

diction and authority of such Commissioners of Sewers, when it shall appear that a majority of the estimated number of acres therein shall not at such annual meeting have been voted for; and such Commissioner or Commissioners taking such poll, shall in like manner as directed for the Sheriff, return and file the proceedings and Poll Book of such election in the Office of the Clerk of the Peace, to be laid before the next Court of Sessions of the Peace for examination and confirmation; which Court shall in like manner, as before directed, examine such proceedings and Poll Book, and if no substantial irregularity be made to appear, shall confirm the same, and proceed to ascertain from such return and Poll Book the name or names of the Commissioner or Commissioners elected, and fix the period of service as follows: If only one Commissioner be elected, his period of service shall expire on the day preceding the annual election to take place five years after the time he was elected; and if two be elected, the period of the service of the Commissioner having the lowest number of votes shall be four years from the like time to expire on the like day; and so on, if more be chosen; and in case of any two or more Commissioners having an equal number of votes, the Court shall determine by lot in like manner as before directed by the seventh Section of this Act, which Commissioner shall be deemed, for the purpose of determining such period of service, to have the greater number of votes, which determination and confirmation shall be entered in the Minutes of said Court, and notice of appointment given to the Commissioners in like manner as is provided in the case of the first election before the Sheriff or his Deputy; provided that the neglect of any Commissioner chosen and confirmed agreeably to this Act, to be sworn within the time prescribed, or the neglect or omission to hold any annual meeting for the choice of Commissioners to supply vacancies, shall not in anywise affect the powers or authority of the remaining Commissioners of Sewers, but the vacancies then or afterwards happening before the next annual meeting may be then supplied.

X. And be it enacted, That when the proprietors of a majority of acres, in any District, shall be desirous of withdrawing the same from the jurisdiction and control of the Commissioners of Sewers in the Parish in which the District is situated, and shall make application in writing to any Court of Session of the Peace for the County, the said Court may, by order, allow the same to take effect at such time, not exceeding six nor less than three months from the time of such order, as such Court may in such order direct; and after the time appointed for such order taking effect, the Commissioners shall cease to have any jurisdiction or control over such District, and the same shall be deemed withdrawn; provided that any rate made before the time for such order taking effect, may still be enforced and levied in all respects the same as if the said District had not been withdrawn; provided that such district may, at any time, be restored to the jurisdiction and control of such Commissioners of Sewers, either by the consent of the proprietors of a majority of acres therein given in writing, or by the proprietors of a majority of acres voting at any election of Commissioners of Sewers, as in other cases hereinbefore provided for.

XI. And be it enacted, That when and so soon as the Commissioners, or any two of them so chosen before the Sheriff, and confirmed by such Court, shall have taken the oath of office, any former existing Commission for the appointment of Commissioners of Sewers in and for the Parish, shall be deemed to be cancelled and void, and all the powers and duties of any such previous Commissioners shall cease and determine; provided that any matter or thing by them before done under such cancelled Commission, agreeably to the directions of the first recited Act, shall be held valid, and all rates imposed may be enforced by the elected Commissioners; and provided also, that nothing in this Act contained, shall affect or be construed in any wise to affect the appointment of Commissioners of Sewers under the Act passed in the third year of the Reign of Her present Majesty, intituled "An Act in addition to the Acts now in force relating to Commissioners of Sewers."

XII. And be it enacted, That every person allowed by Law to make an affirmation instead of taking an oath, shall be allowed to affirm in every case where by the provisions of this Act an oath is required to be taken; and if any person taking any oath or making affirmation as required by this Act, shall wilfully swear or affirm falsely, such person shall be deemed guilty of wilful and corrupt perjury, and shall be liable to all the pains and penalties by Law provided for that offence.

XIII. And be it enacted, That for holding such first election of Commissioners of Sewers for any Parish, the Sheriff shall be entitled to demand and receive the sum of — pounds; and the Clerk of the Court of Sessions for the services required of him by this Act, shall be entitled to such reasonable fees as are provided in other cases for services of like extent; all which shall be paid by the Commissioners of Sewers for such Parish, and may be by them rated and imposed on the Marsh under their jurisdiction and control, in like manner as the charges allowed for their own services are imposed.

