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VOL. XV.—1880.

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Edited by

MONTAGU CHAMBERS, one of Her Majesty's Counsel, FREDERICK HOARE COLT, and JOHN GEORGE WITT, Barristers-at-Law.

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Re BAUM. *Ex parte* EVANS.

Bankruptcy Rules, 271, 273, 275, 303, 304, 305, 307—*Proxy present, but not Voting—Bankruptcy Act*, 1869, *s.* 80, *subs.* 80.

Appeal against registration of certain resolutions.

At a meeting convened under Rule 305 of the Bankruptcy Rules, 1870, by a statutory majority in the matter of the liquidation of Baum, certain resolutions were passed, removing a trustee.

At this meeting a Mr. Scrivener, who was a creditor for a trifling sum, and also a proxy for another creditor, Mrs. Simmons, for a large amount, attended. The proofs for such debts had been put in and filed some years previously, at the first meeting. He stated at the time, in answer to the solicitor of the respondent, that he did not intend to take any part in the meeting, or to sign the resolution for removal; but he stayed throughout the meeting, and was present when the votes were taken. He did not, however, sign the resolutions.

The appellants contended that Scrivener, by being present, must, on the authority of *Ex parte Orde, in re Horsley*, 40 Law J. Rep. Bankr. 60; L. R. 6 Chanc. 881, be taken to have voted against the resolutions. If his vote in respect of Mrs. Simmons's debt were, on that contention, to be counted against the resolutions, the resolutions would not have been passed by the statutory majority. His own debt was so small as to be immaterial.

Mr. Winslow and *Mr. Williams* for the appellants.

Mr. E. C. Willis (*Mr. Reid* with him) for the respondent.

Their LORDSHIPS, without saying whether the principle of the case above mentioned would have applied to Scrivener in his own character as creditor (the smallness of his private debt rendering the decision unnecessary), held that the principle could not apply to the case of the persons who are said to be present by proxy; and that, therefore, in spite of the actual presence of her proxy Mrs. Simmons could not be said to be present at that, meeting, a proxy not being, under the Act, his principal for all purposes, but having power to represent his principal for all purposes.

BAGGALLAY, L.J., added that he desired to reserve for further consideration the question whether the case *Ex parte Orde* ought to apply to any meeting subsequent to the registration of the resolutions passed at the first meeting.

COTTON, L.J., said that if Scrivener could not have been present at the meeting, except as proxy for Mrs. Simmons, the case would be different.

HIGH COURT OF JUSTICE.

Chancery Division.
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Jan. 13.

RENSHAW *v.* RENSHAW.

Practice—Non-appearance of Defendant—Personal Service of Statement of Claim with Writ—Subsequent Filing of Claim—Rules of Court, 1875, *Order XIX., Rule* 6; *Order XXI., Rule* 1*b*.

In this case, judgment by default of appearance was taken against some of the defendants. The amended claim was served personally, with the amended writ; but the claim had not been filed pursuant to Order XIX., Rule 6.

Mr. John Henderson now applied for a direction to the registrar to draw up the order, notwithstanding that the claim had not been filed.

The MASTER OF THE ROLLS considered, on the principle of *omne majus continet minus*, that the personal service of the claim was sufficient; and directed the order to be drawn up.

Chancery Division. MALINS, V.C. Jan. 13. } *Re* PHILLIPS. PHILLIPS *v.* LEVY.

Will—Construction—Direction to accumulate Income beyond Twenty-one Years—Tenant for Life of Residue.

Further consideration.

Abraham Phillips, by his will dated October 1, 1851, bequeathed all his personal estate and effects unto his executors therein named, upon trust, as thereinafter mentioned; that was to say, that they should allow his wife, the plaintiff, Mary Phillips, so long as she should remain unmarried, to possess and enjoy the same. And the testator directed that his executors should receive 'the half-yearly interest, payable upon whatever funded property he might die possessed of, and reinvest the same in the public funds as an addition to the capital stock,' and should stand possessed thereof upon trust, that upon the marriage of all his four daughters they should severally receive, as a wedding portion, the sum of 150*l.* And he further directed that, upon the decease of his wife, or in the event of her marrying again, his executors should sell all his property, and divide the net proceeds of the same, together with whatever moneys belonging to his estate might then be remaining in the public funds, among his children then living.

The testator died on May 9, 1852. The only funded property the testator was possessed of at the time of his death was a sum of 1,600*l.*, 3¼ per Cent. Annuities.

The last of the daughters married in the year 1858.

Mary Phillips, the widow, died on December 16, 1878, without having married again.

A question now arose whether, assuming that the testator had directed his 'funded property' to accumulate until the death of the widow, the interest to accrue on the 1,600*l.* 3¼ per Cent. Annuities and its accumulations, from May 9, 1873, to the death of the widow, would belong to the tenant for life of the residue, or would form part of the capital of the residue.

Mr. Dundas Gardiner for the personal representative of the widow.

Mr. G. C. Price and *Mr. J. G. Wood* for children.

Mr. Method for the defendant.

MALINS, V.C., said that, assuming this fund, at the end of twenty-one years, to amount to 2,000*l.* New 3*l.* per Cents., it would then bring in 60*l.* a year. If there had been an absolute gift of the residue, the 60*l.* a year would clearly go to the residuary legatee. But here the residue was given to the widow for life, with remainders over. While the widow lived, she, as tenant for life of the residue, must take the 60*l.* a year. To say that, though you could not go on accumulating after the twenty-one years, you must keep on investing the income, and that the widow was only to have the interest of that income, would be, to all intents, to go on accumulating; but the Thelluson Act said that the accumulations must stop at the end of twenty-one years. The widow was, therefore, entitled to the income of the fund during her life.

Chancery Division. MALINS, V.C. Jan. 16. } *In re* STOCK'S DEVISED ESTATES.

Petition—Settled Estates Act—Application of Moneys paid in under Lands Clauses Act—Rebuilding.

Petition.

This was an application by the tenant for life of certain settled estates, that a sum of 4,250*l.*, being the purchase money of land, part of the settled estate taken by a railway company in 1879, and which had been paid into Court in pursuance of the Lands Clauses Act, might be paid out to him in order to recoup him in respect of moneys which had been expended by him in rebuilding certain malt houses on the estate before the land had been taken by the railway.

Mr. Glasse and *Mr. Stirling* in support of the application.

Mr. Dundas Gardiner appeared for infants; and submitted to the Court whether, having regard to the decision in *Drake* v. *Trefusis* (L. R. 10 Chanc. 364), the order could be made in the terms asked for.

Mr. W. Barber for other parties.

MALINS, V.C., came to the conclusion that he could not make the order, both on the ground that the tenant for life had expended the moneys before the land was taken by the company, and also on the ground that he felt bound by the decision in *Drake* v. *Trefusis*; and he ordered the money to be invested, and the dividends paid to the tenant for life.

Chancery Division. BACON, V.C. Jan. 13. } *Re* STAPLEFORD COLLIERY COMPANY (LIMITED).

Company—Shares fully paid up — Estoppel—Companies Act, 1867, *s.* 25.

Adjourned summons.

This company was incorporated under the Companies Acts, with a capital of 4,000 shares of 5*l.* each. By an agreement dated May 10, 1871, W. Hill contracted to sell a certain colliery to the company for 5,115*l.*, which was thereby agreed to be paid or satisfied, as to 2,000*l.* to R. Bridgman, and as to the residue of 3,115*l.* to W. Hill; and on the said 2,000*l.* it was agreed that the company should pay 500*l.* in cash, and 1,500*l.* by issuing and transferring to R. Bridgman 300 fully paid up shares of 5*l.* each; and as to the sum of 3,115*l.*, that the company should either pay the same in cash to W. Hill, or, at the option of either the company or W. Hill, should issue to W. Hill 623 fully paid up shares of 5*l.* each. This agreement was never registered under section 25 of the Companies Act, 1867.

The company exercised its option under the contract, and issued 623 shares, purporting to be fully paid up, to W. Hill. Four hundred and fifty of these shares were, for valuable considerations, subsequently transferred to R. Bridgman, who was chairman of the company; and 130 to L. Bridgman, who was solicitor to the company. On June 22, 1876, R. Bridgman died, having appointed L. Bridgman his executor.

The company went into liquidation, and the chief clerk settled L. Bridgman on the list of contributories as the holder, in his own right, of 130 shares, on which nothing had been paid; and of 750 shares as executor of R. Bridgman. L. Bridgman sought to vary the certificate by finding that the shares were fully paid up.

Mr. Westlake and *Mr. Northmore Lawrence*, for L. Bridgman, contended (1) that, under the agreement of May 10, 1871, the consideration for the issue of the shares to W. Hill was a money consideration; and (2) that, in any case, the company, in the face of its own certificates, was estopped from denying that the shares were fully paid up, as against transferees.

Sir H. Jackson and *Mr. Cracknall*, for the liquidator, contended that the doctrine of estoppel could not apply where the transferees of the shares were cognisant of the circumstances under which the shares were issued, as they were in this case, being chairman and solicitor of the company.

Mr. Westlake in reply.

BACON, V.C., held that the shares must be treated as unpaid under section 27, and that no case of estoppel arose; and dismissed the summons, with costs.

Chancery Division.
BACON, V.C.
Jan. 17.

Re THE STAPLEFORD COLLIERY COMPANY (LIMITED). *Ex parte* CHATTERIS.

Company—Commission paid to Secretary and Solicitor of Company—Resolution of Board of Directors that Commission should be allowed—Liability to repay.

Adjourned summons by the liquidator of the above company for repayment, by B. L. Barrow, of 250*l.*, paid to B. L. Barrow by the company as commission on the allotment of 2,000 shares in the company.

B. L. Barrow was the secretary and solicitor, and his father, R. B. Barrow, the chairman of the company.

At a meeting of the directors on August 22, 1871, B. L. Barrow made a proposal for the allotment to a client of his of 2,000 shares, upon certain conditions, including a condition that a commission of 2*s.* 6*d.* per share should be paid, upon allotment, to the company's solicitors.

At a subsequent meeting of the directors on August 30, 1871, it was resolved (*inter alia*) that it appearing 'that, after publicly advertising and circulating the prospectus, no applications have been made for any shares, except those applied for and taken by the directors,' the agreement between the company and T. G. Kimpton (being the agreement as to the allotment of 2,000 shares) be entered into, and the sum of 2*s.* 6*d.* per share be paid thereon as resolved at the last meeting.

The 2,000 shares were allotted to T. G. Kimpton, who immediately afterwards, for a nominal consideration, transferred them to R. B. Barrow.

It appeared that the other directors were perfectly aware that the client of B. L. Barrow, who made the proposal, was R. B. Barrow, and that the latter was the real allottee of the shares.

It also appeared, from a resolution of the directors, that, finding no applications were being made for shares, they were willing to grant a commission of 2*s.* 6*d.* per share to anybody who would obtain applications for shares.

Sir H. M. Jackson and *Mr. Cracknall* for the summons.

Mr. Northmore Lawrence for B. L. Barrow.

BACON, V.C.: Notwithstanding the facts stated to me, on behalf of Mr. B. L. Barrow, I must hold that he, being in a fiduciary relation to the company, cannot make a profit out of a transaction with it, and must repay the 250*l.* commission money.

Summons allowed, and with costs.

Chancery Division.
FRY, J.
Jan. 13.

MUNDY *v.* ASPREY.

Vendor and Purchaser—Statute of Frauds—Signature to Letter enclosing Conveyance.

This was an action for specific performance of a contract for sale of land, brought by the vendor. The defendant relied on the Statute of Frauds as a defence. A question in the action was whether the signature of the purchaser's solicitor to a letter, sent with an engrossment of conveyance, if the solicitor were the authorised agent for the purpose, was a sufficient signature to the terms of a definite contract so as to satisfy the statute. The engrossment contained a recital that the vendor had contracted for the absolute sale to the purchaser of the lands and hereditaments.

The letter accompanying the engrossment was in the following terms: 'We send engrossment of conveyance by this, with draft; please procure an authority from Mr. Mundy to pay the purchase money to yourselves. When we complete, shall we bring cash or a cheque? Our client returns from Devonshire to-day or to-morrow; on seeing him we will procure a cheque, and let you know when we are ready to complete.'

Mr. Cookson and *Mr. Maidlow* for the plaintiff.

Mr. North and *Mr. Field*, for the defendant, were not called on.

FRY, J., held that the requirements of the Statute of Frauds were not satisfied.

Chancery Division.
FRY, J.
Jan. 17.

BLIGHT *v.* HARTNOLL.

Will—Construction—Contingency.

Elizabeth Blight, the testatrix in this action, by her will charged an annuity of 50*l.* on a leasehold wharf, which she gave to her daughter, Sarah Ann Boute, for life. After the death of S. A. Boute, she gave this annuity to her granddaughter, Lucy Osborne Boute. The will proceeded as follows: 'And if the said Lucy Osborne Boute, after having commenced to receive the said annuity, shall die before the expiration of the term of years under which the said wharf is let, then I direct my executors hereinafter named to continue to pay the said annuity out of the rental thereof to the then surviving children of my said granddaughter, in equal shares and proportions; and in the event of there being then, or at any future time, no such surviving children of my aforesaid granddaughter, then I direct my executors hereinafter named to pay the said annuity out of the aforesaid rental to the surviving children of my said daughter Sarah Ann Boute, in equal shares and proportions.'

Lucy Osborne Boute survived the testatrix, but died, without having been married, in the lifetime of Sarah Ann Boute. A question arose whether, on her death, her surviving children were entitled to the annuity.

Mr. North and *Mr. Grosvenor Woods*, for the plaintiff in the action, contended that the children of Sarah Ann Boute were only entitled to the annuity on the happening of two events—Lucy Ann Boute's living to receive some of the income, and the failure of her issue.

Mr. Method, contra.

FRY, J., held that the first contingency did not affect the gift to the children of Sarah Ann Boute.

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Jan. 16, 17, 19, 20.

ORR EWING & Co. *v.* JOHNSTON & Co.

Trade-mark—Infringement—Injunction.

Appeal from FRY, J., noted *ante*, p. 52.

The plaintiffs exported to India Turkey-red yarn, which was known in the markets there as their 'Bhe Hathi' or 'Two Elephant' yarn, from the fact that to the bundles of the yarn was attached a label, or ticket, on which was impressed a device representing two elephants supporting a banner, with a crown between them. The defendants subsequently sold similar yarn in the same markets, with a label, or ticket, on which was impressed a device representing two elephants supporting an idol; but the elephants differed from the plaintiffs' elephants in the way they looked, and in that they bore 'howdahs.'

The plaintiffs complained that the defendants' ticket was an infringement of their ticket.

It was proved that merchants and brokers at Bombay, in buying the defendants' goods, bearing the ticket complained of, would not be deceived; but there was no positive evidence as to whether the ultimate buyers would or would not be deceived.

FRY, J., held that the 'Two Elephants' were a substantial part of the plaintiffs' trade-mark; and that the *onus* was on the defendants to prove that the ultimate buyers were not deceived, which they had failed to do; and granted the injunction.

The defendants appealed.

Mr. Aston and *Mr. J. Cutler* for the appellants.

Mr. North and *Mr. H. A. Giffard* for the respondents.

Their LORDSHIPS held, upon the evidence, that the 'Two Elephants' were a substantial portion of the plaintiffs' trade-mark; and that the defendants, by taking it, had pirated the plaintiffs' trade-mark; and, on this ground, dismissed the appeal, with costs.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
COTTON, L.J.
Jan. 21.

WEBB *v.* EAST.

Master and Servant—Written Character—Libel—Production of Letters—Privilege.

Appeal from order of the Exchequer Division (noted *ante*, p. 166) directing the defendant to produce for inspection copies of letters written by the defendant to Lord Rosslyn, admitted by the defendant, in answer to interrogatories, to be in his possession.

The plaintiff, who had been steward to the defendant, alleged that these letters contained libels, whereby he had failed to obtain a situation as Lord Rosslyn's steward.

Mr. Fischer and *Mr. R. E. Turner*, for the appellant, contended (1) that if the copy of letters, when produced, supported the allegations in the statement of claim, they might tend to criminate the defendant; (2) that, from the necessity of the case, the letters were privileged communications.

Mr. Bompas and *Mr. P. H. Smith, contra.*

Their LORDSHIPS affirmed the order of the Court below; holding that, although the letters were not privileged from production, they were privileged thus far—viz. that the Court would not on them impute malice to the defendant, but leave the plaintiff to prove express malice; but their lordships refused to give any opinion as to what their decision would have been had the defendant deposed on oath that the production of the letters would criminate him.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
Jan. 20.
In re ARGLES.

Practice—Taxation—Order of Course—How obtainable.

In the course of this case, which was for a review of taxation, his LORDSHIP remarked that, under the new Rules of Court, his secretary was now an officer of the High Court, and that the jurisdiction to issue orders of course, for taxation, was not exclusively confined to his branch of the Court, but that any of the chief clerks in the Chancery Division could now issue orders of course for taxation.

Chancery Division.
JESSEL, M.R.
Jan. 23.
HEDLEY *v.* BATES.

Land Drainage Act, 1861 — *Validity of Notice under the Act—Application to Justices—Injunction—Prohibition—Judicature Act*, 1873, *s.* 25, *subs.* 8.

In this case a notice was given by the defendant to the plaintiffs, who were neighbouring landowners, stating that he intended to do certain drainage works, under the powers of the Land Drainage Act, 1861. Under that Act, if the neighbouring landowner does not assent to the execution of the works, the landowner desiring them can apply to justices of the peace in petty sessions, who have power to determine whether any injury will be done by the proposed works, and what amount of compensation in reference thereto is payable. On payment of such compensation the landowner may execute the works. The plaintiffs contended that the notice was not sufficient, and moved to restrain the defendant from proceeding under it before the justices. The defendant contended that the Court had no jurisdiction to interfere with the tribunal pointed out in the Act.

Mr. Chitty and *Mr. Colt* for the plaintiffs.

Mr. Davey and *Mr. Bush* for the defendant.

JESSEL, M.R., was of opinion that the notice was insufficient; that he had a jurisdiction to prohibit the inferior Court from exercising jurisdiction in the matter, and that such right made this a case in which it would be 'just and convenient,' within the meaning of section 25, subsection 8, of the Judicature Act, to grant an injunction between the parties. He therefore granted an injunction to restrain the defendant from proceeding upon his notice.

Chancery Division.
JESSEL, M.R.
Jan. 22, 24.
SIMMONS *v.* STORER.

Practice—Inquiry what due for Costs—Disallowance of all Costs—Objections to Disallowance—Rules of the Supreme Court (Costs), Order VII., Rules 26, 30, 32.

The judgment in this action directed an inquiry what was due to the defendant in respect of the costs of certain proceedings therein mentioned, but contained no direction to tax those costs. The costs were referred to a taxing master, who disallowed them all. The defendant carried in objections before the taxing master in which he stated some, but not all, of his reasons for objecting to the taxation. The taxing master overruled the objections; and the defendant then took out a summons to review the taxation.

Mr. Davey and *Mr. H. Humphreys* for the summons.

Mr. Chitty and *Mr. Whitehorne, contra.*

The MASTER OF THE ROLLS held that nothing in the form of the judgment precluded the taxing master from disallowing all the costs in question; besides which, Order VII., Rule 26, of the rules of the Supreme Court as to costs, obliged him to disallow them if he thought them improper. His lordship also decided that it was open to the defendant to raise objections to the taxation, in Court, which he had not mentioned in his written statement of objections.

Chancery Division.
MALINS, V.C.
Jan. 14, 15, 20.
THE TOTTENHAM LOCAL BOARD OF HEALTH *v.* ROWELL.

Public Health Acts—Local Board—Paving and Sewering Expenses—Recovery of—County Court—Limitation of Time—Public Health Act, 1848 (11 *&* 12 *Vict. c.* 63), *ss.* 69, 129—*Local Government Act*, 1858 (21 *&* 22 *Vict. c.* 98), *ss.* 62, 63—*Local Government Act*, 1858 (24 *&* 25 *Vict. c.* 61), *s.* 24—11 *&* 12 *Vict. c.* 43, *s.* 11.

This action was commenced in June, 1875, by a plaint in equity in the County Court of Middlesex, holden at Edmonton, to recover from the executor of one Rowell, formerly owner of premises in Bounds Green Road, Wood Green, an apportionment of expenses incurred by the plaintiffs in 1864, under section 69 of the Public Health Act, 1848 (11 & 12 Vict. c. 63), in sewering and paving the said road. The amount of the apportionment having been notified to Rowell in 1873, and not having been disputed by him, became, under 21 & 22 Vict. c. 98, s. 63, payable from him to the plaintiffs three months after such notice; and by section 62 of the last-mentioned Act the sums so due are declared to be a charge on the premises, and to bear interest at 5 per cent.; and the plaint prayed that the charge, amounting to the sum of about 25*l.*, might be effectuated in favour of the plaintiffs, and for a sale of the premises.

The plaint was—almost directly after it was filed—transferred into the Court of Chancery.

The plaintiffs had, at the same time they commenced this action, commenced an action on the common law side of the same County Court to recover the sum of 13*l.* 5*s.* 5*d.*

further amount of expenses apportioned to be paid by Rowell as the owner of other premises (*The Tottenham Local Board of Health* v. *Rowell*, 46 Law J. Rep. C.A. 432; L.R. 1 Exch. Div. 574); and in that case it was held that proceedings under 24 & 25 Vict. c. 61, s. 24, in the County Court, for the recovery of a demand below 20*l.*, having been taken after the expiration of six months from the time when such demand became due, were, by implication, subject to the limitation fixed by 11 & 12 Vict. c. 43, s. 11; and that the claim of the board was, therefore, barred by lapse of time.

The present action was not set down till April, 1879.

Mr. Higgins and *Mr. Ilbert*, for the plaintiffs, contended that—notwithstanding the decision of the Court of Appeal in the case above referred to, and which only decided that, in taking summary proceedings, they were barred by lapse of time—the plaintiffs were, under section 62 of the Act of 1858, entitled to a charge on the premises; and that, the proceedings having been commenced within the time allowed by the Statute of Limitations, they were entitled to recover.

Mr. Pearson and *Mr. Hunter*, for the defendant, were not called upon.

MALINS, V.C., decided that the remedies given by section 62 of 21 & 22 Vict. c. 98 were only intended to be exercised when all the remedies given by section 129 of 11 & 12 Vict. c. 63 had failed; and that the board, having lain by for so long, and having never attempted to put in force the remedies given by the last-mentioned section, it was most unreasonable that they should now attempt to get a charge on the premises; and he dismissed the action, with costs.

Chancery Division. BACON, V.C. Jan. 23. } M'STEPHENS & Co. *v.* CARNEGIE AND OTHERS.

Practice—Service out of Jurisdiction—Rules of Court, 1875—*Order XI., Rule* 1.

Adjourned summons on behalf of Ruys & Co., a firm at Antwerp, defendants in the action, to discharge an order for service of notice of the writ of summons upon the said defendants at Antwerp.

The plaintiffs were the first mortgagees of a British ship the India and her freight, by virtue of a mortgage executed by both parties in London. The several defendants were — the second mortgagee of the ship and freight; his trustee in liquidation; the master of the ship; the trustee in liquidation of the mortgagor; the owners of the ship, Law, Surtees & Co., who claimed a charge on the freight for advances under a letter subsequent in date to the plaintiffs' mortgage; and Ruys & Co., the holders of the freight, who also claimed to retain the freight as against a debt due to them from the second mortgagee.

The India's voyage was from the Mediterranean to Antwerp, where she discharged her cargo consigned to merchants there, from whom a sum of 30,000 francs thereupon became payable for freight.

The India afterwards came on from Antwerp to London, where she was sold, in pursuance of an order of the Admiralty Division, for the purpose of paying the wages of the crew and the wages and disbursements of the master. The plaintiffs' claim was for an account of what was due to them on their mortgage; an account of what was due to them for wages of the crew of the India, and for expenses in taking charge of her down to the time of her sale, and for costs in the Admiralty action; a declaration that they were entitled to payment out of the freight, and for a receiver thereof; and an injunction to restrain the defendants from dealing with the same.

Mr. Everitt for Ruys & Co: These defendants are foreigners, out of the jurisdiction; and the subject matter of the action as against them is not situate within the jurisdiction; nor do any of the other circumstances under which, according to Order XI., Rule 1, notice of a writ may be served out of the jurisdiction, apply to them.

Mr. Buckley for the plaintiffs: The main causes of action arose within the jurisdiction, and the relief claimed against Ruys & Co. is merely subsidiary; so that the fact of the cause of action as against them having arisen out of the jurisdiction is immaterial.

Mr. Everitt in reply.

BACON, V.C.: In my opinion this case comes within the provisions of Order XI., Rule 1, for the contract upon which the claim is based was an English contract. The case presents itself to me in this way. A first mortgagee claiming against the mortgagor and puisne incumbrancers, finds part of the property in the hands of an Antwerp merchant, who makes some claim to it because the second mortgagee owes him money. The first mortgagee's right, which is paramount to that claim, is the right interfered with, so that it cannot matter where the contract between the second mortgagee and Ruys & Co. was entered into.

Summons dismissed, with costs.

Chancery Division. HALL, V.C. Jan. 23. } *In re* THE CAKEMORE CAUSEWAY GREEN AND LOWER HOLT UNITED BRICKWORKS AND COLLIERY COMPANY (LIMITED).

Winding-up—Petition by one Company to wind up another Company—Affidavit in Support of Petition.

Unopposed petition by a banking company, as creditors, to wind up the above company.

Mr. F. C. J. Millar applied, *ex parte*, for the leave of the Court that the affidavit in support of the petition might be made by the general manager of the petitioning company. He said that it was considered that Order I., Rule 4, of the General Orders of November, 1862, only applied where the petitioning company was the company to be wound up, and that according to Buckley on 'Joint Stock Companies,' third edition, p. 475, in a case like the present special leave ought to be obtained. He thought, however, that in many similar cases an affidavit by the general manager had been accepted as sufficient, without any special leave.

HALL, V.C., thought so too, but granted the leave on this application.

Chancery Division. HALL, V.C. Jan. 24. } *In re* LUCKIE. NIXON *v.* LUCKIE.

Practice—Service out of Jurisdiction—Counter-claim—Rules of Court, Order XXII., Rule 6: *Order XI.*

Mr. J. Beaumont asked leave to serve, out of the jurisdiction, a counter-claim by one of the defendants against the plaintiff, other defendants, and certain new parties. Two of these defendants to the counter-claim were resident in New Zealand, and one in Demerara. He referred to *The*

Swansea Shipping Company v. *Duncan* (Law J. Notes of Cases, 1876, p. 92; L.R. 2 Q.B. Div. 644), where Order XI. had been held to apply to a third-party order; as to which there was a difficulty from the eight-day limit of appearance, which did not arise in the case of a counter-claim.

HALL, V.C., gave leave as asked.

Chancery Division.
FRY, J.
Dec. 19, 1879.
} LONG *v.* CROSSLEY.

Practice—Wrong Plaintiff—Order XVI., Rules 2, 13.

This was an action for specific performance of a contract to take a lease.

The plaintiff was originally a tenant for life. The statement of claim alleged that she was tenant for life, with power of leasing. She died; and her executor procured an order, under Order I., Rule 4, that the action should be carried on between him and the original defendant. It was found that the tenant for life had no power to grant the lease. The executor of the tenant for life and his sister were the persons entitled in remainder. Application was made at the hearing on behalf of the plaintiff on the record, to amend, by making himself plaintiff in the character of owner, and making his sister, his co-owner, co-plaintiff, and alleging that the tenant for life had contracted as agent, and the contract had been ratified.

Mr. Romer and *Mr. Levett* for the plaintiff.

Mr. North and *Mr. W. Renshaw* for the defendant.

FRY, J., allowed the amendments to be made, giving the defendant leave to amend the defence; and directed the action to stand over, the plaintiff paying all costs occasioned by its so standing over.

Chancery Division.
FRY, J.
Jan. 23, 24.
} LLOYD'S *v.* HARPER.

Guarantee—Act of Parliament—Construction—Trust—Practice—Parties.

In 1868 Lloyd's Coffee House was an unincorporated association, managed by a committee of twelve persons. The association comprised underwriting members, non-underwriting members, and subscribers. Mr. S. Harper sent a letter of guarantee to the committee in the following terms: 'My son, Mr. R. H. Harper, being a candidate for admission to Lloyd's Coffee House as an underwriting member, I beg to tender my guarantee on his behalf, and to hereby hold myself responsible for all his engagements in that capacity.' The association was incorporated by an Act passed in 1871, and the rights of all trustees for the committee or members were vested in the corporation. In September, 1876, Mr. S. Harper died, and notice of his death was given to Lloyd's. Mr. R. H. Harper was elected an underwriting member of Lloyd's, and continued to do business as such down to November, 1878, when he suspended payment. There was no power in the society to remove a member except in case of insolvency. The action was brought by Lloyd's, a firm of insurance brokers being co-plaintiffs, against the executors of Mr. S. Harper to enforce the guarantee.

Mr. North and *Mr. F. C. J. Millar* for the plaintiffs.

Mr. Cookson and *Mr. Cracknall* for the defendant.

FRY, J., held (1) that the guarantee did not determine on the death of the guarantor or on the notice to Lloyd's; (2) that the right to sue on the guarantee was vested in the new corporation of Lloyd's; (3) that it extended to debts due to persons outside Lloyd's in respect of obligations incurred through the agency of members or subscribers of Lloyd's; and (4) the corporation were trustees for them, and could sue on the guarantee in their behalf.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
Jan. 12.
} *Re* LEE & SONS. *Ex parte* GOOD.

Payment of Dividend—Notice of Claim of secured Creditor—Bankruptcy Rules, 1870, Rule 312—Bankruptcy Forms, No. 126.

This was an appeal from the Dewsbury County Court.

The debtor filed a liquidation petition on June 22, 1878, and resolutions for liquidation by arrangement were passed, and two trustees appointed. In the debtor's statement of affairs the London and Yorkshire Banking Company were described as fully-secured creditors. Correspondence passed between the trustees and the bank in which the bank stated particulars of its debt, amounting to 6,523*l.*, and set out the securities, but without estimating their value, and claimed to prove for any balance that might remain due after realisation. The trustees thereupon, on September 9, 1878, served a notice of rejection of the bank's claim and of exclusion from dividend in the form given in Bankruptcy Forms, 1870, No. 126, which concludes with the words: 'take notice that such exclusion will be final, unless within fourteen days you apply to the Court to prove your debt, and proceed with such application with due diligence.' The bank, however, made no application to the Court, but proceeded to realise its securities, and on January 16, 1879, enclosed a proof for 2,585*l.* 10*s.* 5*d.*, being the balance remaining due after realising the securities. The trustees had, in the meantime—on January 3, 1879—declared a dividend of 3*s.* 6*d.*, payable on January 15, but refused to pay any dividend on the proof of the bank. On the application of the bank, the County Court judge ordered the trustees to pay a dividend of 3*s.* 6*d.* on the 2,585*l.* 10*s.* 5*d.*

The trustees appealed.

Mr. E. C. Willis, for the appellants: The trustees were not bound to reserve assets for the payment of a dividend on the bank's claim. Rule 312, which says that the trustee is to be deemed to have notice of debts inserted in the debtor's statement, excepts the case 'where any such debt has been adjudicated upon prior to the declaration of the dividend.' The notice of the trustees' rejection of the claim, according to Form 126, amounted to such an adjudication. He also cited Bankruptcy Act, 1869, sections 40, 43; Bankruptcy Rules, 1870, rules 99, 100, 101, 136, 213, 312, 313.

Mr. Winslow and *Mr. Finlay Knight*, for the respondents, were not called upon.

The CHIEF JUDGE said that the trustees had notice that the bank intended to prove for the balance after realising the securities; that the rejection of the claim by the trustees was not an adjudication within the meaning of Rule 312; that the order directing payment of the dividend was, therefore, right; and that the appeal must be dismissed, but without costs.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
COTTON, L.J.
Jan. 21.

Re EMMET. EMMET *v.* EMMET.

Will—Construction—Gift to Children to be paid at Twenty-one, after a Life Interest.

Appeal from the decision of HALL, V.C. (reported 49 Law J. Rep. Chanc. 21), holding that the rule that a bequest to a class to be paid at twenty-one takes effect in favour of members of the class coming into existence before the eldest attains twenty-one, applies, although the will creates a prior life interest which determines before any of the class attain twenty-one.

Mr. Robinson and *Mr. W. W. Cooper* for the appellant.

Mr. Dundas Gardiner for a party in the same interest.

Mr. Hastings, Mr. Rigby, and *Mr. W. Pearson* for the respondents.

Their LORDSHIPS affirmed the decision of the Vice-Chancellor; and dismissed the appeal, with costs.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
COTTON, L.J.
Feb. 4, 5.

METROPOLITAN DISTRICT RAILWAY COMPANY *v.* COSH.

Railway Company — Superfluous Lands — Land over Tunnel—The Lands Clauses Act, 1845, *s.* 127.

Appeal from decision of FRY, J. (noted Notes of Cases, vol. xiv. p. 73), holding that a railway company which had constructed a tunnel by arching over a cutting and placing soil on the arch, could not sell the surface over the tunnel as 'surplus land.'

Mr. J. Pearson and *Mr. S. Roberts* for the appellant company.

Mr. Glasse and *Mr. Strickland* for the respondent.

Their LORDSHIPS affirmed the decision of Fry, J.

Court of Appeal.
JAMES L.J.
COTTON, L.J.
BAGGALLAY, L.J.
Feb. 9, 10.

KELLY *v.* BYLES.

Trade-mark—Title of Book—Use of descriptive Word, 'Post Office.'

This was an appeal from the decision of BACON, V.C., reported 48 Law J. Rep. Chanc. 569.

The plaintiff was the registered proprietor, under the Copyright Act, of a directory entitled the 'Post Office Directory of the West Riding of Yorkshire,' which included the town of Bradford. The defendants published a directory for the town of Bradford entitled the 'Bradford Post Office Directory,' but which bore no similarity to the work of the plaintiff in price or appearance. The plaintiff claimed to restrain the defendants from using the words 'Post Office' as part of the title of their directory. There was no sufficient evidence to show that the words 'Post Office' in connection with directories was known to any portion of the public as a synonym for the word 'Kelly.'

The Vice-Chancellor held that the plaintiff had no right to the exclusive use of the words 'Post Office' as

part of the title of a directory for Bradford, either under the Copyright Act or as property in the nature of trade-mark; and dismissed the action.

The plaintiff appealed.

Mr. Kay, *Mr. Hemming*, and *Mr. Leeson* for the appellant.

Sir H. Jackson and *Mr. Rigby* for the respondent.

Their LORDSHIPS affirmed the decision of the Vice-Chancellor.

HIGH COURT OF JUSTICE.

Chancery Division. Jessel, M.R. Jan. 30. } THE CANADIAN LAND RECLAIMING AND COLONISING COMPANY (LIMITED).

Companies Act, 1862, *s.* 165—*Acting as Director without Qualification—Misfeasance—Compensation.*

Two persons, named respectively Coventry and Evans, acted as directors of the company, but without the qualification required by the company's articles of association—namely, the holding of 100 shares of 5*l.* each. The company having been wound up, the liquidator endeavoured to put them on the list of contributories as holders of 100 shares each; but the Court held that, since they had not been duly appointed directors, there was no contract by them to take qualifying shares. The liquidator then took out a summons, which was adjourned into Court, asking that Coventry and Evans might be ordered to contribute to the assets of the company the sum of 500*l.* each by way of compensation in respect of their misfeasance in acting as directors without being duly qualified.

Mr. S. Brice for the liquidator.

Mr. Davey and *Mr. Buckley* for Coventry and Evans.

The MASTER OF THE ROLLS held (1) that Coventry and Evans came under the section, since, if not 'directors' within the meaning of the word as used there, they were at any rate 'officers' of the company; (2) that, although no specific damage had been shown to have resulted from their acts, the Court had power to order them to make compensation; and (3) that the proper amount of compensation was the same which they would have had to contribute in respect of qualifying shares had they done their duty and taken them.

Chancery Division. Jessel, M.R. Jan. 31. } *Re* OSBORNE AND ROWLETT.

Vendor and Purchaser—Power of Sale given to Trustees and their Heirs—Sale by Assign of last surviving Trustee.

In this case land had been limited to trustees, with a power of sale exercisable by them and their heirs. The last surviving trustee died, having devised his trust estate, and a contract to sell the property was entered into by the devisee. The purchaser took the objection that, since the power of sale did not in terms extend to the trustees and their assigns, the devisee could not make a good title without the concurrence of the persons beneficially interested. The question now came before the Court on a summons under the Vendor and Purchaser Act.

Mr. Chitty and *Mr. Whately* for the vendor.

Mr. Davey and *Mr. W. W. Knox* for the purchaser.

The MASTER OF THE ROLLS held that the devisee could exercise the power of sale, and give a complete discharge to the purchaser.

Chancery Division. Jessel, M.R. Feb. 2. } GREAVES *v.* TOFIELD.

Annuity not registered—18 *&* 19 *Vict. c.* 15, *s.* 12—*Purchaser—Effect of Notice.*

This was a question of law stated for the opinion of the Court; and was whether an unregistered annuity charged upon land is effectual as against a purchaser of the land who had previous notice of it.

Mr. Ince and *Mr. G. C. Price* for the plaintiff.

Mr. Chitty, *Mr. Ingle Joyce*, and *Mr. H. Humphreys* for the defendants.

The MASTER OF THE ROLLS decided that the purchaser took the land free from the annuity.

Chancery Division. Malins, V.C. Jan. 29. } BAGHOTT *v.* NORMAN.

Bill of Sale—Bills of Sale Act, 1878 (41 *&* 42 *Vict. c.* 31), *s.* 10—*Invalid as against Grantor if not attested—Mortgage—Davies* v. *Goodman*, 49 *Law J. Rep. Exch.* 101; *L. R.* 5 *Exch. Div.* 20, *approved of.*

This was a motion for injunction on behalf of the plaintiff, to restrain the defendant, until the hearing, from enforcing, or taking any steps or proceedings to enforce, any of the powers, covenants, clauses, and provisions of an indenture of October 6, 1879, made between the plaintiff and one Currans of the one part, and the defendant of the other part, whereby Currans and the plaintiff covenanted to pay the defendant 275*l.*, and interest at 30 per cent., by instalments; and charged the lease of a certain theatre with the payment thereof; and that after they should have furnished the theatre, and taken the lease, they would execute a mortgage of all their interest therein, and the furniture, fixtures, and fittings thereof, to the defendant.

Mr. Glasse and *Mr. Rose Innes*, for the plaintiff, contended that the deed operated as, and was in fact, a bill of sale; and that, not having been attested by a solicitor, in pursuance of section 10 of the Bills of Sale Act, 1877, it was wholly invalid; and they relied on the decision in *Davies* v. *Goodman* (*ubi supra*).

Mr. Higgins and *Mr. E. Cooper Willis*, for the defendant, contended that the deed, being also a mortgage, did not come within the section of the Act, and was, therefore, good.

MALINS, V.C., was of opinion that the deed was distinctly a bill of sale within the meaning of the Act, because there was an assignment of the furniture and effects then in the theatre, and such as might be afterwards purchased and placed in the theatre; and that, not having been attested by a solicitor, it was absolutely void against the grantor, as in the case of *Davies* v. *Goodman* (*ubi supra*), with which decision he entirely concurred. He thought, however, that the deed was also a mortgage as well as a bill of sale; and, therefore, so far as it was a mortgage, it was valid, although, so far as it was a bill of sale, it was invalid; and he refused the motion, but without costs.

Chancery Division. BACON, V.C. Feb. 6. } BENBOW & SONS *v.* LOW, SON, & HAYDON.

Practice—Counter-claim—Reply—Joinder of Issue—Striking out Reply—Order XXVII., Rule 1—Order XIX., Rules 20, 21—Rolfe v. Maclaren, L.R. 3, Chanc. Div. 106, not followed.

Motion.

In an action to restrain the defendants from interfering with the plaintiffs in the use of their trade-mark, the defendants delivered a statement of defence and counter-claim; and by the counter-claim the defendants claimed as follows: 'The defendants repeat and rely on each and every of the statements in paragraphs 1 to 13, inclusive of the statement of defence hereinbefore contained, as if such statements were here repeated verbatim.'

Paragraph 1 of their reply was as follows: 'The plaintiffs join issue with the defendants upon their statement of defence.'

