

checked by the court itself wherever it can be done without improperly retarding the progress of the suit. The general rule is, that if the answer goes out of the bill to state any matter, not material to the defendant's case, it will be deemed impertinent and may be expunged; but nothing can be considered irrelevant that may have an influence upon the suit, attending to the nature of it. Yet if what is pertinent be so mixed with that which is impertinent, that the one cannot be separated from the other, the whole matter with the impertinency mixed shall be expunged. And if such foreign matter in an answer be scandalous as well as impertinent, it may be struck out at the instance of a co-defendant, or even a stranger, as well as the plaintiff in the case; and that too at the costs of the party by whom it was filed. (*h*)

The general rule as to impertinence seems to be sufficiently clear in itself; but the proper application of it to cases as they arise, has, in many instances, caused so much hesitation, that it may be well just to mention some few of the instances which afford illustrations of it.

In a case in which *Anna Peck* and *Anna Maria Peck* filed their bill as widow and daughter of *John Peck*, deceased, against his eldest son and others for dower, and their respective shares of the deceased's personal estate. The eldest son put in his answer, which he entitled thus: 'The several answer of *John Peck*, one of the defendants to the bill of complaint of *Anna Baines, alias Green*, assuming to herself the name of *Anna Peck*, as pretended wife of *John Peck, Esq.*, deceased, and of *Anna Maria Green*, assuming to herself the name of *Anna Maria Peck*, as daughter of the said *John Peck, Esq.*, deceased.' To this the plaintiffs ob-

(*h*) *Shaftsbury v. Arrowsmith*, 4 Ves. 71; *Coffin v. Cooper*, 6 Ves. 514; *Lord St. John v. Lady St. John*, 11 Ves. 538; *Norway v. Rowe*, 1 Meriv. 355; *Oliver v. Haywood*, 1 Anstr. 82; *Mason v. Mason*, 4 Hen. & Mun. 414; *Cheseldine v. Gordon*, 2 Bland, 79.

*BIRCHFIELD v. SHARP*.—19th January, 1714.—HART, Chancellor.—Ordered, that the complainant have liberty to take the bill off the file, and to file a new bill without costs; and have time till Monday next to declare which bill he will amend. And that the other bill which is ordered to be taken off the file, be not so taken off, but that it be lodged in the office where it may at any time be had.—*Chancery Proceedings, lib. P. L. fol. 83.*

*NEALE v. CALVERT*.—1717.—HART, Chancellor.—Forasmuch as it appears, that the bill of complaint exhibited by the complainant against the defendant is altogether scandalous for the ill language therein. It is Ordered, that the bill be dismissed out of this court; and that the defendant recover his costs by him expended in the defence of this suit against the complainant.—*Chancery Proceedings, lib. P. L. fol. 376.*