

of plants known to act most beneficially to cleanse the system effectually. * * * The juice of figs in the combination is to promote a pleasant taste." Again it is stated that "its efficacy and delicacy of flavor are due to the medicinal and agreeable qualities of plants and aromatic carminatives skillfully combined with pleasant liquids, among which may be mentioned the juice of figs." It appears to be a fact that the preparation does contain a small quantity of the juice of figs, which is combined with other ingredients for the purpose of promoting a pleasant taste in the compound, and that senna and aromatic plants form the basis of the preparation. I do not discover anything in the statement on the boxes or bottles, or in the picture of figs displayed upon the boxes, or in the picture of the young lady holding a branch of the fig tree laden with the fruit also displayed upon the boxes, that can be properly characterized as a fraudulent representation. Dealers are allowed to make their goods appear attractive, and place upon them such pleasing figures and devices as will make them salable; and, when this is done without fraudulent representation, the law will not refuse relief because the "poster is more attractive than the performance." Upon the facts presented in the application for an injunction in this case, it appears to me that the complainant is entitled to relief against the defendants in the manufacture and sale of the preparation of "Syrup of Figs" or "Fig Syrup" under the name and in the form and style shown by Exhibits D, E, F, G, H, I, S, and T.

With respect to the technical objection that the bill is multifarious, it is perhaps sufficient to say that the bill alleges that the defendants, knowing the premises, have fraudulently conspired together to perpetrate the frauds set forth in the bill. Moreover, whether an objection of this kind should be entertained depends largely upon the discretion of the court. As a general rule, it may be said that, whenever the several matters set up in the bill require entirely distinct and different kinds of relief, the bill is multifarious; but, if the relief sought is the same as against all the defendants, it does not appear that the objection should be considered sufficient to sustain the demurrer. *Merrins*, Eq. § 926. A preliminary injunction will issue, as prayed for in the bill of complaint.

WHELAN v. MANHATTAN RY. CO.

(Circuit Court, S. D. New York. April 1, 1898.)

1. COSTS—SECURITY—SUING IN FORMA PAUPERIS.

Under Act July 20, 1892, §§ 1, 4, plaintiff may be permitted to sue in forma pauperis on filing a proper affidavit of poverty, and also an affidavit of facts sufficient to show that the cause of action is not frivolous.

2. SAME—ASSIGNMENT OF ATTORNEY.

When one shows a right to sue in forma pauperis, the court will appoint an attorney for him, whose fee will be contingent on success, and, in any event, will not be larger than the quantum meruit.

Motion to vacate an order heretofore made, requiring plaintiff to file security for costs. The action is brought to recover damages for

personal injuries sustained, as is alleged, through defendant's negligence.

Edwin G. Davis, for the motion.

Joseph A. Adams, opposed.

LACOMBE, Circuit Judge. This motion is made upon an affidavit made by the plaintiff, which sets forth that she is a citizen of the United States, resident in the state of New Jersey; that she is wholly destitute of means; that, because of her poverty, she is unable to pay the costs of this suit, or to give security for the same; and that she believes she is entitled to the redress she seeks by this action. This affidavit conforms to the requirements of section 1 of the act of July 20, 1892. That act, however, does not secure an unrestricted right to prosecute as a poor person. A preliminary investigation by the court is also provided for by section 4, which reads:

"Sec. 4. That the court may request any attorney of the court to represent such poor person, if it deems the cause worthy of a trial, and may dismiss any such cause so brought under this act if it be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious."

Upon attention being called to this provision, a further affidavit has been filed, which sets forth the facts which plaintiff expects to prove upon the trial. From this statement it appears that plaintiff was about to step on board the platform of one of defendant's cars which had stopped at a station; that there was room for her upon the platform; that (the guard holding the gate open) she placed her right foot upon the platform, and had just raised her left foot from the station platform when the guard suddenly, and without warning, violently shoved the gate against the plaintiff, thrusting her from the platform of the car, and inflicting severe injuries. If this story be uncontradicted, plaintiff would be entitled to go to the jury, and the alleged cause of action would certainly not be "frivolous." It seems, therefore, to be "worthy of a trial," within the language of section 4. The order requiring plaintiff to file security for costs should therefore be vacated. It remains, however, for the court to provide an attorney to represent the poor person. The act is most carefully framed to deal fairly with both sides. It will not allow an irresponsible person to prosecute, without incurring liability for costs, some frivolous or malicious cause of action; but once it is shown to the court that there is a cause of action "worthy of a trial," which plaintiff, a citizen of the United States, cannot prosecute without incurring indebtedness, which such citizen is too poor to pay, then congress provides a way whereby such poor citizen may have his day in court without incurring such indebtedness. Not only is he to be relieved from securing the costs of his adversary, but an attorney is to be provided for him by the court, who will prosecute his cause of action without stipulating for some compensation in the event of success larger than the quantum meruit. In other words, the "poor citizen" will not be compelled, by reason of his poverty, to enter into any contract more oppressive than such as could be made by his more fortunate fellow citizen. The attorney assigned by the court, in the

event of nonsuccess, will, of course, receive nothing; in the event of final success, he may apply to the court for an order fixing a fair compensation for the services he may actually render, which will be paid to him out of the fund recovered, and the balance only paid over to plaintiff.

If the attorney who brought the action is willing to continue the litigation on those terms, he will be assigned to represent plaintiff; if not, the court will find some other attorney to prosecute her case.

BRYAN v. CONGDON.

(Circuit Court of Appeals, Eighth Circuit. March 21, 1898.)

No. 1,009.

1 FALSE IMPRISONMENT—IRREGULAR PROCESS.

The law lying at the foundation of actions for false imprisonment based on irregular process is that, if a person has been arrested and imprisoned under color of legal process, which is thereafter set aside for irregularity, the person who set that process in motion is responsible in damage to him upon whom the indignity and deprivation of liberty have been visited.

2 SAME—MINISTERIAL ACT OF OFFICER ISSUING WARRANT.

A clerk of the district court of Kansas, in issuing a warrant of arrest in a civil action, acts in a ministerial manner only, and his acts are no protection to the person promoting the proceeding, where the affidavit or warrant is defective, and is thereafter set aside for irregularity in its inception.

3 SAME.

If a motion to set aside a warrant of arrest on the ground of irregularity is denied by a court of competent jurisdiction, it does not thereby protect the complainant against responsibility for damages, where the order denying the motion is afterwards reversed on appeal, and the warrant vacated.

4 SAME—PETITION IN ACTION.

The plaintiff's petition alleged that the defendant caused his arrest under a warrant in a civil action issued by a clerk of the district court of Kansas, which was afterwards vacated on the ground of irregularity, and while he was in jail under said order, and after the defendant had recovered judgment against him in the civil action for money had and received, again caused his arrest on a warrant charging him with embezzlement of the same property for which the judgment was rendered. After he had given bail and been released on the charge of embezzlement, the defendant induced the sheriff to rearrest him under the original arrest proceedings. From this arrest he was released by the supreme court, for the reason that the affidavit in the original proceedings did not state facts sufficient to authorize the warrant. *Held*, that the petition stated facts sufficient to constitute a cause of action.

In Error to the Circuit Court of the United States for the District of Kansas.

A. L. Greene, for plaintiff in error.

C. S. Bowman (Charles Bucher, on the brief), for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and PHILIPS, District Judge.

PHILIPS, District Judge. This is an action for false imprisonment. The defendant in error instituted suit by attachment against the plaintiff in error in the district court of Harvey county, Kan., to recover the sum of \$1,167.51 for money had and received. In connec-