Paragraph 2 of the reply was: 'With respect to the statements contained in the defendants' counter-claim, the plaintiffs join issue on paragraphs 1 to 13, inclusive of the statements of defence therein repeated and relied on, as if the same were repeated verbatim.'

Mr. Byrne, for the defendants, moved to strike out paragraph 2 of the reply, as embarrassing.

Mr. Willis-Bund, contra: *Rolfe* v. *Maclaren* (*ub. sup.*) is a direct authority to the contrary. Paragraphs 1 to 13 of the counter-claim are the same upon which, when stated by way of defence, we have already joined issue. Of what use, then, can it be to answer them specifically?

BACON, V.C.: With the greatest respect for the decision in *Rolfe* v. *Maclaren*, I must look at the words of Rules 20 and 21 of Order XIX.; and, in my opinion, those rules require that a plaintiff, in his reply, shall deal specifically with, and not deny generally, the facts alleged in a defence by way of counter-claim. Paragraph 2 of the reply must be struck out, and paragraphs 1 to 13 of the counter-claim must be answered specifically.

Chancery Division. BACON, V.C. Feb. 10. } TOZER *v.* BRITTON.

Practice—Foreclosure Action—Further Mortgage 'Pendente Lite'—Action continued against Mortgagee—Rules of Court, 1875, Order L., Rule 2.

This was a foreclosure action by a first mortgagee against the mortgagor and a second mortgagee. A receiver had been appointed, and the action set down for hearing, when the plaintiff discovered that, pending the action (which had not then been registered as a *lis pendens*), the mortgagor had mortgaged the property to a third mortgagee.

Mr. Phillpotts applied, *ex parte*, for an order under Order L., Rule 3, that the action might be continued against the third mortgagee. He stated that the plaintiff had already applied for, and been refused, an order of course at the Order of Course Office, where it was intimated that the proper course was to proceed under Order XVI.; but the latter procedure would involve as much delay as if the action had to be recommenced.

BACON, V.C., made an order under Order L., Rule 3, that the action should be continued against the third mortgagee.

Chancery Division. HALL, V.C. Jan. 28. } YATES *v.* FINN.

Partnership—Surviving Partner carrying on Business after Copartner's Decease—Distribution of Profits.

Further consideration of a partnership action by the representatives of a deceased partner against the surviving partner. The deceased partner died in 1873; and for three years after his decease the defendant carried on the business, claiming to be entitled so to do under an option of purchase given to him by the partnership articles, and retaining and employing therein the capital of the deceased partner. The action was brought in 1873; and, at the hearing in 1875, it was decided that the option in question determined when the term of the partnership articles expired, which was in the year 1857. The capital of the deceased partner largely exceeded that of the defendant; and the only question was, whether, after making a due allowance to the defendant in respect of his services in managing the business, the profits earned during the three years should be divided equally or rateably in proportion to the respective capitals.

Mr. Pearson and *Mr. Everitt* for the plaintiffs.

Mr. Graham Hastings and *Mr. G. Curtis Price* for the defendant.

HALL, V.C., held that the profits must be divided rateably in the proportions of the capitals. That appeared to him the correct principle to adopt, where a surviving partner carried on the business after the decease of his copartner, and the capital of one partner was greatly in excess of the other; and particularly where, as here, the surviving partner had acted in assertion of a right to which he was not entitled.

Chancery Division. HALL, V.C. Jan. 31. } *In re* AMIES. MILNER *v.* MILNER

Will—Construction—Separate Use—Word 'sole.'

Elizabeth Amies, who died in June, 1878, by her will, dated April 6, 1874, declared that her nephews and executors (named) should take two-third shares of her property for their own use and actual benefit, and gave the other third as therein mentioned.

By a codicil dated May 14, 1874, she declared that, out of the one-third share last given, there should be paid to her niece, Bettey Ann Scott, the wife of Abiathar Scott, 250*l.* 'for her sole use;' and to her son, R. A. Scott, 500*l.*, if and when he should attain twenty-one; and, if he should die under that age, then the 500*l.* should be payable to her brother, the plaintiff, and all her sisters equally, &c.

An action for administration now came on upon further consideration as a short cause. As to the point whether the gift to Mrs. Scott was for her separate use,

Mr. Graham Hastings and *Mr. E. Holl*, for the executors, suggested that consistently with *Massy* v. *Rowen*, L.R. 4 Exch. 488, the word 'sole' was capable of admitting the technical meaning, where the context supported that, and it would be otherwise reduced to silence. Here the testatrix apparently distinguished the use of it from mere words of absolute enjoyment, such as were employed elsewhere in the will.

Mr. W. Pearson and *Mr. Rawlinson* appeared for both husband and wife.

HALL, V.C., held that a separate use was created.

Chancery Division.
FRY, J.
Jan. 29.
} DAVIS *v.* DAVIS.

Compromise.

This was an action which, at the trial, after the plaintiff's case had been opened and some evidence given, was compromised in Court. A motion was now made to compel the plaintiff to give minutes, signed by counsel, to the registrar for the purpose of passing the order agreed to. The plaintiff insisted on her right to withdraw from the terms before the order was passed.

Mr. Cohen and *Mr. Fellows* for the motion.

Mr. Fischer for the plaintiff.

FRY, J., held that the compromise was binding, and directed the signed minutes to be given to the registrar.

Chancery Division.
FRY, J.
Feb. 4, 5, 6, 7.
} POWERS *v.* BATHURST.

Prescription — Right of Way — Copyhold—Evidence—Presumption.

An issue in this action was whether there was a public right of footway over a meadow belonging to the plaintiff. Part of the meadow was copyhold. There was evidence of long user. It was argued on the part of the plaintiff that, in the absence of evidence that the lord had been in a position to dispute the right, there would have been no prescription against him.

Mr. North and *Mr. Bunting* for the plaintiff.

Mr. Fischer, Mr. Herschell, and *Mr. Bathurst* for the defendants.

FRY, J., held that it would not be presumed that the lord had at no time been in possession; and gave judgment for the defendants.

Chancery Division.
FRY, J.
Feb. 7.
} COX *v.* WILLOUGHBY.

Partnership.

This was an action, by the executors of a deceased partner, to determine whether a clause in partnership articles was applicable to the partnership at will carried on by the partners after the expiration of the partnership articles. The partnership was between solicitors; and the articles provided that, if Mr. Cox should die during the term, his executors should be paid 1,500*l.*

Mr. North and *Mr. Hatfield Green* for the plaintiffs.

Mr. Cookson and *Mr. Hornell* for the defendants.

FRY, J., held the provision was applicable to the continuing partnership at will.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
Feb. 9.
} *Ex parte* EATOUGH. *Re* CLIFFE.

Court of Bankruptcy—Jurisdiction—Seizure before Act of Bankruptcy—Bankruptcy Act, 1869, *s.* 72.

Appeal from Bolton County Court.

By a lease, dated October 24, 1878, Eatough & Co., brewers, agreed to let to J. W. Cliffe a public house, upon a yearly tenancy, at a rent of 80*l.* per annum, half a year's rent, in advance, being payable on November 24. The lease also contained powers to the landlords to take the same means for recovering book debts and the price of beer supplied as the lease gave them for the recovery of rent, including a power of distress and sale, after a five days' notice of the distress.

Under these powers Eatough & Co., on December 4, distrained for the sum of 140*l.*, due to them for rent, book debts, beer, &c., from Cliffe. On December 16, Cliffe's goods were sold to satisfy the distress.

On December 6, Cliffe committed an act of bankruptcy; and, on December 19, a petition was filed, under which, on January 3, 1879, Cliffe was adjudicated a bankrupt.

On August 20, 1879, the registrar of the Bolton County Court made an order that the trustee in Cliffe's bankruptcy was entitled to the proceeds of the goods, less 10*l.*, and also to damages for an excessive distress.

Eatough & Co. now appealed from this order.

Mr. De Gex and *Mr. Channell* for the appellants: The County Court had no jurisdiction to decide this question; it is not a case for the Bankruptcy Court, as the cause of action arose prior to the bankruptcy.

Mr. Finlay Knight for the trustee: The Bankruptcy Court has jurisdiction, for the power to seize in the agreement is bad, as being contrary to the policy of the bankrupt law. The objection should have been taken in the County Court (*Ex parte Swinbanks, re Shanks,* 48 Law J. Rep. Bankr. 120; s. c. L. R. 11 Chanc. Div. 525).

The CHIEF JUDGE: In my opinion, the County Court judge had no jurisdiction to try the question; and the order must, therefore, be discharged, without costs.

Table of Cases.

HOUSE OF LORDS.

House of Lords. Feb. 9. HOOPER AND ANOTHER *v.* BOURNE AND OTHERS.

Lands Clauses Consolidation Act, 1845 (8 & 9 *Vict. c.* 18), *s.* 127)—*Superfluous Lands.*

This was an appeal from a judgment of the Court of Appeal (reported 47 Law J. Rep. Q.B. 437), which affirmed one of the Queen's Bench Division (reported 46 Law J. Rep. Q.B. 509).

The plaintiffs sued as adjoining landowners, to recover as superfluous lands, under 8 & 9 Vict. c. 18, s. 127, certain parcels of land near the Westbury Station of the Great Western Railway. The land, including the mines thereunder, was bought in 1848 by the Wilts, Somerset, and Dorset Railway Company, under their statutory powers, by agreement with the owners. That company was afterwards dissolved, and its undertaking transferred to the Great Western Railway Company. The land in question had never been used for the purposes of the railway; but it was found, by the special case in which the facts were stated, that since 1868 the traffic had so largely increased, that the land was required for providing additional accommodation, though want of means had prevented the company from so using it. Meanwhile, it had been demised to a mining company, with special powers of re-entry if it should be required for the use of the railway.

The plaintiffs contended that there was no evidence that the land was required in 1863 when the period expired during which the company could retain it if not required; and, secondly, that even if the surface was not superfluous, the mines under it were.

The judgments of the Queen's Bench Division and of the Court of Appeal were in favour of the defendants.

The plaintiffs appealed

Mr. Benjamin (*Mr. Merewether* with him) appeared for the appellants.

Mr. Davey, *Mr. Charles*, and *Mr. Moulton*, for the respondents, were not called upon.

Their LORDSHIPS (EARL CAIRNS, L.C., LORD HATHERLEY, LORD O'HAGAN, and LORD BLACKBURN) affirmed the decision of the Court of Appeal.

COURT OF APPEAL.

Court of Appeal. JESSEL, M.R. BAGGALLAY, L.J. THESIGER, L.J. Dec. 3, 17. Feb. 11. *In re* HALLETT.

Trustee—Blending Trust with Private Moneys—Rule of Clayton's Case (1 *Mer.* 572, 603)—*Pennell* v. *Deffell* (4 *De G. M. & G.* 372) *overruled.*

H. H. Hallett, a solicitor, died in February, 1878, insolvent. In November, 1877, he had sold a Russian bond for 1,036*l.*, which was the property of the trustees of his own marriage settlement, and also other Russian bonds for 2,442*l.*, belonging to a client of his, Mrs. Cotterill. The proceeds of the sales were paid by Mr. Hallett to the credit of his current account with his bankers on November 14, 1877. The trustees' bonds produced 770*l.*, Mrs. Cotterill's 1,804*l.* The 770*l.* was entered in the account before the 1,804*l.* Before his death he had drawn out of the bank various sums to an amount which covered the whole 770*l.*, and a large part of the 1,804*l.*; but there had always been a balance to the credit of his

account more than sufficient to answer the 770*l.* and 1,804*l.*, and at his death there was a sum of more than 3,000*l.* standing to his credit.

The question was, whether the rule in Clayton's case applied—in which case the whole of the 770*l.*, and a large part of the 1,804*l.*, had been drawn out before his death. If it did not apply, then the trustees and Mrs. Cotterill would be entitled to receive full payment out of the balance standing to his credit.

FRY, J., holding himself bound by *Pennell* v. *Deffell*, which laid down that the rule of Clayton's case applied to trust as well as other moneys, decided that the 770*l.* was wholly gone, Mrs. Cotterill being entitled to recover so much of the 1,804*l.* as remained undrawn out.

The trustees and Mrs. Cotterill appealed.

Mr. Pearson and *Mr. Dundas Gardiner* for the trustees.

Mr. De Gex and *Mr. Edward Beaumont* for Mrs. Cotterill.

Mr. Napier Higgins and *Mr. Fossett Lock* for the executors of Mr. Hallett.

Their LORDSHIPS (JESSEL, M.R., and BAGGALLAY, L.J.) reversed the decision of Fry, J. On principle nothing could be better settled by the law of this and all other civilised countries that, when an act could be done rightfully, no man could be allowed to say that he did it wrongfully; and, applying that rule to the case of trust moneys, which a man had blended with his own, he could not be heard to say that he had taken away the trust moneys when he might have been taking away his own. The rule established in Clayton's case—that the drawings out in a banker's account were to be attributed, in the first instance, to the earlier payments in—was a very convenient rule; but was a mere presumption of law, which must give way to a contrary inference deduced from the facts of the case. Nothing laid down by that rule conflicted with the principle above mentioned. The case of *Pennell* v. *Deffell*, no doubt, created considerable difficulty. It was a decision of a Court of co-ordinate jurisdiction, pronounced many years ago, and, to a great extent, was applicable to the present case, and did destroy the right of the *cestui qui trust* to follow trust money. But the law laid down in a decision which is to be a guide to future judges, is merely the expression of a principle to be gathered from the judgment. The main part of the decision in that case consisted in giving effect to the rights of the *cestui que trust* upon the very principle which was explained above; and the principle laid down there had been rightly applied, except on the one point which arose in the present case, and the Court ought now to follow the principle, and not the mistaken application. The case had been followed, no doubt; but no rule of conduct had been created by it, and the cases followed would not affect the dealings of mankind as had sometimes been the case with some erroneous decisions. No man ever gave credit to a man on the supposition that he would misappropriate trust money, and so increase his assets, and still less that he would pay the trust money to his own account at his banker's, and then draw out a large sum for his own purposes.

THESIGER, L.J., dissented. While recognising the principle contended for by the appellant, he yet felt himself bound by the judgment of the judge in *Pennell* v. *Deffell* and the many cases which followed it. He did not feel himself justified in overruling judgments by which, in his opinion, the Court ought to be bound.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
COTTON, L.J.
Jan. 27. Feb. 9, 14.

MILLS *v.* JENNINGS.

Mortgages—Consolidation—Redemption Suit—Parties.

Appeal from the decision of BACON, V.C.

In the year 1836 J. T. mortgaged certain freeholds to A., and in the year 1837 mortgaged certain copyholds to B.

In the year 1838 J. T., on the marriage of his daughter, conveyed to trustees part of the property comprised in B.'s mortgage upon trust for his daughter, and the issue (if any) of her marriage.

In the year 1839 J. T. mortgaged certain other copyholds to C.

In the year 1857 all three mortgages had become vested in W. J., who had no notice of the settlement, and who, in the year 1873, transferred all three mortgages to the defendant Jennings.

In the year 1878 the trustees of the settlement brought an action for an account, and to redeem B.'s mortgage only.

The defendant claimed to consolidate all three mortgages, and insisted that the parties beneficially interested in the equity of redemption in A.'s and C.'s mortgage were necessary parties to the action.

The plaintiffs admitted the defendant's right to consolidate the mortgages prior to the settlement, and amended their writ by making the trustee of the equity of redemption in A.'s mortgage a co-defendant; but contended that the defendant Jennings could not tack to A.'s and B.'s mortgage any mortgages created by J. T. subsequent to the date of the settlement.

BACON, V.C., decided in favour of the defendant on both points; and, as the plaintiffs refused to amend further, dismissed the action, with costs.

The plaintiffs appealed.

Mr. North and *Mr. F. C. J. Millar* for the appellants.

Sir H. Jackson and *Mr. Townsend*, for the respondent, relied on *Tassell* v. *Smith*, 2 De G. & J. 713.

Their LORDSHIPS dissented from *Tassell* v. *Smith* (*supra*); and held that acts done by a mortgagor, subsequent to a sale of an equity of redemption, could not affect the purchaser of the equity of redemption. Consequently, C.'s mortgage could not be consolidated with the mortgages created prior to the date of the settlement. Their lordships were also of opinion that the action, as amended, was properly constituted as to parties.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 17, 18.

MYERS *v.* DEFRIES AND ANOTHER.

Practice—Costs—Action or Issue tried by Jury—Costs following the Event—Several Issues—Event where Plaintiff succeeds on some Issues, and Defendant on others—Order LV., Rule 1.

Appeal from the Exchequer Division (*ante*, p. 174).

Action to recover damages for three separate causes of

action. The jury found a verdict for the plaintiff, with one farthing damages, upon one cause of action, and found for the defendants on the other causes of action.

The Exchequer Division ordered that the plaintiff should have no costs of the action; and the Court of Appeal affirmed that order.

The Master refused to tax the costs of the issue found for the plaintiff, and taxed the defendants their costs of the issues found for them.

The plaintiff moved to review the taxation.

The Exchequer Division refused the motion.

The plaintiff appealed.

Mr. Murphy and *Mr. Clay* for the plaintiff.

Mr. Gates and *Mr. E. Pollock* for the defendants.

Their LORDSHIPS affirmed the judgment of the Exchequer Division.

HIGH COURT OF JUSTICE.

Chancery Division. JESSEL, M.R. Feb. 9. } CARR *v.* THE METROPOLITAN BOARD OF WORKS.

Artisans Dwellings Act, 1875, *Schedule, Clause* 11—*Provisional Award—Omission of Interest—Powers of Arbitrator.*

In this case a question arose whether an arbitrator appointed in pursuance of the provisions in the schedule to the Artisans Dwellings Act, 1875, had power under clause 11 to summon a person before him to assess the compensation payable to him in respect of his interest in lands taken compulsorily under the Act, where such interest was entirely omitted from the provisional award. The plaintiff's lands were mentioned in the schedule of lands required to be taken compulsorily.

By clause 11 the arbitrator may hear and determine 'any objections which may be made to the provisional award by any person interested therein, and may take any measures which he may deem proper for ascertaining the compensation payable in respect of any scheduled lands, or the justice or propriety of any other matter of such provisional award.' By clause 12, when the arbitrator has heard the objections to the provisional award, and made such inquiries as he may think necessary, and made such alteration as he may deem proper in the provisional award, he is to confirm the same, which thereupon, subject to a right of appeal under certain conditions to a jury to assess the compensation, is absolutely binding upon all persons.

When the arbitrator discovered that the plaintiff's interest was omitted, he summoned him before him and assessed the compensation, and altered the provisional award in accordance with such assessment.

The plaintiff objected to the sum awarded, and brought this action to restrain the defendants from taking possession of his land on the ground that the arbitrator had acted without jurisdiction in assessing the compensation.

Mr. Ince and *Mr. Pope* for the plaintiff.

Mr. Chitty and *Mr. Everitt* for the defendants.

The MASTER OF THE ROLLS was of opinion that the plaintiff was a person 'interested' under clause 11; or that, at all events, the arbitrator had power to take proceedings to get the compensation assessed in such way as he thought fit under the later words. He therefore thought that the proceedings had been regular; and dismissed the action, with costs.

Chancery Division. JESSEL, M.R. Feb. 10. } ELLIN *v.* SLACK.

Trade-mark—Infringement—Sale—Knowledge—Right to Account.

In this case a motion for an injunction to restrain an infringement of the plaintiff's trade-mark was made; and the defendant offered to consent to a perpetual injunction, with costs. The plaintiff, however, also claimed an account of profits made by the defendant by the sale of the pirated articles. The defendant alleged that, at the time of the sale, he did not know of the piracy, and had at once desisted from any further sales.

Mr. Chadwyck Healey, for the defendant, relied on *Edelsten* v. *Edelsten*, 1 D. J. & S. 185.

Mr. Hatfield Greene for the plaintiff.

The MASTER OF THE ROLLS was of opinion, under the circumstances, that, inasmuch as the piracy had occurred without the defendant's knowledge, the plaintiff was not entitled to the account asked for; and he therefore only gave him a perpetual injunction, with costs.

Chancery Division. JESSEL, M.R. Feb. 13. } STANDISH *v.* TAYLOR.

Practice—Third Party Notice—Indemnity—Order XVI., Rule 18—*Motion or Summons.*

A motion was made, *ex parte*, by a defendant, for leave to serve a third party notice under Order XVI., Rule 18, on a person from whom he claimed indemnity.

Mr. Clare for the motion.

The MASTER OF THE ROLLS said that the practice was for such an application to be made by summons in chambers, upon notice to the plaintiff. He, therefore, directed the applicant to take that course.

Chancery Division. JESSEL, M.R. Feb. 13. } HART *v.* HAWTHORNE.

Practice—Foreclosure—Absolute Power of Attorney.

This was a motion to make absolute a judgment for foreclosure. It appeared that the mortgagee's agent had attended at the Rolls Chapel, during the time appointed, for payment, but that he had not with him a power of attorney by the mortgagee to receive the money.

No one attended on behalf of the mortgagor.

Mr. Warmington asked his lordship to make the order absolute on the authority of *Cox* v. *Watson*, 47 Law J. Rep. Chanc. 263; L.R. 7 Chanc. Div. 196.

The MASTER OF THE ROLLS said he would make the order absolute on production of an affidavit that there was a power of attorney by the mortgagee, although the clerk had not had it with him.

Chancery Division.
MALINS, V.C.
Feb. 5.
} RUSTON *v.* TOBIN.

Practice—Amendment of Pleadings—Addition of Plaintiffs at Trial of the Action—Rules of Court, 1875, *Order XVI., Rule* 13, *and Order XXVII., Rule* 6.

This was an action by Ruston and others, as plaintiffs, claiming to have a certain agreement of April 15, 1876 (by which they had agreed to purchase from the defendant Martin Tobin a patent obtained by him for an 'improved mode of ventilating rooms') delivered up to be cancelled, on the ground that the agreement was obtained by the fraudulent representations of the defendant.

The defendant, by his statement of defence, denied that he had made any fraudulent representations, and alleged that the plaintiffs had ample opportunity of making inquiries as to the validity or invalidity of the patent before they agreed to purchase; and, by way of counter-claim, claimed specific performance of the agreement.

The action was commenced in January, 1877. It appeared that on April 19, 1876, four days after the date of the agreement, the plaintiffs had transferred all their interest in the patent to a duly registered limited company.

On the third day of the trial, after several witnesses had been examined on behalf of the plaintiffs,

Mr. Aston and *Mr. Dundas Gardiner* (*Mr. Glasse* with them), for the plaintiffs, applied for leave to amend, by adding the company as plaintiffs. They cited Order XXVII., Rule 6, and Order XVI., Rule 13.

Mr. Higgins and *Mr. Sangster Green* for the defendant.

MALINS, V.C., said that, on April 19, 1876, a company was formed and duly registered for the purpose of working this patent. The plaintiffs had now no interest whatever in the matter, as all their interest had been transferred to the company. In his lordship's opinion, a grievous error had been committed in not making the company plaintiffs. On the other hand, the defendant knew perfectly well, before he put in his statement of defence, that the company was formed, and should then have objected to the frame of the suit.

Now, by Order XVI., Rule 13, and Order XXVII., Rule 6, the Court had very extensive powers of giving leave to amend 'at the trial of the action.' On the whole, therefore, he should give leave to amend by adding the company as plaintiffs. The defendant had the right to postpone the trial, if he desired it, to give himself an opportunity of inspecting the books of the company. But, as he did not ask for this, the case had better go on, it being understood that the company were added as plaintiffs. He should reserve the question of costs.

The trial of the action then proceeded.

Divisional Court.
(Sitting for Q.B., C.P., and Exch. Divisions.)
Feb. 18.
} DIX *v.* GROOM AND ANOTHER.

Practice—Replevin Bond—Judgment by Default in Action on a Replevin Bond final, not interlocutory—Writ of Inquiry unnecessary.

This was an appeal from an order of DENMAN, J., sitting at chambers, who had refused to rescind an order made by the District Registrar of Hanley.

The defendants had entered into a replevin bond, with a penalty of 150*l.*, to avoid a distress for rent. In an action on the bond, the writ was endorsed with a claim for 102*l.* 8*s.*, which was the amount admitted to be due under the distress for rent and expenses. The defendants appeared in the action, but allowed judgment to go by default. The plaintiff obtained *ex parte* an interlocutory judgment, and a writ of inquiry to assess the damages. On November 23, 1879, the defendants applied to the District Registrar of Hanley to set aside this interlocutory judgment and all further proceedings, as irregular, on the ground that the judgment ought to have been final. The District Registrar dismissed the application; and, on December 12, Denman, J., upheld his decision.

This appeal was then brought.

Cyril Dodd for the defendants.

Hardy for the plaintiff.

The COURT (LUSH, J., and POLLOCK, B.) held that the interlocutory judgment and the writ of inquiry were wrong. The old course of procedure was not affected by the Judicature Act. The judgment ought to have been final in the first instance.

Appeal allowed, with costs. Plaintiff to be at liberty to sign final judgment.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
Feb. 16.
} *In re* GOURLEY. *Ex parte* ORMANDY.

Liquidation—Security—Judgment—Writ of 'Elegit'—Seizure—Filing of Petition—Bankruptcy Act, 1869—*s.* 12, *s.* 16 (*subs.* 5), *s.* 87.

Appeal from the County Court at Blackburn.

A creditor obtained judgment, and issued a writ of *elegit* against the debtor for 203*l.* 8*s.* 11*d.* on June 28, under which the sheriff seized on June 30. On July 1 the inquisition by the jury under the writ was completed; but, at an earlier hour on the same day, the debtor filed a petition for liquidation, under which a trustee was afterwards appointed.

The points which arose were (1) whether the creditor had, under such circumstances, obtained a security within section 12 and section 16 (subsection 5) of the Bankruptcy Act, 1869; and (2) whether, if he had, section 87 applied to a case in which judgment was enforced by means of an *elegit* instead of a *fi. fa.*, and so deprived him of his security.

The County Court judge held that the creditor obtained no security till after the result of the inquisition; and that, whether that were so or not, section 87 did apply to an execution by means of an *elegit*, and he restrained the execution creditor from taking any further proceedings under his judgment.

The execution creditor appealed.

Mr. Winslow and *Mr. E. C. Willis* for the appellant.

Mr. De Gex and *Mr. Jordan* for the trustee.

BACON, C.J., held (1) that the creditor obtained a security by virtue of his judgment before the petition, or at any rate at the date of issuing the writ of *elegit*; and (2) that, although the consequences of so holding might be that creditors would evade section 87 by issuing writs of *elegit* instead of writs of *fi. fa.*, yet he must hold that the section did not apply to executions carried out by means of writs of *elegit*.

Appeal allowed, with costs.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 22.

COLLINS *v.* VESTRY OF PADDINGTON.

Practice—Time for appealing—Final or interlocutory Judgment—Rules of Court, Order LVIII., Rule 15.

Appeal by plaintiff, from a judgment of the Queen's Bench Division, on a special case stated by an arbitrator. The case is reported 48 Law J. Rep. Q.B. 345.

The action had been referred to an arbitrator, and the order of reference contained a clause empowering him to state a case for the opinion of the Court, on any point on which he might think it desirable to do so. The arbitrator accordingly stated a case, submitting a particular question for the opinion of the Court, which gave judgment on April 1, 1879, in favour of the defendants.

About six weeks afterwards the plaintiff appealed.

Mr. W. G. Harrison, for the defendants, took a preliminary objection, and contended that the appeal was too late; that the judgment of the Queen's Bench Division was an interlocutory judgment; and that no appeal could be brought after twenty-one days.

Mr. Seymour and *Mr. Bompas*, for the appellant, contended that the status of the parties was fixed by the judgment of the Queen's Bench Division, and, therefore, that it was final.

Their LORDSHIPS held that the appeal was too late; but reserved their judgment, and did not dismiss the appeal, in order to allow the plaintiff to make an application for extension of time, under Order LVIII., Rule 15.

HIGH COURT OF JUSTICE.

Chancery Division.
HALL, V.C.
Feb. 10, 11.

THE METROPOLITAN BOARD OF WORKS *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Metropolitan Local Management Acts—Rights of Owner outside Metropolitan Area to use Metropolitan Drain.

Action to restrain the defendants, who were the owners of land situated just outside the metropolitan area, from pouring the sewage from certain houses recently erected by them on their land into the metropolitan main drain, and so disposing of it at the cost of the metropolitan ratepayers. Prior to the year 1855, there were four ancient cottages on the land, which drained into the Stamford Brook (a parish boundary), and in that year, by 18 & 19 Vict. c. 120, this brook became vested in the Board, who covered it in, and converted it into a sewer, leaving an eyehole or communication into it for the convenience of the four cottages. The defendants, having recently built a number of houses on their land, proceeded to drain such houses through this eyehole or communication; and they claimed to be entitled so to do, on the ground that they had a natural right to drain their land into the brook, and also by virtue of section 61 of the Act of 1862 (25 & 26 Vict. c. 102), which, after enacting that no person shall make any opening into any metropolitan sewer without the consent of the Board, provides that it shall be lawful for 'any person,' with such consent, to make or branch any drain into any sewer vested in the Board on certain terms. They referred to correspondence to show that the Board had given their consent.

Mr. W. Pearson and *Mr. Everitt* for the plaintiffs.

Mr. Osborne Morgan and *Mr. Speed* for the defendants.

Mr. Yate Lee watched the case for the Willesden Local Board.

HALL, V.C., held that the words 'any person' in the Act of 1862 must be taken to mean any person entitled to participate in, and make arrangements with the Board for, the user and benefit of the Metropolitan Sewage Scheme, and did not apply to the defendants, who were not so entitled to participate; and he granted the injunction.

Chancery Division. HALL, V.C. Feb. 17. } POTTER *v.* JACKSON.

Practice — Partnership — Costs — Partnership Assets, what are.

Partnership action in which a balance of 1,620*l.* 3*s.* 5*d.* had been found due to the plaintiff, and there was a fund in Court of about 2,000*l.* which represented the whole assets. The only question was how the costs of the action were to be borne.

Mr. F. C. J. Millar and *Mr. Warrington*, for the plaintiff, contended that the costs were payable out of the assets remaining after deducting the balance due to the plaintiff, and cited *Austin* v. *Jackson*, reported in the note to *Hamer* v. *Giles* (L. R. 11 Chanc. Div. 942; s.c. 48 Law J. Rep. Chanc. 508), as an authority to that effect.

Mr. W. Pearson and *Mr. J. Beaumont*, for the defendant, contended that the ordinary rule was that the costs of a partnership action were payable, as those of an administration action, in the first instance in priority to all debts. *Hamer* v. *Giles* was an authority to that effect, and was not to be reconciled with *Austin* v. *Jackson*, which was only a decision in chambers.

HALL, V.C., held that the rule as laid down in *Austin* v. *Jackson* was consistent with good sense; and must, therefore, be adopted.

Chancery Division. HALL, V.C. Feb. 19. } HODSON *v.* THE TEA COMPANY.

Company—Debentures—Winding-up—Charge on Property of Company, when taking effect.

This was an action by a debenture holder, on behalf of himself and all other debenture holders, for a declaration that they were entitled to a charge on the property of the company. The plaintiff's debenture was in form an assignment of the stock, plant, chattels, and effects which might, from time to time, be held by the company. The principal money was payable in 1882, and the interest (half-yearly) on October 9 and April 9, the first payment (which was, in fact, made) to be on October 9, 1877. If the interest was in arrear for twenty-one days, the debenture holder was empowered to enter and sell; but, until default, the company were to be at liberty to receive and apply the assets for the general purposes of the company. The company went into liquidation in January, 1878; and, immediately afterwards, this action was brought. The only question was, at what period of time the debentures took effect as a charge.

Mr. Graham Hastings and *Mr. Bradford*, for the plaintiff, contended that the debentures took effect immediately upon the company going into liquidation and ceasing to carry on business.

Mr. Pearson and *Mr. Buckley*, for the defendants, contended that, as nothing was due and payable on the debentures at the time of the liquidation (the interest having been duly paid), they did not, by their very terms, take effect until twenty-one days from April 9, 1878.

HALL, V.C., held that the debentures took effect immediately upon the liquidation. The clause as to application of assets until default contemplated the continuance of the company; and it was impossible to suppose that the debenture holders were bound to wait until the subject-matter of their security was extinguished.

Chancery Division. HALL, V.C. Feb. 19. } *In re* RAILWAY PASSENGERS ASSURANCE COMPANY'S ACT, 1864. *In re* LISCOMBE.

Submission to Arbitration—Rule of Court—Compelling Attendance of Witnesses—Unnecessary Application.

Mr. Renshaw moved, on behalf of the representatives of Wm. Davey, deceased, that a submission to arbitration under the Railway Passengers Assurance Company's Act of Parliament of a claim against the company upon a policy might be made an order of Court. The company had required the claim to be referred, and the parties had named arbitrators; and the applicants now alleged that it was requisite, in order to compel the attendance of witnesses, that the submission should be made a rule of Court, which the Act provided might be done on the application of either party. The company's solicitor deposed that the usual course to compel the attendance of witnesses was by a judge's order, which issued upon a certificate stating the witnesses required, as under an ordinary reference.

Mr. Northmore Lawrence for the company.

HALL, V.C., considered the application unnecessary; and refused it, with costs.

Chancery Division. FRY, J. Feb. 20, 21, 23. } ROUSSILLON *v.* ROUSSILLON.

Covenant—Restraint of Trade—Foreign Judgment.

This was an action to enforce a covenant by the defendant not to establish himself, or associate himself with other persons or houses, in the champagne trade for a period of ten years.

The plaintiffs had obtained a judgment of the Tribunal of Commerce, at Epernay, restraining the defendant from breaking the covenant, and condemning him in costs and penalties.

The defendant was a Swiss subject residing in England. The French judgment was given by default. The defendant had no notice of the proceedings in France till the judgment was served upon him. The plaintiffs sought to enforce the contract directly, and also the foreign judgment. It was contended, on the part of the defendant, that the contract was void, as being against public policy, because it was unreasonable, and because its scope was not limited as to space; and that the foreign judgment could not be enforced against him.

Mr. Cookson and *Mr. S. Dickinson* for the plaintiffs.

Mr. North and *Mr. Dundas Gardiner* for the defendant.

FRY, J., held that the covenant was reasonable, and that there was no hard-and-fast rule that, over and

above the question of reasonableness, a covenant in restraint of trade must be partial as to locality; and granted an injunction. He held, also, that the judgment given in France did not come within the class of foreign judgments which it was the duty of the defendant to obey, and could not, therefore, be enforced by the Courts of this country; and, upon that part of the action, gave judgment for the defendant.

Queen's Bench Division. (*Magistrates' Case.*) Feb. 19. } WILLIAMS *v.* ELLIS.

Turnpike Toll—Carriage drawn by Steam or other Power—Bicycle.

Case stated by justices.

A private Act (3 Wm. IV. c. 55), after imposing a toll of sixpence for carriages, waggons, &c., drawn by horses or other beasts, proceeded to enact as follows:—

'And for every carriage of whatever description, and for whatever purpose, which shall be drawn or impelled, or set or kept in motion, by steam or by any other power or agency than being drawn by any horse or horses, or other beast or beasts of draught, any sum not exceeding 5*s*.'

The question argued was whether a bicycle was a 'carriage' within the above clause.

A. P. Stone, for the appellant, argued that it was, and relied upon *Taylor* v. *Goodwin*, 48 Law J. Rep. M. C. 104.

Raikes, for the respondent, was not called upon to argue.

The COURT (LUSH, J., and MANISTY, J.): The Act was clearly intended to apply only to carriages of a heavy description impelled by mechanical power. A bicycle, therefore, is no more a 'carriage' within the meaning of the statute, than a wheelbarrow or perambulator would be.

Queen's Bench Division. (*Magistrates' Case.*) Feb. 20. } MULLINS *v.* THE TREASURER OF THE COUNTY OF SURREY.

County Fund—Expenses of conveying Prisoners to Gaol—27 Geo. II. c. 3, *s.* 1—11 *&* 12 *Vict. c.* 42, *s.* 26—40 *&* 41 *Vict. c.* 21, *ss.* 4, 28, *and* 57—'*Period of Committal*'—*Prison Authority.*

This was a case, stated by consent, to raise the question as to the payment of the expenses necessarily incurred by the police officers in conveying prisoners, after conviction or committal for trial by a magistrate, to the gaol named in the warrant.

Before the passing of the Prisons Act, 1877 (40 & 41 Vict. c. 21), the expenses of conveying any person committed to gaol were directed, by 27 Geo. II. c. 3, s. 1, to be paid, if the prisoner could not defray them, by the treasurer of the county; and so, too, by Jervis's Act (11 & 12 Vict. c. 42), an order for the expenses of taking a prisoner under a warrant of commitment to the gaol mentioned in the warrant, was to be made on the treasurer of the county where the alleged offence was committed, except in Middlesex, where the order was to be on the overseers. The Act 40 & 41 Vict. c. 21, which transferred all prisons to the Secretary of State, by section 57 imposed on the latter the liability to pay such necessary expenses connected with the maintenance of a prisoner 'from the period of his committal to prison to his death or discharge, as would, if the Act had not passed, have been payable by a prison authority.' And 'prison authority' is defined, in 28 & 29 Vict. c. 126, as being the justices in quarter sessions, whose officer, for the purpose of making all payments due from such justices as a body, the treasurer of the county is.

Upon this, it was contended for the defendant that, as these expenses were payable by the treasurer of the county by virtue of 27 Geo. II. c. 3, and 11 & 12 Vict. c. 42, and he was the officer of the prison authority, it was intended to transfer the liability from him, as representing the prison authority, to the Secretary of State; and that the proviso in section 57, having reference to the prisoner defraying them when able to do so, showed that 'from the period of his committal to prison' meant from the signing of the warrant of committal by the magistrate.

For the plaintiff it was argued that those words meant from the lodgment of the prisoner in the gaol; and that the treasurer continued to be liable, because under the earlier Acts he paid the expenses, not as representing the prison authority, but because the county fund was made subject to such payment, quite irrespective of the justices in quarter sessions, or of the prison authority, whoever he might be; in London, for example, the Lord Mayor being the prison authority, while the order was always on the overseers of Middlesex.

The Solicitor-General (*Avory* with him) for the plaintiff.

Herschell (*E. Clarke* with him) for the defendant.

The COURT (LUSH, J., and MANISTY, J.) gave judgment for the plaintiff; holding that the earlier part of section 57 did not deal at all with the expenses of prisoners before their reception into prison; and that it was only the expenses after their reception—hitherto payable by the prison authority—which were transferred to the Secretary of State, and not those charged upon the overseers of Middlesex and the treasurers of other counties by 11 & 12 Vict. c. 42. This construction involved the total disregard of the proviso to section 57, to which the Court said they could give no meaning.

Queen's Bench Division. (*Magistrates' Case.*) Feb. 21. } REGINA *v.* TRUELOVE.

Obscene Books—Order for Destruction—Death of Complainant before Order—Lapse of Proceedings—20 *&* 21 *Vict. c.* 83.

This was an appeal to the Middlesex Sessions against an order made by a metropolitan police magistrate, under Lord Campbell's Act (20 & 21 Vict. c. 83), for the destruction of certain books found on the premises of Truelove (the appellant).

At the hearing of the appeal it was proved that the complainant had died after the summons was issued, but before the order in question was made by the magistrate. It was, therefore, contended that the proceedings against Truelove lapsed, as there was then no person in the position of prosecutor.

The questions reserved by the sessions were (1) whether the proceedings against the appellant lapsed upon the death of the complainant; (2) whether, if they did so lapse, the fact that the objection was not included in the appellant's grounds of appeal precluded the sessions from giving effect to the objection.

Mead for the prosecution.

Hunter and *J. M. Davidson* for Truelove.

The COURT (LUSH, J., and MANISTY, J.) held that, inasmuch as the proceedings were *quasi*-criminal in their nature, the death of the complainant created no lapse in them; but that it was the duty of the magistrate, having once issued his summons on the information, to proceed.

Order confirmed.

Queen's Bench Division. Feb. 23. } CHAPMAN *v.* THE MIDLAND RAILWAY COMPANY.

Practice—Costs on higher Scale—Rules of the Supreme Court (Costs), Order VI., Rule 2 — Special Injunction.