XIV. And be it enacted, That throughout this Act, in the construction thereof, except there be something in the subject or context inconsistent with or repugnant to such construction, the word "Marsh" shall extend to and mean the Marsh, Low Lands, and Meadows, referred to in the first recited Act; the word "Proprietor" shall extend to and mean the owner in fee of any such Lands, either in possession by himself or his Tenant under a lease

not having seven years to run, the Mortgagor, Tenant by courtesy, Tenant in Dower, Tenant for life, or for years under a lease having seven years to run, of any such Lands, and being in possession thereof; and when the subject of context requires it, every word importing the singular number, or the masculine gender only, shall include and extend to several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals.

COURT OF CHANCERY.—5TH JANUARY, 1848.

Re Staples.

Mr. Solicitor General, for Appellant.

Mr. Street, for Respondents.

THE MASTER OF THE ROLLS.

The question for decision in this case is, as to the right of the Appellant, in the present stage of the proceeding, to the personal answer of the Respondents to the allegation filed on her behalf. That allegation was admitted on the 2nd December, 1846. No application was then made for answers, and the Respondents brought in a counter allegation, the admission of which was opposed, and the case argued on admission in April last. In May judgment was pronounced, ordering it to be reformed. On 1st June the allegation was brought in as reformed, and the admission again opposed on the part of the Appellant, and after a second argument admitted on the 5th of that month.

On the argument that took place in December last, three points were made on the part of the Appellant in support of this application, and as the general nature of Suits like the present, formed the subject of much discussion, on which very opposite views were maintained, it may be convenient, before going into the particular points raised, to consider the proceedings of the Ecclesiastical Courts a little at large.

The principal Ecclesiastical Courts of England are the Court of Arches, the Prerogative Court, and the several Consistorial or Diocesan Courts. The appellate jurisdiction in the last resort, under an Act of the Reign of King William IV, is in the Judicial Committee of the Privy Council acting under an order of reference from Her Majesty.

All causes of which these Courts have cognizance, are either 1st. Causes of Office; or 2d. Causes of Instance.

1st. Causes of Office are those which are in the nature of Criminal proceedings.

2d. All Causes of Instance which are Civil Suits, are again divisible into two classes—1st. Plenary: 2d. Summary.

All proceedings in the Prerogative Courts are termed Summary.

There is a material distinction in the practice in the two kinds of causes. The proceedings of the former being much more formal and subject to stricter rules. In the cases where the cause is properly Summary, however, if a doubt exists upon the point, it does not invalidate the proceeding, that the Promovent has resorted to the Plenary course of proceeding.

It is contended that such has been done in the present Suit, that is, that this is a Plenary proceeding; which is the first point made. Secondly, that the period when the *contestatio litis* commenced was on the giving in of the counterplea of the Respondent; and, thirdly, that however that may be, and whether the case be Plenary or Summary, the Appellant is entitled to the personal answer of his adversary at any time quite down to the hearing.

1st. Is the proceeding adopted in this case Plenary or Summary? It is contended that it is Plenary, in consequence of the cause having been conducted by formal written allegations, and the other formalities which have attended its progress. The course of practice, however, of the Prerogative Court, is that which has been pursued, the jurisdiction of which is exercised in matters testamentary, and in which all the cases as we have already seen, are Summary. The allegations in writing and other circumstances relied on, are according to the formulæ there adopted; and the very argument adduced, is met by an observation in 1 Brown 492. There, after having described the nature of Summary Cases, it is observed, "to part of this description causes in the Prerogative may seem not strictly to answer, since the pleadings are in writing, and the depositions taken down in writing, as in the Consistorial Court," &c., "but," the Author adds, "as there is no term to propound or to conclude, they are justly called Summary." It is therefore clear that the circumstance of a cause being conducted by written allegations and depositions does not form the criterion of its being Plenary or Summary.

2nd. We then come to the second point. According to all the authorities, the time prescribed for obtaining the personal answers is as quickly as possible after the *contestatio litis*.

Here then a question arises, what is meant by the *contestatio litis*. This is defined to be the *principium formale*, the fundamental judicial Act whereby the Judge begins to take cognizance of the cause.—Law, 172.

"It begins," says Law, "in the *very exordium* of the suit, and retains that name and order even until the sentence."

He then explains very fully its nature.

The contestation of suit is manifold: 1st. Affirmative: 2nd. Negative: 3d. Quasi Contestata. Negative is again subdivided into (1) General, or (2) Special.

(1) General, which is (1) either in express words, or (2) tacitly.