferior and cheaper jurisdiction. In such cases, liability to the jurisdiction of a Court, on the ground of inhabitancy or residency, would be claimed on the footing of privilege; but in general cases it would rather be viewed in the nature of a liability or charge. Viewed in this latter light, inhabitancy would fall within the authority of Lord Coke's comment on the statute of bridges. It is not, however, necessary, to insist on this, as the decisions in this Court are within the principles of Common Law, on the subject of liability to be sued in a Court of Civil Jurisdiction, on the ground of constructive inhabitancy. I trust that the decisions of the Court, on any ground of jurisdiction, will never be extended, in any degree, beyond the fair reach of the principles, on which any particular branch of jurisdiction is founded, but I can see no reason for declining to give to the decisions establishing constructive inhabitancy, their full application to new circumstances.

Plea overruled.

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[80] BEHARRIRAM *v.* SEWEMBERRAM & KISSENPERSAUD.

(1847. *June* 22. *Tuesday.*)

Practice—Irregularity—New 28*th Eq. Rule of* 1842, *Construction of.*

Under this rule it is complainant's duty to set the plea down for argument within the time limited thereby, otherwise its validity in point of law is admitted; and *semble*, if he do not either set the plea down or reply thereto, within such limited time, he admits its validity in point of fact as well as law.

MOTION on behalf of the defendant Kissenpersaud, "that the order directing the plea of the defendant Kissenpersaud to be set down for argument, (as well as the entry thereof with the Registrar) be set aside, for irregularity with costs."

Mr. *Colvile* (Adv. G.) in support of the motion. The order in question was obtained at chambers *ex parte* from Mr. Justice Grant. The bill was filed on the 23rd November, 1846. The subpœna ad respondendum was served on the defendant Kissenpersaud on the 24th March, 1847, and appearance entered on

the 26th of the same month. His plea, answer, and disclaimer were filed on the 21st April. The plea was to the whole relief prayed by the bill, although it was necessary to support it with an answer, for the purpose of negativing certain statements in the bill, which, unless so negatived, would have been admitted. Those statements raised the question whether Kissenpersaud was a partner with the other defendant or not. The eight days allowed by the old 28th Equity rule (a) as to bills and other pleadings, (analogous with one of Lord Clarendon's orders) (b) for the complainants to reply to the plea, or enter the same with the Registrar for argument, expired on the 29th April, and the eight weeks allowed for pleading, to be calculated from the day of service of the subpœna, expired on the 19th May. (c) The 28th Equity rule of the 2nd Term of 1842 (d) (corresponding with the 35th of Lord Cottenham's new orders of August 1841) (e) provides "that **[81]** where the defendant shall file a plea to the whole or part of a Bill, the plea shall be held good to the same extent, and for the same purposes, as a plea allowed upon argument; unless the plaintiff shall, within three weeks from the expiration of the time allowed for filing such plea, cause the same to be set down for argument; and the plaintiff shall be held to have submitted thereto." The three weeks allowed by this rule expired on the 9th of June; and it was not until the 11th of that month, when the complainants entered the plea with the Registrar, and obtained the order to set it down for argument for the ensuing Term. No replication had been filed although two months had elapsed. Although the plea goes in fact to the whole of the merits, still of itself, it is not enough to dismiss the Bill, but as the period has expired, during which the complainant was bound to take some further step in the cause, the plea, it is submitted, must now be taken as if allowed on demurrer; and the defendant Kissenpersaud is entitled to have the bill dismissed as against him. *Tarleton* v. *Barnes* (a) and *Roberts* v. *Jones*. (b)

Mr. *Prinsep* and Mr. *Morton* contra. There seems to have been some confusion in the practice, for the rule here is quite at variance with that in England. The rule governing the practice here is the old 28th, which simply requires the complainant to enter the plea within eight days, for argument.

[*The Chief Justice.*—Our rule appears to be the most stringent of the two. It says, "that the complainant shall, within eight days after having received notice of the filing of such plea, reply to the same, if he conceive the plea to be good, or shall enter the same with the Registrar, for argument, if he conceive it to be otherwise." If the complainant then does not enter the plea for argu- **[82]** ment within the time limited, he must be assumed to admit its validity.]

In this rule no penalty is attached for mere non-feazance on the part of a complainant. It is quite silent as to whether the plea, if not duly entered, shall

[80] (a) 2 Smo. & Ryan's R. & O. 146.
(b) Bea. Ord. Chan. 175.
(c) 2 Smo. & Ry. R. & O. 138.
(d) Sub. Co. Eq. Orders, 28th rule, p. 8.
(e) 3d Beavan's Rep. p. xxiii; 10 Law J. Chan. R. 414.
[81] (a) 2 Keen, 632.
(b) 7 Beavan, 266.

be allowed as if argued on demurrer. It seems to be the duty rather of the defendant to move that the plea be allowed, if he is desirous to expedite matters.

[*The Chief Justice.*—The complainants, by not setting down the plea for argument within the limited time, impliedly admit the validity of the plea in point of law. Were the defendant to set it down, he would waive the advantage he has gained by his adversary's neglect.]

There has been some misapprehension with regard to the interpretation of the rule. It seems to have been drawn up on a mistaken notion of what the rule was at home, and certainly is very vaguely expressed.

[*The Chief Justice.*—The very fact of misapprehension should rather operate as an inducement on the party to avoid possible consequences, by coming in at once.]

This rule also provides, that the defendant shall give immediate notice of filing his plea. The 44th of Lord Lyndhurst's orders of Easter Term, 1845, (a) (which have not been acted on here) is silent as to notice, and dispenses with the entry of the plea, but gives either party liberty to set it down immediately, and the 49th (b) directs that if a plea is not set down or replied to within six weeks after *filing* thereof, it shall be held good as on argument. Under the old 28th rule immediate notice is necessary.

[83] [*The Chief Justice.*—Was any notice of filing the plea given here as required by the old rule?]

The Advocate General.—I understand that notice was given, but there is no affidavit to that effect, it not having been considered necessary. The real question here arises under the 28th rule of 1842, which says nothing about notice.

SIR L. PEEL, C. J.—The real question is whether the complainant should be at liberty to contest the validity of the plea in point of law, or be driven to reply. We think the order of the learned Judge cannot stand, and ought not to have been obtained *ex-parte*. The question principally turns upon the late 28th Equity rule, (which is the same as the 35th of Lord Cottenham's of 1841, and introduced here in the time of Chief Justice Ryan.). That rule is express. I confess I see no imperfection in it. Perhaps it may not be expressed so clearly and plainly as might have been done; the intent seems to be to introduce the same state of things as in England; and as the complainant has neither replied nor set the plea down within the time limited, the rule might well be conceived to intend, that he was precluded from doing either afterwards. As to the want of notice under the old 28th rule, the complainant might have moved to take the plea off the file for irregularity, as the notice is required to be immediate, but his subsequent entry of the plea is an implied admission of notice having been properly given. As to dismissing the bill:—it may be that the defendant Kissenpersaud is in a position to do so, no step having been taken by the complainant to obviate the effect of the plea. But as the merits of the case cannot be arrived at without letting the complainant in upon terms, we think the bill should stand dismissed, unless he reply within a fortnight.

Order accordingly.

[82] (a) Reported in 7 Beavan, xlii. and in 14 Law Journal, Chan. rep. 289. (b) Ibid.