The plaintiff, an owner of land adjoining a railway in course of construction, sued the defendants for damages caused to his land by the contractors having, for convenience of access from the high road to the railway, trespassed upon it, and wrongfully used an occupation road across it. He also claimed, by his writ, an injunction against the repetition of the trespasses. The defendants paid 10*l.* into Court in satisfaction of the trespass, but this was not accepted. Issue having been joined, the defendants successfully resisted an application requiring them to take short notice of trial, and so the plaintiff was unable to try before the long vacation.

The acts of trespass still continuing, the plaintiff applied for an injunction, which was granted by the vacation judge. At the beginning of the Michaelmas sittings, the defendants made application to stay proceedings on their payment of a further 20*l.* into Court. This was not opposed, and the plaintiff took out the 30*l.* in satisfaction for the damage done to his land; that being, indeed, the amount claimed in the statement of claim. Thereupon, the plaintiff desired to be allowed to tax his costs, upon the higher scale, under Order VI., Rule 2, of the Rules of the Supreme Court (Costs); but the master, and on appeal from him, FIELD, J., refused to allow him to do so.

From such refusal plaintiff now appealed to the Court.

A. Wills and *R. S. Wright* for the plaintiff.

W. E. Harrison and *H. Sutton*, for the defendants, were not called on.

The COURT (LUSH, J., and MANISTY, J.) dismissed the appeal; holding that the test to be applied under Order VI., Rule 2, of the Rules of the Supreme Court (Costs), was, whether the injunction was the principal relief sought by the action. That here the nature of the trespass showed that it was not committed in the assertion of a right, nor intended to be permanent; it was of a kind which could be easily compensated for by damages; and the action was, therefore, not brought within the rule.

Queen's Bench Division. Feb. 24. } THE NATIONAL MERCANTILE BANK (LIMITED) *v.* HAMPSON.

Bill of Sale—Grantor and Grantee—Sale by Grantor of Goods—Trover.

This was a demurrer to a statement of defence.

The action was brought by the plaintiffs, as holders of a bill of sale (comprising, among other things, all the growing crops, and all the goods, chattels, and effects which there were, or thereafter should be, on or about a certain farm and premises) against the defendant, a corn merchant, for wrongfully converting to his own use a quantity of wheat comprised in the bill of sale.

The statement of defence alleged that, even if the goods sold were the plaintiffs' property, the plaintiffs, by suffering the grantor to have possession thereof, enabled him to hold himself forth as the owner, and that the grantor sold the same to the defendant who bought them in the ordinary course of his business, and without notice that they did not belong to the grantor; that the said grantor was suffered by the plaintiffs to carry on his business as a farmer and dealer in grain at the time of the sale; and that it was the ordinary course of the grantor in such business to make such sale.

The plaintiff demurred.

Lyon, for the plaintiff, supported the demurrer, and contended that the grantor had no power to part with the property in question; and that the plaintiffs, as holders of the bill of sale, were under no duty to give notice to the defendant that the said goods were the property of the plaintiffs.

R. T. Reid, for the defendant, was not called upon to argue.

The COURT (LUSH, J., and MANISTY, J.) overruled the demurrer on the ground that the grantor was not prevented by the bill of sale from carrying on his trade and selling goods in the ordinary course of business.

Demurrer overruled.

COURT OF BANKRUPTCY.

Bankruptcy. BACON, C.J. Feb. 24. } *Re* WILLIAMS. *Ex parte* JONES.

Liquidation Petition—Filed after Office Hours—Notice of Act of Bankruptcy—Execution Creditor.

This was an appeal from the Bangor County Court.

About 2.30 P.M. on May 23, two sheriff's bailiffs came to the place of business of the debtor, a builder, to make a seizure under a *fi. fa.* for less than 50*l.* The debtor, under a promise to pay, induced the bailiffs to withdraw to a neighbouring public house; but, not being able to obtain the money, he at once filed a liquidation petition. The petition was filed shortly after 4 o'clock, after the regular office hours. The debtor then returned and gave the bailiffs notice of the petition. The bailiffs, the same evening, went to the debtor's place of business and took possession.

The trustee claimed the proceeds of the execution; but the County Court judge said (1) that there had been a seizure at 2.30, before the petition was filed, and no abandonment; and (2) that he had conferred with some of his brother judges, and had agreed with them that any documents filed after 4 P.M. should be taken as filed next day; and that, therefore, in any case the second seizure (which was admitted to have been complete) had been made before the filing of the petition.

The trustee appealed.

Mr. Yate Lee for the appellant.

Mr. Bigham for the respondent.

The CHIEF JUDGE held (1) that as a question of fact there had been no seizure at 2.30; and (2) that the fact that the petition was filed after office hours could not postpone its operation to the ensuing day; and that the seizure in the evening having been made with notice of the filing of the petition was, therefore, bad against the trustee; and allowed the appeal, without costs.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
Jessel, M.R.
James, L.J.
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Feb. 18.

Re The Norwich Provident Insurance Society. Bath's Case.

Fire and Life Insurance Society—Distinct Departments—Past Fire Member—Contributory—Companies Act, 1862, *s.* 38, *sub.* 3.

Appeal from the decision of Bacon, V.C., reported 48 Law J. Rep. Chanc. 411.

The company carried on fire and life insurance, under distinct departments, with distinct shares for each class of business.

In the winding up of the company, Bath, a fire shareholder, was placed on the list of contributories as a past member.

All the existing fire shareholders were exhausted; but there were still existing solvent life shareholders.

The Vice-Chancellor held that Bath, as a past fire shareholder, was bound to pay calls made by the liquidator for the purpose of paying the liabilities of the fire department.

Hesketh, a shareholder in the same class as Bath, appealed.

Sir H. Jackson and *Mr. Romer* for the appellant.

Mr. Hemming and *Mr. Brett* for the liquidator.

Their Lordships held (reversing the decision of the Vice-Chancellor) that, until the existing solvent life shareholders were exhausted, no call could be made on past fire members.

Court of Appeal.
James, L.J.
Brett, L.J.
Cotton, L.J.
Feb. 19.

Re Shand & Co. *Ex parte* Corbett.

Bankrupt Firm—Lease—Disclaimer by Trustee—Proof by Lessor against separate Estates—The Bankruptcy Act, 1869, *ss.* 23, 37.

In this case the lease of the partnership premises was vested in the four partners, who entered into the usual joint and several covenants of lessees.

One partner died, and the three remaining partners carried on the business and subsequently became bankrupt. The same person was appointed trustee of the joint estate of the firm and of the separate estates of the partners.

The trustee having disclaimed the lease, the lessor claimed to prove for loss of rent and dilapidations against the joint and separate estates.

Mr. Registrar Pepys, acting as Chief Judge, held that the lessor had no right of proof against the separate estates, but was entitled to prove against the joint estate.

The lessor appealed.

Mr. H. A. Giffard (*Mr. Higgins* with him) for the appellant.

Mr. J. Pearson and *Mr. Finlay Knight* for the trustee.

Their LORDSHIPS held that the lessor had no right of proof against the joint estate under section 37 of the Bankruptcy Act, 1869; but had, under section 23, a right of proof against the separate estates of the partners.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
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Feb. 23.

Re HOOPER. *Ex parte* BANCO DE PORTUGAL.

Bankruptcy—Pending Appeal to House of Lords—Application to Court of Appeal to rehear their Decision—Jurisdiction—The Bankruptcy Act, 1869, *s.* 71—*The Judicature Act*, 1873, *ss.* 4, 16—*The Judicature Act*, 1875, *s.* 9.

In this case the Banco de Portugal had appealed, to the House of Lords, from the decision of the Court of Appeal in Bankruptcy. See *In re Hooper, ex parte Banco de Portugal*, 48 Law J. Rep. Bankr. 73.

Mr. Cookson and *Mr. S. Woolf*, for the appellants, now applied, by special leave, to the Court to rehear, *pro formâ*, their decision, in order that a document, most material to their case, might be recited in the order under appeal; and submitted that the Court, as a Court of Bankruptcy, had jurisdiction, under section 71 of the Bankruptcy Act, 1869, to do so.

Mr. De Gex and *Mr. M'Coll, contrà*, were not heard.

Their LORDSHIPS held that, assuming they had jurisdiction to rehear their orders for the purpose of correcting accidental slips and omissions; and assuming also that they had power to rehear under section 71 of the Bankruptcy Act, 1869, upon fresh evidence (but upon this they declined to give any opinion); they would not rehear an order for the purpose of introducing into it, as part of the evidence before them, that which was not before them; and which, as it appeared, might have been tendered in evidence before them.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
COTTON, L.J.
Feb. 18, 25.

THE ALINA.

Procedure—Action 'in rem'—Breach of Charter-party—Jurisdiction of County Court—The County Courts Admiralty Jurisdiction Act, 1869, *s.* 2.

Appeal from the decision of the Exchequer Divisional Court (affirming the decision of the County Court) that the County Court, under section 2 of the County Courts Admiralty Jurisdiction Act, 1869, had only jurisdiction to try and determine causes which were within the original jurisdiction of the Admiralty Court; and, therefore, had no jurisdiction to try an action *in rem* for breach of a charter-party.

Mr. Cohen and *Mr. Aspinall*, for the appellants, relied on *The Cargo ex Argos*, 42 Law J. Rep. Adm. 1; L. R. 5 P.C. 134.

Mr. Herschell and *Mr. Wood Hill, contrà*, relied on *Simpson* v. *Blues*, 41 Law J. Rep. C.P. 121; L. R. 7 C.P. 290; *Gunnested* v. *Price*, 44 Law J. Rep. Exch. 44; L. R. 10, Exch. 65.

Their LORDSHIPS, following *The Cargo ex Argos* (*supra*), held that the County Court had jurisdiction under section 2 of the Act to try and determine actions *in rem* for breach of charter-party, notwithstanding that the Admiralty had not original jurisdiction in such matters.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
COTTON, L.J.
Feb. 25.

DICKS *v.* BROOKS.

Rules of Court, 1875—*Order LVIII., Rule* 5 — *Fresh Evidence on Appeal—'Vivâ voce' Evidence.*

This was an application, by motion by the plaintiff, for leave to adduce fresh evidence on the hearing of the appeal by subpœnaing witnesses.

The plaintiff gave special notice of motion to the defendant.

Mr. Whitehorne and *Mr. Oswald* for the plaintiff.

Mr. Ingham, for the respondent, objected that a special notice of motion was improper; that, according to *Hastie* v. *Hastie*, 45 Law J. Rep. Chanc. 288; s.c. L. R. 1 Chanc. Div. 562, the proper course was to give notice to the other side that, on the hearing of the appeal, he would apply for leave to produce the new evidence.

Their LORDSHIPS gave the leave asked for by the plaintiff; and held that the rule laid down in *Hastie* v. *Hastie* applied to cases where the new evidence was affidavit or documentary evidence, and not to cases where, as here, such new evidence was to be given *vivâ voce* by persons subpœnaed, in which case a special application for leave, by motion, was necessary.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 26.

HINCHCLIFFE *v.* BARWICK.

Sale of Horses—Conditions of Sale—Warranty—Condition that Horses sold shall be returned within a given Time, if unsound—Construction of—Breach of Warranty—Purchaser's Remedy.

Appeal from an order of POLLOCK, B., overruling a demurrer to a statement of defence.

In answer to a statement of claim for damages for the defendant's breach of a warranty that a horse sold by him to the plaintiff was a good worker, the statement of defence alleged that the horse was sold by the defendant to the plaintiff as being the highest bidder for it at a public auction, subject to conditions of sale, containing the following condition: 'Horses warranted quiet in harness, or quiet to ride, or good workers . . . not answering such warranty, must be returned before five o'clock on the day after the sale; shall then be tried by a competent person to be appointed by the proprietor of this establishment, and the decision of such person shall be final; the expenses of time—viz. 10s.—shall be paid by the party in error. Horses returned not answering the warranty, will be charged for at the rate of 5 per cent. upon the sum realised at sale;' that, even if the horse was warranted at the sale to be a good worker (which the defendant denied), the plaintiff did not return the horse before five o'clock on the day after the sale, in compliance with the condition.

The plaintiff demurred to this defence, on the ground that the condition only related to the return of the horse, and did not debar the purchaser from claiming damages for any breach of warranty.

Mr. Digby Seymour and *Mr. Bray* for the plaintiff.

Mr. Charles and *Mr. C. Hall* for the defendant.

Their LORDSHIPS affirmed the decision of Pollock, B., and held the demurrer bad; being of opinion that, in the absence of fraud, the purchaser's only remedy for breach of warranty was that given by the condition; and, therefore, that he could not maintain the action.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 27, 28. March 1.

WAGSTAFF AND OTHERS *v.* ANDERSON AND OTHERS.

Shipping—Charter-party—Master when not Agent of Charterer.

Appeal from the Common Pleas Division (reported 48 Law J. Rep. C.P. 759).

The defendants chartered a ship; and shortly after, by an agreement in which they described themselves as acting for the owners of the ship, agreed to receive on board a cargo. The cargo was shipped, and the master signed bills of lading. The ship met with bad weather, put into port, and was condemned. The master, without communicating with the plaintiffs, sold the cargo.

In an action against the defendants for the value of the cargo, the jury found that the sale was unjustifiable; but DENMAN, J., holding that the master was not acting as the servant of the defendants, gave judgment for the defendants.

The plaintiffs appealed.

Mr. W. Williams and *Mr. A. L. Smith* for the plaintiffs.

Mr. Butt, *Mr. Brett*, and *Mr. Mathers*, for the defendants, were stopped by the Court.

Their LORDSHIPS affirmed the judgment of the Common Pleas Division.

Court of Appeal.
LORD COLERIDGE, C.J.
BRAMWELL, L.J.
THESIGER, L.J.
March 2.

THE PRISON COMMISSIONERS *v.* THE CORPORATION OF LIVERPOOL.

Reformatory Schools Act, 1866 (29 & 30 *Vict. c.* 117), *s.* 23—*Prison Act*, 1877 (40 & 41 *Vict. c.* 21), *ss.* 4, 57—*Expenses incurred in Maintenance of Prisoners—Prison Authorities—Liability to provide Clothing for Prisoner sent to a Reformatory.*

This was an appeal from the judgment (reported 48 Law J. Rep. Q.B. 436) of the Queen's Bench Division, on a special case.

By the Prison Act, 1865 (28 & 29 Vict. c. 126), *s.* 5, the council of a borough is made the 'prison authority' for a borough prison.

By the Reformatory Schools Act, 1866, *s.* 14, certain offenders under the age of sixteen, sentenced by a magistrate for a term of ten days' imprisonment, or longer, may also be sent, at the expiration of the imprisonment, to a certified reformatory school for not less than two, and not more than five, years. By section 23, the expense of providing proper clothing, requisite for the offender's admission into the school, shall be defrayed by the prison authority within whose district he has last been imprisoned.

By the Prison Act, 1877, all prisons are vested in a Secretary of State, and the general regulation thereof in prison commissioners. By section 4, all expenses incurred in the 'maintenance' of prisoners shall be defrayed out of moneys provided by Parliament; and, by section 57, 'maintenance' includes all such necessary expenses incurred in respect of a prisoner for clothing, safe conduct, and removal from one place to another, from the period of his committal to prison until his discharge or death, as would, if the Act had not passed, be payable by a prison authority.

The corporation of Liverpool were the prison authority of the borough prison of Liverpool until the passing of the Act of 1877; and the special case raised the question whether, in the case of an offender imprisoned in the borough prison, and sent to a reformatory school after the passing of the Act, the corporation were liable to pay to the prison commissioners the expense of supplying requisite clothing for his admission to the reformatory school.

The Queen's Bench Division gave judgment for the defendants.

The Attorney-General and *Mr. A. L. Smith* appeared for the plaintiffs.

Mr. Herschell and *Mr. R. S. Wright* for the defendants.

Their LORDSHIPS affirmed the decision of the Queen's Bench Division; holding that the expense of supplying the clothing was an expense incurred for the 'maintenance' of a prisoner, and, also, an 'expense of removal,' for which the prison commissioners were liable under the Prison Act, 1877.

HIGH COURT OF JUSTICE.

Crown Case Reserved.
Feb. 28.

REGINA *v.* CRAMP.

Coram LORD COLERIDGE, C.J., DENMAN, J., POLLOCK, J., FIELD, J., and STEPHEN, J.

Abortion—Attempt to procure—Noxious Thing—24 & 25 Vict. c. 100, *s.* 58.

Case reserved by DENMAN, J., at the Maidstone Winter Assizes.

The prisoner was tried on an indictment, which alleged that he did unlawfully cause to be taken by one Ellen Verrall, a certain noxious thing—to wit, half an ounce of oil of juniper—with intent feloniously to procure the miscarriage of the said Ellen Verrall. It was proved that the prisoner did, with intent to procure the miscarriage of Verrall, give her an ounce bottle full of oil of juniper, and tell her that she must take it, half of it at a time, in two doses. She, accordingly, took half the contents of the bottle, which caused violent sickness.

There was evidence that the bottle given by the prisoner contained 500 to 600 drops of oil of juniper; that oil of juniper in small quantities of from 5 to 20 drops is commonly used without any bad effect as a diuretic, but that taken in a dose of half an ounce it acts as a powerful stimulant and irritant, and produces violent purging and vomiting, which would have a tendency to produce miscarriage by reason of the shock to the system and the straining of the parts consequent upon the purg-

ing or vomiting; and that a dose of half an ounce of oil of juniper would be a very dangerous dose to administer to a pregnant woman, and that such danger would consist in the high probability of its causing miscarriage.

The question reserved for the opinion of the Court was whether there was evidence that the half ounce of oil of juniper taken by Ellen Verrall was a noxious thing within the meaning of section 58 of 24 & 25 Vict. c. 100.

D. Kingsford for the prisoner.

A. B. Kelly for the prosecution.

HELD, that there was evidence that the half ounce of oil of juniper was a noxious thing within the meaning of the section, and that anything which was harmful as administered was a noxious thing within the meaning of the Act.

Conviction affirmed.

Chancery Division. Jessel, M.R. Feb. 23. } MAYOR OF LONDON *v.* RIGGS.

Easement—Way of Necessity—Extent of Reservation.

In this case a question was argued whether a way of necessity entitled the grantor of the land over which the way was required to a right of way necessary only for the purposes for which the land was used at the time of the grant, or to a general right of way.

Mr. Chitty, Mr. Davey, Mr. W. R. Fisher, and *Mr. H. A. Giffard* for the parties.

The MASTER OF THE ROLLS said there was no authority on the point; and held, on principle, that the way of necessity presumed to be reserved to the grantor of land was only such a right of way as was necessary, having regard to the mode in which the land was used at the time of the grant by him.

Chancery Division. Jessel, M.R. Feb. 24. } RIGBY *v.* CONNOL.

Trades Union Act, 1871, *s.* 4—*Construction—Right of Member to sue.*

In this case, a member of a trade union, on expulsion for breach of its rules, claimed a declaration that he was entitled to participate in the benefits of the union, and an injunction to restrain the committee of the union from excluding him. A preliminary objection was taken that the Court could not entertain the action.

Mr. Ince and *Mr. J. T. Edwards* for the plaintiff.

Mr. Chitty and *Mr. C. Crompton* for the defendants.

The MASTER OF THE ROLLS was of opinion that section 4 of the Trades Union Act, 1871, did not give the plaintiff a right to sue in respect of any application of the funds of the union for his benefit; and that, independently of the Act, the union was an illegal society; and that the Court would not assist the plaintiff in enforcing the illegal contract contained in its rules. He, therefore, dismissed the action, with costs.

Chancery Division. Jessel, M.R. March 1. } MATTHEWS *v.* WHITTLE.

Married Women's Property Acts—Action for Wife's Debt contracted before Marriage—Receipt of Assets by Husband.

Demurrer.

The statement of claim alleged that the plaintiff lent to the defendant, Esther Whittle—then Dearle, spinster—a sum of 100*l.*, repayable on demand, with interest. Esther Dearle, in 1877, married the defendant, A. B. Whittle. The claim stated that the debt remained unpaid notwithstanding repeated applications for payment, and asked that the defendants might be ordered to repay the same, and for ancillary relief. The defendant, A. B. Whittle, demurred, on the ground that the claim did not allege that he had received any of his wife's property on marriage.

Mr. J. Beaumont for the demurrer.

Mr. Stirling for the plaintiff.

The MASTER OF THE ROLLS held that such an allegation was unnecessary; and overruled the demurrer.

Chancery Division. Malins, V.C. Feb. 26. } *In re* THE DIAMOND FUEL COMPANY. *Ex parte* MITCALFE.

Winding up—Shareholder—Director—Writ of Attachment—Debtors Act, 1869 (32 & 33 *Vict. c.* 62, *s.* 4)—*Debtors Act*, 1878 (41 & 42 *Vict. c.* 54, *s.* 1).

This company was formed in January, 1873; and the articles of association provided that the company should adopt an agreement dated November 15, 1872, whereby Barker and Clare agreed to sell certain patents and property to the company for 15,000*l.* in cash, and the allotment to them of 8,200 fully paid up shares in the company; and the articles nominated five persons as the first directors of the company (in addition to Barker and Clare), one of whom was Mitcalfe, who had signed the memorandum of association for 200 shares. He continued to be a director of the company till the winding-up order was made in February, 1879. The 15,000*l.* was paid to Barker and Clare, and the 8,200 shares were allotted, 4,100 to Barker, and 4,100 to Clare. In March, 1873, Barker transferred 170 of his shares, and Clare transferred 940 of his shares, to Mitcalfe—in each case for a nominal consideration. The whole of the shares, 1,110 in number, were registered in Mitcalfe's name, but he never paid anything in respect of them to the company. At the date of the winding up, 855 of the shares remained registered in his name; the remaining 255 he had transferred, some for value, and the rest for a nominal consideration. The liquidator took out two summonses—one relating to the 855 shares, and the other to the 255 shares—asking that Mitcalfe might be ordered to pay the full nominal value of all the shares; and in July, 1879, Mr. Justice Fry held that he was liable to pay the full nominal value; and that decision was affirmed by the Court of Appeal in November of the same year (L. R. 13 Chanc. Div. 169).

Mitcalfe not having paid the money (5,550*l.*), which he had been ordered to pay, this was a motion on the part of the official liquidator, that, for default of judgment, he might be committed to prison, unless he paid the money due from him.

Mr. Glasse and *Mr. Seward Brice*, in support of the motion, asked that Mitcalfe might be ordered to attend for cross-examination.

Mr. Higgins and *Mr. Everitt*, for Mitcalfe, took the preliminary objection that he could not be committed for non-payment of the money, on the ground that the money was not in his possession or under his control, within the meaning of the Debtors Acts, 1869 and 1878.

MALINS, V.C., decided that, under the circumstances

of the case, Mitcalfe did not stand towards the company in a fiduciary character, and that he had been ordered to pay the money simply as a shareholder, and that the money was not in his possession or under his control within the meaning of the Act.

Chancery Division. HALL, V.C. Feb. 26. } ECCLESIASTICAL COMMISSIONERS *v.* KING.

Ancient Lights—Plaintiffs' Site vacant—Interlocutory Injunction.

This was a motion for an injunction to restrain the defendant, until the trial, from erecting opposite to the site of the late church of St. Dionis Backchurch any buildings obstructing the light which would come to the windows of the buildings to be placed upon that site, so far as such windows comprised ancient lights enjoyed with the building formerly thereon.

The church had been demolished, and the new buildings upon its site were not yet erected. A record had, however, been preserved of the position of the lights of the church.

Mr. Graham Hastings and *Mr. Borrett* for the plaintiffs.

Mr. Wm. Pearson and *Mr. Solomon* for the defendant.

HALL, V.C., said that the application was a novel one; but, it being impossible to ascertain that there would be in the plaintiffs' new buildings any ancient light, it could not be acceded to.

Motion refused; costs to be costs in the action.

Chancery Division. HALL, V.C. Feb. 28. } *In re* TRADE MARKS REGISTRATION ACTS. *In re* DUGDALE AND BROTHERS' APPLICATION.

Trade Marks Registration Acts—Cotton Marks—Distinctiveness—Written Characters—Committee of Experts.

The applicants moved for a direction to the registrar to proceed with their application for registration of two marks for cotton goods in class 24, notwithstanding that the committee of experts had placed the marks in class 2. The marks were (1) a bird (called a Chinese phœnix) sitting on a bough, with Chinese writing underneath; (2) a demi-griffin, with wings erect, and a cross moline on the breast. The committee rejected the marks, on the ground that they were not distinctive, many applications being before them for marks in their opinion similar. Since the decision of the committee four applications for devices resembling (1), but without the writing, had been withdrawn, and the applicants now gave evidence of long and exclusive user of both marks.

Mr. Hastings and *Mr. E. S. Ford* for the applicants.

Mr. Rigby for the registrar.

HALL, V.C., made an order in terms of the application. He considered the writing an important matter with regard to the first mark; and held generally that it was the duty of the Court to form its own opinion as to the correctness of the conclusion come to by the committee; and, upon the facts before it, as to the fitness of the marks for registration.

Queen's Bench Division. Feb. 24. } THE NATIONAL MERCANTILE BANK *v.* JOHN HAMPSON.

Bill of Sale—Trader—Grantor and Grantee—Implied License to carry on Business—'Bona fide' Purchase of Goods comprised in Bill of Sale—Growing Crops.

This was a demurrer to a statement of defence.

The statement of claim alleged that the plaintiffs were the holders of a bill of sale dated January 13, 1879, and duly registered, comprising, amongst other things, all the growing crops, and all the goods, chattels, and effects which then were, or thought should be, on or about the farm lands and premises of one Samuel Seaman; and that the defendant, a corn merchant, on or about October 2, 1879, wrongfully converted to his own use and deprived the plaintiffs of the use and possession of a quantity—namely, twelve quarters, or thereabouts—of wheat, comprised in the said bill of sale. Paragraph 4 of the defendant's statement of defence was as follows:—

'4. If the goods so sold were the plaintiffs' property, the defendant says that the plaintiffs suffered Seaman to have possession thereof, and enabled him to hold himself forth as having not only the possession but the property in the same; and that he sold the same to the defendant, who bought them in the ordinary course of his business, and without any notice that they did not belong to the said Seaman. The said Seaman was suffered by the plaintiffs to carry on his business as a farmer and dealer in grain at the time of the sale, and it was the ordinary course of the said Seaman in such business to make such sales.'

The plaintiffs demurred to paragraph 4 of the statement of defence; and

Lyon, for the plaintiffs, appeared in support of the demurrer. The goods sold were comprised in the bill of sale, of which the plaintiffs were the holders; the grantor therefore had no power to sell them to the defendant. The plaintiffs had no right to prevent the grantor from carrying on his business, and were under no duty to give notice that the goods were the property of the plaintiffs. He cited *Corkran* v. *Ryman*, 40 L. T. (N.S.) 744.

R. T. Reid, for the defendant, was not called upon to argue.

The COURT (LUSH, J., and MANISTY, J.): This demurrer must be overruled. The bill of sale clearly did not disentitle the grantor to sell in the ordinary course of his business. There is an implied license to a trader who gives a bill of this kind to carry on his trade; consequently the plaintiffs have no *locus standi*.

Judgment for the defendant.

Common Pleas Division. Dec. 17. } MIDDLETON AND OTHERS (PETITIONERS) *v.* SIMPSON (RESPONDENT).

Municipal Election—Qualification of Candidate—Conclusiveness of Register.

Case reserved by commissioner under the Corrupt Practices (Municipal Elections) Act, 1872.

On the trial of an election petition, for the purpose of ascertaining whether the respondent had been duly elected a town councillor for the West Derby ward, in the borough of Liverpool, holden on November 1, 1879, it was proved that the respondent was on that date enrolled on the burgess list for the said borough, in respect of a dwelling-house in the said ward; but that he had never occupied the said house, as required by the Act of Parliament in that behalf, and was therefore not duly qualified to be on the burgess list.

The question of law reserved for the Court was, whether the burgess list and roll were conclusive.

Gully (*Edward Pollock* with him), for the respondent, contended that the Municipal Elections Act (5 & 6 Wm. IV. c. 76, s. 28), by which no person should be qualified to be elected a councillor unless entitled to be on the burgess list of the borough, under which it had been held that a person qualified to be on the burgess roll, though not on, was 'entitled to be on the list' within the meaning of the section (*Regina* v. *Dixon*, 19 Law J. Rep. Q.B. 363), was now superseded by 38 & 39 Vict. c. 40, s. 1, subs. 2, by which 'every person nominated shall be enrolled on the burgess roll of the borough.' And that the effect of the later statute was that, in the present case, the burgess list was conclusive of the qualification of the respondent.

Channell (*W. R. Kennedy* with him) for the petitioners.

The COURT (LORD COLERIDGE, C.J., GROVE, J., and LINDLEY, J.) held that the later statute was not inconsistent with the earlier; and that the effect of the two statutes was that the candidate must be on the list as well as qualified to be on the list; and that, therefore, the list was not conclusive.

Judgment for the petitioners.

Common Pleas Division. Feb. 20. } NEWMAN *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

Practice—Reference to Court by a Judge at Chambers—Lapsed Motion.

In this case, the verdict being only for 15*l.*, the master refused to tax the plaintiff's costs. The plaintiff, contending that the action was one in tort and not contract, applied by summons to FIELD, J., at chambers, for an order to direct the master to tax the plaintiff's costs; and, on the hearing of such summons, that learned judge, on July 4 last, referred the matter to this Court. Nothing further was done until January of this year, when notice of motion to this Court was given to the defendant. By consent the motion stood over from January until the first sitting of the Court after the assizes.

Finlay now moved accordingly for an order for the master to tax the costs.

Willis objected that the motion was too late.

Finlay contended that there was no rule as to time in a case like this; and that, if this motion was not now heard, a fresh summons to tax would have to be taken out, and to be again heard and referred by the judge to the Court.

The COURT (LORD COLERIDGE and LINDLEY, J.) held that it must be treated as a lapsed motion; and that the plaintiff must, therefore, begin again.

Willis then applied for the defendants' costs of appearing in pursuance of the notice of motion.

The Court refused, as the motion was a lapsed one.

No order.

Common Pleas Division. Feb. 23. } BENNETT *v.* LORD BURY AND OTHERS.

Practice—Staying several Actions on the Application of the Plaintiff until one had been tried as a Test Action.

This was one of thirty-eight actions brought against the same defendants, who were directors of the Colonial Trust Corporation Company, by various plaintiffs, who were persons who had deposited moneys with the company for investment; and the plaintiffs alleged in these actions that the defendants had afterwards received the moneys from these investments, and had applied them to their own use, instead of applying them according to the articles of association.

The plaintiff, wishing that one action should be first tried as a test action, got an order from FIELD, J., at chambers, staying all further proceedings in the present and the other actions until one of them—viz. *Hull* v. *Lord Bury and Others*—had been tried.

Herschell and *Reginald Brown*, for the defendant Montgomery, and *Lumley Smith*, for the defendant Lord Bury, applied to set aside such order, as, the defendants being sued for a personal liability, and not in their character of directors, the evidence in one action would be different from the evidence in the others, and the question in each would not necessarily be the same; and the defendants objected to all the other actions against them being suspended thus indefinitely.

Butt and *J. C. Mathew* appeared for the plaintiff, but were not called on.

The COURT (LORD COLERIDGE, C.J., and LINDLEY, J.) held that the judge had the power to make such order; and that it was rightly made.

Order affirmed.

Common Pleas Division. Feb. 26. } PORTER *v.* DREW AND ANOTHER.

Landlord and Tenant—Implied Covenant—Under Lessee.

Statement of claim, that the defendants leased to the plaintiff a messuage and nursery ground for a term of six and a quarter years less the last three days, by a deed containing a covenant 'that the lessee will, at the expiration of the said term, deliver up to the lessors the said premises and all landlord's fixtures which may, at any time during the said term, be in or about the same.'

That the plaintiff erected greenhouses and other trade fixtures upon the nursery grounds, relying on the said express provision in the said covenant to deliver up to the lessors all landlord's fixtures to the exclusion of trade fixtures, and upon the implied covenant of the lessor that the plaintiff should be at liberty to remove during the continuance of the said term the said fixtures, and that they (the defendants) had not, at the time of the execution of the said lease, entered into covenants or done anything inconsistent with the right of the plaintiff to remove trade fixtures annexed by him to the nursery ground during the said term.

That the defendants were themselves tenants of the said premises under a superior lease, which contained a covenant by the lessees to deliver up, at the expiration of the term, all landlord's fixtures and trade fixtures.

That the plaintiff, shortly before the expiration of his term, sold the said greenhouses; but the reversioner commenced an action against him and obtained a perpetual injunction restraining the plaintiff from removing the said trade fixtures, whereby, &c.

Demurrer.

Alfred Wills argued in support of the demurrer.

R. V. Williams, contrà.

GROVE, J., held that the implied covenant, relied on by the plaintiff, did not arise from the express covenant in the lease; and allowed the demurrer.

Judgment for the defendants.

Common Pleas Division. Feb. 26. FOSTER AND OTHERS (APPELLANTS) *v.* MEDWIN AND OTHERS (RESPONDENTS).

Parliament — County Votes — Alteration of Parish Boundary—Borough Boundary unaffected—Divided Parishes and Poor Law Amendment Act, 1876.

Case stated by the revising barrister for the borough of Horsham in accordance with a rule granted pursuant to 41 & 42 Vict. c. 26, s. 37. The appellants claimed to vote for the Parliamentary borough of Horsham in respect of property situated in a detached part of the parish of Sullington, called Broadbridge Heath, which, though locally within the parish of Horsham, was within the Parliamentary borough of New Shoreham, as defined by the Reform Act, 1832. Previous to the revision of the lists, the Local Government Board had in pursuance of the powers granted by the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ordered that Broadbridge Heath should cease to be part of the parish of Sullington, and should be amalgamated with the parish of Horsham.

By section 1 of that Act, where any parish shall be divided so as to have its parts isolated in some other parish, the Local Government Board may [after duly complying with the provisions of the Act] make an order either for constituting separate parishes out of the divided parish, or for amalgamating some of the parts thereof with the parish in which the same may be locally included or annexed.

By section 4: Nothing herein contained shall alter the boundaries of any municipal borough; and for the purposes of the election of members of Parliament and of burgesses in municipal boroughs, of the jury lists, of the action of justices, and of the police and constables, the parishes shall continue to be deemed unaltered until new lists are made and new constables are appointed.

New lists of voters had been duly made, and new constables had been duly appointed, for the parish of Horsham; and the appellants, who had hitherto voted for the borough of New Shoreham, now claimed to vote instead for the borough of Horsham, on the ground that the property in respect of which they voted had ceased to be within the Parliamentary borough of New Shoreham, and was now within the Parliamentary borough of Horsham.

The revising barrister disallowed the claim, and refused to grant a case.

The appellants, being dissatisfied with the decision, obtained a rule *nisi*, under section 37 of 41 & 42 Vict. c. 26, calling on the revising barrister to show cause why he should not state a case for the opinion of the Superior Court.

This rule was on a future day made absolute.

A. L. Smith for the appellants.

Goldie for the respondents.

J. F. Clerk for the returning officer.

The COURT (LORD COLERIDGE, C.J., and LINDLEY, J.) held that the Divided Parishes and Poor Law Amendment Act, 1876, did not apply to Parliamentary franchise; and that the alteration of the boundaries of the parish of Horsham by the Local Government Board did not interfere with the boundary of the Parliamentary borough of New Shoreham so as to transfer the votes of the appellants from one borough to the other.

Decision affirmed.

Common Pleas Division. (*Magistrates' Case.*) Feb. 27. WHITE (APPELLANT) *v.* FOX AND ANOTHER (RESPONDENTS).

Justices—Assault and Battery—Summary Jurisdiction—Ouster of Jurisdiction—'Mens rea'—24 & 25 Vict. c. 100, ss. 42, 46.

The respondents were summoned before the justices, under 24 & 25 Vict. c. 100, s. 42, for unlawfully assaulting the appellant.

The appellant, who was a tenant farmer, was asked by the two respondents (who were the gamekeepers of the appellant's landlord) to give up his bag containing nets and rabbits, the appellant being found engaged in catching rabbits on the land he occupied as tenant, and which the respondents insisted he had no right to do, as by the terms of his holding rabbits were reserved to the landlord. The appellant refusing to deliver up his bag, the respondents attempted to seize it, and in the struggle to do so knocked off the appellant's hat, and committed the assault complained of. The justices were of opinion that the respondents acted in the *bona fide* belief that they had a right to do what they did, and that, therefore, the jurisdiction of the justices was ousted; and they accordingly dismissed the summons.

The appellant appealed.

Bompas for the appellant.

Charles (*Pitt Lewis* with him) for the respondents.

The COURT (LORD COLERIDGE, C.J., and LINDLEY, J.) held that the justices were wrong; and that the jurisdiction to decide the complaint under section 42 of 24 & 25 Vict. c. 100, was only ousted by a question arising as to the title to land, which did not arise in this case.

Case remitted to the justices.

Common Pleas Division. (*Magistrates' Case.*) Feb. 27. ARKWRIGHT (APPELLANT) *v.* EVANS (RESPONDENT).

Mine—Fencing Shaft of abandoned Mine—Owner—Person interested in Minerals—Lessee—Duchy of Lancaster—Metalliferous Mines Regulation Act, 1872 (35 & 36 *Vict. c.* 77).

The question in this case was whether the appellant was interested in the minerals of an abandoned mine, so as to be liable to fence the shafts under section 13 of 35 & 36 Vict. c. 77. The Duchy of Lancaster were the owners of the mine, which was regulated by a local statute, under which every one of the public had a right to work it on paying certain dues. The appellant was the lessee, under a lease from the Duchy, by which, in addition to a rent of 5*s.* a year, there was reserved to the Duchy all the dues which the appellant should receive from the persons who worked the mine; so that, in fact, the appellant had no pecuniary interest in the matter.

The justices having convicted the appellant, he appealed.

Herschell (*M'Leod* with him) for the appellant.

Dugdale (*Gilbert-Kennedy* with him) for the respondent.

The COURT (LORD COLERIDGE, C.J., and LINDLEY, J.) held that the appellant was not owner or other person interested in the minerals of the mine within the meaning of sections 13 and 41 of the Metalliferous Mines Regulation Act, 1872, assuming that that Act did apply to Crown mines (which was doubtful).

Decision reversed.

Common Pleas Division. Feb. 27. } SMITH *v.* MORGAN.

Administration—Judgment Creditor—Priority—Judicature Act, 1875, *s.* 10.

The question was whether a judgment creditor was entitled to priority in the administration of an intestate's estate, he having obtained his judgment before the decree for the administration. The judgment was not registered; but it was held, before the Judicature Acts, in *Williams* v. *Williams*, 42 Law J. Rep. Chanc. 158, that such a creditor was entitled to priority; and the question now was whether section 10 of the Judicature Act, 1875, had made any difference.

The judge of the County Court of Glamorganshire held that the creditor was entitled to priority, he not being a secured creditor within the meaning of section 10.

The case came now by way of appeal on a rule to show cause why this decision should not be reversed.

Finlay showed cause.

J. P. Aspinall in support of the rule.

LINDLEY, J. (LORD COLERIDGE, C.J., concurring) held that the County Court judge was right.

Rule discharged.

COURT OF BANKRUPTCY.

Bankruptcy. BACON, C.J. Feb. 24. } *Re* WESTRAY. *Ex parte* MORRISON.

Mortgage of House and Furniture—Deed not registered—Possession of Tenant—'Apparent Possession' of Mortgagor—Bills of Sale Act, 1854 (17 & 18 *Vict. c.* 36) *s.* 7.

By a deed, dated June 22, 1877, J. Westray mortgaged a freehold house and furniture to Mrs. Morrison to secure 3,000*l.* and interest; and Westray, who remained in possession, thereby attorned to Mrs. Morrison. This deed was not registered under the Bills of Sale Act. In February, 1879, J. Westray let the house furnished to a tenant for six months, from May 1, 1879, at a rent of 260*l.*, it being arranged between J. Westray, Mrs. Morrison, and the tenant, that the latter should pay 60*l.* of the rent to Mrs. Morrison. The tenant took possession accordingly, and paid J. Westray 200*l.* for the proportion of the rent payable to him in advance. J. Westray filed a liquidation petition on June 30, and the County Court judge held that the trustee was entitled to the furniture as having been in the apparent possession of the bankrupt.

Mrs. Morrison appealed. The question was, whether the furniture was in the 'apparent possession' of the bankrupt within the Bills of Sale Act, 1854, s. 7.

Mr. Winslow and *Mr. Creed* for the appellant.

Mr. Roxburgh and *Mr. Finlay Knight* for the respondent.

Mr. Winslow in reply.

The CHIEF JUDGE said that, on the tenant going into possession, the furniture ceased to be in the possession, or apparent possession, of the bankrupt, and that Mrs. Morrison was, therefore, entitled to hold it against the trustee; and allowed the appeal, with costs.

Bankruptcy. BACON, C.J. Feb. 25. } *Re* GREAVES. *Ex parte* WHITTON.

Practice—Time for appealing—Twenty-one Days from Date when Order pronounced—Bankruptcy Rules, 1870, *Rule* 143.

This was an appeal from an order of the judge of the Sheffield County Court, by which the judge gave the appellant leave to take off the proceedings in the bankruptcy his proof of debt, and to file a new proof of debt, subject to certain conditions. The appellant appealed because he was dissatisfied with the conditions subject to which he obtained leave to file his new proof.

The order was pronounced on October 30, 1879; but not signed and sealed till December 8. The registrar dated the order October 30. Notice of appeal was served, and the appeal entered on December 9.

Mr. De Gex and *Mr. Robson*, for the appellant: We take the preliminary objection that, by rule 143, the appeal is too late, not having been brought within twenty-one days from the date when the order was pronounced and dated.

Mr. Hemming and *Mr. West*, for the appellant: The twenty-one days ought to be calculated from the date when the order was drawn up and signed. It was the duty of the registrar to date the order on the day when it was signed and sealed; and it is sufficient if the appeal is brought within twenty-one days from the date of the order whenever it was pronounced. We ought not to be prejudiced by the mistake of the registrar in dating the order wrongly.

The CHIEF JUDGE: It is the settled bankruptcy practice that the appeal must be entered within twenty-one days from the date when the order is pronounced. The order, as the date shows, was pronounced on October 30. The objection must prevail; and the appeal be dismissed, with costs.

Bankruptcy. BACON, C.J. March 1. } *Ex parte* BRAMBLE. *Re* TOLEMAN AND ENGLAND.

Liquidation—Solicitor's Lien—Production of Deed.

Appeal from the Bristol County Court.

The appellant had been the solicitor of the debtors, and had prepared their deed of partnership; afterwards, as their solicitor, retaining the deed in his hands. The costs for the preparation of the deed had been paid; but, at the time the debtors filed their petition for liquidation, they were indebted to the appellant in a small sum for subsequent charges. A trustee was appointed in the liquidation who did not employ the appellant as his solicitor; and the trustee applied to the appellant to hand over to him the deed of partnership. The appellant refused; and, accordingly, the trustee issued a summons to compel him to attend to give evidence in the liquidation, and to produce the partnership deed.

The County Court judge made the order, and the solicitor now appealed.

Mr. F. O. Crump for the appellant.

Mr. Finlay Knight for the respondent.

The CHIEF JUDGE dismissed the appeal, with costs.

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ASKEW *v.* WOODHEAD.

Lands Clauses Act, s. 74—Settled Leaseholds—Compulsory Purchase—Tenant for Life and Remaindermen—Apportionment of Purchase Money.

Appeal from decision of BACON, V.C., noted Notes of Cases, vol. xiv., p. 154.

Settled leaseholds, producing 137*l.* per annum, were taken compulsorily by a corporation, and the purchase money, when paid into Court, produced 1,640*l.* Consols.

The tenant for life claimed, on petition, an annual payment of 218*l.* per annum out of the fund, which would in eight years (the period of the lease) exhaust the fund; but the Vice-Chancellor held that he was only entitled to 137*l.* per annum for the eight years.

Their LORDSHIPS held that the tenant for life was entitled to such an annuity as the Consols would purchase for the period of the lease; and varied the order of the Vice-Chancellor accordingly.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 3.

Re HORNE. *Ex parte* NELSON.

Judgment Creditor—Writ of Sequestration—Bankruptcy of Debtor—Secured Creditor.

Appeal from one of the registrars, acting as CHIEF JUDGE.

The question raised was whether a judgment creditor, who issues a writ of sequestration against the estate and effects of his judgment debtor and serves it on parties having moneys of the debtor in their hands, is, on the bankruptcy of the debtor, a secured creditor within subsection 5 of section 16 of the Bankruptcy Act, 1869.

Mr. Winslow and *Mr. S. Woolf* for the appellant, the trustee in bankruptcy.

Mr. Horton Smith and *Mr. Meares* for the judgment creditor.

Their LORDSHIPS held, reversing the decision of the registrar, that the issue and service of the writ, without anything further being done, did not constitute the judgment creditor a secured creditor within the terms of the Act.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 5.

ECCLESIASTICAL COMMISSIONERS *v.* KINO.

Ancient Lights—Plaintiff's Site vacant—Interlocutory Injunction.

This was an appeal from a decision of HALL, V.C., reported *ante*, p. 25.

Mr. Graham Hastings and *Mr. Borrett* for the appellants.

Mr. Wm. Pearson and *Mr. Solomon* for the respondent.

Their LORDSHIPS reversed the decision of the Vice-Chancellor. The right to the ancient lights was not taken away, but only the enjoyment was suspended; and the commissioners had a right to preserve the access of light to the windows, which would be placed in the position marked on the hoarding which had been erected showing the ancient lights of the church. There was no real difference between the present case and that of *Staight* v. *Burn*, L. R. 5 Chanc. 163.

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DIXON *v.* THE SEA INSURANCE COMPANY.
DIXON *v.* WHITWORTH.

Marine Insurance—Total Loss—Salvage and Costs—Suing and Labouring Clause.

Appeal from a judgment of LINDLEY, J., after further consideration (reported 48 Law J. Rep. C.P. 538).

These were actions brought by the plaintiff, who was the assured under two policies of marine insurance, against the underwriters of the policies to recover certain salvage expenses, Admiralty costs, and refitting expenses incurred by him, in consequence of the accident which happened to the Cleopatra obelisk whilst being towed from Egypt to England. The policies were against the risk of total loss only, and they contained a suing and labouring clause in the ordinary form.

Lindley, J., gave judgment for the plaintiffs for the amount claimed in such action; holding, on the authority of *Lohre* v. *Aitcheson*, 46 Law J. Rep. Q.B. 715; s. c. 47 Law J. Rep. Q.B. 534; s. c. 49 Law J. Rep. Q.B. (H. L.) 123 (which had then been decided in the Court of Appeal), that the suing and labouring clause in the policies was operative to enable the plaintiffs to recover, although there had been no total loss, and nothing abandoned to the underwriters.

On appeal from this judgment—

Mr. C. Russell and *Mr. J. C. Mathew* appeared for the appellants.

Mr. Butt, Mr. Gainsford Bruce, and *Mr. Hollams* for the respondents.

The respondents' counsel admitted that the judgment of the House of Lords in *Lohre* v. *Aitcheson*, which had been given since the judgment of Lindley, J., and reversed the judgment of the Court of Appeal, was conclusive against them; and the appeal was, therefore, allowed.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 5, 6, 8.

LEVY *v.* LOVELL.

Foreign Attachment—Lord Mayor's Court—Secured Creditor—Bankruptcy Act, s. 12.

Appeal from a decision of BACON, V.C. The case is reported in 48 Law J. Rep. Chanc. 357.

His lordship held that a creditor who had issued and served a writ of foreign attachment in an action in the Lord Mayor's Court, but who had not proceeded to judgment before the liquidation of the debtor, was a 'creditor holding security upon the property of the debtor' within section 12 of the Bankruptcy Act, 1869.

The trustee in bankruptcy appealed.

Sir H. Jackson and *Mr. Laing* for the appellant.

Mr. De Gex, Mr. Romer, and *Mr. Phipson* for the respondent.

Their LORDSHIPS reversed the decision of the Vice-Chancellor, holding that the proceeding by way of a foreign attachment was only a proceeding to compel appearance; and that the service of such a writ gave no security on the property; this decision being in accordance with that of Lush, J., in *Richter* v. *Laxton*, 27 W. R. 214; Romilly, M.R., in *Redhead* v. *Wellor*, 29 Beav. 521; s.c. 30 Law J. Rep. Chanc. 577; and Grove, J., in *Barnfather* v. *Barrow*, 37 L.T. (N.S.) 231; differing from Hall, V.C., *In re The London Cotton Mills Company*, 25 W. R. 109.

HIGH COURT OF JUSTICE.

Crown Case Reserved.
Feb. 28.

REGINA *v.* BISHOP.

Coram LORD COLERIDGE, C.J., DENMAN, J., POLLOCK, J., FIELD, J., and STEPHEN, J.

*Lunatic—Reception of, in unlicensed House—Honest Belief—*8 *&* 9 *Vict. c.* 100, *s.* 44.

Case reserved by STEPHEN, J., at the Northampton Winter Assizes.

The defendant was convicted on an indictment, under 8 & 9 Vict. c. 100, s. 44, of receiving into her house two or more lunatics, such house not being an asylum or hospital registered under the said Act, nor a house licensed thereunder. The defendant received into her house, as patients, persons suffering from 'hysteria, nervousness, and perverseness.' There was strong evidence to show that the defendant believed, in good faith and on reasonable grounds, that no one of them was a lunatic. The jury found the defendant guilty; but also found that she did honestly, and on reasonable grounds, believe that no one of her patients was a lunatic.

The learned judge directed the jury that an honest belief by the defendant that such persons were not lunatics was immaterial; but reserved for this Court the question whether such direction was correct.

Mellor and *Harris* for the prosecution.

No counsel appeared for the defendant.

HELD, that honesty of belief was immaterial; and that the direction was correct. *Conviction affirmed.*

Crown Case Reserved.
March 5.

REGINA *v.* CROMPTON.

Coram LORD COLERIDGE, C.J., GROVE, J., POLLOCK, B., FIELD, J., and STEPHEN, J.

*Arrest—Warrant of Commitment—Jurisdiction of Justices—*5 *&* 6 *Wm. IV. c.* 76, *ss.* 76, 101.

Case reserved by the Recorder of Worcester.

The prisoner was convicted on a charge of assaulting the police in the execution of their duty. The assault was committed on two police constables of the county police force of Worcestershire who were apprehending the prisoner within the city and borough of Worcester under a warrant issued by two county justices for his commitment to prison for default in payment of a fine. Worcester is a city and county having a separate commission of the peace, with exclusive jurisdiction and a separate police force. The warrant was not backed by any city justice. The prisoner was not pursued from the county of Worcester, but found in the city.

J. J. Powell and *P. F. Evans* for the prisoner.

H. Matthews and *R. H. Amphlett* for the prosecution.

HELD, that the conviction was wrong, the warrant not having been backed by a city justice.

Conviction quashed.

Chancery Division.
JESSEL, M.R.
March 5.

In re A SOLICITOR.

Practice—Solicitor—Petition—Personal Service of Order—Service of Notice of Motion for Attachment.

In this case an order had been made on an original petition for the delivery by a solicitor of certain docu-

ments. The order was served personally on the solicitor. A motion for an attachment for disobedience to the order was now made, and the notice of motion was served by being left at the solicitor's residence.

Mr. Solomon for the applicant.

The MASTER OF THE ROLLS held the service of the notice of motion sufficient, and made an order for the issue of the attachment.

Chancery Division. JESSEL, M.R. March 5. } GLEDHILL *v.* HUNTER.

Practice—Joinder of Causes of Action—Action for the Recovery of Land—Action for Declaration of Title and ancillary Relief—Order XVII., Rule 2, Rules of Court, 1875.

In this case the writ claimed in effect a declaration of title to certain property; also a declaration that a lease of the same property had been entered into under a mistake, also to have a receiver of the rents and profits, and an account and payment of past rents and profits.

Mr. Seward Brice, for the defendant, moved to stay all further proceedings in the action, on the ground that leave of the Court should have been obtained to join the above causes of action; following *Whetstone* v. *Davis*, 45 Law J. Rep. Chanc. 49; s.c. L.R. 1 Chanc. Div. 99.

Mr. Chitty and *Mr. Caldecott*, for the plaintiffs, were not called upon.

The MASTER OF THE ROLLS was of opinion that an action for a declaration of title was not 'an action for the recovery of land' within the meaning of Order XVII., Rule 2; and held that the above causes of action could be joined without any order.

Chancery Division. HALL, V.C. March 6. } *In re* THE BRITISH GUARDIAN LIFE ASSURANCE COMPANY (LIMITED).

Companies Act, 1862, *s.* 165—*Judicature Acts—Rules of Court, Order XVI., Rule* 5; *Consolidated Order VII., Rule* 2—*Proceedings under section* 165 *against Estate of deceased Person; and against some without joining all of Persons jointly and severally liable.*

Under a special resolution, passed in August, 1872, of the above company (now in winding-up), 50 per cent. of the premiums paid on whole life policies were required to be invested in the name of trustees for the better security of policyholders. The investments made under this rule having, as was alleged, before the winding-up been applied to the general purposes of the company, the present summons was taken out by the liquidator and a whole life policyholder, seeking a declaration of joint and several liability on the part of the directors to account for the 50 per cent. of premiums during their respective periods of office, and consequential orders against the individual directors and the estates of those who were dead. The summons was at chambers adjourned generally, except against one living director, and the representatives of a deceased director.

Mr. Graham Hastings and *Mr. Seward Brice* for the applicants.

Mr. Romer and *Mr. Beddall*, for the respondent legal representatives, objected that there was no jurisdiction to proceed, under section 165 of the Companies Act, against a dead man's estate.

Mr. Northmore Lawrence, for the respondent director: If the summons cannot go on against the estates of deceased trustees, it cannot proceed against any trustees. In a suit for the same purpose, all parties liable should be before the Court.

HALL, V.C., held that *Feltom's Executors' Case*, 35 Law J. Rep. Chanc. 196; L. R. 1 Eq. 219, not having been overruled, and agreeing with the literal terms of the section, was an authority which prevented him from exercising jurisdiction in this proceeding against the deceased director's representatives. The summons was, therefore, dismissed against them, with liberty to apply at chambers as to costs. The other objection was untenable, there being now jurisdiction (subject to a discretion in the Court) to proceed against some, without the others, of persons subject to any joint and several liability.

Queen's Bench Division. Feb. 20, 26. } CAPPER & CO. *v.* WALLACE BROTHERS.

Ship and Shipping—Charter-party, Construction of—Ship to proceed to safe Port, or so near thereto as she can safely get.

Action by ship owner against charterers to recover cost of lightering a cargo through the North Holland Canal up to Koogerpolder. Under the charter the ship was to proceed to a safe port, as ordered on signing bills of lading, or 'so near thereto as she might safely get.' She was ordered to Koogerpolder, and the master signed bills of lading stating that the cargo was to be delivered at that port. The charter provided that he was to sign bills of lading without prejudice to the charter-party, at rates not less than those current at the port of loading, and, also, that the cargo was to be brought to and taken from alongside at merchant's risk. On arriving at Nieuwediep, at the mouth of the canal, the shipowners informed the charterers that she could not proceed any nearer to Koogerpolder, and asked what should be done. No reply being given, the master unloaded a part of the cargo, and sent it up the canal to Koogerpolder, and then took up the remainder in the ship, of which the draught was thus sufficiently reduced to admit of her passage. As defendants refused to make any arrangements for taking delivery at Nieuwediep, the plaintiffs claimed pilotage and harbour dues, and other expenses of going into port as well as demurrage, in addition to the cost of lightering the portion of the cargo up the canal. It being, however, made clear that the less expensive course would have been to lighter the whole cargo from Nieuwediep to Koogerpolder, they consented that their claim should be only for the recovery of an amount calculated upon that basis. The defendants paid into Court sufficient to cover the lighterage of the portion actually conveyed by lighters, and denied their liability beyond that amount.

The facts were brought before the Court in a special case.

Herschell (*A. L. Smith* with him) for the plaintiffs.

Butt (*Arbuthnot* with him) for the defendants.

Cur. adv. vult.

The COURT (LUSH, J., and MANISTY, J.), held that the master was justified in considering the voyage at an end, and in treating the mouth of the canal, where he was anchored, as the place of discharge, having regard to the facts, that at least one-third of the cargo had to be taken out before the ship could pass through the canal, and that the charterers had refused to make any arrange-

ments, and that no one appeared at Nieuwediep to take delivery. They therefore gave judgment for the plaintiffs.

Judgment for the plaintiffs.

Queen's Bench Division. (Magistrates' Case.) Feb. 25, 28. } DE MORGAN (APPELLANT) *v.* THE METROPOLITAN BOARD OF WORKS (RESPONDENTS).

Metropolitan Commons Supplemental Act, 1877—Common dedicated to Use and Recreation of Public—Right of Public Meeting, how limited—Bye-laws, Validity of.

Case stated by a metropolitan police magistrate.

By the Local Act (40 & 41 Vict. P. cci. 201), and the scheme which is made part of the Act, Clapham Common is 'dedicated to the use and recreation of the public as an open and unenclosed space for ever, and shall, for the purpose of the scheme, be regulated and managed by the Metropolitan Board of Works.' The Board are empowered, among other things, 'to frame bye-laws and regulations for the prevention of nuisances and the preservation of order on the common, &c.' Among the bye-laws made under this Act and scheme was one prohibiting, and declaring to be an offence, 'delivering any public speech, lecture, sermon, or address of any kind or description whatever, except with the written permission of the board first obtained, and upon such portions of the common and at such times as may, by such written permission, be directed and sanctioned by the board.'

The appellant on June 29, 1879, preached a sermon to a considerable assemblage on Clapham Common without having obtained the permission of the board. For this offence he was charged before a magistrate and convicted, and a case stated at his request for the opinion of the Court, raising the question whether the Board of Works had power to make the bye-law, the breach of which was complained of.

The appellant in person contended that the bye-law which gave the board the absolute power of prohibiting meetings altogether was *ultra vires*, as that went beyond a mere provision for the preservation of order.

Biron for the respondents.

Cur. adv. vult.

Feb. 28.—The COURT (LUSH J. and MANISTY, J.) affirmed the conviction, holding that the intention of the scheme was to preserve the common as a place of recreation in perpetuity; and, in order that all classes might at all times share in its enjoyment, it was necessarily placed under regulation; that all modes of user which, if enjoyed without limitation of time or place, would unduly interfere with the comfort of others, were put under reasonable restriction, and that it was necessary that holding public meetings should also be regulated; that it was reasonable, therefore, for the board to require information beforehand of the object and character of a proposed meeting, in order to judge whether it was such as should be allowed on the common; and, if so, to prescribe reasonable limits as to time and place.

Conviction affirmed.

Queen's Bench Division. March 3, 6. } REED *v.* HARVEY.

Bankruptcy—Disclaimer by Trustee of Leasehold Interest—Leave of Court—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *ss.* 23, 24—*Rules of* 1871, *Rule* 28—*Evidence—Notice sent by registered Letter.*

Action by landlord against trustee in bankruptcy of tenant for rent. After the appointment of the trustee, and before the rent became due, notice to disclaim was sent by registered letter to defendant. After application for rent subsequently accrued due, which was more than twenty-eight days after the sending of the notice, defendant disclaimed, alleging that the notice had never reached him.

The plaintiff proved the posting of the registered letter containing the notice; the defendant denied having received it. The County Court judge before whom the action was tried held that the evidence was sufficient to affect the defendant with notice; and, as he had not disclaimed within the time limited by the Act, the plaintiff was entitled to sue him for the rent.

On the argument of the rule for a new trial it was contended on behalf of the plaintiff (1) that the notice to disclaim was sufficiently proved; and (2) that no operative disclaimer had been made, the leave of the Court for that purpose not having been obtained, as required by Rule 28 of the Rules of 1871, in the case of a leasehold interest.

A. Wills (*Forbes* with him) for the plaintiff.

Leese for the defendant.

The COURT (LUSH, J., and MANISTY, J.) made the rule absolute for a new trial; holding, as to the second point, that, under section 23 of the Bankruptcy Act, 1869, disclaimer is entirely in the discretion of the trustee, and the leave of the Court is unnecessary. And, on the first point, that there was not sufficient proof of the letter containing the notice to disclaim having been delivered to the defendant, or at his office.

Common Pleas Division. March 2. } M'ALLISTER *v.* THE BISHOP OF ROCHESTER AND OTHERS.

Practice—Third Parties who have appeared under Order XVI., Rule 20—*Party to the Action—Order for Discovery of Documents by such third Parties—Order XXXI., Rule* 12.

This was an action in the nature of *quare impedit*, in which the plaintiff claimed the right to present a clerk to a certain chapel (see the case on demurrer reported 49 Law J. Rep. C.P. 114). The defendants obtained an order under Order XVI., Rule 18, allowing them to issue notice to the Ecclesiastical Commissioners for England, against whom the defendants claimed an indemnity if the plaintiff succeeded in the action. The Ecclesiastical Commissioners, when so served, entered an appearance in the action pursuant to Order XVI., Rule 20; and a judge's order was made for the trial of the question whether all things had been done by the commissioners to enable them, as against the plaintiff, to make a valid declaration of the right of nomination. An order, directing them to make discovery of documents, was afterwards made by FIELD, J., at chambers, under Order XXXI., Rule 12; and the question now was whether the commissioners, being third parties, were parties to the action within the meaning of Order XXXI., Rule 12.

Lumley Smith appeared for the commissioners, against the order of the judge.

Cowie, for the plaintiff, in support of such order.

The COURT (LINDLEY, J., and LOPES, J.) held that the commissioners were parties to the action, so as to make them liable to an order for discovery under Order XXXI., Rule 12.

Appeal dismissed.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 4.

Re ADAMS. *Ex parte* GRIFFIN.

Practice—Costs in Bankruptcy—Costs at Common Law—Set-off.

This was an appeal from the decision of Mr. Registrar Hazlitt, as CHIEF JUDGE, and raised the question whether costs, which Adams had been ordered to pay in proceedings between Adams and Griffin's trustee, incurred in the Queen's Bench Division of the High Court, could be set off against the costs which Griffin would have to pay by reason of his petition in bankruptcy against Adams having been dismissed, with costs.

Sir H. Jackson and *Mr. V. Williams* for the appellant.

Mr. Pollard for the respondent.

Their LORDSHIPS held (affirming the decision of the registrar) that as such a set-off would not have been allowed in the old Court of Chancery, and that as the Court of Bankruptcy had always followed the practice of the Court of Chancery, the set-off now claimed could not be allowed.

Court of Appeal.
LORD COLERIDGE, C.J.
BRAMWELL, L.J.
BRETT, L.J.
Nov. 16, 17, 1879.
March 10.

LEWIS *v.* LEONARD & SON.

Liquidation by Arrangement—Resolutions giving absolute Power to grant Discharge—Acceptance by dissenting Creditor of Benefits under a Liquidation Scheme—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *ss.* 28, 40, 125, *subs.* 7, 9.

Appeal from the judgment of GROVE, J., at a trial without a jury.

Claim by indorsee against acceptors for balance due on two bills of exchange.

Defence, that the defendants' affairs were liquidated by arrangement. That a scheme was adopted by which one of the defendants was to pay a composition secured by his promissory notes, payable at stated intervals, and also secured by a deed executed by him and several sureties. The discharge of the debtors was to be granted on the certificate of the trustee. Allegations of the performance of these conditions, and of the receipt by the plaintiff of promissory notes under the scheme.

Reply, that default had been made in payment of one of the promissory notes, and that the debt had consequently revived.

The plaintiff had dissented from these resolutions; but had accepted four promissory notes, three of which had been paid, default having been made in respect of the fourth, when the plaintiff sued on the original bills. The debtors had received their discharge, and had been granted their certificate.

Grove, J., gave judgment for the defendants.

The plaintiff appealed.

Mr. De Gex and *Mr. Dugdale* for the plaintiff.

Mr. Mellor and *Mr. Graham* for the defendants.

Their LORDSHIPS reserved judgment, and now gave judgment for the defendants; and dismissed the appeal.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 22, 23.
March 11.

THE YORKSHIRE BANKING COMPANY *v.* BEATSON & MYCOCK.

Partnership carried on in Name of individual Member—Bill of Exchange—Liability of dormant Partner.

Appeal from the judgment of the Common Pleas Division (reported Law J. Rep. C.P. 428).

The plaintiff sued on two bills of exchange—one dated March 6, 1878, drawn on a man named Wilson, and accepted and indorsed by W. Beatson; and the other, dated March 13, drawn on, accepted, and indorsed by W. Beatson.

Before January, 1878, W. Beatson carried on business alone; on January 1, 1878, the defendant Mycock joined him as a sleeping partner. The name of the firm was W. Beatson; neither partner was to draw, indorse, or accept bills without the consent in writing of the other. Beatson's account at the plaintiffs' bank was made the account of the firm, and no change was made in the form or style of the account, nor had the firm any other account.

The bills sued on were bills accepted by Beatson, without the knowledge of Mycock, in renewal of bills negotiated by Beatson previous to the year 1878. The plaintiffs did not know of the partnership. The proceeds of the bills were paid into the account at the plaintiffs' bank.

The Common Pleas Division gave judgment in favour of the defendant Mycock.

The plaintiffs appealed.

Mr. Bompas, Mr. Forbes, and *Mr. T. Atkinson* for the plaintiffs.

Mr. Waddy and *Mr. G. Bruce* for the defendant Mycock.

Their LORDSHIPS, having reserved judgment, now dismissed the appeal.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 11.

In re WHITE. *Ex parte* MASON.

Two Bankruptcy Petitions—Adjudication on Second Petition without Notice to First Petitioning Creditor—Rights of First Petitioning Creditor—Person aggrieved—Procedure.

Appeal from order of the CHIEF JUDGE directing that all proceedings, under the adjudication made on the appellant's petition, should be stayed until Nicholson's bankruptcy petition had been heard and disposed of.

Nicholson's petition had been first presented, but the debtor avoided service; and, the same day, his solicitors, with his connivance, presented a second petition on behalf of Mason, a friendly creditor, on which an immediate adjudication by consent was made behind Nicholson's back.

Nicholson appealed against the order of adjudication as a person aggrieved thereby.

The Chief Judge held that Nicholson was a person aggrieved by the order of adjudication; and made the order now appealed from.

Mr. De Gex and *Mr. E. C. Willis* for the appellant.

Mr. Winslow and *Mr. Wood* for the respondent.

Their LORDSHIPS held that Nicholson was not a 'person aggrieved' by the order of adjudication, as he sought the same relief by his petition. His proper course was to have applied to the County Court to have the carriage of the order of adjudication which, under the circumstances, would have been given to him in the same way that the Court of Chancery, when an administration decree has been snatched in a second action, gave, in a proper case, the carriage of the administration to the plaintiff in the first action. Nicholson, therefore, had mistaken his remedy, and it was now too late to give him any relief. The appeal must be allowed, with costs; but Nicholson would have the costs of his petition down to the date of the adjudication.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 11.

CRUMP *v.* CAVENDISH.

Practice—Order XIV., Rules 1 and 3—Showing Cause—Payment into Court of Sum indorsed on Writ of Summons.

Appeal from a judgment of the Exchequer Division.

The plaintiff's writ of summons was specially indorsed

with a claim for 39*l.*, the price of goods sold and delivered to the defendant.

The plaintiff took out a summons in order to obtain final judgment under Order XIV., Rule 1, and a master in chambers gave the defendant leave to defend. On appeal to FIELD, J., in chambers, the defendant offered to pay the sum claimed into Court, but the judge gave the plaintiff leave to sign final judgment unless the defendant paid the debt and costs within a week.

On appeal to the Exchequer Division from the order of Field J., the Court (Kelly, C.B., and Lopes, J.) were divided, and the order of Field, J., therefore stood.

On appeal, it was contended for the defendant that under Order XIV., Rule 3, an offer to pay the amount of the claim indorsed on the plaintiff's writ is a successful showing cause against the plaintiff's application for leave to sign final judgment; and that, when the defendant takes that course, the Court, or a judge, have no power to allow final judgment to be signed.

Mr. Reginald Brown appeared for the defendant; and

Mr. Poulter for the plaintiff.

Their LORDSHIPS affirmed the order of Field, J., and dismissed the appeal; being of opinion that on the true construction of Rules 1 and 3 of Order XIV., the Court, or a judge, had a discretion to refuse permission to defend the action, notwithstanding that the defendant has offered to bring the amount claimed into Court under Rule 3.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 11.

SOUTHWELL AND ANOTHER *v.* SCOTTER.

Assignment of future Rent—Surrender of Lease after Notice of Assignment—Effect of, on Right of Assignee to sue for Rent accruing after Surrender—Judicature Act, 1873, *s.* 25, *subs.* 6.

Appeal from the judgment of STEPHEN, J., after a trial without a jury.

Claim for two quarters' rent.

The plaintiffs were the owners of the lease of a house, of which they sublet part to the defendant. After the creation of this tenancy, the plaintiffs assigned their interest in the house to a person named Burrows; but, at the same time, they agreed with Burrows that the defendant should pay rent to them, and that Burrows should give them every facility for recovering the rent, by lending his name, if it should be necessary, to bring an action. Notice of this agreement was given to the defendant.

It was afterwards agreed between Burrows and the defendant that the defendant should surrender her lease; and she ceased to be tenant of the premises.

The plaintiffs sued for rent which became due after this surrender.

Stephen, J., held that there had been an absolute assignment of the future rent; and gave judgment for the plaintiffs.

The defendant appealed.

Mr. Bompas and *Mr. French* for the defendant.

Mr. A. Wills and *Mr. Wilberforce* for the plaintiffs.

Their LORDSHIPS allowed the appeal; holding that, although there had been an absolute assignment of rent by Burrows to the plaintiffs, yet that it was only an assignment of such rent as should become due, and that no rent had become due since the surrender by the defendant of her lease.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 11.

PARAIRE *v.* LOIBL.

Practice—Payment into Court—Separate Claims—Order XXX., Rule 1.

This was an appeal from a judgment of the Common Pleas Division.

The action was to recover 1,191*l.*, for work done by the plaintiff as an architect employed by the defendant. In the statement of claim the plaintiff claimed for work done at three different times, and in respect of three different matters. The defendant paid 221*l.* into Court; and, in his statement of defence, pleaded the payment into Court, without specifying in respect of what items of the plaintiff's claim the payment was made. The Common Pleas Division (LORD COLERIDGE, C.J., and LINDLEY, J.) refused to order the defendant to amend his statement of defence by specifying in respect of what items the money was paid into Court.

The plaintiff appealed.

Mr. Anderson for the plaintiff.

Mr. A. Cook for the defendant.

Their LORDSHIPS affirmed the decision of the Common Pleas Division; and held that a defendant was not bound, under Order XXX., Rule 1, to state in his defence in respect of what items of the plaintiff's claim he had paid money into Court.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 12.

BOYES *v.* COOK.

Will—Subsequent Settlement reserving general Power of Appointment—The Wills Act, 1856, *ss.* 24, 27.

Appeal from the decision of MALINS, V.C., holding that a will executed in the year 1860 did not operate as an execution of a general power of appointment reserved to the testator in a separation deed executed by him in the year 1861.

Mr. J. Pearson and *Mr. Cozens-Hardy* for the appellants, the trustees of the will.

Mr. Simmons, for a party interested, supported the appeal.

Mr. C. H. Turner, for the principal respondent, relied on *Re Ruding's Trusts*, L. R. 14 Eq. 266.

Mr. Hallett and *Mr. Marcy* for other parties.

Their LORDSHIPS held (dissenting from *Re Ruding's Trusts*) that the will operated as a good execution of the power; and discharged the order of the Court below.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 12, 13.

THE ATTORNEY-GENERAL *v.* TOMLINE.

Seashore—Removal of Shingle—Prerogative of the Crown—Injunction.

Appeal from the decision of FRY, J. (reported 48 Law J. Rep. Chanc. 593), granting an injunction to restrain the defendant, the lord of the manor, from removing shingle from the natural barrier of shingle protecting from the sea a piece of land, the property of the relator, on the ground that the Crown has a prerogative and duty to defend the realm against inundations of the sea.

Mr. Cookson and *Mr. Hadley* for the appellant.

The Attorney-General, the Solicitor-General, and *Mr. Rigby* for the respondent.

Their LORDSHIPS affirmed the decision of Fry, J.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 13.

COOK *v.* MANLEY. (VERNON CLAIMANT.)

Bill of Sale—Affidavit sworn before Solicitor to Parties to Bill of Sale—Whether valid.

This was an interpleader issue directed to try the right to certain goods as between an execution creditor and the grantee of a bill of sale from the debtor.

At the trial of the issue by Lord COLERIDGE, C.J., without a jury, it was proved that the affidavit verifying the date, execution, &c., of the bill of sale was sworn by a partner in the firm of solicitors who were acting both for the grantor and grantee of the bill of sale, and also that it was sworn before the other partner in the firm. Lord Coleridge, C.J., held that the bill of sale was bad, and gave judgment for the execution creditor against the claimant under it.

Mr. J. C. Lawrance and *Mr. A. Morley* appeared for the claimant.

Mr. Cave, Mr. Dugdale, and *Mr. Cooper Willis* for the execution creditor.

Their LORDSHIPS held that the affidavit could be properly sworn by and before members of the firm of solicitors who acted for the parties to the bill of sale; and allowed the appeal.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 23, 25.
March 16.

THE PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* THE LONDON AND PROVINCIAL SUPPLY ASSOCIATION (LIMITED).

Pharmacy Act, 1868 (31 & 32 *Vict. c.* 121)—*Sale of Poisons by unqualified Person—Company with Drug Department—Application of Statute to Corporations.*

Appeal from the judgment of the Queen's Bench Division (reported 48 Law J. Rep. Q.B. 387).

The Pharmaceutical Society sued the defendant association for penalties under sections 1 and 15 of 31 & 32 Vict. c. 121, and the Queen's Bench Division gave judgment for the plaintiffs.

The defendants appealed.

Mr. A. Wills and *Mr. Finlay* for the appellants.

The Attorney-General and *Mr. Lumley Smith* for the defendants.

Their LORDSHIPS, having reserved judgment, delivered judgment, on March 16, in favour of the appellants, holding that the Act did not apply to corporations.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
March 12.

In re LOMAX'S ARBITRATION.

Practice—Arbitration—Submission to be made a Rule of Divisionnl Court—Rule of Queen's Bench Division—Motion in Chancery Division to set aside Award.

A motion was made to set aside an award in this Division, where the submission had been made a rule of the Queen's Bench Division pursuant to a provision in the agreement that the submission might be made a rule of any Divisional Court of the High Court of Justice.

A preliminary objection was taken to the motion that it ought to have been made to the Queen's Bench Division.

Mr. Farwell, for the motion, submitted that, under the 3 & 4 Wm. III. c. 15, the parties could make the submission a rule of any Court of Record; that the High Court of Justice was at present the only Court of Record covered by the words; that the submission was really made a rule of the High Court; and, therefore, that the motion could properly be made in any Division of the High Court.

Mr. F. C. J. Millar, for the respondent, was not called upon.

JESSEL, M.R., was of opinion that, though the agreement would have been more properly worded if it had provided that the submission might be made a rule of the High Court of Justice, still that the objection to the motion was a good one; and that the parties, under the Judicature Act, could make the submission a rule of any Division they thought fit. As the submission had

been made a rule of the Queen's Bench Division, he considered the application to set aside the award ought also to have been made in that Division; and he therefore refused the motion.

Chancery Division. MALINS, V.C. March 13. } *In re* ALLEN. HINCKS *v.* ALLEN.

Settlement on Marriage—Contract by Letter—Will—Revocation of conditional Contract.

In April, 1850, Thompson became engaged to marry one M. A. Allen, when her father informed him that he had already made his will, and settled his property upon his three daughters equally; and also told him that he would allow his daughter 200*l.* a year during his life. On June 6, 1850, Allen wrote to Thompson as follows: 'The settlement you propose, I should consider satisfactory. When I made my will, a few years ago, I then divided my property equally between my children, settling the same upon the daughters. These measures (although it may appear premature to enter upon them now) are subjects which I consider of great importance, and ought to be thoroughly understood in the first instance by all parties.'

The marriage took place in July, 1851. Allen never allowed his daughter the 200*l.* a year, nor did Thompson ever settle anything upon his wife; and she died in 1858, leaving three children. Allen died in 1875, having, by his will, given the whole of his property to his wife for life, and after her death to his daughter, Elizabeth Hincks, absolutely.

The widow died in 1879; whereupon this action was commenced for the administration of Allen's estate, and this summons was upon a claim by Thompson to be entitled to one-third of the estate. Thompson, by his affidavit, admitted that 'the settlement you propose,' mentioned in Allen's letter, referred to a settlement of 200*l.* a year which he had agreed to make upon his intended wife.

Mr. Higgins and *Mr. T. C. Wright* in support of the claim.

Mr. Glasse and *Mr. Cozens Hardy* for the residuary legatee under the will.

MALINS, V.C., decided that even if the letter were a contract on the part of Allen not to alter his will, still it was conditional on Thompson's making a settlement on his wife; and, that condition not having been performed, the other part of the contract was not binding, and the claim, therefore, failed; but he allowed the costs of both parties out of the estate.

Chancery Division. BACON, V.C. March 13. } *In re* THE METROPOLITAN STREET IMPROVEMENT ACT, 1877. *Ex parte* B. T. CHAMBERLAIN.

Lands Clauses Act, 1845, *ss.* 76, 79—*Owner—Person in Possession—Adverse Possession—Disability—Real Property Limitation Act*, 1874, *ss.* 3, 5.

Petition.

Some messuages in Bermondsey, of which B. T. Chamberlain was the ostensible owner, were taken by the Metropolitan Board of Works in February, 1878, under their powers by virtue of the above-mentioned Act.

Upon examining the title, it appeared that the persons from whom Chamberlain had purchased, in 1875, in fact held the property not as owners in fee, but for a term of 192 years, expiring on March 25, 1854. The board required proof that the person entitled to the reversion was under no disability; Chamberlain insisted that he was not liable to adduce any such proof, and, in consequence, the board paid the agreed purchase money into Court. Chamberlain now presented a petition that the money might be paid out to him as the person in possession as owner under section 79 of the Lands Clauses Act.

Mr. Hemming and *Mr. Renshaw* for the petitioner.

Mr. F. Pownall, for the board, contended that the petitioner was not entitled to the money, as, if the reversioner were under disability, the petitioner would not obtain a title by adverse possession till 1884; and his own title showed that he was not the owner, which brought him within the words of section 79, 'until the contrary be shown to the satisfaction of the Court.' The point was decided in *Douglas* v. *The London and North-Western Railway Company*, 3 K. & J. 173.

BACON, V.C.: Section 79 makes the petitioner the 'owner,' unless the contrary be shown. Who shows the contrary? No claim has been made by any one to the property. I do not consider *Douglas* v. *The London and North-Western Railway Company* has any bearing upon the present case.

Order as prayed; costs according to the Act.

Chancery Division. BACON, V.C. March 16. } MARTIN *v.* HOWARD.

Evidence—Reputation—Declaration by deceased Members of Family—'Post Litem motam'—Evidence inadmissible.

This was a suit instituted by the plaintiff's predecessor in title, in 1859, seeking to share in the personal estate of William Jennings, who died intestate in 1798. The plaintiff claimed through a deceased uncle, who was alleged to have been a cousin of the intestate; and in proof of his pedigree tendered in evidence parol declarations made to him by his deceased uncle, in the year 1830 and afterwards. The present suit was not instituted till 1859; but the witness admitted that, at the time the declarations were made, he 'knew there was a question about the Jennings property.'

Sir H. Jackson and *Mr. Russell*, for the defendants, objected that this evidence was inadmissible; as, having been made *post litem motam*, or after the controversy, the subject of the present suit had arisen.

Mr. Hemming and *Mr. Turner* for other defendants in the same interest.

Mr. Fischer and *Mr. Horsbrugh*, for the plaintiff, contended that, inasmuch as the suit was not instituted till 1859, the declarations in this case were not within the exception of declarations made *post litem motam*, and were therefore admissible.

BACON, V.C., held that the evidence was inadmissible, since the declarations were made when there was a question as to the distribution of the intestate's estate, which was the subject in controversy in this suit.

The plaintiff's counsel thereupon withdrew their case; and judgment was given for the defendants, with costs.

Chancery Division.
HALL, V.C.
March 3.
} MARTIN *v.* TOLLEMACHE.

Deed—Construction—Forfeiture—Shifting Clause.

This was a special case to determine whether or not a certain shifting clause or proviso for cesser had taken effect. By an indenture of settlement of 1804 it was provided that if any of certain specified persons should under the will of the fourth Earl of Dysart, 'or otherwise,' become entitled to two particular third parts of and in certain 'manors and other hereditaments in the counties of Surrey and Suffolk, or either of the said two-third parts or shares, or of or to any part or share of the said manors and other hereditaments,' the person so becoming entitled should convey and assure the same to the uses of the deed, or, in default, should forfeit all interest under the deed. One of the specified persons became entitled as purchaser for value to a third part of the Surrey estates only, but neglected to convey the same to the uses of the deed.

Mr. Davey and *Mr. Yate Lee* for the parties entitled in case the forfeiture had not taken place.

Mr. Cookson and *Mr. Shebbeare*, *Mr. Ince* and *Mr. Strickland*, and *Mr. Waller* and *Mr. Rawlinson*, for the parties in the opposite interest.

HALL, V.C., held that the forfeiture had not taken place, inasmuch as the specified person had become entitled to a share of the Surrey estates only, and not of the Surrey *and* Suffolk estates. His lordship also expressed a doubt whether in a clause such as the present the words 'or otherwise' would be wide enough to extend to a person becoming entitled as a purchaser for value.

Chancery Division.
HALL, V.C.
March 5.
} *In re* CORBISHLEY'S TRUSTS.

Presumption of Death—Seven Years' Absence—Onus Probandi.

Under a settlement, dated in 1866, a trust was declared of a sum of 450*l.*, in favour of H. Corbishley. In the year 1861 (five years previous to the date of the settlement), H. Corbishley disappeared, and had not since been heard of. The representatives of the settlor claimed to be entitled to this sum under a resulting trust, on the ground that the onus of proving that Corbishley survived the date of the settlement lay upon those who claimed on his behalf; and that this onus had not been discharged by them.

Mr. Greenwood, for the petitioner, referred to *In re Lewes's Trusts*, 40 Law J. Rep. Chanc. 602, as showing that the onus lay on those who alleged that the person presumed to be dead survived any particular period during the seven years of his disappearance.

Mr. Bramwell Davis and *Mr. Tweedie*, for the trustees of the settlement and the representatives of Corbishley, were not called on.

HALL, V.C., said that the case cited was that of a will where the trust was in favour of a legatee who might or might not die before the testator. Here the trust was in a settlement in favour of a person named; and was, therefore, an existing trust in favour of a presumably existing person, until displaced by evidence to the contrary. The onus, therefore, lay on the petitioners; and the fund must be paid to Corbishley's representatives.

Chancery Division.
FRY, J.
Feb. 26, 27.
March 3, 4.
} FRITZ *v.* HOBSON.

Nuisance—Highway—Injunction—Damages.

The plaintiff was a tailor and dealer in china and curiosities. His shop had a small window in Fetter Lane, with a larger front and entrance in a narrow passage leading eastward from Fetter Lane. The defendant, under a contract, rebuilt the hall and premises of the Scottish Corporation. The ground on which the buildings were erected was not directly accessible to carts. It could be approached by three passages—one that adjoining the plaintiff's house, which was the shortest, and, for other reasons, most convenient for the defendant to use in removing the old materials and bringing in the new material necessary for his building operations. The plaintiff alleged that the work had been carried on in an unreasonable manner, and created a nuisance, by which loss of trade had been occasioned to him. He claimed an injunction and damages. Before the action was tried, the acts complained of had ceased.

Mr. North and *Mr. Seward Brice* for the plaintiff.

Mr. Cookson and *Mr. Northmore Lawrence* for the defendant.

FRY, J., held (1) that the defendant did the work in an unreasonable manner in not carrying a larger proportion of the material by the longer passages, and in doing the work principally at the busy period of the day; (2) that there was a good cause of action in respect of a private nuisance, inasmuch as the access to the plaintiff's shop was interfered with; (3) also in respect of a public nuisance, because the nuisance caused a special injury to the plaintiff; and (4) that damages in lieu of or in addition to an injunction can be given in respect of matters which occur after the issue of the writ.

Common Pleas Division.
March 4.
} LUCAS *v.* DICKER.

Bankruptcy—Execution—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 95—*Notice of Act of Bankruptcy.*

Special case, raising the question whether notice to an execution creditor, before sale, that a petition in bankruptcy had been presented in the County Court at

Windsor, against the execution debtor, was a sufficient notice of an act of bankruptcy to deprive the execution creditor of the protection given by section 95 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71).

Graham for the plaintiff, the trustee in bankruptcy of the execution debtor.

Pitt Lewis for the defendant, the execution creditor.

The COURT (LINDLEY, J. and LOPES, J.) held that the notice was sufficient, for it necessarily involved that an act of bankruptcy had been committed.

Judgment for the plaintiff.

Exchequer Division. March 15. } METROPOLITAN INNER CIRCLE RAILWAY COMPANY *v.* METROPOLITAN RAILWAY COMPANY AND METROPOLITAN DISTRICT RAILWAY COMPANY.

Practice—Notice of Trial—Entry for Trial—Close of Pleadings.

Action for 50,000*l.* on an award.

The defendants pleaded a defence and counter-claim. The plaintiffs replied, and with their reply gave notice of trial. The pleadings were not closed then, and were not closed at the time of this application. A summons to set aside the notice of trial, and to strike out the cause from the list for London, was dismissed by a master, and by POLLOCK, B.

Graham, for the defendant, moved by way of appeal.

A. L. Smith, for the plaintiff, argued that the notice of trial was regular under Order XXXVI., Rule 4, which provides that 'the plaintiff may with his reply, or at any time after the close of the pleadings, give notice of trial;' and that the entry for trial might be made immediately, without reference to the state of the pleadings.

KELLY, C.B., was of opinion that the notice of trial was good under Order XXXVI., Rule 4, but that the entry for trial before the pleadings were complete was irregular.

STEPHEN, J., was of opinion that the notice of trial was irregular under Order XXXVI., Rule 4, which meant that plaintiff might give notice of trial with his reply, only if the reply was the close of the pleadings.

Cause struck out of the list.

COURT OF BANKRUPTCY.

Bankruptcy. BACON, C.J. Feb. 25. } *Re* SMITH. *Ex parte* A. SMITH.

Bill of Sale—Consideration—Bills of Sale Act, 1878 (41 & 42 *Vict. c.* 31), *s.* 8.

This was an appeal from the Warwickshire County Court.

In January, 1879, the debtor, a nursery gardener, was indebted to his brother in 200*l.*; and, by a bill of sale dated January 17, 1879, in consideration of the 200*l.* then due, and 'in consideration of the sum of 50*l.* now advanced,' the debtor assigned to his brother his stock-in-trade and other effects. The bill of sale was properly attested and explained; but it appeared that of the 50*l.* expressed to be then advanced, the sum of 5*l.* had been advanced at the request of the debtor the previous day, so that on execution of the deed only 45*l.* was actually paid over. The debtor became bankrupt; and the County Court judge declared that the trustee was entitled to the property comprised in the bill of sale, on the grounds (1) that, under the circumstances of the case, it was void as an act of bankruptcy; and (2) that it was void as against the trustee under the Bills of Sale Act, 1878, s. 8, since the consideration had not been truly set forth.

The bill of sale holder appealed.

Mr. Winslow and *Mr. Nathan* for the appellant.

Mr. De Gex and *Mr. Hugo Young* for the trustee.

The CHIEF JUDGE held (1) that the bill of sale was not void as an act of bankruptcy; and (2) that the consideration was truly set forth, since the present advance was in fact 50*l.*, though 5*l.* of it was paid on the previous day; and discharged the order of the County Court judge, with costs.

Bankruptcy. BACON, C.J. March 1. } *In re* FOX, WALKER, & Co. *Ex parte* TURQUAND.

Proof — Liability provable — Discounter — General Guarantee—Indorser—Bankruptcy Act, 1869, *s.* 31.

Appeal from the County Court at Bristol.

In January, 1875, Fox, Walker, & Co., engineers at Bristol, accepted bills to the amount of 22,501*l.* 6*s.* 4*d.*, drawn by Fothergill & Hankey, ironmasters in South Wales. The bills were all due in July, 1875. The drawers indorsed the bills generally, and discounted them with Sanderson & Co., bill brokers in London, who, while the bills were still current, rediscounted them with the London and Westminster Bank. Sanderson & Co. did not indorse the bills; but it appeared that, in April, 1871, they had entered into a general arrangement with the bank, whose customers they were, to guarantee the payment of all bills which the bank should discount for them. Fothergill & Hankey went into liquidation in May, 1875, and Sanderson & Co. immediately afterwards. Fox, Walker, & Co. did not pay the bills at maturity; and the bank claimed against Sanderson & Co.'s estate for the whole amount, and received 3,575*l.* 17*s.* 2*d.*, being a dividend of 3*s.* 7*d.* in the pound.

The trustee of Sanderson & Co.'s estate now claimed to prove in the liquidation of Fox, Walker, & Co., for 4,091*l.* 2*s.* 3*d.*, being the above sum of 3,575*l.* 17*s.* 2*d.* and 515*l.* 5*s.* 1*d.* interest.

On March 3, 1876, the bank made an arrangement with Fox, Walker, & Co. to accept certain periodical payments in discharge of their liability to the bank.

The trustee of Fox, Walker, & Co.'s estate refused to

admit Sanderson & Co.'s proof; and the County Court judge confirmed his refusal.

From that decision Sanderson & Co.'s trustee now appealed.

Mr. Winslow and *Mr. Linklater* for the appellant.

Mr. Bompas and *Mr. Romer* for the respondent.

The CHIEF JUDGE: In my opinion, this is a liability provable within section 31. The guarantee given by Sanderson & Co. to the bank rendered them liable on the bills. There will be no double proof. The proof must be admitted.

Appeal allowed, with costs.

Bankruptcy.
BACON, C.J.
March 15.

Re BROOK. *Ex parte* NETTLETON.

Bankruptcy—Practice—Time for appealing—Twenty-one Days from date of Order—Order pronounced—Order settled—Bankruptcy Rules, 1870, *Rule* 143—*Ex parte Cochrane*, 58 *Law J. Rep. Bankr.* 31, *L. R.* 9 *Chanc. Div.* 608, *distinguished.*

Appeal from the County Court at Dewsbury. The order appealed from was pronounced on December 18, 1879, and settled by the Court on February 12, 1880. Notice of appeal was given on February 26, 1880.

The form of the order, so far as regards the date was:—

'Before the Court.

'Thursday the 18th day of December, 1879.

'The above-mentioned motion, coming on for hearing this day . . . . It is ordered that the said motion be dismissed . . . .

'Settled

'By the Court, this 12th day of February, 1880.'

Mr. Winslow and *Mr. Tindal Atkinson*, for the respondent, objected that the appeal was out of time, relying especially upon the Chief Judge's most recent decision in *Ex parte Whitten, re Greaves*, 42 L. T. (N.S.) 63.

Mr. T. E. West, for the appellant, relied upon *Ex parte Cochrane (ubi supra)*, as showing that the time for appealing to the Chief Judge runs from the date when the order is settled, not from the date when it is pronounced.

The CHIEF JUDGE: There may be orders such as that appealed from in *Ex parte Cochrane*, in which it does not clearly appear at what date the order is pronounced; but there is no doubt here, for that date is given on the face of the order. That being so, the rule of this Court is clear, that the time for appealing runs from the date when the order was pronounced.

Appeal dismissed, with costs.

Table of Cases.

COURT OF APPEAL.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 26, 27.
March 9.

FOULKES *v.* THE METROPOLITAN DISTRICT RAILWAY COMPANY.

Negligence—Ticket issued by one Company—Passenger carried in Train of Another—Liability for Injuries.

Appeal from a judgment of the Common Pleas Division, discharging a rule for a new trial, reported 48 Law J. Rep. C.P. 555.

The question was whether the defendants were liable for injuries received under the following circumstances:—

The plaintiff took a return ticket of the London and South-Western Railway Company, to a station on the line of the defendants, whose railway joins the South-Western line. He went by a train of the defendants', who have running powers over the South-Western line. He was injured at a station of the South-Western Company, owing to the platform being unsuited to the carriages of the defendants.

The verdict passed for the plaintiff. The defendants obtained a rule for a new trial, which was afterwards discharged.

The defendants appealed.

The Solicitor-General for the appellants.

Mr. A. L. Smith for the plaintiff.

March 9.—Their LORDSHIPS, having reserved their judgment, now dismissed the appeal.

Court of Appeal.
BRAMWELL, L.J.
COTTON, L.J.
THESIGER, L.J.
Dec. 20, 1879.
March 13.

TUNBRIDGE WELLS LOCAL BOARD *v.* AKROYD.

Public Health Act, 1875, *ss.* 150, 180, 257—*Award—Liability of Owner of Land not a Party to the Arbitration.*

Appeal from the Exchequer Division.

The Public Health Act, 1875, empowers an urban authority to repair highways, and to apportion the expense amongst the owners of land abutting on the highway. If the amount is disputed, an arbitration is to be held, and the award is to be final and binding on all parties to the reference.

The defendant was a frontager, and was called on to pay a sum for expenses incurred under the Public Health Act. He did not dispute the amount, but other frontagers did. An arbitration was therefore held, to which the defendant was no party, and at which he was not represented. The arbitrator awarded a larger sum than that which the defendant had been originally called on to pay.

The County Court judge held that the defendant was liable for the larger sum.

The Exchequer Division, being equally divided, the judgment was affirmed.

The defendant appealed.

Mr. Cave (with him *Mr. Hannen*) for the defendant.

Mr. Webster (with him *Mr. E. Pollock*) for the plaintiffs.

March 13.—Their LORDSHIPS, having taken time to consider, now gave judgment in favour of the defendant.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 6, 16.

YEWENS (APPELLANT) *v.* NOAKES (RESPONDENT).

Inhabited House Duty—Warehouse in Charge of Caretaker—Exemption from House Duty—32 & 33 Vict. c. 14, s. 11.

Appeal from a judgment of the Exchequer Division (KELLY, C.B., and POLLOCK, B.) on a case stated, under 37 & 38 Vict. c. 16, ss. 9 and 10, by the Commissioners of Income Tax.

The question for the opinion of the Court, raised by the case, was, whether a certain warehouse belonging to the respondent was exempt from inhabited house duty.

The case found that part of the warehouse was occupied by a clerk of the respondent, who lived there, for the purpose of protecting the premises, with his wife and family and his servant. Section 11 of the 32 & 33 Vict. c. 14 provides that any tenement, or part of a tenement, occupied as a warehouse only, shall be exempt from inhabited house duties, 'although a servant or other person may dwell in such tenement, or part of a tenement, for the protection thereof.'

The Exchequer Division gave judgment for the respondent.

On appeal—

Mr. MacIntyre and *Mr. Graham* appeared for the appellant.

The Solicitor-General appeared for the respondent.

Cur. adv. vult.

March 16.—Their LORDSHIPS reversed the judgment of the Exchequer Division; being of opinion that the occupation of the premises was not that of a 'servant or other person,' dwelling there for the protection of the building, within section 11 of 32 & 33 Vict. c. 14.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 8, 9, 16.

BURNS *v.* NOWELL.

Kidnapping Act, 1872 (35 & 36 *Vict. c.* 19), *ss.* 3, 9—*Seizure of Vessel—Justification.*

Appeal from the Queen's Bench Division.

This action was brought to recover damages for the seizure by the defendant, a lieutenant in the navy, of the defendant's brig Aurora, which was engaged in the South Sea trade. The Aurora started from Australia, in 1871, for a trading voyage in the South Pacific. While she was absent on this voyage, the Kidnapping Act, 1872 (35 & 36 Vict. c. 19), came into operation. By section 3 of that Act, it is made unlawful for any British vessel to carry native labourers of the islands in the Pacific, not being part of the crew, unless the master of the vessel has given a bond and obtained a license. By section 9 it is an offence to ship, embark, receive, detain, or confine on board any vessel any native of these islands without his consent. Section 16 empowers officers in the navy to seize vessels suspected, upon reasonable grounds, of an offence against section 9, and section 6 applies the provisions as to seizure of British vessels found carrying native labourers without a license. In August, 1873, the defendant, who was in command of H.M.S. Sandfly, found the Aurora near Simbo in the Solomon Islands with some natives on board, and seized her. The natives were employed partly in working the vessel, and partly in diving and fishing and trading on shore. At the trial Lord COLERIDGE, C.J., asked the jury whether at the time of seizure or detention the defendant had reasonable cause for thinking that the Aurora was employed in breaking the Act of Parliament. The jury found in the affirmative. Judgment was given for the defendant, and a rule for a new trial was discharged by COCKBURN, C.J., and LUSH, J. The plaintiff appealed.

Mr. A. Wills and *Mr. Edwyn Jones* for the plaintiff.

Mr. A. Staveley Hill and *Mr. Bosanquet* for the defendant.

Their LORDSHIPS held that the defendant was protected, on the ground that he honestly believed that the captain of the Aurora was committing an offence against the Act of Parliament. They further said that the carrying of the natives, which began before the passing of the Act, was not within section 3, and that no offence had been committed under section 9.

Judgment affirmed.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March, 17, 18.

POWELL AND ANOTHER *v.* FALL.

The Locomotives Acts, 1861 *and* 1865—*Nuisance—Locomotives used on Roads—Injuries by—Liability of Owner of Locomotive.*

Appeal from a judgment of MELLOR, J.

The action was to recover damages for injury to the plaintiff's stack of hay, caused by sparks flying from a traction engine of the defendant's, which was being driven along a highway near the stack.

Mellor, J., tried the case, without a jury, at Devizes. There was no negligence on the part of the defendant's servants, and the engine was constructed according to the requirements of the Locomotives Acts, 1861 and 1865. Mellor, J., gave judgment for the plaintiffs.

Mr. Cave and *Mr. Kinglake* for the defendant.

Mr. A. Charles and *Mr. Bullen* for the plaintiffs.

Their LORDSHIPS affirmed the judgment of Mellor, J.; holding that the Locomotives Acts did not relieve the defendant of his common law liability for injuries to others caused by his using the engine on the highway.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 18.

MELLOR (APPELLANT) *v.* DENHAM (RESPONDENT).

Appeal—Jurisdiction—Criminal Cause or Matter—Offence against Bye-law made under the Elementary Education Act, 1870—*Judicature Act*, 1873, *s.* 74.

This was an appeal from a judgment of the Queen's Bench Division, for the respondent, upon a case stated by justices.

The appellant, Mellor, who was the School Board officer for the borough of Oldham, laid an information against the respondent for not sending his child to school in accordance with the provisions of a bye-law made by the School Board under section 74 of the Elementary Education Act, 1870. The bye-law provided that a fine of 5*s.* (made enforceable under Jervis's Act by section 92 of the Education Act, 1870) should be paid by parents neglecting to send children to school. The case stated raised the question whether or not the respondent was bound to send the child, who was attending an efficient elementary school under the Factory Acts, to the Board school under the bye-law.

On appeal from the judgment of the Queen's Bench Division, an objection was taken, for the respondent, to the jurisdiction of the Court of Appeal, on the ground that this was a 'criminal cause or matter' within section 47 of the Judicature Act, 1873, and no appeal would lie from the judgment of the Queen's Bench Division, except for error of law apparent on the record.

Mr. A. L. Smith and *Mr. Dicey* appeared for the appellant.

Mr. Aspland for the respondent.

Their LORDSHIPS allowed the objection; holding that the judgment of the Queen's Bench Division was in a 'criminal cause or matter;' and, therefore, that no appeal could be brought from it.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 18.

Re WILLSON. *Ex parte* NICHOLSON.

Liquidation—Creditor's Application to examine privately the Debtor—The Bankruptcy Act, 1869, *s.* 96.

This was an appeal from Mr. Registrar Pepys, acting as CHIEF JUDGE, refusing an application by the appellants, creditors of the debtor, for leave to examine privately the debtor and certain other creditors, relatives of the debtor. The applicants deposed that they had grave suspicions as to the validity of a bill of sale executed by the debtor within twelve months of his liquidation, and desired to investigate the trade dealings and transactions between the debtor and the bill of sale holder and his relatives; they offered to put all depositions on the file, for the use of the trustee in the liquidation, and to pay all the costs of the examinations.

The trustee opposed the application on the ground that he had investigated the debtor's affairs, and was satisfied that the debtor had truly disclosed the whole of his estate.

Mr. Creed (*Mr. Robinson* with him) for the appellants.

Mr. Winslow and *Mr. H. Reed* for the trustee.

Their LORDSHIPS held that a creditor was not entitled, *ex debito justitiæ*, to such an examination. It was a matter within the discretion of the Court; and the Court must be satisfied of the reasonableness of the application, and that a *prima facie* case for investigation is made out. In the present case the applicants failed to make out a *prima facie* case. The appeal must be dismissed, with costs.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 19.

BABCOCK AND OTHERS *v.* LAWSON AND OTHERS.

Conversion—Pledge—Special Property—Redelivery obtained by Fraud—Rights of innocent Transferee.

Appeal from a judgment of the Queen's Bench Division, reported 48 Law J. Rep. Q.B. 524.

Messrs. D. pledged certain goods to the plaintiffs, and plaintiffs agreed to deliver them to Messrs. D. as sold, on Messrs. D. agreeing to pay the proceeds of the sale to the plaintiffs. Messrs. D. afterwards pledged the same goods to the defendants, who were unaware of the former pledge to the plaintiffs; and Messrs. D., by representing to the plaintiffs that they had sold the goods to the defendants, procured a delivery order from the plaintiffs, and delivered the goods to the defendants, who sold them.

The plaintiffs sued the defendants for conversion.

The Queen's Bench Division gave judgment for the defendants.

The plaintiffs appealed.

Mr. Chalmers (*Mr. Herschell* with him) for the plaintiffs.

Mr. Warr (*Mr. Cohen* with him), for the defendants, was not called on.

Their LORDSHIPS affirmed the judgment of the Queen's Bench Division.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 19.

DAVIES *v.* GOODMAN AND ANOTHER.

Bill of Sale—Effect of Non-attestation as between Grantor and Grantee—41 & 42 *Vict. c.* 31. *ss.* 8, 10.

Appeal from the Common Pleas Division, reported 49 Law J. Rep. C.P. 101.

The Common Pleas Division gave judgment for the plaintiff, holding that the non-attestation of the bill of sale rendered it void as between the grantor and grantee.

The defendants appealed.

Mr. Bompas for the appellant.

Mr. Gore for the plaintiff.

Their LORDSHIPS allowed the appeal.

Court of Appeal.
COCKBURN, L.C.J.
BRAMWELL, L.J.
COTTON, L.J.
THESIGER, L.J.
Dec. 8, 1879.
March 20.

LOWREY *v.* BARKER AND OTHERS.

Bankruptcy—Disclaimer of Lease by Trustee in Bankruptcy—Effect of Disclaimer—Liability of Trustee for Rent after Disclaimer—Use and Occupation—The Bankruptcy Act, 1869, *s.* 23.

Appeal from a judgment of BRETT, L.J.

The plaintiff was the trustee in bankruptcy of Dixon & Co., who were adjudicated bankrupts on October 8, 1877. Dixon & Co. were dyers, and at the date of the bankruptcy were tenants to the defendants of a mill and premises at Leeds, under a lease for seven years from October 8, 1873, at a yearly rent of 500*l*

payable on the usual quarter days. On Dixon & Co. becoming bankrupt, the plaintiff carried on their business for the benefit of the estate until certain dyeing materials left on the premises were used up; and in the course of the business the plaintiff did some work for the defendants, to recover the price of which this action was brought. The plaintiff's claim was admitted; but the defendants counter-claimed for a sum in respect of the plaintiff's use and occupation of the premises from April 1 until May 28, 1878, under the following circumstances: On January 4, 1878, the plaintiff paid to defendants a quarter's rent for the premises, and on January 4 sold the effects remaining on them, and from that time ceased to use the premises. On April 1, 1878, the quarter's rent for the premises was paid to the defendants by Wilkinson and Rendal, who were creditors of the bankrupts and assignees of certain machinery belonging to the mill, which machinery, under the provisions of the lease, was to be paid for on its expiration by the landlord. From April 1 to May 28 the plaintiff kept the keys of the premises in his possession; but on the latter day he disclaimed the lease and gave up the keys to the defendants, who did not oppose the disclaimer. Brett, L.J., upon these facts, gave judgment for the plaintiff in respect of the defendants' counter-claim.

Mr. C. Russell and *Mr. Shield* for the defendants.

Mr. A. Wills and *Mr. A. L. Smith* for the plaintiff.

Cur. adv. vult.

March 20.—Their LORDSHIPS affirmed the judgment of Brett, L.J., for the plaintiff; holding that, upon the execution of the disclaimer, which by section 23 of the Bankruptcy Act, 1869, operated as a surrender of the lease on the date of the order of adjudication, the trustee must be taken as never having had any interest under the lease; that he was not liable under any implied contract for use and occupation of the premises; nor was he liable on a *quantum meruit* as a trespasser.

THESIGER, L.J. (in whose judgment COCKBURN, L.J., concurred), desired, however, to guard himself from holding that, as a general principle, a trustee in bankruptcy who has had the use and occupation of the bankrupt's leasehold premises without payment, on disclaiming the lease, is absolved from personal liability.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 22.

HAWKSLEY *v.* BRADSHAW AND ANOTHER.

Practice—Pleading—Action for Libel—Denial of Libel and Payment into Court—Rules of Court, Orders XXVII. and XXX.

Appeal from the Queen's Bench Division, reported 49 Law J. Rep. Q.B. 207.

The plaintiff brought an action for libel.

The defendants denied the libel, pleaded an apology, and paid money into Court.

The Queen's Bench Division refused to allow the payment into Court to be pleaded with a denial of the libel, and held that the statement of defence was embarrassing, and ought to be struck out, under Order XXVII.

The defendants appealed.

Mr. Graham for the appellants.

Mr. Cave and *Mr. Dunn* for the plaintiffs.

Their LORDSHIPS reversed the judgment of the Queen's Bench Division.

Court of Appeal.
JESSEL, M.R.
BRETT, L.J.
COTTON, L.J.

M'STEPHENS & Co. *v.* CARNEGIE.

Practice—Service out of Jurisdiction—Rules of Court 1875—Order XI., Rule 1.

Appeal from decision of BACON, V.C., noted *ante*, p. 7, holding that Ruys & Co., foreigners resident out of the jurisdiction, and agents of the defendant Carnegie, the second mortgagee of a British ship, had been rightly made defendants.

The plaintiff was the first mortgagee of the ship, and the action was to establish his right to receive the proceeds of the freight of the ship which had been made payable and had been paid to Ruys & Co. at Antwerp, or to be paid thereout the amount he had paid for the wages of the crew and the wages and disbursements of the master.

Mr. Everitt, for the appellants, contended that Order XI., Rule 1, did not apply. The subject matter of the action was not properly within the jurisdiction; nor was there any contract entered into between the plaintiff and Ruys & Co. within the jurisdiction which was sought to be enforced or for breach of which damages was claimed.

Mr. H. Burton Buckley, contra.

Their LORDSHIPS reversed the decision of the Vice-Chancellor; being of opinion that no contract at all existed, or had existed, between the plaintiff and Ruys & Co. The equity of the plaintiff was a right of contribution against Ruys & Co., in respect of which they must be sued at Antwerp.

HIGH COURT OF JUSTICE.

Chancery Division.
HALL, V.C.
March 20.

FORSTER *v.* THE MANCHESTER AND MILFORD RAILWAY COMPANY. *Ex parte* PUGH.

Lands Clauses Act, 1845, s. 11—Vendor of Land to Railway Company—Rent-charge—Right of Vendor to re-enter under Covenant.

Adjourned summons.

The applicant had, in 1871, sold land to the company in consideration of rent-charges; and the conveyances were made to the use that the vendor might out of the land take the rent-charges; and that, if any payment should be in arrears as therein mentioned, he might enter on the lands, and exclude the company, and hold the lands till satisfaction; and subject, as aforesaid, to the use of the company.

In 1875 a receiver of the undertaking was appointed in this action, who was directed to apply balances in his hands, after payment of the working expenses, in meeting arrears and accruing payments of rent-charges. The applicant's rent-charges being in arrear, he sought the leave of the Court to enter upon the lands till satisfaction.

Mr. Graham Hastings and *Mr. Kenyon Parker* for the summons.

Mr. Wm. Pearson (*Mr. Wm. Barber* with him): The remedy for re-entry is inconsistent with enjoyment of the land for the purposes of the railway, and cannot be made use of.

HALL, V.C., granted the application. The contract of the parties provided for this remedy, which was within the liberty given to them by section 11 of the Lands Clauses Act. What the party re-entering could do with the land, was a question not now before the Court.

Table of Cases.

HOUSE OF LORDS.

House of Lords. March 16, 19. } BANCO DE PORTUGAL *v.* WADDELL.

Double Proof—Two Firms composed of same Persons—Administration of one Estate in two Countries—Bankruptcy Act, 1869, *s.* 37.

This was an appeal from a judgment of the Court of Appeal (reported Notes of Cases, vol. xiv. p. 71, *sub nom. Ex parte Banco de Portugal, in re Hooper*) affirming one of Mr. Registrar Murray, sitting as CHIEF JUDGE in Bankruptcy.

J. K. Hooper and J. K. Hooper, the younger, carried on business in London as wine and spirit merchants, under the firm of Richard Hooper and Sons; and at Oporto, as wine shippers, under the firm of Hooper Brothers.

The English firm filed a petition for liquidation; and shortly afterwards proceedings were taken in Portugal for winding up the affairs of the firm there. According to the Portuguese law, the estate in Portugal was divided among the Portuguese creditors, to the exclusion of those residing elsewhere. The appellant bank, as a Portuguese creditor, received a dividend upon the debt due to them out of the estate in Portugal, and afterwards tendered a proof in respect of the same debt in the English liquidation.

Mr. Registrar Murray admitted the proof, but only on condition that the bank should not receive any dividend on it until the other creditors had received a dividend equal to that which the bank had already received.

This decision was affirmed by the Court of Appeal.

The bank appealed by leave of the Court.

A petition was also presented by them for the admission of further evidence, which had not been tendered before the Court of Appeal.

Mr. M. Cookson and *Mr. Sidney Woolf* for the appellant company.

Mr. De Gex and *Mr. M'Call*, for the respondent, the trustee, were not called upon.

Their LORDSHIPS (EARL CAIRNS, L.C., LORD SELBORNE, and LORD BLACKBURN) held that the evidence was inadmissible; and dismissed the appeal, with costs.

House of Lords. Feb. 19, 23, 24, 26, March 1, 2, 4, 23. } NATIONAL BOLIVIAN NAVIGATION COMPANY *v.* WILSON.

Impracticability of Objects of Trust—Resulting Trust.

This was an appeal from a judgment of the Court of Appeal reversing one of FRY, J.

In the year 1872 a loan was brought out in England, on behalf of the Republic of Bolivia, for the purpose, as was stated in the prospectus inviting subscriptions, of subsidising the National Bolivian Navigation Company, which had been formed to open a communication from Bolivia to the Atlantic Ocean *via* the Amazon. It was stated in the prospectus that a contract had been entered into for the construction of a railway (which was a principal feature in the scheme), and that the same was to be completed and equipped within two years.

In accordance with the terms of the prospectus, a sum equal to the contract price of the railway (in addition to interest and drawings on the loan for two years) was retained out of the proceeds of the loan, and placed in the hands of trustees to be applied in payment of the work of making the railway as it proceeded. In addition to the general guarantee of the Bolivian Government, the profits of the navigation company and of the railway and the customs duties on all goods entering Bolivia by the new route (which duties had been granted to the appellant company) were hypothecated as security for the loan.

The original contractors discovered that the railway could not be made in the time or for the price agreed upon, and threw up their contract, alleging that they had been deceived as to the length of the proposed line.

Some litigation thereupon took place as to the trust fund; and it was held by Jessel, M.R., that it must still be applied to the making of the railway, there being then no allegation that the scheme was impracticable.

The respondent Wilson subsequently commenced the present action on behalf of himself and all other bondholders, for the distribution among them of the trust fund, on the ground that the scheme had become im-

practicable by reason of the withdrawal of the Bolivian concession from the company, and because the sum requisite for building the railway largely exceeded the trust fund, and no more money was forthcoming.

A demurrer by the defendants was overruled by Jessel, M.R.; but at the hearing, which took place before Fry, J., that learned judge gave judgment for the defendants, without calling upon them for evidence or argument.

On appeal by Wilson, the Court of Appeal called upon the defendants to produce their evidence, and in the result reversed the judgment of Fry, J., and ordered the fund to be distributed.

Mr. Benjamin, *Mr. Davey*, and *Mr. Rigby* for the appellants.

The Solicitor-General, *Mr. Southgate*, *Mr. Fooks*, and *Mr. Cozens Hardy*, for the respondent Wilson, were not called upon.

Mr. M'Naghten and *Mr. Snagge* for the trustees.

Their LORDSHIPS (EARL CAIRNS, L.C., LORD HATHERLEY, LORD PENZANCE, LORD O'HAGAN, LORD SELBORNE, and LORD BLACKBURN) held that the scheme had become abortive, and that there was a resulting trust for the bondholders. The decision of the Court of Appeal was, with an unimportant variation, affirmed, with costs.

House of Lords.
March 4, 8, 9, 11, 15, 18, 23.
REGINA *v.* THE BISHOP OF OXFORD.

Church Discipline Act (3 & 4 *Vict. c.* 86), *s.* 3—*Meaning of the Words 'It shall be lawful'—Discretion of Bishop as to issuing a Commission—Mandamus.*

This was an appeal from a decision of the Court of Appeal, reversing one of the Queen's Bench Division. The proceedings in the Courts below are reported 48 Law J. Rep. Q.B. 609.

The appellant applied to the Bishop of Oxford to take proceedings under the Church Discipline Act, s. 3, either by issuing a commission or by letters of request, in respect of offences against the law ecclesiastical alleged to have been committed by the Rector of Clewer in the county of Berks.

The bishop, being of opinion that under the section he had a discretion whether or not he would allow proceedings to be taken, refused the application.

The appellant then moved in the Queen's Bench Division for a *mandamus* to the bishop to take one of the two courses mentioned in the section. The Queen's Bench Division granted a *mandamus*, but its decision was reversed by the Court of Appeal.

Mr. Herschell and *Mr. Jeune* (*Mr. Chalmers* with them) for the appellant.

Mr. Charles (*Mr. M. Mackenzie* with him) for the Bishop of Oxford.

Mr. Phillimore for the Rector of Clewer.

Mr. Chalmers was, by special leave of the House, heard in reply, both the leading counsel for the appellant, who had already addressed the Court, being absent on public business.

Their LORDSHIPS (EARL CAIRNS, L.C., LORD PENZANCE, LORD SELBORNE, and LORD BLACKBURN) affirmed the decision of the Court of Appeal, with costs.

COURT OF APPEAL.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 18.
Re LEE & SONS. *Ex parte* GOOD.

Liquidation—Notice of Claim off—Secured Creditor—Declaration and Payment of Dividend by Trustee without making a Reserve in Respect of Claim—The Bankruptcy Act, 1869, *ss.* 40, 42, 43—*The Bankruptcy Rules*, 1870, *Rules* 136, 312—*Bankruptcy Forms*, *No.* 126.

This was an appeal from the decision of BACON, C.J. (noted *ante*, p. 8), ordering the trustees in the above liquidation to pay a dividend of 3*s.* 6*d.* in the pound on the proof of the London and Yorkshire Bank, creditors of the debtors; which order, as the trustees had no assets in hand, amounted to an order on them for personal payment.

The proof had been sent in after the declaration and payment of a dividend by the trustees; a previous proof by the bank having been admittedly properly rejected by the trustees.

The trustees had given the bank the usual notice requiring them to assess and estimate their securities, and to prove their debt, otherwise they would be excluded from dividend; and the bank had stated their intention to realise their securities, and to send in a further proof, and meanwhile gave notice that they had a claim against the estate.

The County Court judge, on the application of the bank, held that the trustees ought to have made a reserve in respect of the claim of the bank, and ordered them to pay the dividend; and the Chief Judge affirmed his decision as above.

Mr. De Gex and *Mr. E. C. Willis* for the appellants, the trustees.

Mr. Winslow and *Mr. Finlay Knight* for the bank.

Their LORDSHIPS reversed the decision of the Courts below, being of opinion that there had been nothing improper or misleading in the conduct of the trustees. The notice of claim given by the bank was not notice of such a debt provable in the liquidation as required the trustees, on declaring a dividend, to make a reserve in respect of it. If the bank, for some reason or other, were unable to realise their securities immediately, or desired not to do so, they should have applied to the Court to postpone the declaration of the dividend, or for such order as they thought themselves entitled to; and the Court would have made such an order as would have been just.

Court of Appeal.
JAMES, L.J.
BRETT, L.J.
COTTON, L.J.
March 2, 24.
In re D'ANGIBAU (DECEASED).
ANDREWS *v.* ANDREWS.

Power to appoint by Tenant for Life—Exercise of Power by Infant.

This was an appeal from a decision of JESSEL, M.R. (reported LAW JOURNAL Notes of Cases, vol. xiv. p. 145), overruling a demurrer, and holding that an infant could exercise a power over property in which she had an interest, and over which the exercise of the power did not affect her interest.

Mr. Ince and *Mr. Wilkinson* for the appellant.

Mr. Chitty and *Mr. Phillpotts* for the respondent.

March 24.—Their LORDSHIPS to-day affirmed the judgment of the Master of the Rolls, but said that they would give their reasons for their decision on some future occasion.

HIGH COURT OF JUSTICE.

Chancery Division. HALL, V.C. March 17. } *In re* THE MANCHESTER AND MILFORD RAILWAY COMPANY.

Railway Company—Rent-charge—Lands Clauses Consolidation Act, 1845, *s.* 10.

In this case a question arose as to the validity of certain rent-charges granted by a railway company to their contractor. The agreement between the company and contractor in effect was that if any landowner was unwilling to sell to the company in consideration of a rent-charge, the contractor should purchase for money, and resell to the company, who should grant a rent-charge to the contractor. The rent-charges so granted were of two kinds. In one class of cases the contractor agreed with the landowner for the purchase of the land, and paid the purchase money to the vendor who conveyed to the company, and the company then by a subsequent deed granted a rent-charge to the contractor calculated on the amount so paid. In the other class of cases the rent-charges were granted generally in respect of sums of money paid by the contractor for the purposes of the company. The chief clerk having disallowed all the rent-charges, the contractor took out a summons to vary the certificate.

Mr. W. Pearson and *Mr. W. Barber* for the contractor.

Mr. Graham Hastings and *Mr. Kenyon Parker, contra*, contended that the rent-charges were void, as the contractor had never been either an owner in fee or entitled to dispose of the land within the Lands Clauses Consolidation Act, s. 10.

HALL, V.C., held that the rent-charges of the first kind were good; the substance of the case being that the contractor purchased and took the land and sold it to the company, and the conveyance direct to the company being merely to avoid circuity. The rent-charges of the second kind were invalid, as it did not appear that the money was paid by the contractor to any person who was selling to the company as an owner in fee, or whether such money was purchase money or other compensation; *e.g.* for injuriously affecting lands, surveyors' fees (it might be the contractor's own surveyor's), or the like.

Queen's Bench Division. (*Magistrates' Case.*) March 20. } REGINA *v.* PRICE AND OTHERS.

Poor Rates—Warrants of Distress—Summary Jurisdiction of Justices—Procedure—Statutes 11 *&* 12 *Vict. c.* 43; *and* 42 *&* 43 *Vict. c.* 49.

This was an application for a writ of *mandamus*, in which the question raised was whether the Summary Jurisdiction Act, 1879, has done away with the summary power of magistrates to issue warrants of distress for poor rates.

Mr. Price, and other magistrates of Middlesex, had refused to issue warrants of distress for the recovery of certain poor rates, on the ground that the procedure in such cases was now regulated by the Summary Jurisdiction Act, 1879.

By the Summary Jurisdiction Act (42 & 43 Vict. c. 49), s. 47, the provisions of this Act, with respect to a sum adjudged to be paid by an order, shall apply, so far as circumstances admit, to a sum in respect of which a Court of summary jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1878, in like manner as if the said sum were a civil debt; and the provisions of this Act, with respect to the hearing, trying, determining, and adjudging of a case by a Court of summary jurisdiction, when sitting in open Court, shall apply to the hearing, trying, determining, and adjudging by a Court of summary jurisdiction of an application for the issue of any such warrant.

Poland showed cause.

The Solicitor-General and *Lush-Wilson* supported the rule.

The COURT (COCKBURN, L.C.J., LUSH, J., and BOWEN, J.) held that the magistrates, in issuing warrants of distress for poor rates, do not sit as a 'Court of summary jurisdiction' under Jervis's Act, and that section 47 applied only to cases in which the application might be under Jervis's Act.

Rule absolute.

Queen's Bench Division. March 22. } *In re* PIERCE.

Statute 4 *&* 5 *Wm. IV. c.* 76, *s.* 38—*Union—Ex officio Guardians—County Justices—County of a Town.*

This was an application for a *quo warranto*; the question raised being, whether justices for the county of the town of Poole had a right to act as *ex officio* guardians under the provisions of 4 & 5 Wm. IV. c. 76, s. 38, by which, *inter alia*, 'Every justice of the peace residing in any parish, and acting for the county, riding, or division in which the same may be situated,' is made an *ex officio* guardian of a workhouse.

Arthur Charles and *Rudge* showed cause, and contended that the words 'county,' 'riding,' or 'division' included a county of a town; and that, therefore, the justices in question lawfully acted as *ex officio* guardians for the Poole Union.

Wills and *Pollard, contra*, argued that the words employed in section 38 applied only to counties at large, and not to counties of towns.

The COURT (COCKBURN, L.C.J., LUSH, J., and BOWEN, J.) discharged the rule, holding that the term 'county' included a county of a town.

Rule discharged.

Queen's Bench Division. (*Magistrates' Case.*) March 23. } GOLDSTRAW (APPELLANT) *v.* DUCKWORTH AND ANOTHER (RESPONDENTS).

Highway—Projection over Footpath—Obstruction.

Case stated under 20 & 21 Vict. c. 43.

By an Act 'for the promotion of the health of the inhabitants of Liverpool and the better regulation of buildings in the borough,' it was enacted that 'no projection of any kind should be made in front of any building over or upon the pavement,' with certain exceptions in favour of shop fronts and doorways.

The respondents were summoned under the above pro-

visions. The projection complained of was an oriel window, not in the nature of a shop front or doorway, which projected over the pavement of the street. It was admitted that the window did not interfere with the use of the footpath, but only with the access of light and air to the street, and with the regularity of the line of buildings in the street. The magistrate dismissed the summons, but stated the above case.

R. S. Wright for the appellant.

The respondents did not appear.

The COURT (LUSH, J., and MANISTY, J.) held that the statute only prohibited projections which prevented free passage along the pavement; and not to projections in the upper part of buildings, which merely interfered with the access of light and air.

Appeal dismissed.

Common Pleas Division. March 17. } HAMLYN *v.* BETTELEY.

Bill of Sale—Statement of Consideration—Bills of Sale Act, 1878 (41 & 42 *Vict. c.* 31), *s.* 8.

In this case—which was an interpleader issue whether certain goods, seized in execution, were the property of the plaintiff as against the defendant, the execution creditor—the question was raised, whether the bill of sale of the goods, which had been given by the execution debtor to the plaintiff, set forth the consideration for which it was given as required by section 8 of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31). The bill of sale recited that the grantor, having two executions on his premises, and being unable to carry on his business by reason thereof, had applied to the plaintiff to lend him 182*l.* 3*s.*, to enable him to pay out such executions, and that the plaintiff had agreed to this on having the assignment; and then the bill of sale stated that, in pursuance of such agreement, and in consideration of the sum of 182*l.* 3*s.* then paid, the grantor assigned the goods therein mentioned to the plaintiff.

At the trial at Chelmsford, before DENMAN, J., the evidence was that the plaintiff gave various cheques, which were duly paid, for several sums, amounting in the whole to the said 182*l.* 3*s.* One of these cheques was given to the sheriff's officer; another was given to an execution creditor; another was given to the grantor himself of the bill of sale; and one for 25*l.* was given to the solicitor of such grantor for money lent and for costs. It appeared, however, that the grantor knew and sanctioned the cheques being so drawn and given. The learned judge held that the consideration was not correctly set forth in the bill of sale, and directed a verdict for the defendant. A rule *nisi* for a new trial on the ground of such direction being a misdirection was obtained, and against this rule

Witt showed cause.

E. Pollock in support of the rule.

The COURT (GROVE, J., and DENMAN, J.) held that the direction of the learned judge was wrong, as the consideration was only the money which was paid, and that that was truly stated.

Rule absolute.

Common Pleas Division. March 18, 20, 22. } MAYOR AND BURGESSES OF SALTASH *v.* GOODMAN AND ANOTHER.

Trespass—Oyster Fishery—Claim to take without Stint—Free Inhabitants of ancient Tenements.

Special case.

The plaintiffs—claiming, by virtue of divers royal charters and by prescription, to be possessed of the soil and of a several oyster fishery in a navigable part of the river Thames—sued the defendants for disturbance of the fishery by dredging for oysters. The defendants justified as free inhabitants of ancient tenements in the borough of Saltash from time immemorial, to have exercised the privilege of dredging for oysters in the *locus in quo* from the second day of February to Easter Eve in each year, and of catching and carrying away the same, without stint, for sale. The defendants further claimed to have exercised these privileges as free inhabitants of the borough of Saltash, and also as subjects of the realm. It was found, as a fact, that such a usage as was claimed by the defendants would destroy the fishery.

The royal charters from which the plaintiffs deduced their title—after reciting and confirming ancient royal charters of Richard II., Edward IV., and Henry VIII., and the liberties conferred by them on the plaintiffs—granted to the plaintiffs all the 'liberties, privileges, &c., above recited, and the like lands, waters, watercourses, &c., and also tolls of oysters, anchorage, &c., and customs for every seine of the sea, &c.' The plaintiffs further produced the records in two actions for disturbance of the fishery, in both of which they had obtained judgment, and other documentary evidence showing acts of ownership.

Arthur Charles (*J. V. Austin* with him), for the plaintiffs, contended that the charters conferred on the plaintiffs the soil of the river, and a general fishery therein; that the acts of ownership, of themselves, raised a presumption in favour of the plaintiffs; and that the right claimed by the defendants was bad in law.

Muir-Mackensie (*Bullen* with him), for the defendants, contended that the language of the charters conferred no exclusive rights on the plaintiffs, and that the acts of ownership on which they relied were opposed and displaced by the immemorial user on the part of the defendants.

The COURT (GROVE, J., and DENMAN, J.) gave judgment for the plaintiffs; holding from the language of the royal charters, and other documentary evidence, that the plaintiffs had made out a *prima facie* title to the soil and a several fishery in the river, and that the defendants had made out no title to displace the plaintiffs' rights.

Judgment for the plaintiffs.

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COURT OF APPEAL.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 20, 24.

DEBENHAM AND ANOTHER v. MELLON.

Husband and Wife—Wife's Authority to pledge her Husband's Credit—Secret Revocation of Authority.

Appeal from a judgment of BOWEN, J.

The action was to recover 42*l*., the price of various articles of dress supplied by the plaintiffs, who were linendrapers, to the defendant's wife. The goods were supplied to the wife whilst living with her husband, and were admitted to be necessaries, in the sense that they were suitable to the position in life of the parties. Shortly before the goods were ordered, the defendant secretly forbade his wife to buy goods on his credit. Bowen, J., at the trial, left the question to the jury, whether or not there had been a revocation of the wife's authority. The jury found that there had; and Bowen, J., gave judgment for the defendant.

The plaintiffs appealed.

Mr. Benjamin, *Mr. A. L. Smith*, and *Mr. Wilberforce* for the plaintiffs.

Mr. M'Call for the defendant.

Their LORDSHIPS dismissed the appeal; holding that the defendant's wife was not entitled to pledge his credit for the goods after the authority had been revoked.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
March 24.

ATTWOOD AND OTHERS v. SELLAR.

Ship and Shipping—General Average Contribution—Practice of Average Adjusters inconsistent with Law.

Appeal from a judgment of the Queen's Bench Division (reported 48 Law J. Rep. 465) on a special case.

Mr. Butt, *Mr. R. E. Webster*, and *Mr. Fullarton* for the appellant.

Mr. Cohen and *Mr. J. C. Mathew* for the respondents.

Their LORDSHIPS unanimously affirmed the judgment of the majority of the Queen's Bench Division.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
April 6, 8.

SEYMOUR v. COULSON AND ANOTHER. WHARTON AND ANOTHER CLAIMANTS.

County Court Appeal—38 & 39 Vict. c. 50, s. 6—Point not argued at Trial—Notes of County Court Judge.

Appeal from the judgment of the Queen's Bench Division dismissing an appeal from a County Court judge, who had decided against the validity of a bill of sale.

Certain composition resolutions had been agreed to, in pursuance of which the debtor had given the bill of sale in question.

The judge of the County Court had taken a note, from which it appeared that he held the bill of sale not to be void under 13 Eliz. c. 5; but he found that the resolutions had been obtained by fraud; and held that, therefore, they were void or voidable; and that the bill of sale, having been given in pursuance of these resolutions, was invalid; and gave judgment against the claimants.

On appeal to the Queen's Bench Division, by motion, under 38 & 39 Vict. c. 50, s. 6, it did not appear that the point that the bill of sale was invalidated by the invalidity of the composition resolutions had been argued before the County Court judge, nor had he been requested to take a note of that point. The Court held that, under the Act, the point could not be raised; and dismissed the appeal without considering the case on the merits.

The claimants under the bill of sale appealed to this Court.

Mr. Herschell and *Mr. R. Vaughan Williams* for the appellants.

Mr. Cave and *Mr. Horace Smith* for the respondents.

Their LORDSHIPS held that, as the point was necessarily decided by the County Court judge, in arriving at the conclusion at which he had arrived, it might be raised by the appellants, although it had not been argued at the trial, nor had the judge been requested to take a note of it. They further held that the bill of sale was not invalidated by the fraud practised in procuring the passing of the composition resolutions; and allowed the appeal.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 9.

In re THOMSON'S ESTATE. HERRING *v.* BARROW.

Will—Construction—Life Interest, with Power of Disposition 'inter vivos'—Power or Property—'Remaining.'

Appeal from the decision of HALL, V.C. (reported 49 Law J. Rep. Chanc. 16), where he held that a devise and bequest of all a testator's real and personal estate to his widow, 'for her natural life, to be disposed as she may think proper for her own use and benefit;' and 'in the event of her decease, should there be anything remaining of the said property, or any part thereof,' a devise and bequest of 'the said part or parts thereof' to other persons—conferred on the widow a life interest, with a power to dispose of the property absolutely during her life, but not extending to a disposition by will.

The plaintiff appealed.

Mr. G. Hastings and *Mr. Caldecott* for the appellant.

Mr. W. Pearson and *Mr. D. Rawlins*, for the respondent, were not called upon.

Their LORDSHIPS affirmed the decision of the Vice-Chancellor, and dismissed the appeal.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
April 13.

LETCHFORD *v.* OLDHAM.

Marine Insurance—Stranding.

This action was brought on a policy of marine insurance to recover for an average loss on certain maize, which had been shipped on board a vessel, called the White Eagle, for a voyage from Tralee to Dingle. By the policy the maize was declared to be free from average, unless the ship were stranded. The harbour at Dingle is so shallow that a vessel of the draught of water of the White Eagle can only get alongside the quay at high spring tides. She arrived on July 21, 1878, and waited for water, the 30th being the date of the highest spring tide. On the 26th she floated further in, and took the ground within 300 feet of the quay. On the 27th she got in some distance further, and took the ground again. On the 28th she floated to within twenty feet of the quay, and took the ground on a small bank, close to which there was a hole. It was owing to her bows getting down into this hole that the average loss occurred. It appeared, from the evidence, that the bank and the hole had been recently formed by the propellers of steamers which had forced their way out of the harbour at low water.

FIELD, J., held that the vessel was stranded within the meaning of the policy.

The defendant appealed.

Mr. Herschell and *Mr. Bremner* for the defendant.

Mr. Butt and *Mr. J. C. Mathew* for the plaintiff.

Their LORDSHIPS held that, the vessel having taken the ground on July 28, not in the usual course of navigation, but owing to an accidental extraneous cause, there had been a stranding within the meaning of the clause in the policy; and dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
April 6.

In re ARTISTIC COLOUR PRINTING COMPANY (LIMITED).

Company—Execution—Injunction to stay 'Proceeding' in Exchequer Division—Companies Act, 1862, *ss.* 85, 138—*Judicature Act*, 1873, *s.* 24, *subs.* 5.

This was an *ex parte* application to stay execution on a judgment in an action in the Exchequer Division, where the judgment had been signed after notice of an extraordinary resolution to wind up the company.

Mr. Buckley, for the liquidator, relied on *Re Perkins, Beach Lead Mining Company*, L.R. 7 Chanc. Div. 371.

The MASTER OF THE ROLLS was of opinion that the case cited was no authority on the point, as section 24, subsection 5, of the Judicature Act, 1873, had not been called to the judge's attention; and he held that, having regard to the provisions of that section, the application must be made to the Exchequer Division.

Chancery Division.
JESSEL, M.R.
April 10.

Re DRONFIELD SILKSTONE COAL COMPANY (LIMITED). WARD'S CASE.

Purchase of Shares by Company—Inconsistent Memorandum and Articles of Association—'Ultra Vires'—Companies Act, 1862, *s.* 23.

A dispute having arisen between the company and Ward, the vendor to the company of a mining lease, it was agreed, by way of compromise, that the company should, amongst other things, buy certain shares in the company which were held by Ward. This was carried out as a separate transaction, and the company was registered as the owner of the shares. The memorandum of association gave the company power to do all things conducive to carrying on the business of the company, but did not expressly empower it to buy its own shares. Such a power was, however, contained in one of the articles of association.

The company having been ordered to be wound up by the Court, the official liquidator took out a summons, asking that Ward might be put on the list of contributories in respect of these shares.

Mr. Chitty and *Mr. Buckley*, for the summons, contended that the transaction was *ultra vires* the company.

Mr. Davey and *Mr. G. C. Price*, for Ward, submitted that the purchase of the shares was authorised by the memorandum and articles of association, and, being perfectly *bona fide*, would not be set aside by the Court.

The MASTER OF THE ROLLS held that the purchase was not within the powers given to the company by its

memorandum of association, and could not, therefore, be sustained under an article of association which was inconsistent with the memorandum. His lordship was further of opinion that, even if such a power had been contained in the memorandum, it would have been ineffectual as being obnoxious to the provisions of section 23 of the Companies Act, 1862, which, by implication, requires that the registered members of a company shall be persons other than the company itself.

Chancery Division. BACON, V.C. April 8. } BOLTON *v.* FERRO.

Composition Deed—Assessment of Value of Security—Redemption—Bankruptcy Act, 1861 (24 & 25 *Vict. c.* 134), *s.* 192.

On November 4, 1864, S. Bolton, a tobacconist, executed a composition deed in favour of his creditors, whereby the creditors released him from their debts; and S. Bolton and his brother covenanted to pay a composition of 10*s.* in the pound; and it was thereby provided that nothing therein contained should prevent the creditors from enforcing any charge or lien on any estate whatsoever, or suing any other person than S. Bolton; and, further, that, as to any debt secured on the estate of S. Bolton, the creditors should be entitled to the composition on the amount of such debt, after allowing for and deducting the value of the security.

At the date of the deed, the defendants were creditors of S. Bolton to the amount of 229*l.* 8*s.* 5*d.*, for which they held certain policies as security. The defendants valued their security at 16*l.*, and executed the deed as creditors for 213*l.* 8*s.* 5*d.*, on which they duly received the composition of 10*s.* in the pound. S. Bolton died in 1878; and the plaintiff, his administratrix, brought this action to redeem the policies, tendering 16*l.* and the amount of premiums paid by the defendants, with interest at 4*l.* per cent. The defendants insisted that they were entitled to be paid in full out of their security.

Mr. Hemming and *Mr. Mulligan* for the plaintiff.

Sir H. Jackson and *Mr. Daniel Jones* for the defendants.

Mr. Hemming in reply.

BACON, V.C., said that the defendants, having had the benefit of the composition, could not claim to retain their security for anything in excess of the value they had assessed it at; and made an order for redemption on payment of 16*l.* with the amount of the premiums, with interest at 5*l.* per cent. No costs.

Chancery Division. BACON, V.C. April 9. } HODGSON *v.* WILLIAMSON.

Married Woman—Separate Estate—General Engagements—Separation Deed Trusts—Statute of Limitations.

Action for the administration of the trusts of the will of Mary Barber.

By the terms of a separation deed between her and her husband, the income of certain property became vested in the defendant, upon trusts for Mary Barber for life, for her separate use; and, after her death, the *corpus* was to be held, upon trust, as she should, by deed or will, appoint.

Nothing was paid to Mary Barber under the separation deed; and, in fact, she was utterly destitute. The plaintiff advanced moneys for her support.

She died, in March, 1870, leaving a will, by which she appointed her property in moieties, directed her debts to be paid, and appointed executors. They, however, did not prove the will; and, there being then no property, it was not till September, 1878, that an administrator was appointed.

A suit for the administration of the trusts of the separation deed was instituted in 1871; and, a sum of 3,500*l.* having in the meantime been received unexpectedly in another suit, the chief clerk, in July, 1877, certified that the property, subject to the trusts of the separation deed, consisted of that sum. On November 21, 1877, it was ordered that the sum of 3,500*l.*, less costs, should be carried over, in moieties, to the separate accounts of the appointees under the will of Mary Barber.

The plaintiff now claimed repayment, from Mary Barber's estate, of the sums above stated to have been advanced by him.

The main points argued were (1) whether the debts bound Mary Barber's separate estate; (2) whether, if they did, they were barred by the Statute of Limitations, or were relieved from the operation of the statute as being payable out of her separate property as a trust fund.

Upon the latter point *Vaughan* v. *Walker*, 6 Ir. Ch. 471; 8 Ir. Ch. 458, was relied upon by the defendant as displacing *Norton* v. *Turvill*, 2 P. Wms. 144. See 'Lewin on Trusts,' 633 (6th ed.).

Mr. Osborne Morgan and *Mr. Finch* for the plaintiff.

Sir H. M. Jackson and *Mr. W. Barber* for the defendant.

BACON, V.C., held (1) that the married woman's separate estate was liable to the debts; and (2) that the decision in *Vaughan* v. *Walker* was erroneous, saying that, apart from that case, the principle of *Norton* v. *Turvill* had never been departed from, and that the Statute of Limitations was no defence.

Chancery Division. HALL, V.C. March 23. } *In re* RUTHERFORD. BROWN *v.* RUTHERFORD.

Statute of Limitations—Promissory Note payable after Demand—Payment of Interest—Time when beginning to run.

The testator in the action signed and gave to the plaintiff's testator a promissory note, dated May 20, 1857, for 100*l.*, payable three months after demand, with interest at 5 per cent. from the date of the note. Interest was paid from the date of the note down to May, 1858, but not afterwards. There was no evidence that any actual demand for payment of the principal had been made before 1878, when this action was brought. The defendants set up the Statute of Limitations as a bar to the claim, and the chief clerk disallowed the claim. This was an adjourned summons to vary the certificate in this respect.

Mr. E. Henderson, for the plaintiff, argued that the statute did not begin to run until actual demand made, and that it lay on the defendants to prove that such demand had been made.

Mr. Caldecott, for the defendants, argued that the payment of interest was in itself evidence of a demand

having been made, and cited *Bamfield* v. *Tupper*, 7 Exch. Rep. 27; 21 Law J. Rep. Exch. 6.

HALL, V.C., distinguished that case on the ground that there the note was payable 'on demand'—*i.e.* immediately; and observed that the payment of interest might very well have been made in order to prevent a demand for the payment of the principal, and was not, therefore, evidence that such a demand had been made.

Chancery Division. HALL, V.C. March 4, 24. } JENKINS *v.* MORRIS.

Practice—Motion for new Trial—Action in Chancery Division—Issue of Fact tried at Assizes—Rules of Court, Order XXXIX., Rules 1, 1*a.* (*Rules of December*, 1876); *Order XXXVI.*

In this action, which was to set aside a lease on the ground of the unsoundness of mind of the lessor, and inadequacy of rent, the Vice-Chancellor made an order, upon the application of the defendant, that the issue of fact—namely, whether the lessor was or was not of sound mind at the granting of the lease—should be tried at the Carmarthenshire assizes; and staying further proceedings until trial of the issue. The issue was tried before LINDLEY, J., and a jury, who found in the affirmative; and the presiding judge reported the finding to the Vice-Chancellor.

Mr. B. T. Williams, *Mr. Graham Hastings*, and *Mr. C. C. Berkeley* applied, *ex parte*, for a conditional order for a new trial of the issue, on the ground of misdirection, and that the verdict was against evidence. They submitted that, under the rules, the application must be made in the Division in which the action actually stands.

HALL, V.C., said that, with regard to the point of jurisdiction, he must entertain the motion, there being no rule in the general orders to meet the case.

His lordship afterwards refused the application on the merits.

Chancery Division. HALL, V.C. March 16, 17, 24. } *In re* THE BRITISH GUARDIAN ASSURANCE COMPANY.

Companies Act, 1862, *s.* 165—*Trustee for Policyholders whether an 'Officer' of the Company.*

This was an application by the official liquidator of the above company, under section 165 of the Companies Act, 1862, to make one of the trustees for the policyholders liable in respect of sums invested in the name of the trustees, for the benefit of the policyholders, and alleged to have been improperly sold out by the trustees. One of the defences was that the trustees were not 'officers' of the company within the section.

Mr. Graham Hastings and *Mr. Seward Brice* for the official liquidator.

Mr. W. Pearson (*Mr. Manby* with him) referred to the judgment of Honeyman, J., in *Cornell* v. *Massey*, 42 Law J. Rep. C.P. 136, as an authority that a trustee for a company was not an officer of the company.

HALL, V.C., said that a trustee was an officer of a company within the section. The case cited was decided under the penal section 38 of the Amendment Act of 1867. The 'office of trustee' was an everyday expression, and in the Charitable Trusts Act trustees were treated as officers.

Chancery Division. HALL, V.C. March 24. } *In re* THE ANGLO-FRENCH CO-OPERATIVE SOCIETY.

Practice—Privilege of Parliament—Committal for Contempt.

This was a motion for an attachment against a member of the House of Commons for disobedience to an order of the Court for the payment of money and delivery over of certain documents by him. The application was resisted on the ground of privilege of Parliament.

Mr. Young for the motion.

Mr. M'Swiney for the respondent.

HALL, V.C., after referring to the authorities, said that it was only in cases of gross contempt of Court that an order would be made for the committal of a member of Parliament. In the present case he held that the conduct of the respondent, although improper, was not of such a kind as to warrant an order being made. *Motion refused, without costs.*

Chancery Division. HALL, V.C. April 9. } DEWAR *v.* BROOKE.

Will—Vested or contingent—Gift to Child attaining Twenty-five, with Direction as to Maintenance—Fox v. *Fox considered.*

Petition.

The testator, James Dewar, by his will, dated March, 1866, directed his trustees to stand possessed of the proceeds of his residuary real and personal estate, in trust for all his children, who being sons should attain twenty-five, or being daughters should attain twenty-one, or marry, and to be divided and paid on the youngest child attaining the age of twenty-one. The will contained a power to the trustees to apply the whole or part of the income of the vested or presumptive share of any child entitled in expectancy for his or her maintenance.

There were only two children of the testator—a son aged twenty-three, and a daughter who had attained twenty-one. The question was, whether or not the son had acquired a vested interest under the will.

Mr. W. Pearson and *Mr. W. W. Cooper*, for the son (the petitioner), submitted that he took a vested interest, both by reason of the direction as to maintenance, and because of the direction for payment when the youngest child attained twenty-one (which had happened). They cited *Fox* v. *Fox*, L. R. 19 Eq. 286, on the former point.

Mr. Graham Hastings and *Mr. W. C. Harvey* for the respondents, the trustees.

HALL, V.C., held that the son took contingently on his attaining twenty-five. He pointed out that *Fox* v. *Fox* was in conflict with *In re Ashmore's Trust*, 39 Law J. Rep. Chanc. 202; L. R. 9 Eq. 99.

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Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 12, 13.

KINLOCH *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

Kirwee Booty—Grant by Crown to Secretary of State in Trust for ascertained Persons—Account.

Appeal by the defendant from a decision of HALL, V.C. (noted Notes of Cases, Vol. XIV. p. 138), holding that an order of Her Majesty in Council, granting the proceeds of the Kirwee booty to the Secretary of State for India 'in trust' for distribution amongst the parties entitled, created a trust which rendered the Secretary of State liable to account for the proceeds at the suit of the parties entitled.

The Attorney-General (*Sir J. Holker*), *Mr. Graham Hastings*, and *Mr. Macnaghten* for the appellant.

Mr. W. Pearson and *Mr. Willis Bund* for the respondent.

Their LORDSHIPS held, reversing the decision of the Vice-Chancellor, that the order did not create a trust which was enforceable in a Court of law, but was what it purported to be—a direction by the Sovereign authorising the Sovereign's servant having possession of the Sovereign's money to deal with it in a certain way.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
April 14.

CHAPMAN *v.* THE MIDLAND RAILWAY COMPANY.

Practice — Costs on Higher Scale—Injunction principal Relief sought—Additional Rules of Court (Costs), Order VI., Rule 2.

Appeal from the Queen's Bench Division, reported 49 Law J. Rep. Q.B. 245.

The plaintiff, who had recovered damages and obtained an injunction in an action for trespass, applied to tax his costs on the higher scale, according to the provisions of Order VI., Rule 2, of the Additional Rules of Court (Costs).

The Queen's Bench Division affirmed a decision of the master refusing him permission to do so; and he appealed.

Mr. W. Wills and *Mr. Cozens Hardy* for the plaintiff.

Mr. W. Harrison and *Mr. Sutton* for the defendants.

Their LORDSHIPS affirmed the decision of the Queen's Bench Division; holding that the injunction was not the principal relief sought by the plaintiff.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 14.

In re AN ARBITRATION BETWEEN DAVEY AND RAILWAY PASSENGERS ASSURANCE COMPANY.

Submission to Arbitration—Rule of Court—Compelling Attendance of Witnesses.

This was an appeal from the decision of HALL, V.C., dismissing an application by the representatives of Wm. Davey, deceased, to make a submission to arbitration a rule of Court. The case is reported ante, p. 18, *nom. In re Railway Passengers Assurance Company's Act*, 1864, *in re Liscombe*.

Mr. Renshaw for the appellants.

Mr. Northmore Lawrence for the company.

Their LORDSHIPS varied the order of the Vice-Chancellor, and made the submission a rule of Court, on the ground that the order of the Vice-Chancellor, if allowed to stand, would prevent the appellants from enforcing the award, if subsequently made in their favour. They agreed with the Vice-Chancellor in his opinion that the application was useless and premature, and, if made at all, should have been made *ex parte*. The appellants were ordered to pay the costs of the motion in the Court below; no order as to costs of the appeal.

Court of Appeal.
JESSEL, M.R.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 14.

In re MANCHESTER AND MILFORD RAILWAY COMPANY.

The Railway Companies Act, 1867 (30 & 31 *Vict. c.* 127), *s.* 4—'*Appointment of a Receiver, and, if necessary, of a Manager*'—*Working Concern—Petition by Judgment Creditors.*

This was an appeal by the Cambrian Railway Company from a decision of HALL, V.C., dismissing the petition presented by them, with costs.

The Cambrian Company were judgment creditors of the Manchester and Milford Railway Company, and in that capacity presented a petition under section 4 of the Railway Companies Act, 1867, for the appointment of a manager of that company. A receiver had been already appointed by the Court upon a petition under the same Act on July 23, 1875.

The petition alleged a case of mismanagement by the directors of the company, who were the nominees of a Mr. Barrow, who was the principal shareholder of the company; and several instances of unfair preference of other companies, in which Mr. Barrow was personally interested, to the injury of the Manchester Railway Company.

Numerous affidavits were filed in support of the allegations contained in the petition.

Hall, V.C., dismissed the petition, on the ground that it was not a case in which, under the Act, it was necessary for the management to be withdrawn from the board of directors, who were the properly constituted authority, and responsible for the due management of the company.

The petitioners appealed.

Mr. G. Hastings and *Mr. Kenyon Parker* for the appellants.

Mr. W. Pearson and *Mr. W. Barber, contra.*

Their LORDSHIPS reversed the decision of the Vice-Chancellor. Section 4 of the Act not only extended protection to the rolling stock, plant, &c., of railway companies, but gave judgment creditors of such companies new rights, and rights independent of the question whether or no the company had rolling stock, &c., to be taken in execution. Under that section any judgment creditor could obtain the appointment of a receiver, and, if necessary (not 'if expedient' or if desirable), of a manager. A receiver had no power of carrying on a business, or buying and selling; and, in the ordinary practice of the Court, where a partnership had to be continued, or a mine to be worked, a manager, and not a receiver only, was appointed. From the consideration of this distinction, and the words 'if necessary,' after making due provision for the working of the railway, contained in the section, it was obvious that if a railway is carrying on business a manager must necessarily be appointed. As a general practice the directors, or some of them, if acting fairly, will be appointed.

The case was accordingly referred to the Vice-Chancellor to appoint a manager, without prejudice to the right of the directors to propose themselves or one of their number as manager. The costs of the appellants below and on the appeal to be added to their debt, except so far as they had been increased by the evidence which had been entered into, the whole costs of such evidence being left to the discretion of the Vice-Chancellor.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
April 15.

SHOETENSACK *v.* PRICE & Co.

Practice—Appeal—Time for appealing—Setting down Case for Hearing—Order LVIII., Rules 2, 8, *and* 15.

This was an appeal of the plaintiff's from an order of HAWKINS, J., referring the case back to an official referee.

The order was made on March 10; and the plaintiff gave the defendants notice of motion for an appeal on the 25th, and set down the appeal at the office for hearing on the 31st.

Mr. M'Leod, for the defendants, objected that the appeal had been abandoned, on the ground that, having been set down for hearing on the last of the twenty-one days within which appeals from interlocutory orders must be brought, it was never ripe for hearing.

Mr. Monckton appeared for the plaintiff.

Their LORDSHIPS held that the appeal was in time, as March 31 fell in the Easter vacation; and the appeal must necessarily come on for hearing on a subsequent day.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 13, 16.

SAFFRON WALDEN BUILDING SOCIETY *v.* RAYNER.

Mortgagees—Priority—Constructive Notice.

This was an appeal from a decision of BACON, V.C. (reported 48 Law J. Rep. Chanc. 402), holding (1) that notice by first mortgagees of their charge given to the solicitors purporting to act on behalf of the trustees of the mortgaged fund, was notice to the trustees, so as to give priority over puisne incumbrancers who had given notice of their charges to the trustees directly; (2) that, upon the evidence, notice of the first charge was, at the time they received it, distinctly brought by the solicitors to the actual knowledge of the trustees.

The trustees appealed.

Mr. Bristowe and *Mr. Everitt* for the appellants.

Sir H. Jackson and *Mr. Warmington* for the first mortgagees.

Mr. Hemming and *Mr. F. W. Bush* for the solicitors.

The puisne incumbrancers had been served with the notice of appeal, but did not appear.

Their LORDSHIPS reversed the decision of the Vice-Chancellor; being of opinion (1) that the mere fact that the defendant solicitors were generally employed by the trustees, in matters connected with the trust estate, did not, without express authority, constitute them the agents of the trustees to accept, on their behalf, notices of incumbrances on the trust estate; (2) that if the notice was communicated by the solicitors, at the time they received it, to the trustees, it was not communicated in such a way as that they acquired an intelligent apprehension of the nature of the incumbrance that had been created, so as to regulate their conduct by it in the execution of the trust.

Court of Appeal.
COCKBURN, C.J.
BRAMWELL, L.J.
BRETT, L.J.
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Dec. 16, 1879.
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SCARAMANGA & CO. *v.* STAMP AND ANOTHER.

Ship and Shipping—Charter-party—Insurance—Deviation whether justified to save Property—Liability of Shipowner.

This was an appeal from the judgment of LINDLEY, J., on further consideration (reported 48 Law J. Rep. C.P. 478).

Mr. Herschell, Mr. Benjamin, Mr. Cohen, and *Mr. Crump* for the defendants.

Mr. Butt, Mr. J. C. Mathew, and *Mr. Lodge* for the plaintiffs.

Cur. adv. vult.

Their LORDSHIPS affirmed the decision of Lindley, J.; and dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
April 16.

HEWETT *v.* MANSEL.

Receiver—Prior Incumbrancers in Possession by Receiver—Attornment—Form of Order.

In this case an order had been made for a receiver at the instance of the plaintiff, who was a judgment creditor, and the registrar had drawn up the order in the form given in 'Seton,' at p. 414, being the order made in *Wells* v. *Kilpin*, 44 Law J. Rep. Chanc. 184; L.R. 18 Eq. 298. In that case the receiver was appointed without prejudice to prior incumbrancers, and the tenants are 'subject, as aforesaid, to attorn.' In the present case, it appeared that a prior incumbrancer was already in possession by means of a receiver; and it was objected that there ought to be no attornment clause in the order.

Mr. Levett for the defendant.

Mr. Frederic Thompson for the plaintiff.

The MASTER OF THE ROLLS was of opinion that there ought to be no attornment clause in the order.

Chancery Division.
JESSEL, M.R.
April 16.

CHRISTIE *v.* NOBLE.

Arbitration—Agreement to refer—Revocation—Common Law Procedure Act, 1854, s. 11.

A motion was made in this action that all further proceedings might be stayed, and the matters in dispute referred to arbitration under section 11 of the Common Law Procedure Act, 1854, in pursuance of the agreement to that effect in the partnership articles. An objection was taken by the plaintiff that he had revoked the agreement to refer.

Mr. Davey and *Mr. Greenwood* for the motion.

Mr. Chitty and *Mr. Rigby* for the plaintiff.

The MASTER OF THE ROLLS was of opinion that an agreement to refer could not be revoked by one party to it; and directed the usual reference under section 11.

Chancery Division.
JESSEL, M.R.
April 19.

RAYNER *v.* PRESTON.

Vendor and Purchaser—Destruction of Premises by Fire after Contract and before Completion—Insurance by Vendor—Right of Vendor to Insurance Moneys.

This action was brought by the purchasers of certain property to recover insurance moneys paid to the vendors of the property, the fire having occurred after the date of the contract for sale, but before completion. The insurance had been effected by the vendors.

Mr. Roxburgh and *Mr. Ingle-Joyce* for the plaintiffs.

Mr. Chitty and *Mr. Bardswell* for the defendants.

The MASTER OF THE ROLLS was of opinion that the vendors, as against the purchasers, were entitled to the insurance moneys; and dismissed the action, with costs.

Chancery Division.
MALINS, V.C.
April 19.

COOPER *v.* REGINAM.

Petition of Right—4 & 5 Wm. IV. c. 24, s. 18—The Superannuation Act, 1859, s. 2—Demurrer.

Charles Cooper, the suppliant, by his petition of right, alleged that in the year 1845 he was selected to fill the office of religious instructor on board convict ships at a salary of 100*l.* a year in money, and certain personal allowances (equivalent to 300*l.* a year), and that he held the office until October 31, 1853, when it was abolished. That, in November, 1853, he was re-employed as Scripture reader at Portland prison, at a salary (including an allowance for lodging) of 186*l.* a year; that he held this office for twelve years; and that, upon his retirement (in the year 1865), he received a superannuation allowance of 65*l.*, being twenty-one-sixtieths of 186*l.* He then submitted (in effect) that the allowance had been calculated on a mistaken principle, and claimed an increased allowance on that footing.

A demurrer was put in on two grounds—(1) as to the claim for superannuation under section 2 of the Act of 1859, that the Commissioners of the Treasury had decided to allow 65*l.* a year, and that their decision was final; (2) as to the claim for compensation for the office abolished (in 1853), that no grant of any such compensation had been authorised by the commissioners as required by 4 & 5 Wm. IV. c. 24, s. 18.

The Attorney-General and *Mr. Rigby* for the demurrer.

Mr. J. Pearson and *Mr. Macmorran* for the suppliant.

MALINS, V.C., said that the right to a superannuation allowance was a very peculiar right. The Act of 4 & 5 Wm. IV. c. 24, s. 30, enacted that nothing therein contained should extend to give any person an absolute right to a superannuation allowance. He was, therefore, entirely dependent on the bounty of the Crown, and could not enforce his claim in any legal tribunal. This was made still more clear by section 2 of the Superannuation Act, 1859, which, after prescribing a scale of superannuation allowances according to length of service, provided that, if any question should arise in any department of the public service as to the claim of any person for superannuation under that clause, it should be referred to the Commissioners of the Treasury, whose decision should be final. It had been argued that this was not a claim for a superannuation allowance, but to rectify a mistake in the principle upon which it was calculated; but,

surely, this was a claim for superannuation 'within section 2 of the Act.' The demurrer must, therefore, be allowed.

Chancery Division.
BACON, V.C.
April 15.
EARL DE LA WARR *v.* MILES.

Common—'Common Pasturage and Herbage'—Extent of Right.

By a decree made in 1693, in a suit between the then owners of the soil of the forest of Ashdown (the predecessors in title of the plaintiff) and the commoners, 7,500 acres of the forest were allotted to the owners of the soil, freed of common rights; while 6,400 acres were allotted to remain open and unenclosed, so that the commoners should have and take 'sole common pasturage and herbage' thereof, 'the owners of the soil being for ever excluded from having or claiming any common of pasturage or herbage' thereon. This action was brought, by the present lord of the manor, against two persons claiming rights of common, to determine the rights of the parties under the decree. The question was whether, under the right of 'common pasturage and herbage,' the defendants were entitled to cut and carry brake, fern, and heather, for litter and manure, or whether their right was limited to taking that which could be taken by the mouth or bite of cattle.

Sir H. Jackson and *Mr. Elton* for the plaintiff.

Mr. Joshua Williams, Sir W. Harcourt, Mr. Webster, and *Mr. P. H. Lawrence* for the defendants.

BACON, V.C., held that, under 'common pasturage and herbage,' which he read as 'common of pasturage and herbage,' the commoners were only entitled to what could be taken by the bite of the cattle; and gave judgment for the plaintiff, with costs.

Chancery Division.
HALL, V.C.
April 9.
BUSTROS *v.* BUSTROS.

Practice—Service out of Jurisdiction—Form of Affidavit—Chancery and Common Law Forms.

Leave having been obtained in this action to serve the defendant, a Syrian, with a copy of the writ, a difficulty arose as to the affidavit of service to be made. It appeared that the form of affidavit in use in the Common Law Divisions merely required the deponent to state that he had served the foreigner 'with a notice in writing, a true copy of which is hereunto annexed,' and that he had effected such service by delivering a true copy of the said notice to, and leaving it with, the foreigner. By the Chancery form, on the other hand, the deponent stated that the writ of summons 'appeared to him to have been regularly issued out of the Chancery Division;' and that, 'at the time of the service of the notice, memoranda were subscribed to the said writ, and endorsements were made thereon, and on the said notice, in the manner and form prescribed by the rules of the Supreme Court.'

Mr. Romer, ex parte, asked the Court to express an opinion that an affidavit in the first form was sufficient; pointing out that it was impossible that a Syrian effecting service in Syria should make an affidavit in the Chancery form, while to send out a person on purpose would be a very heavy expense.

HALL, V.C. (without saying that the Chancery form would not do), held that the form in use in the Common Law Divisions was sufficient.

Common Pleas Division.
April 19.
WARD *v.* SIMFIELD.

Witness—Proof of previous Conviction of a Witness—17 & 18 Vict. c. 125, s. 25.

At the trial of this action before LOPES, J., the defendant, who gave evidence in support of a counter-claim, was cross-examined as to whether he had ever been convicted of an embezzlement; and, on his denying it, the plaintiff tendered in evidence a certificate of such conviction, according to section 25 of 17 & 18 Vict. c. 125, which states that, if the witness 'denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction, and a certificate,' &c., 'shall be sufficient evidence of the said conviction.' Whether the defendant was so convicted or not was not material for determining the matter in issue in the cause, and it was therefore objected that the evidence tendered was inadmissible. The learned judge, however, received the evidence, and the jury found a verdict for the plaintiff.

Cooper Wyld now moved for a new trial on the ground that such evidence was not admissible.

The COURT (GROVE, J., and LOPES, J.) refused a rule; being of opinion that the enactment allowed such proof to be given, though the matter was not material to the issue.

Rule refused.

Probate, Divorce, and Admiralty Division.
April 14.
THE RADNORSHIRE.

Practice—Interrogatories—Collision Action.

This was a motion by the plaintiffs, in an action for damage by collision, to set aside interrogatories addressed to them by the defendants. The action was an ordinary collision action between the Radnorshire and the Paria, of which the plaintiffs were the owners.

Clarkson, in support of the motion: It has never been the practice to administer interrogatories in collision actions. The Preliminary Acts prevent the necessity for interrogatories. The point is also concluded by authority—the Biola.

They are unreasonable; and so Order XXXI., Rule 5, applies (34 L. T. N.S. 135; 3 Asp. Mar. Cases, 125).

Milward and *Hilberry, contra*: Unless interrogatories are objectionable in some way, the parties have a right to deliver them; and there can be no difference in the procedure in regard to discovery in the different Divisions of the High Court.

Sir R. J. PHILLIMORE: I feel no doubt that I must dismiss this motion. I confess that I think it will increase the cost of proceedings unnecessarily if the practice is to spring up of administering interrogatories in every collision suit; but nevertheless, in spite of the case of the Biola, which has been referred to in the argument, I cannot think that, as the rules stand, these interrogatories as a whole have been improperly exhibited. Any objections to the several questions must be taken in the answers. I, therefore, dismiss the motion. The costs to be costs in the cause.

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Court of Appeal.
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April 15, 22.

Ex parte NATIONAL MERCANTILE BANK. *In re* HAYNES.

Bill of Sale—Validity—Statement of Consideration—Explanation by Solicitor—Bills of Sale Act, 1878, *ss.* 8, 10.

This was an appeal from a decision of the CHIEF JUDGE, holding that a bill of sale given by Haynes on November 3, 1879, to the bank was void as against the trustee in his liquidation, under the Bills of Sale Act, 1878, on the grounds that the solicitor who had attested the execution of the bill had not fully explained the effect of the deed to the grantor; and, further, that the consideration for the bill had not been truly stated, the consideration stated being an advance of 2,050*l.* by the bank to the grantor, whereas, in fact, only 1,500*l.* had been handed over to him, the sum of 550*l.* being applied to take up some outstanding bills which had not matured at the date of the execution of the deed.

The bank appealed.

Mr. Winslow and *Mr. Robson* for the appellants.

Mr. Hemming and *Mr. R. Vaughan Williams* for the respondent.

Their LORDSHIPS discharged the order of the Chief Judge; being of opinion that the Act of 1878 only required that the attestation clause should state that the effect of the bill had been explained, not that it should, in fact, be explained; and any omission of the explanation had not the effect of making void the bill against the grantor or any one claiming under him. The Legislature very probably thought that the protection given to the grantor by the solicitor pledging his word that he had explained the deed was sufficient, the solicitor being an officer of the Court, and liable to punishment if he misconducted himself; and that, as regards the statement of consideration, the Act only required that to be stated which would have been proper to be stated if the Act had not been passed, and that a collateral bargain between the grantor and the grantee as to the application of the consideration need not be stated.

Court of Appeal.
LORD COLERIDGE, C.J.
BRETT, L.J.
COTTON, L.J.
April 27.

BARBER *v.* GREGSON AND WIFE.

Married Woman—Separate Property—Form of Judgment against Married Woman having separate Property.

Appeal from the judgment of STEPHEN, J., at a trial without a jury.

The action was to recover the balance due on a bill of exchange indorsed by the defendant, Maud Anna Gregson, to the plaintiff. Mrs. Gregson's husband was joined as a formal defendant.

The bill was drawn on March 4, 1875, payable three months after date; and, at the time it was drawn, Mrs. Gregson was entitled to a life interest in certain real and personal property vested in trustees, in trust for such person or persons as she or her husband should jointly appoint; and, in default of appointment, upon trust that the trustees should pay the annual income to her for her separate use, free from the control of her husband.

Issue was joined on the pleadings in the action on July 19, 1879. By deed of July 5, 1879, Mr. and Mrs. Gregson jointly appointed her life interest in the trust property to Mrs. Gregson for her separate use, without power of anticipation. The action was tried on August 7, 1879; and Stephen, J., then directed that judgment should be entered for the plaintiff for 64*l.* and costs, with a direction to the master to inquire as to the separate estate of the defendant, Mrs. Gregson, and report to the Court. The judge also granted an injunction, restraining the defendants from dealing with Mrs.

Gregson's separate estate until the debt and costs were paid, or the money was paid into Court.

The defendants appealed.

Mr. Cave and *Mr. Gainsford Bruce* for the defendants.

Mr. A. Wills and *Mr. Forbes* for the plaintiff.

Their LORDSHIPS held that, as the engagement of a married woman did not bind her separate estate until an order was made to bind it, the judgment of Stephen, J., must be discharged. They declared that the plaintiff was entitled to be paid 64*l.* and costs out of the separate estate to which the defendant, Mrs. Gregson, might be entitled, with power of anticipation; but, it appearing that there was no separate estate to which she was entitled, with power of anticipation, the Court made no further order, without prejudice to the proceedings (if any) that the plaintiff might be advised to take with reference to setting aside the deed of 1879. No costs of the appeal allowed.

Court of Appeal.
LORD COLERIDGE, C.J.
BRETT, L.J.
COTTON, L.J.
April 27.

REGINA *v.* THE VICAR AND CHURCHWARDENS OF TOTTENHAM.

*Vestry Meeting—Regulation of Business at—Authority to fix Hour for holding—*58 *Geo. III. c.* 69.

This was an appeal from a judgment of the Queen's Bench Division (reported 48 Law J. Rep. Q.B. 407), discharging a rule for a *mandamus* commanding the vicar and churchwardens of the parish of Tottenham to insert on the notice paper of the next vestry meeting notice that a resolution would be proposed 'that the hour for the vestry meeting shall be 7 P.M.'

Mr. A. Charles and *Mr. Fullarton* appeared for the appellant.

Mr. W. G. F. Phillimore for the respondents.

Their LORDSHIPS affirmed the judgment of the Queen's Bench Division; and dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
March 20.

ISAACS *v.* FIDDEMANN.

Copyright—Registration after Cause of Action—Forfeiture—Copyright Law Amendment Act, 1842 (5 & 6 *Vict. c.* 45), *s.* 23.

This was an action to restrain the infringement by the defendant of the plaintiff's copyright in certain books; and the plaintiff now moved for judgment in default of pleading. The plaintiff was the owner of the copyright, and was registered as such before the commencement of the action, but not until after the publication of the piratical works complained of.

Mr. J. W. Bonser, who appeared for the plaintiff, asked that the judgment might include an order on the defendant to deliver up the piratical copies to the plaintiff for his own benefit; but mentioned *Hole* v. *Bradbury*, 48 Law J. Rep. Chanc. 673; s.c. L. R. 12 Chanc. Div. 886, in which FRY, J., held that, where the plaintiff, the proprietor of the copyright, had not been registered until after the publication by the defendant, his only right was to have the piratical works destroyed.

The MASTER OF THE ROLLS made the order as asked; for, in his opinion, section 23 of the Copyright Law Amendment Act, 1842, entitled the plaintiff to have the works in question for his own benefit, whilst their destruction could not benefit anybody.

Chancery Division.
JESSEL, M.R.
April 26.

In re REES. REES *v.* GEORGE.

Practice — Administration Suit — Parties served with Notice of Decree—Further Consideration.

In this case, a decree had been made for the administration of real and personal estate. The tenant for life and two of the residuary legatees had been served with notice of the decree, but had not obtained an order to attend the proceedings. The suit now came on for further consideration; and the plaintiff asked that the tenant for life might be ordered to replace, as capital, certain sums which had been paid to her as income; and, also, that the residuary legatees might be ordered to repay to the tenant for life sums which she had advanced to them for maintenance. It appeared that neither the tenant for life nor the two residuary legatees had had notice that the cause had been set down for further consideration.

Mr. Chitty and *Mr. F. H. Colt*, *Mr. Ince* and *Mr. Romer*, and *Mr. D. Sturges* appeared for some of the parties interested.

The MASTER OF THE ROLLS was of opinion that no order could be made against the tenant for life and residuary legatees, unless they had previous notice that the suit was coming on for further consideration; and directed the matter to stand over for a fortnight, in order that such notice might be given them.

Chancery Division.
HALL, V.C.
April 15.

In re ANGLO-FRENCH CO-OPERATIVE SOCIETY.

Privilege of Parliament—Committal for Contempt—Duration of Privilege.

The liquidator of the above company applied, on March 20, just before the dissolution of Parliament, for the attachment of Mr. Fortescue Harrison—then a member of Parliament—for contempt of Court in disobeying an order of the Court in the winding up for delivery of papers and payment of moneys. The application was refused on the ground of privilege.

Parliament was, on March 23, dissolved; and, on April 2, notice was given by the liquidator of a fresh motion, with the same object. This motion was served on April 6, and now came on. Mr. Harrison was not a member of, nor nominated for election to, the new Parliament.

Mr. A. Young in support of the motion.

Mr. Hastings and *Mr. M'Swinney*, for the respondent, again took the objection of privilege.

HALL, V.C., held that, although there was no decided case in which the privilege had been asserted in favour of a person not actually a member of Parliament, yet the law was sufficiently laid down to the effect that the privilege from arrest extends to forty days after a

prorogation or dissolution; that period being fixed as sufficient to enable the member to return home from serving in the Parliament. Forty days not having elapsed in the present case, the motion was refused, with costs.

Chancery Division. HALL, V.C. April 22. } KEMPE *v.* ANGLESEA (PENMON) MARBLE QUARRIES COMPANY (LIMITED).

Company—Debentures repayable at future Date—Winding up before Date—Enforcement of Security.

The company, in 1877, issued debentures secured by a deed dated December 31, 1877, by which the leasehold quarries, plant, &c., of the company were demised for the residue, less one day, of the term of twenty-five years, for which they were holden, to Fearon and Swithinbank, trustees for the debenture holders; and the company covenanted for themselves, their successors, and assigns, that the debentures should be a first charge; and the company covenanted for themselves and their successors to keep the premises in repair, to renew the plant, &c., and to insure against fire. The proviso for redemption was on payment of principal and interest, according to the terms of the debentures; and there was a power of entry and sale by the trustees upon request of a majority in number and value of debenture holders in arrear after default for three months in payment of principal or interest becoming due.

By the debentures the company bound themselves and their successors to pay principal on July 1, 1884, and interest in the meantime half yearly; with power for the company to pay off the principal upon six months' notice.

The company made a subsequent issue of debentures under a security comprising a power of sale.

In October, 1879, a resolution was made for voluntary winding up, which was confirmed, and the secretary was appointed liquidator.

The plaintiff was the holder of the greater part of the first issue of debentures; his interest due on January 1, 1880, was not paid; and on February 5 he commenced this action (suing on behalf of himself and all other persons entitled to the security of December 31, 1877) to realise the security. Messrs. Jones, who had purchased the property upon a sale, under the security for the second issue of debentures, were made defendants by amendment.

Mr. Hastings and *Mr. Vaughan Hawkins* moved for a receiver and manager.

Mr. Wm. Pearson and *Mr. Buckley*, for Messrs. Jones, contended that the security could not be enforced in respect of the principal, which was not due till 1884; and said that they had offered to pay, and would pay, the interest.

Mr. Everitt appeared for one of the trustees and for the other debenture holders who were stated to have received their interest.

Mr. Osborne Morgan and *Mr. Plummer* for the other trustee.

Mr. Neville for the liquidator.

HALL, V.C., said that the security of 1877 made the debentures repayable in 1884 only on the basis of the company continuing its business. Upon the liquidation taking place, the plaintiff was entitled to sue, on behalf of all the debenture holders whose interest was the same as his own, to have the security realised. He accordingly made the order for appointment of a receiver and manager.

Chancery Division. FRY, J. April 14. } BALLARD *v.* MARSDEN.

Legacy—Executor—Set-off.

Mrs. Cross bequeathed a sum of 1,000*l.* to her executors, upon trust to pay the income to Miss Harvey for life. The executors purchased a sum of India Railway Stock, which was placed in the joint names of themselves and Miss Harvey. The purchase money of the stock and legacy duty very nearly exhausted the 1,000*l.* The estate of Mrs. Cross was liable for certain dilapidations in respect of a house, the lease of which had been vested in Miss Harvey, who was under liability to indemnify the estate of Mrs. Cross. Miss Harvey mortgaged her interest in the railway stock to the plaintiff, who had notice of the liability of Miss Harvey in respect of dilapidations. The executors of Mrs. Cross had to pay for dilapidations. The plaintiff brought this mortgage action against the executors of Mrs. Cross and Miss Harvey, and the executors claimed a right to set off the life interest of Miss Harvey in the railway stock, against the debt due from her to the estate of the testatrix in respect of the dilapidations.

Mr. Cookson and *Mr. Parker* for the plaintiff.

Mr. North and *Mr. J. G. Wood* for the defendants.

FRY, J., held that the railway stock had been set apart for every purpose, and that the executors had no right of set-off.

Chancery Division. FRY, J. April, 16, 17. } RAINS *v.* BUXTON.

Statute of Limitations (3 & 4 *Wm. IV. c.* 27), *ss.* 2, 3, 26—*Unknown Entry.*

In this case the plaintiff claimed, among other things, an injunction to restrain quarrying so as to break into a cavity in ground under a road, the ownership of which, subject to a right of way, belonged to some of the defendants. The plaintiff rested her title to the right of way on prescriptive user of it as a coal cellar for her house. A defence raised was that the cavity was out of sight and its existence unknown to the owners of the soil, and that the time which would give a title by adverse possession did not begin to run till such possession was known to the owners.

Mr. Cookson, Mr. Everitt, and *Mr. Lockwood* for the plaintiff.

Mr. North and *Mr. Cracknall* for the defendants.

FRY, J., granted the injunction.

Common Pleas Division. April 24. } *Re* THE TRUSTS OF THE WILL OF THOMAS CLARE.

Husband and Wife—Conveyance by Married Woman under 3 & 4 *Wm. IV. c.* 74, *s.* 91.

Gathorne Hardy moved for a rule to dispense with the concurrence of the husband of a married woman in the

transfer of a mortgage, in which the husband had no personal interest. The motion was made on the affidavit of a son of the husband and wife, in which he stated that his father and mother were living apart in consequence of the intemperate habits of the father, which occasioned his being confined in a lunatic asylum for a time; and which stated that, although he had since been discharged from the asylum, he was not in a fit mental condition to execute a deed, or understand its nature.

The COURT required the application to be adjourned for an affidavit by a medical man, an application to the husband, and also notice to him, so as to give him an opportunity of appearing on the occasion of the motion being renewed.

Common Pleas Division. April 23, 26. } GOTHARD AND OTHERS (PETITIONERS) *v.* CLARKE AND OTHERS (RESPONDENTS).

Municipal Elections Act, 1875 (38 & 39 *Vict. c.* 40), *s.* 1 *subs.* 2, *Schedule* 1 *Form* 2—*Nomination Paper*—*Number on Burgess Roll of Seconder*—*Ballot Act*, 1872 (35 & 36 *Vict. c.* 33), *s.* 13.

Petition to set aside the election of the respondents to the office of councillor for the Heaton Norris ward of the borough of Stockport.

The petitioners, who were three in number, and the respondents, who were also three in number, were candidates at the above election. Three councillors were to be elected.

The nomination papers of the petitioners were handed in at the proper time, and were in all respects regular except that the register number of George Chapman, who had subscribed each of the nomination papers as seconder, was inserted as 695 instead of 704. Objection to the nomination papers of the petitioners was made to the mayor, who allowed the objection, and declared the respondents duly elected as being the only candidates for the said ward.

From this decision the appeal was now brought.

Sir H. James (*Hopwood* and *Aspland* with him) for the petitioners.

Edward Clarke (*Morton Daniel* with him) for the respondents.

The COURT (GROVE, J., and LOPES, J.) held that Schedule 1, Form 2, in the Municipal Elections Act, 1875 (38 & 39 Vict., c. 40), s. 1, by which 'the number on the burgess roll of the burgess subscribing' is to be inserted, had not been sufficiently complied with, and that the nomination papers of the petitioners were therefore invalid.

Judgment for the respondents.

Common Pleas Division. April 26. } *Re* WEST BROMWICH SCHOOL BOARD.

Elementary Education Acts, 1870 & 1873 (33 & 34 *Vict. c.* 75; 36 & 37 *Vict. c.* 86)—*School Board Election*—*Mode of questioning Election*—*Ballot Act*, 1872 (35 & 36 *Vict. c.* 33)—*Corrupt Practices Municipal Act*, 1872 (35 & 36 *Vict. c.* 60).

Wills (*Anstie* with him) applied to remove a petition off the file, which had been presented under the Corrupt Practices Municipal Act, 1872 (35 & 36 Vict. c. 60), against an election to a school board, on the ground that that Act did not apply to school board elections.

By section 33 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), any question as to the right of any person to act as a member of a school board under the Act, may be determined by the Education Department, and their order so determining it is to be final. The Elementary Education Act, 1873 (36 & 37 Vict. c. 86) by its second schedule, which is made part of that Act, declares that 'the Ballot Act, 1872, shall apply to the case of the election of a school board in like manner as if the provisions thereof were therein enacted with the substitution of "school board election" for "municipal election."' In 1872, there was passed not only the Ballot Act, 1872, which relates to municipal elections, but also the Corrupt Practices Municipal Act, 1872 (35 & 36 Vict. c. 60); and by subsection 2 of section 2 of that last Act it is enacted that that Act shall 'be construed as one with the Acts for the time being in force relating to boroughs and to elections in boroughs.'

It was argued by *Jeune*, in opposition to the application to remove the petition in this case, that the effect of that subsection 2 was to incorporate the Ballot Act with the Corrupt Practices Municipal Act, 1872; and that, therefore, when the Elementary Education Act, 1873, applied the Ballot Act to a school board election, it also applied the Corrupt Practices Municipal Act, 1872.

The COURT (LORD COLERIDGE, C.J., and GROVE, J.) held that as section 33 of the Elementary Education Act, 1870, had not been repealed, the proper mode of disputing the election was by reference to the Education Department, and not by petition under the Corrupt Practices Municipal Act; and the petition was ordered to be taken off the file.

Application granted.

Probate, Divorce, and Admiralty Division. JAMES, L.J. BAGGALLAY, L.J. BRAMWELL, L.J. April 23. } THE CITY OF MANCHESTER.

Costs—*Collision*—*Both Ships in Fault.*

This was an appeal from an order of Sir R. PHILLIMORE giving the costs of an action, brought by the owners of cargo on board a ship named the Moselle, against the City of Manchester, to the plaintiffs.

Both ships had been found to be in fault; so that the plaintiffs, according to the Admiralty rule, could only recover half their damages.

Sir R. Phillimore, following what was done in the case of the Milan (31 Law J. Rep. Adm. 105), gave them their costs of the action. The case is reported 48 Law J. Rep. Adm. 70.

The City of Manchester appealed.

Butt and *Clarkson* for the appellants.

Phillimore and *Stubbs*, for the respondents, waived any objection, on the ground that it was an application for costs.

Their LORDSHIPS considered that the appeal was a proper one, a question of principle being involved in it; reversed the decision in the Court below; and held that the plaintiffs were not entitled to the costs.

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J. W. THORLEY'S CATTLE FOOD COMPANY *v.* MASSAM. MASSAM *v.* J. W. THORLEY'S CATTLE FOOD COMPANY.

Rival Traders—Libellous Circular—Article of Commerce—Right to use original Maker's Name—Injunction.

These were two appeals, both from decisions of MALINS, V.C.

The first action was brought by the company to restrain the defendants, the executors of the late Joseph Thorley, from representing, in their advertisements and circulars, that they alone were possessed of the secret for compounding the condiment known as 'Thorley's Food for Cattle,' and that the cattle food manufactured and sold by the company was a spurious article, and not compounded in accordance with the true recipe.

The second action was by the executors of the late Joseph Thorley to restrain the company from representing any cattle food manufactured and sold by them as the cattle food manufactured and sold by the late Joseph Thorley, or that they were in any way the successors to the business formerly carried on by the late Joseph Thorley.

It appeared that J. W. Thorley, who had given his name to the company, was the brother of the late Joseph Thorley; that both brothers knew the secret for compounding the cattle food; that Joseph Thorley had for many years employed his brother to assist him in his business; that Joseph Thorley by his will directed his executors to carry on his business; that on the death of Joseph Thorley, J. W. Thorley, who had some eight years previously left his brother's service, was induced to join in getting up the company; and that the cattle food manufactured by the company was substantially the same as that manufactured by Joseph Thorley.

The circular complained of by the company was as follows: 'Caution. Thorley's Food for Cattle. The public, and in particular farmers, graziers, dealers, and others, purchasing this world-famed food, are warned that any food for cattle purporting to be Thorley's Food for Cattle, and not signed with the name "Joseph Thorley," is not the manufacture of this establishment, carrying on business as Joseph Thorley, the proprietors of which are alone possessed of the secret for compounding that famous condiment.'

The Vice-Chancellor held, in the first action, that this circular was a libel, and that the company were entitled to the injunction they claimed; and, in the second action, that the plaintiffs' evidence failed to show that the company had represented they were the successors to, or were carrying on the business of, the late Joseph Thorley.

The executors appealed against both decisions.

Mr. Glasse and *Mr. Nalder* for the appellants.

Mr. Higgins and *Mr. Townsend* for the respondents.

Their LORDSHIPS dismissed the appeal in the first action with costs, being of opinion that the circular, in stating that the executors alone possessed the secret, had gone too far, and was clearly libellous. As to the appeal in the second action, their lordships held that, on the evidence, the appellants were entitled to an injunction. Also the company had no right to use the term 'Thorley's Food for Cattle,' for that term meant the article which had been made by Joseph Thorley, and which was now made by his executors. The term had not come to mean simply an 'article of commerce,' but indicated the particular article which came from a particular manufactory.

Court of Appeal.
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April 28.

MARTANO *v.* MANN.

Married Woman—Next Friend—Security for Costs—Order XVI., Rule 8—Practice.

A married woman, the tenant for life under her marriage settlement, commenced an action by a next friend against the surviving trustee of the settlement, and the executors of a deceased trustee, for an account of the trust funds.

The defendant executors consented to the appointment of a receiver. Immediately afterwards they applied by summons that the next friend should give security for costs, alleging that they had only then ascertained that she was a pauper.

BACON, V.C., dismissed the application, on the ground that the matter was governed by the old practice in Chancery; and that, as the executors had taken a material step in the action by consenting to the appointment of a receiver, they had waived their right to security for costs.

The executors appealed.

Mr. Hemming and *Mr. Porter* for the appellants.

Mr. T. A. Roberts for the plaintiffs in the action.

Their LORDSHIPS directed the writ to be amended by striking out the name of the next friend, and leaving the married lady to sue alone. Their lordships also intimated that the old practice, both in Chancery and at common law, which required the application for security for costs to be made at the earliest possible moment, and before a material step in the action had been taken, was abrogated by the new Judicature Rules, under which the Court had a judicial discretion to allow a married woman to sue alone, with or without giving security for costs, and to direct a next friend, in a proper case, to give security for costs at any time.

Court of Appeal.
LORD COLERIDGE, C.J.
BRETT, L.J.
COTTON, L.J.
Dec. 6, 1879.
April 30, 1880.

REGINA *v.* THE SWINDON NEW TOWN LOCAL BOARD.

Practice — Case stated by inferior Court — Appeal from Judgment of Divisional Court—Leave to appeal —Judicature Act, 1873, *s.* 45; *Public Health Act*, 1875 (38 & 39 *Vict. c.* 55), *s.* 269, *subs.* 7.

Appeal from the Queen's Bench Division.

Case stated by Quarter Sessions under section 269, subsection 7, of the Public Health Act, 1875, for the determination of a superior Court.

The case was argued and decided in the Queen's Bench Division, 48 Law J. Rep. M.C. 119, when judgment was given in favour of the local board, who were the respondents. No leave to appeal was given.

The prosecutor appealed.

Mr. Mellor and *Mr. Goldney*, for the respondents, took a preliminary objection, and contended that the case, on application to the Queen's Bench Division, being stated under subsection 7 of section 269 of the Public Health Act, 1875, came within the provisions of section 45 of the Judicature Act, 1873; and that, as no leave to appeal was given, the determination of the Divisional Court was final.

Mr. Charles and *Mr. Ravenhill*, for the appellant, contended that the case was not within section 45 of the Judicature Act.

Their LORDSHIPS, having taken time to consider, dismissed the appeal; holding that it was an appeal from an inferior Court within section 45, and that, as no leave to appeal had been given, the determination of the Divisional Court must be final.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 24. May 1.

THE CANADIAN LAND RECLAIMING AND COLONISING COMPANY (LIMITED).

Companies Act, 1862, *s.* 165—*Acting as Director without Qualification—Misfeasance.*

This was an appeal from an order of JESSEL, M.R., made upon summons, directing two persons, Coventry and Dixon, to pay each the sum of 500*l.* by way of compensation in respect of their misfeasance in acting as directors without being duly qualified (see *ante*, p. 10).

Mr. Davey and *Mr. Buckley* for Coventry.

Mr. William Pearson for Dixon.

Mr. Ince and *Mr. Seward Brice* for the liquidator.

Their LORDSHIPS allowed the appeal; being of opinion that section 165 did not constitute or create any new right or new liability, but a mere machinery for the more complete and speedy enforcement of rights and remedies in the winding up of a company that could be given by the ordinary procedure; and that, to apply that section, it was necessary to show something which would enable the company, if a going concern, to bring

an action according to the ordinary procedure. The misfeasance mentioned in the section must be some act equivalent to a breach of trust, and resulting in a pecuniary loss to the company. Here there was no damage to the company which was the legal result from any act or omission of the appellants; and, accordingly, the appeal must be allowed.

HIGH COURT OF JUSTICE.

Chancery Division. Jessel, M.R. April 26. } CHANDLER *v.* POCOCK.

Settlement of Real Estate subject to Power of Sale—General Power of Appointment by Will—Sale and Reinvestment in Personalty—Appointment of 'all my personal Estate'—Wills Act, ss. 1, 27.

Land was settled to the use, in events which happened, of such persons as Ann Brown should by will appoint, with remainder, in default of appointment, to the use of Edward Lee and his heirs. The settlement contained a power for the trustees to sell the land, the proceeds to be laid out in the purchase of other land to be settled to the same uses; and, in the meantime, to be invested in Government and other securities, and the income of such investment to be paid to the persons to whom the rents of the purchased land would be payable were such purchase then actually made.

In 1855 the settled real estate was sold, and the proceeds invested in Consols, and they remained so invested at the death of Ann Brown.

Ann Brown, by her will, made in 1875, gave legacies to the amount of 30,000*l.*, appointed the defendants her executors, and bequeathed all the residue of her personal estate and effects whatsoever to two persons absolutely. Her personal estate, exclusive of the Consols, was under 6,000*l.*

The plaintiff, who derived title from Edward Lee, claimed the Consols as representing the land to which he was entitled in default of appointment of it by Ann Brown. The defendants demurred to his statement of claim.

Mr. Davey and *Mr. Rigby* for the demurrer.

Mr. Chitty and *Mr. J. G. Wood* for the plaintiff.

The MASTER OF THE ROLLS held that the will of Ann Brown operated, with respect to the Consols, as an execution of the power of appointment given to her by the settlement; and allowed the demurrer.

Chancery Division. Jessel, M.R. May 1. } WARD *v.* WARD.

Settlement—Trust to pay Annuity to Husband and Wife—Claim of Creditor of Husband to Whole.

Under an ante-nuptial settlement trustees were in receipt of an annuity upon trust, to pay the same to the husband and wife during their joint lives.

Judgment creditors of the husband had obtained an order *nisi* for an attachment of the whole annuity; and, on the application to make the order absolute, the wife asserted her right to have half the annuity paid to her, or to have a settlement thereout made upon her.

Mr. Chitty and *Mr. Stock* for the judgment creditors.

Mr. Ince and *Mr. Nalder* for the trustee and wife.

The MASTER OF THE ROLLS was of opinion that the husband was entitled to receive the whole annuity, and ordered the same to be paid to the judgment creditors until their claim was satisfied.

Chancery Division. Jessel, M.R. May 3. } *Re* FINANCIAL CORPORATION. GOODSON'S CLAIM.

Financial Company — Power to take Shares in other Companies—Memorandum of Association.

Goodson was the registered owner of shares in the Regent's Canal Ironworks Company, and, as such, had had to pay calls on his shares. This was a summons by him asking that the amount of such calls might be repaid to him out of the funds of the Financial Corporation, he alleging that he had held the shares as trustee for the corporation. One question was, whether the corporation were capable of holding shares in another company? The memorandum of association stated that the Financial Corporation was formed for the purpose of (*inter alia*) 'undertaking, assisting, and participating in financial, commercial, and industrial operations and undertakings, both in England and abroad, and both singly or in connection with other persons, firms, companies, and corporations, and as well as principal as agent.'

Mr. Davey and *Mr. Romer* were for the summons.

Mr. Chitty and *Mr. W. Renshaw, contrà.*

The MASTER OF THE ROLLS held that the words set out above empowered the Financial Corporation to hold shares in other companies.

Chancery Division. Malins, V.C. May 1. } *Re* THE WEST OF ENGLAND BANK. *Ex parte* BOOKER.

Bankers—Ordinary Business—Deed of Settlement—'Ultra Vires.'

Adjourned summons.

This was a claim by Mrs. Booker to be admitted as a creditor against the assets of the bank for the sum of 18,000*l.*, the estimated value of a guarantee given to her by the bank.

In the year 1876 Mrs. Booker, at the request of the bank, joined in conveying certain property, in which she was interested, to T. W. Booker & Co. (Limited), in consideration of having eighteen debentures of 1,000*l.* each of T. W. Booker & Co. transferred to her, it being part of the arrangement that the bank should guarantee the payment of the interest on these debentures under their common seal. The main question in argument was whether the giving of such a guarantee formed part of the ordinary business of a banker.

Mr. Higgins and *Mr. Macnaghten* appeared in support of the summons.

Mr. Glasse and *Mr. Romer* for the official liquidator of the bank.

MALINS, V.C., said it was plain that, in the year 1876,

the firm of T. W. Booker & Co. were largely indebted to the bank, and that the bank had the power of disposing of these debentures as they thought fit. The bank had directed the transfer of certain debentures to Mrs. Booker, and had guaranteed to her the payment of the interest. Under their deed of settlement the directors were empowered to transact every kind of banking business, and to act in such manner as might appear to them best calculated to promote the welfare of the bank. Therefore, looking at the whole transaction, the guarant e was within the scope of their authority, and must be held to be binding upon the bank.

Chancery Division. BACON, V.C. April 14, 15, 20, 29. } NOBEL'S EXPLOSIVES COMPANY *v.* JONES & Co.

Patent—Infringement—Custom House Agents—Practice—Amendment at Hearing.

This was an action to restrain the defendants from infringing the plaintiffs' patent right in a substance named 'safety powder or dynamite.' The invention consisted in rendering nitro-glycerine insensible to shocks by absorption in porous unexplosive substances.

The statement of claim alleged that the defendants had purchased from Krebs & Co., of Cologne, a substance called lithofracteur (which was identical with the plaintiffs' patented substance), and below Gravesend transhipped this lithofracteur from the German vessel to ships which sailed to Australia, where the lithofracteur was sold on behalf of the defendants; and at the hearing it was contended that this transhipment amounted to a user or putting in practice of the plaintiffs' invention.

On the evidence, it appeared that the defendants were not the importers, but only acted as custom house agents in clearing the lithofracteur on behalf of Krebs & Co., who had a magazine in Essex, to which the goods had been removed; and that the defendants had no interest whatever in the lithofracteur.

On this evidence having been given—

Mr. Aston and *Mr. Cutler* asked leave to amend, so as to charge the defendants with the new user shown by their evidence. They could not be prejudiced by charging them with acts which they must have known.

Sir H. Jackson and *Mr. Goodeve* for the defendants.

BACON, V.C., said that the amendment must be allowed, so that a decision could be given on the facts now in evidence—viz. that the defendants were not the importers, but had acted as agents of Krebs & Co. in dealing with the lithofracteur. The plaintiffs would have leave to amend their statement of claim, but not to adduce further evidence. The defendants might put in a further defence, and adduce evidence in support of it. Costs to be reserved.

On April 20 the cause came on again on the amended pleadings, by which the defendants were charged with infringing the plaintiffs' patent by acting as agents for Krebs & Co. as aforesaid.

Mr. Aston and *Mr. Cutler* for the plaintiffs.

Sir H. Jackson and *Mr. Goodeve* for the defendants.

Mr. Aston in reply.

Cur. adv. vult.

BACON, V.C. (April 29), said that, having regard to the nature of this invention, it was impossible to tranship or otherwise handle any substance made according to the invention without using or putting in practice such invention; that the defendants, by procuring the delivery from shipboard at Krebs & Co.'s magazine of lithofracteur, had accordingly infringed the plaintiffs' patent; and the plaintiffs were entitled to an injunction, with costs.

Chancery Division. HALL, V.C. April 30. } *In re* TAYLOR'S SETTLED ESTATES.

Practice—Settled Estates Act, 1877, *s.* 36—*Form of Order for interim Investment.*

This was an ordinary petition for sale under the Settled Estates Act.

The prayer of the petition asked that the trustees of the settlement might be authorised to invest the proceeds of sale in one or more of certain specified investments (being investments proper in the case of cash under the control of the Court), with power to vary such investments. The only question was, whether under the above section the Court had power to make an order in such form, or whether the order must not specify the particular investment or investments of the fund. Reference was made to 'Seton on Decrees,' 4th ed., p. 1496, Addenda, p. 1686.

Mr. Whateley for the petitioner.

Mr. Bunting for the trustees.

HALL, V.C., declined to make the order as asked; but directed that the particular investment should be specified in the order.

Chancery Division. HALL, V.C. April 7. May 3. } *In re* FLEETWOOD. SIDGREAVES *v.* BREWER.

Will — Revocation — Codicil declaring Trust — Parol Evidence to ascertain Objects of Trust—'All my Personalty, such as Cash, Furniture, &c.'

The testatrix in this action having executed a will and three codicils, executed a fourth codicil (dated September 24, 1877), as follows: 'I bequeath and leave to J. Beaumont, to whom I have willed my landed property, all my personalty, such as cash, furniture, &c., to be applied as I have requested him to do.' There was a memorandum in writing (not signed by the testatrix, nor proved to have been produced to her) showing the alterations of the will and three codicils, intended by the testatrix to be made by the fourth codicil; and J. Beaumont gave evidence, by affidavit, in the action, proving that the memorandum expressed the intention of the testatrix as communicated to him by her. The contentions raised were (1) that the fourth codicil did not operate as a revocation of the will and three codicils as to all the personal estate of the testatrix, but only as to cash, furniture, and articles *ejusdem generis*; (2) that the codicil, not containing any effectual disposition of the beneficial interest in the property comprised in it, did not, in any way, revoke the will and three codicils; (3) that the codicil created a trust, which trust could be, and was, effectually made out by the parol evidence; (4)

that the codicil created a trust; but that, the parol evidence being inadmissible, the next of kin took.

Mr. Kekewich and *Mr. Northmore Lawrence* for the plaintiffs.

Mr. Crossley, Mr. W. Pearson and *Mr. Giffard, Mr. Ingle Joyce, Mr. Graham Hastings* and *Mr. Tweedy*, and *Mr. Rawlins* for the defendants.

Cur. adv. vult.

May 3.—HALL, V.C., held, first, that the fourth codicil comprised all the personal estate of the testatrix, and was an effectual revocation of the will and three codicils; and, secondly (after a full examination of the authorities), that the parol evidence was admissible, and that J. Beaumont was a trustee to carry out the will and three codicils, with the alterations specified in his affidavit.

Chancery Division. FRY, J. April 21, 22, 23. } CAVE *v.* CAVE.

Breach of Trust—Mortgage—Priorities—Notice—Agent—Fraud.

Ch. W. Cave, a solicitor, became by survivorship the sole trustee of the marriage settlement of his brother, F. Cave. Some of the trust funds were applied in the purchase of land which was conveyed to F. Cave, in fee. A legal mortgage was executed, by F. Cave, of this land to P. Chaplin to secure a sum of money lent, and further advances in that transaction. Ch. W. Cave acted as solicitor for Chaplin, the mortgagee. F. Cave executed successive equitable mortgages of the land to other persons. When Chaplin advanced the last 500*l.* secured by his mortgage, he had notice of the first of the equitable mortgages, which was given, to secure 1,800*l.*, to one White.

This was an action by the infant children of F. Cave, who were interested in funds subject to his marriage settlement, and they claimed to follow the trust money into the land in which it had been invested, and to have priority over the various incumbrancers. One question was between the plaintiffs and Chaplin, whether he was to be taken to have had notice of their right because he employed as his solicitor in the transaction a person who knew what the circumstances were; and that, therefore, Chaplin lost his right to be protected by the legal estate. There was also a question between the plaintiffs and the puisne mortgagees, whether these equitable interests were of a higher order than the plaintiffs'; and whether, consequently, they were to rank before the lien of the trust estate as their charges on the land.

Mr. Cookson and *Mr. Everitt* for the plaintiffs.

Mr. Fischer and *Mr. Cochran* for Chaplin.

Mr. Harrison and *Mr. Warmington, Mr. North* and *Mr. M'Swinney, Mr. Romer, Mr. T. L. Wilkinson*, and *Mr. Bethel*, and *Mr. Etherington* for other defendants.

FRY, J., held that Ch. W. Cave had acted in such a manner in the matter that his knowledge would not be imputed to his principal, Chaplin, who was therefore entitled to priority; that, as between the plaintiffs and the equitable mortgagees, the maxim *qui prior est tempore potior est jure* was applicable, and they were to rank subsequently to the plaintiffs; and, as Chaplin had advanced 500*l.* after he had notice of 1,800*l.* being secured to White, Chaplin's 500*l.* was to be postponed to the 1,800*l.* and interest; and that the plaintiffs to that extent stood in White's place, and had priority over the 500*l.*

Chancery Division. FRY, J. April 30. May 1. } DAVIS *v.* ARTINGSTALL.

Auctioneer—Liability for Goods received for Sale.

This was an action by a married woman against auctioneers who had been employed by the plaintiff's house to sell goods to which the plaintiff was entitled as her separate property. The goods were placed in a warehouse hired for the purpose, and there put up for sale by auction. Some of the goods were not sold; they were taken away by the plaintiff's husband.

A question in the action was whether the auctioneers were liable for the value of the whole of the goods, or only those sold.

Mr. Cookson and *Mr. M'Laren* for the plaintiff.

Mr. Watson for the plaintiff's husband; and

Mr. North and *Mr. Simmonds* for the auctioneers.

FRY, J., held, on the authority of *Williams* v. *Williams*, 2 H. Bl., that though the sale took place on premises not belonging to the auctioneers for the purpose of the sale, they received possession of the goods with an interest, and were liable for the whole of the goods.

Queen's Bench Division. April 30. } WADSWORTH *v.* PICKLES.

Bankruptcy—Liquidation by Arrangement—Fraudulent Omission of Name of Creditor from Statement of Debts—32 & 33 *Vict. c.* 71 (*Bankruptcy Act*, 1869), *ss.* 49, 125, 127.

Action for money lent by plaintiff to defendant; in answer to which the latter set up an order of discharge granted after a liquidation by arrangement which had been entered upon subsequently to the incurring of the debt.

The County Court judge, before whom the action was tried, upon proof that the debtor (the defendant) had fraudulently omitted to insert plaintiff's debt in the list of creditors, gave judgment for the plaintiff; holding that the order of discharge did not release the debtor by virtue of section 49 of the Bankruptcy Act, 1869, there being fraud within section 127 of the same Act.

On appeal from this decision by motion—

Forbes showed cause.

Crump, for the defendant, supported the rule.

The COURT (LUSH, J., and FIELD, J.) allowed the appeal; and held that, having obtained a certificate of discharge after liquidation, the debtor was entitled to plead it as a defence to the action, notwithstanding his having fraudulently omitted the plaintiff's name from the list of creditors. The exceptions in section 49 apply only to cases where the debt has been incurred by fraud, or where forbearance of the debt has been obtained by fraud; and section 127 applies only to proceedings in the Court of Bankruptcy.

Rule absolute.

Queen's Bench Division. May 3. } REGINA *v.* GASKARTH (CHAIRMAN OF THE ALTRINCHAM LOCAL BOARD).

Public Health—Election of Members of Local Board—Disqualification of Member—Lease of Sewage Farm to Member—38 & 39 Vict. c. 55 (Public Health Act, 1875), ss. 27 & 29, and Schedule II., Rule 64.

This was a rule for a *mandamus* to the returning officer of the local board of health for Altrincham, commanding him to certify Mr. John Newton as having been elected a member of the local board at an election of four members held on April 8.

It appeared that Mr. Newton stood third on the list of eight candidates for the four vacancies; but the returning officer only certified the first two to be elected, thinking that Mr. Newton was disqualified by reason of his having a contract with the local board to take the sewage. As to this, the facts were that the local board held on lease certain land for the disposal of their sewage, as authorised by section 27 of the Public Health Act, 1875; and they had demised such land to Newton for five years, from September, 1876, at a fixed rent, he covenanting to cultivate it as a sewage farm, and to use all the sewage to be supplied upon the farm, and the board covenanting to deliver on the land all the sewage made in the district.

Rule 64, Schedule II., of the Public Health Act, 1875, says that 'any member who accepts or holds any office or place of profit under the local board of which he is a member, or in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof or of any work done under the authority of this Act in or for the district, shall, except in the cases next hereinafter provided, cease to be such member, and his office as such shall thereupon become vacant. Provided that no member shall vacate his office by reason of his being interested in the sale or lease of any lands or in any loan to the local board.'

Lumley Smith and *L. A. Russell* showed cause.

R. S. Wright in support of the rule.

The COURT (LUSH, J., and FIELD, J.) made the rule absolute for a *mandamus*; holding that Mr. Newton was within the proviso to the above rule, which was to be construed with reference to section 29 of the Act, by which power is conferred on the local authority to deal with any lands held by them for the purpose of distributing sewage by leasing the same for agricultural purposes.

Rule absolute.

Queen's Bench Division. (Magistrates' Case.) May 4. } HORDER (APPELLANT) *v.* SCOTT (RESPONDENT).

Sale of Food and Drugs Act, 1875, s. 6—Adulterated Article—Inspector acting by Deputy—Information.

Case stated under 20 & 21 Vict. c. 43.

The respondent was summoned, upon an information laid by the appellant, the inspector appointed under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63, s. 6), for having sold, to the prejudice of one Toy, the purchaser, certain coffee which was not of the nature and quality of the article demanded by such purchaser.

It appeared that Toy went as the appellant's assistant, and asked for two ounces of the best coffee, for which he paid 2½*d.* On being analysed, the coffee purchased was found to contain a large proportion of chicory.

The justices dismissed the information, on the ground, amongst others, that, the proceedings having been instituted by the appellant in his official capacity, he, and not Toy, should have personally dealt with the coffee.

A. R. Jelf appeared for the appellant.

The respondent did not appear.

The COURT (LUSH, J., and FIELD, J.) held that Toy might be treated as an ordinary purchaser; and that, upon the above facts, the justices had acted wrongly in dismissing the information.

Case remitted.

Queen's Bench Division. (Magistrates' Case.) May 4. } SPEAR (APPELLANT) *v.* THE BODMIN UNION (RESPONDENTS).

Poor Rate—Liability to be rated—Market—Occupier of Stall.

The appellant rented a stall in Bodmin market, year by year, at a rent payable weekly. It appeared that the stall in question had been put up to auction, and was bought by the appellant and used by him on market days. It was the third stall from the gate of the market, but was capable of being removed, and there was no agreement that it should always stand on the same identical spot.

The question raised was whether there was any such occupation of the stall as rendered the appellant liable to be rated under 43 Eliz. c. 2.

Pitt Lewis for the appellant.

Petheram for the respondents.

The Court (LUSH, J., and FIELD, J.) held that the appellant was not rateable, having acquired only the right to a given stall in a given row, and not the right to place one on any definite portion of ground.

Judgment for the appellant.

Common Pleas Division. April 30. } THE SHANKLIN LOCAL BOARD *v.* MILLER.

Public Health Act, 1875, ss. 150, 257—Notice of Apportionment—Opportunities for Inspection of Plans.

Special case on appeal from the County Court of Hampshire.

The plaintiffs sued for the proportion of expenses payable by the defendant as owner of premises abutting on a street paved, &c., by the plaintiffs, under the powers of the Public Health Act, 1875. Previous to the service of the necessary notices requiring the defendant to pave, &c., a plan, in accordance with the terms of section 150 of the Act, had been deposited at the offices of the plaintiffs, to which access could be had on Mondays and Thursdays, from 10 till 3. The defendant having failed to comply with the notice to pave, &c., the plaintiffs themselves executed the works, and served on the defendant a notice of apportionment 'in respect of expenses incurred by the plaintiffs in

paving, &c., certain streets called Osborne Road and Palmerston Road upon which certain premises of which you are the owner abut.' No notice of an intention to dispute the apportionment was given by the defendant within three months of the service of the notice, in accordance with section 257. The County Court judge gave judgment for the defendant on the grounds that the apportionment, being an apportionment of the expenses incurred in repairing more roads than one, was bad in law; and that the opportunities afforded to the defendant of inspecting the documents deposited were not, in his opinion, reasonable.

Archibald for the plaintiffs.

J. F. Clerk for the defendant.

The COURT (DENMAN, J., and LOPES, J.) reversed the decision of the County Court judge; holding that, the three months indicated by section 257 having elapsed, it was too late to dispute the apportionment; and that the opportunities for inspection of the documents, directed by section 150, were not a condition precedent to the validity of the apportionment.

Judgment for the plaintiffs.

Common Pleas Division. April 30. HILL *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Carriers—Railway and Canal Traffic Act (17 & 18 *Vict. c.* 31), *s.* 7—*Limit of Liability.*

Appeal from the County Court of Hertfordshire.

The plaintiff delivered a ram to the defendants, to be carried on their railway from Aylesbury to Kings Langley. On the journey, the ram was injured through the negligence of the defendants' servants. No contract in writing for the carriage of the ram was signed by the plaintiff, nor was any declaration of value made by the plaintiff. On the back of the consignment note were certain special conditions, limiting the liability of the defendants—in the case of sheep to 2*l.* per head—but this note was not signed by the plaintiff.

The plaintiff claimed 10*l.* for the injury to the ram; the defendants paid 2*l.* into Court, and contended that they were not liable for more than that amount by virtue of the proviso contained in section 7 of the Railway and Canal Traffic Act (17 & 18 Vict. c. 31), by which the limit of their liability for loss or injury, in the case of a pig or sheep, is 2*l.*, 'unless the person sending or delivering the same shall, at the time of the delivery, declare them to be of higher value, in which case the company may charge a reasonable percentage on the excess of value above the limited sum to be paid in addition to the ordinary charge.'

The County Court judge having given judgment for the plaintiff for the full amount, the defendants moved, under section 6 of the County Court Act (38 & 39 Vict. c. 50), and obtained a rule *nisi* to set aside the judgment and enter judgment for the defendants; against which

Hon. R. Grosvenor showed cause, and contended that all the parts of section 7 were to be read together; and any conditions limiting the liability of the company must be embodied in a written contract, signed by the consignor, in accordance with *Peek* v. *The North Staffordshire Railway Company*, 32 Law J. Rep. Q.B. 241; and that, in the absence of such written contract, the common law liability of the company attached.

Sutton, for the defendants, was not called upon.

The COURT (DENMAN, J., and LOPES, J.) gave judgment for the defendants; holding that the proviso of section 7 was a substantive enactment, which, in the absence of any declaration of value, limited the common law liability of the company without requiring a special contract.

Rule absolute.

Common Pleas Division. May 3. TAYLOR *v.* M'KEAN AND ANOTHER.

Bill of Sale—Sale of Stock in Trade—Trover.

One Bass, a draper, as a security for money borrowed, gave a bill of sale of (*inter alia*) all his stock in trade to the plaintiff, and by the terms of such bill of sale the money borrowed was to be repaid, on demand, at any time; and, until default, it was to be lawful for Bass to hold and make use of the goods without hindrance of the plaintiff. The bill of sale was never registered; and, before demand by the plaintiff, the defendants purchased all the stock in trade of Bass, who then absconded.

In an action of trover for such goods by the plaintiff against the defendants, the jury found that Bass sold the goods fraudulently, and not in the ordinary way of his business; but that the defendants did not know of this, and bought them *bona fide*. Thereupon LOPES, J., at the trial directed a verdict to be entered for the plaintiff. A rule *nisi* was afterwards obtained for a new trial, against which

D. Kingsford showed cause.

Oppenheim in support of the rule.

The COURT (LORD COLERIDGE, C.J., and DENMAN, J.) held that the direction of the learned judge at the trial was right, since the goods were the plaintiff's, and Bass had no right to sell them except in the ordinary way of his business, which, according to the finding of the jury, he had not done in the present case.

Rule discharged.

Probate, Divorce, and Admiralty Division. May 4. THE HJEMMETT.

Towage—Delay—Payment of extra Sum.

This was a claim by the tug Vivid for a sum in respect of three days delay at Gravesend. The Vivid had contracted to tow the Hjemmett from Sea Reach to London for a fixed sum; but, in consequence of a collision, the master of the Hjemmett insisted on remaining at Gravesend to clear away the wreckage, and that the Vivid should hold herself in readiness to complete her engagement.

Clarkson for the plaintiff, the owner of the Vivid.

Phillimore for the defendants, the owners of the Hjemmett.

SIR ROBERT PHILLIMORE held that such a claim as this was of an indefinite character, since it was neither properly a claim for towage or salvage, and could not be sustained; and dismissed the action, with costs.

COURT OF BANKRUPTCY.

Bankruptcy. Bacon, C.J. April 19. } *In re* Armytage. *Ex parte* Moore & Robinson's Nottinghamshire Banking Company.

Bill of Sale—Registration—Trade Machinery—Fixtures—Chattels—Bills of Sale Act, 1878, *ss.* 3, 4, 5, 7.

Appeal from the County Court at Derby.

Armytage, on December 10, 1878, executed a mortgage to the appellants of a quarry, 'together with the limekilns, stone sawing mills, buildings, steam engines, boilers, furnaces, shafts, gearing, motive power, plant, fixed and movable machinery, apparatus, rails, sleepers, &c.' This mortgage was not registered as a bill of sale. Armytage, in July, 1879, presented a petition for liquidation, and a trustee was appointed in August, 1879. At the date of the trustee's appointment there remained in the debtor's possession at the quarry, amongst other things, a steam crane, and certain tram rails. Upon the evidence the Chief Judge was of opinion that both the tram rails and the crane were so fixed to the freehold as to be irremovable without damage to it. Both rails and crane were claimed by the trustee and mortgagees respectively; the trustee submitting that, as to them, the mortgage was a bill of sale, and void for want of registration; the mortgagees arguing that they were not chattels, but fixtures, and that registration was, therefore, unnecessary.

Mr. De Gex and *Mr. A. Morley* for the appellants, the Banking Company: These articles are 'trade machinery' of a nature which before the Bills of Sale Act, 1878, would have been fixtures, not chattels, so that the instrument would, before that Act, not have been a bill of sale. This instrument was executed before the passing of the Act, which is not retrospective (section 3).

Mr. Winslow and *Mr. Horace Smith*, for the respondent, the trustee: This instrument deals with chattels and things which may or may not be fixtures in one mass, and would, therefore, have been a bill of sale even before the present Act. But sections 4 and 5 of the present Act make trade machinery chattels, and the latter part of section 7 makes the Act retrospective as to all things not fixtures under the Act, and, therefore, as to trade machinery.

The Chief Judge: In my opinion both the crane and the rails are plainly fixtures, having been permanently affixed to the ground. Section 7 of the new Bills of Sale Act says that 'the same rule of construction shall apply to all deeds,' &c. I therefore turn to the deed, and find that these fixtures are not separately assigned. Both rails and crane are, therefore, the property of the trustee.

Appeal allowed.

Table of Cases.

HOUSE OF LORDS.

House of Lords. May 4. THE METROPOLITAN DISTRICT RAILWAY COMPANY *v.* SHARPE.

Arbitration under Railway Act—Incorporation of Lands Clauses Consolidation Act, 1845—*Costs.*

This was an appeal from a decision (reported 48 Law J. Rep. Q.B. 325) of the Court of Appeal, affirming one of MANISTY, J.

The plaintiff Sharpe claimed compensation under the Metropolitan District Railway Act, for deterioration in value of a house by the works of the company. Under section 14 of the Railway Act, the question was referred to an arbitrator appointed by the Board of Trade, who made an award in which nothing was said as to costs. The plaintiff delivered to the company's solicitors her bill of costs, with notice of taxation. The company denied their liability to pay the costs.

This action was then brought to determine the question of liability, the plaintiff claiming under sections 1 & 34 of the Lands Clauses Consolidation Act, 1845 (which Act was incorporated with the company's Act, except where expressly varied), to have her costs taxed by a Master and paid.

The company contended that the mode of arbitration provided by their Act being different from that in the Lands Clauses Act there was an express variation, and that the provisions in the latter Act were not applicable in respect of costs. They further contended that the Master was named in the Lands Clauses Act not *qua* Master, but as a *persona designata*, whose decision was necessary to complete the award, and that the proper course was for the plaintiff to apply to him to tax the costs before bringing the action.

MANISTY, J., gave judgment for the plaintiff, and ordered the costs to be taxed. The Court of Appeal affirmed the judgment.

The company appealed.

Sir H. Giffard and *Mr. Pollard* for the appellants.

Mr. W. G. Harrison and *Mr. Man*, for the respondent, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD HATHERLEY, and LORD BLACKBURN) affirmed the decision of the Court of Appeal, with costs.

COURT OF APPEAL.

Court of Appeal. JAMES, L.J. BAGGALLAY, L.J. BRAMWELL, L.J. April 11. *In re* ROTHERHAM & SONS' TRADE MARK.

Trade Mark—Name in Arabic Letters—Regulation of Commissioners of Patents—Trade-Mark Registration Act, 1875 (38 & 39 *Vict. c.* 91), *ss.* 1, 10—*Trade-Mark Rules*, 1876, *Rule* 61.

Appeal by the Registrar of Trade-Marks from BACON, V.C., noted Notes of Cases, 1879, p. 62.

The question was whether Messrs. Rotherham & Sons had a right to register as a trade-mark under the Act the word 'Tod,' written in Arabic characters.

Mr. Rigby for the Registrar of Trade-marks.

Sir H. M. Jackson and *Mr. Moloney* for the respondents.

Their LORDSHIPS affirmed the Vice-Chancellor's decision that the respondents were entitled to have their trade-mark registered.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
April 27, 30.
May 3, 4.

DICKS *v.* BROOKS.

Copyright in Engraving—Coloured Copy of Original Picture—The Hogarth Acts.

This was an appeal from the decision of BACON, V.C.

The plaintiff, towards the end of 1878, was bringing out, as a Christmas supplement to his weekly publication, called *Bow Bells*, a coloured lithograph, designed as a sample for Berlin wool work, after Millais's celebrated picture, the 'Huguenot.' The defendant was the owner (under 8 Geo. II. c. 13, and 7 Geo. III. c. 38, known as the Hogarth Acts) of the copyright of an engraving by T. O. Barlow, after Millais. The defendant had delivered a circular cautioning newsvendors against infringing his copyright; and upon this the plaintiff brought his action, claiming damages for slander of his title to the coloured lithograph, and an injunction against the circulation of the circular. The defendant, by counter-claim, asked for an injunction against the publication of the coloured lithograph as an infringement of his copyright, and for the statutory penalty of five shillings for every copy which had been printed by the plaintiff.

The Vice-Chancellor had given judgment in favour of the defendant, granting him his injunction and the penalty—a moiety for himself, and the other moiety to go to the Crown. The penalty amounted to 6,250*l.*

The plaintiff appealed.

Mr. Davy, *Mr. Whitehorne*, and *Mr. Oswald* for the appellant.

Mr. Hemming and *Mr. Ingham* for the respondent.

Their LORDSHIPS held that the coloured lithograph was not a copy of the engraving within the meaning of the statutes. It was a copy of Mr. Millais's design, in which there was no copyright. But the protection given by these statutes to the engraver was intended to be, and was, commensurate with his work as an engraver. The coloured imitation in question could be produced without making use of the engraving as an engraving, and was therefore not a piratical copy of the engraver's meritorious work. The judgment in favour of the defendant must therefore be reversed.

It having appeared from the *viva voce* evidence of the defendant, given on the appeal, that only one copy of the circular complained of had been delivered to a customer of the plaintiff's, their lordships further held that the plaintiff had failed to prove any appreciable damage. The action was one which ought never to have been brought, and must be dismissed, with costs. The plaintiff to have the costs of the counter-claim.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
May 10.

In re THE METROPOLITAN BANK (LIMITED).

Voluntary Winding-up—Action by Liquidator against a Director—Interrogatories sufficiently answered—Summons by Liquidator to examine Director—The Companies Act, 1862, *ss.* 115, 138.

Appeal from an order of BACON, V.C., directing Mr. Heiron, a director of the above company, to attend for examination on a summons taken out by the liquidator under section 115 of the Companies Act, 1862, under these circumstances.

The above company was being wound up voluntarily, and the liquidator, on behalf of the company, had brought an action against Mr. Heiron for damages for falsely representing the position and credit of a customer of the bank.

Interrogatories had been served on, and had been answered by, Mr. Heiron; and a summons for a further answer had been dismissed.

The action was set down for trial; and then the liquidator took out a summons, in the winding up, under section 115 of the Act, for the purpose of examining him concerning his dealings with the company.

The Vice-Chancellor, considering that the liquidator was entitled as of right to the order, granted the application.

Mr. Heiron appealed.

Sir H. Jackson and *Mr. Northmore Lawrence* for the appellant.

Mr. Hemming and *Mr. Whitehorne* for the liquidator.

Their LORDSHIPS were of opinion that the proposed examination was vexatious and oppressive. Under sections 115 and 138 of the Companies Act, very inquisitorial powers were conferred on liquidators; and, the more inquisitorial they were, the more the Court was bound to see that they were not used for purposes of vexation and oppression. The information the liquidator now sought to obtain could have been ascertained, under the statute, before he commenced his action. But he had called upon the defendant to put in a defence; he had called upon him to answer interrogatories; and had harassed him with a summons for a further answer; and now, after the action was set down for trial, he sought to take advantage of the powers conferred by the statute. The Vice-Chancellor had granted the application not on the ground that it was just and reasonable, but on the assumption that it was a matter as of right; but, under the circumstances, such a proceeding ought not to be allowed unless a strong case was made out to the satisfaction of the Court. The appeal would be allowed, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
May 8.

SWAINE *v.* DENBY.

Partition—Sale—Overriding Trust.

Demurrer.

Jonas Denby, who died in 1850, by his will gave to trustees three freehold cottages upon trust to pay the rents and profits to his sons, Jonas Denby and Holmes Denby, during their respective lives, in equal shares; and, in case of the death of either of them without lawful issue, the whole was to go to the survivor; but in case of the death of either, leaving issue, his share of the rents was to be divided among his issue until the death of the other son, and after the death of the survivor of the two sons the testator directed the cottages to be sold.

Holmes Denby died in March, 1878, leaving two children, the plaintiffs. Jonas Denby was still living, and had several children.

The plaintiffs brought an action claiming a sale of

the property in lieu of partition, as being entitled to a moiety.

The defendants, the present trustees of the testator's will, demurred.

Mr. Birrell for the defendants: The testator has pointed out a time for sale which has not yet arrived, and which cannot be anticipated (*Taylor* v. *Grange*, 49 Law J. Rep. Chanc. 24; s. c. 13 Ch. D. 223).

Mr. Dunning for the plaintiffs: *Taylor* v. *Grange* was a much stronger case than this. The property here is only cottages; in that case the trustees had extensive trusts and powers for working valuable quarries, the sale of which would have injured the other shares.

BACON V. C., allowed the demurrer, with costs.

Chancery Division. BACON, V.C. May 8. } BUTLER *v.* BUTLER.

Practice—Notice of Claim between Co-defendants—Order XVI., Rule 17.

Further consideration.

Action by some of the beneficiaries under the will of John Butler, sen., against John Butler and Walter Butler and another, the trustees of the testator's will. The plaintiffs claimed against John and Walter Butler a declaration that they were jointly and severally liable in respect of certain trust moneys improperly invested in breach of their trust. John Butler, by his defence, claimed contribution from the defendant, Walter Butler, in respect of the trust moneys, if the Court should consider the investments improper. This defence was delivered to Walter Butler, but there was no counter-claim against him. At the hearing before BACON, V.C., the investments were declared improper, and the defendants, John and Walter Butler, jointly and severally liable to make them good. An account of what was due in respect of these sums was ordered, and further consideration adjourned.

A previous action had been brought by John Butler against Walter Butler, in which the former claimed an indemnity against the latter in respect of the improper investment of the same trust funds. This action was dismissed, with costs.

Upon the further consideration, the defendant John Butler asked for an inquiry how and in what proportions as between the defendants John and Walter Butler the sums ordered to be paid to the plaintiffs should be borne. Walter Butler resisted the inquiry.

Mr. Mackeson and *Mr. G. Williamson* for the plaintiffs.

Mr. Horton Smith and *Mr. Nugent*, for John Butler: This defendant claimed contribution from his co-defendant in his statement of defence, and served that pleading on his co-defendant. That was a sufficient notice of the claim (*Furness* v. *Booth*, 46 Law J. Rep. Chanc. 112; s. c. L. R. 4 Chanc. Div. 586).

Mr. W. W. Cooper (*Sir H. M. Jackson* with him) for Walter Butler: There was no counter-claim between the co-defendants; and, therefore, no proper notice of John Butler's claim has been given to this defendant. The question cannot, therefore, be raised; at any rate not at this period of the proceedings.

BACON, V.C.: This is, no doubt, somewhat new practice, and care must be used in applying it; but, in my opinion, Walter Butler had sufficient notice within the terms of the rules of the other defendant's claim, and so I must allow the inquiry.

Chancery Division. HALL, V.C. May 1, 8. } *In re* GOVERNMENT SECURITY FIRE INSURANCE COMPANY (LIMITED). MUDFORD'S CLAIM.

Company—Winding-up—Proof—Breach of Contract—Contract to deliver fully-paid-up Shares—Non-registration of Contract—Contributory Negligence—Measure of Damages.

The company contracted in writing with Mr. Mudford, a newspaper proprietor, to pay him for the insertion of their advertisements in fully-paid-up shares. They issued to him shares as fully paid up, upon which nothing had, in fact, been paid; and for which, the contract not having been registered, he was held liable to calls in the winding-up of the company (see *White's Case*, 48 Law J. Rep. Chanc. 820). He was not aware, previous to the winding up, that the contract was not registered.

Mr. Mudford sent in a claim to prove for the nominal value of the shares by way of damages for the breach of contract.

It appeared that shares were subscribed for after the issue of Mr. Mudford's shares.

The liquidator sought the direction of the Court as to admitting the proof.

Mr. Eddis and *Mr. Plummer* for the claimant.

Mr. Hastings and *Mr. Methold* for the company.

HALL, V.C., directed the proof to be allowed. The contract to give fully-paid-up shares meant shares validly paid up: it was for the company, not for Mr. Mudford, to see that the contract was registered; and the measure of damages was the value of really paid-up shares when these were taken, which value, from the fact of shares having been afterwards subscribed for sufficiently, appeared to be the same as their nominal amount.

Chancery Division. HALL, V.C. May 8. } RAPIER *v.* WRIGHT.

Attachment of Debts—Moneys in Hands of Receiver of the Court—Moneys to become payable 'in futuro'—Rules of Court, Order XLV.

Mrs. Cowans was entitled for her life, under the will of the testator in the cause, to an annual payment out of his residuary trust estate, and to the rents of his real estate. A receiver, having been appointed, was, by an order in the cause, directed to make these payments to Mrs. Cowans.

Messrs. Basil Willis & Co. obtained a judgment in the Queen's Bench Division, and a judge's order for payment, upon which she made default in October, 1879. They, in December, obtained a garnishee order *nisi* attaching the moneys in or to come to the hands of the receiver, payable or accruing to Mrs. Cowans, to answer their debt (subject to prior incumbrances).

The summons to make the order absolute was adjourned into Court.

Mr. Charles Browne for the applicants.

Mr. Aspland for Mrs. Cowans, and a prior incumbrancer, contended that the moneys in, or, at all events, those yet to come to, the receiver's hands, were not a debt within the meaning of Order XLV.

HALL, V.C., made the order. This remedy was not destroyed by the Court substituting a receiver for the trustee; and the point as to future moneys was answered by the case of *Tapp* v. *Jones*, 44 Law J. Rep. Q.B. 127.

Chancery Division.
FRY, J.
April 27, 28, 29.
May 7.
THOMAS *v.* WILLIAMS.

Trade Names—Libel—Fox's Act.

This was an action, by a needle manufacturer, against Australian merchants, to restrain the distribution of trade circulars, on the ground that they implied that the plaintiff's needles were spurious, and were calculated to damage his trade.

Three legal objections were taken for the defence. 1. That an injunction would not be granted to restrain a libel. 2. That, by virtue of Fox's Act, before any relief could be given, the question of libel or no libel must be tried by a jury. 3. That special damage must be shown.

Mr. Cookson and *Mr. Beale* for the plaintiff.

Mr. Kay and *Mr. MacSwinney* for the defendant.

FRY, J., overruled all the objections. He held one of the circulars to be libellous; and restrained its distribution.

Queen's Bench Division.
(*Magistrates' Case.*)
May 5.
REGINA *v.* HUTCHINS.

Public Health—Paving private Streets—Highway repairable by the Inhabitants at large—Decision of Justices as to Character of Street conclusive—'Res judicata'—38 & 39 Vict. c. 55 (Public Health Act, 1875), s. 150—Dismissal of Complaint, Evidence of—11 & 12 Vict. c. 43, s. 14.

Case stated by the Court of Quarter Sessions for the hundred of Salford.

In 1873 the local board of Bradford summoned Hutchins for payment of his proportion of the expenses incurred in sewering Mill Street, upon which his property abutted, they having given him a notice under the Public Health Act to do the work, and the notice not having been complied with. The justices, after hearing evidence, dismissed the summons on the ground that Mill Street was a highway repairable by the inhabitants at large. In 1879, the local board gave a fresh set of notices, requiring the owners and occupiers in Mill Street to pave and level the street; and, on default of compliance, again summoned Hutchins for the expense incurred by them in doing that work themselves. The justices made an order upon him for payment; and, on appeal, the quarter sessions upheld the order. The questions for the Court were, whether the appellant was entitled upon his grounds of appeal, which only stated that the street was a highway repairable by the inhabitants at large, to contend that the matter was *res judicata*; and, secondly, whether, if so, the adjudication in 1873 was conclusive and binding on the justices at the hearing of the summons in 1879.

Hopwood, in support of the order of sessions, argued that the first decision was analogous to a nonsuit, and did not preclude the board from reopening the question with additional evidence at a subsequent date; and that, as the appellant had not, under Jervis's Act (11 & 12 Vict. c. 43, s. 14), required the justices in 1873 to give him a certificate of dismissal, he could not rely on the informal entry in the magistrate's note book as an estoppel.

Ambrose, contrà, was not called on.

The COURT (LUSH, J., and FIELD, J.) made the rule absolute to quash the order; holding, first, that the grounds of appeal sufficiently raised the point, and should have been amended by the sessions, if necessary; and, secondly, that the decision in 1873, being one of a Court of competent jurisdiction as to the character of the street, and made between the same parties and not appealed against, was binding on the justices in 1879 as conclusive of the question raised on the summons.

Common Pleas Division.
May 6.
CHESHUNT *v.* HAND. HARRISON (CLAIMANT).

Bill of Sale—Prior Mortgage of Freehold and Leaseholds—Consolidation of Mortgages.

Special case.

The goods of the defendant having been seized in execution, one Harrison claimed them as grantee under a registered bill of sale. The claimant Harrison was also mortgagee of certain freehold and leasehold premises, mortgaged to him by the defendant prior to the granting of the bill of sale; these mortgages were not registered. The goods were more than sufficient in value to cover the amount advanced under the bill of sale, but the claimant claimed to be entitled to the surplus remaining after realisation of the bill of sale, on the ground that he was entitled to consolidate the mortgages by virtue of the equitable doctrine that where one person has vested in himself, by way of mortgage, two estates the property of the same mortgagor, one of them cannot be redeemed without the other.

French for the plaintiff, the execution creditor.

Arthur Leach for the claimant.

The COURT (DENMAN, J., and LINDLEY, J.) held that the equitable doctrine of consolidation of mortgages could not be extended so as to enable the claimant to defeat the right of the execution creditor to the surplus remaining after realisation of the bill of sale.

Judgment for the plaintiff.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
May 1, 3.

GREAVES *v.* TOFIELD.

Unregistered Annuity—Purchaser with Notice—18 & 19 *Vict. c.* 15, *s.* 12.

Appeal from the decision of the MASTER OF THE ROLLS, noted *ante*, p. 10, holding that a purchaser of land, with notice of an unregistered annuity charged on the land, took the land free from the annuity.

Mr. Ince and *Mr. G. C. Price* for the appellant (the annuitant).

Mr. Chitty and *Mr. Ingle Joyce* for the purchaser.

Mr. Vernon Smith and *Mr. H. Humphreys* for other parties.

Their LORDSHIPS reversed the decision of the Master of the Rolls; being of opinion that the annuitant was entitled to equitable priority over those purchasers and incumbrancers who took the land with notice of the annuity.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
April 21.
May 12.

JONES *v.* THE MONTE VIDEO GAS COMPANY.

Practice—Discovery—Affidavit of Documents—Rules of Court, Order XXXI., Rule 12.

Appeal from the Queen's Bench Division.

Action for wrongful dismissal.

Defence—Justification of the dismissal on the ground of disobedience, and a failure to make proper reports.

The plaintiff obtained an order for discovery; the defendants made an affidavit of documents, to which the plaintiff replied by an affidavit specifying certain documents which he stated he knew had been in the defendants' possession or power, and which he believed still to be so, but which they had not disclosed. The defendants then made an affidavit, stating that these documents were not relevant to the action.

On this a Master made an order for a further affidavit. The defendants appealed; and, the hearing having been adjourned for a further affidavit by the plaintiff, the plaintiff made an affidavit, pointing out, in

detail, how the specified documents were material. The JUDGE then affirmed the Master's order, and the Queen's Bench Division affirmed the decision of the judge.

The defendants appealed.

Mr Will (with him *Mr. Farwell*) for the appellants.

Mr. Archibald for the plaintiff.

Their LORDSHIPS took time to consider, and to consult the other judges of the Court of Appeal; and, on May 12, delivered judgment allowing the appeal; holding that an affidavit of documents is conclusive, and cannot be contradicted, unless it appear, either from the affidavit itself, or from admissions or documents referred to in the pleadings of the party making the affidavit, that he has, in his possession or control, other documents relevant to the action.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
April 12. May 13.
} REGINA *v.* REED.

Elementary Education Acts, 33 & 34 *Vict. c.* 75, *ss.* 53, 54, 57—36 & 37 *Vict. c.* 86, *s.* 10—*Deficiency of School Fund—Power of Board to borrow for temporary Purposes.*

Appeal from the Queen's Bench Division, reported 48 Law J. Rep. Q.B. 729.

The question on this appeal was whether a school board is entitled to borrow money, for current expenses, in any other way than that provided by section 10 of 36 & 37 Vict. c. 86.

The auditor, holding that a school board is not, had disallowed a charge for interest on a loan advanced to the London School Board without the requirements of the above section being satisfied.

The Queen's Bench Division made a rule absolute to quash this disallowance.

The auditor appealed.

The Solicitor-General (*Sir H. Giffard*) and *Mr. Anstie* for the appellant.

Mr. Jeune (*Sir H. James* with him) for the school board.

Their LORDSHIPS, having taken time to consider, delivered judgment, on May 13, reversing the decision of the Queen's Bench Division; holding that a school board has no power to borrow money save under section 10 of 36 & 37 Vict. c. 86; and that the auditor's disallowance was, therefore, right.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
May 13.
} HOCH *v.* BOOR.

Practice — Order referring Issues to Official Referee made by Judge at Trial—Appeal—Whether to Divisional Court or Court of Appeal—S. 57 *of the Judicature Act*, 1873.

This was an appeal from an order made, under section 57 of the Judicature Act, 1873, by GROVE, J., at a trial, referring all the issues in the action to an official referee. The plaintiff appealed from the order to the Court of Appeal.

Mr. Willis and *Mr. Morton Smith*, for the defendant, now took the preliminary objection that the appeal should have been to a Divisional Court in the first instance.

Mr. Digby Seymour and *Mr. Smalman Smith* appeared for the plaintiff.

Their LORDSHIPS held that the order, having been made by Grove, J., sitting as a judge of assize, was the order of a Court from which the appeal was direct to the Court of Appeal, and not like an order in chambers, from which the appeal was to a Divisional Court. The appeal was, therefore, heard; and, in the result, their lordships refused to interfere with the discretion exercised by Grove, J.

Court of Appeal.
JAMES, L.J.
BAGGALLAY, L.J.
BRAMWELL, L.J.
May 14.
} *In re* MORTON AND HALLETT.

Devise to Trustees—Trust for Sale to be executed by Devisees or Trustees for Time being—Heir of surviving Trustee—Vendors and Purchasers Act, 1874.

This was a summons, taken out under the Vendors and Purchasers Act, 1874, by the purchaser, objecting that the heir of the surviving trustee of a will had no power to sell.

The testator devised copyholds to two trustees, upon trust that they, or the trustees for the time being of his will, should, after the death of a tenant for life, sell and distribute the proceeds. The will provided for the appointment of new trustees. Both the trustees were dead, and no new trustee had been appointed. The tenant for life was dead, and the heir of the surviving trustee, having been admitted to the copyholds, had now contracted to sell them.

The MASTER OF THE ROLLS had held that the heir could give a good title.

The purchaser appealed.

Mr. Chitty and *Mr. F. W. Maitland* for the appellant.

Mr. Davey and *Mr. W. W. Cooper* for the respondent.

Their LORDSHIPS affirmed the decision of the Master of the Rolls.

Court of Appeal.
BRETT, L.J.
COTTON, L.J.
THESIGER, L.J.
May 14.
} THE CAPITAL AND COUNTIES BANK *v.* HENTY & SONS.

Libel—Privilege—Malice.

Appeal from a judgment of the Common Pleas Division.

Action for libel, alleged to have been written and published by the defendants, who were brewers at Chichester, of the plaintiffs.

The defendants had, for years, allowed their travellers to take cheques from customers on the branch banks of the Capital and Counties Bank, and the bank had been in the habit of cashing those cheques. A new manager of the bank having been appointed, he refused to continue the practice; and the defendants thereupon sent a circular (being the libel complained of) to each of their customers in the country, stating that 'Messrs. Henty & Sons hereby give notice that they will not receive in payment any cheques drawn on any of the branches of the Capital and Counties Bank.' The statement of claim alleged that the defendants falsely and maliciously

published this circular, meaning thereby 'that the plaintiffs were not to be relied on to meet the cheques drawn on them, and that their position was such that they were not to be trusted to meet the cheques of their customers.' At the trial LORD COLERIDGE, C.J., left certain questions to the jury, upon the answer to which they could not agree, and were, therefore, discharged without verdict. The defendants moved the Common Pleas Division to have the verdict entered for them on the ground that there was no evidence upon which the jury could properly have found that the publication complained of was a libel; that, if it was, the occasion of publishing it was privileged; and that there was no evidence of actual malice on the defendants' part. The Common Pleas Division gave judgment for the plaintiffs, and the defendants appealed.

Sir Hardinge Giffard, *Mr. Herschell*, and *Mr. A. L. Smith* appeared for the defendants.

Sir John Holker, *Mr. A. G. Goldney*, and *Mr. R. T. Read* for the plaintiffs.

Cur. adv. vult.

May 14.—Their LORDSHIPS (THESIGER, L.J., dissenting) allowed the appeal; holding that there was nothing in the circumstances under which the circular was sent from which the jury could reasonably find that it was libellous; that the occasion of publishing it was privileged; and that there was no evidence of express malice on the defendants' part.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
May 25.

HILL AND OTHERS *v.* THE MANAGERS OF THE METROPOLITAN ASYLUM DISTRICT.

Practice—Appeal—Shorthand Notes—Taxation of Costs—When Application to allow Costs of Shorthand Notes used on Appeal ought to be made—Order LVIII., Rule 11.

Application of the plaintiffs to the Court of Appeal for a direction to a Master that, on taxation, the costs of the shorthand notes used at the hearing of an appeal from the Queen's Bench Division should be allowed.

The action was to recover damages from the defendants for creating a nuisance by maintaining a small-pox hospital near the house of one of the plaintiffs. The trial, before POLLOCK, B., and a jury, occupied several days, and shorthand writers were present, and took notes of all the proceedings. Pollock, B., after further consideration, gave judgment for the plaintiffs, on the findings of the jury, with costs (reported 48 Law J. Rep. Q.B. 562). The defendants obtained a rule for a new trial in the Queen's Bench Division, and at the hearing in that Court a transcript of the shorthand notes taken at the trial, and copies of that transcript, were used by both sides.

The plaintiffs appealed from the judgment of the Queen's Bench Division, and the defendants from the judgment of Pollock, B.; and, at the hearing of the appeals, the transcripts, and copies of them, of the shorthand notes taken at the trial, and also of the shorthand notes of the proceedings before the Queen's Bench Division, were used. The Court of Appeal dismissed the plaintiffs' appeal on the condition of the defendants paying to them the costs of the first trial, and gave judgment for the plaintiffs, with costs, on the defendant's appeal (49 Law J. Rep. Q.B. 228). This judgment was duly drawn up and entered. On taxation of the plaintiffs' costs, the Master refused to allow the costs of the shorthand notes used in the Court of Appeal without an order of the Court.

Mr. Finlay, for the plaintiffs, now applied for an order under Order LVIII., Rule 11.

Mr. Anderson, *contrà*.

Their LORDSHIPS expressed an opinion that it was desirable to follow, as far as possible, the rule laid down by the Court of Appeal at Lincoln's Inn in *Ashworth* v. *Outram*, L.R. 9 Chanc. Div. 483; and therefore refused the application, on the ground that it ought to have been made before the judgment was entered up.

HIGH COURT OF JUSTICE.

Chancery Division.
FRY, J.
May 4.

STRELLEY *v.* PEARSON.

Mandatory Injunction—Drowned Mine—Preservation of Property—Pumping out—Judicature Act, 1873, *s.* 25, *subs.* 8—*Order LII., Rule* 3.

This was an action for specific performance of an agreement to take a lease of a colliery, dated August 5, 1873, and for an injunction. The defendant had taken possession soon after the agreement, and worked the colliery until April, 1879, when he gave notice that he would cease pumping. The action was, thereupon, commenced, by writ issued in May, 1879; and notice of motion was given for an injunction to restrain the defendant from ceasing pumping, and from permitting any irreparable injury to accrue to the colliery by reason of the defendant's default in performing his obligations under the agreement.

The defendant had cross-examined the plaintiff's witnesses on the motion; and, the mine having become completely drowned, an order was taken that the motion should stand to the trial, which now came on.

Mr. Cookson and *Mr. Colt* for the plaintiff.

Mr. North and *Mr. F. Thompson* for the defendant.

FRY, J., gave judgment for specific performance, with costs, and made the costs of the motion costs in the action. He said the question was, whether the motion, when notice was given, would have been acceded to by the Court; and he held that the case was within Rule 3 of Order LII., and that the motion was originally well founded for preservation of the property; but he declined to grant a mandatory injunction until execution of the lease, on account of the lapse of time.

Queen's Bench Division.
(*Magistrates' Case.*)
May 14.

REGINA *v.* THE JUSTICES OF ESSEX.

Bastardy—Appeal—Sessions Order quashed not upon Merits—Second Order—Jurisdiction of Justices.

Rule calling upon certain justices to show cause why a writ of prohibition should not issue.

It appeared that, upon an appeal coming on for hearing to the sessions against an order adjudicating the appellant to be the putative father of a bastard child, the respondent, the mother of the child, and the witnesses on her behalf, were not in attendance, owing to some mistake. The sessions refused to adjourn the appeal; and quashed the order, with costs. Subsequently the mother applied for, and obtained, a fresh bastardy summons against the appellant. Whereupon a rule *nisi* was moved for, and obtained, to prevent the justices from adjudicating upon it.

W. W. Wood showed cause, and contended that there had been no decision by the sessions on the merits so as to bar the mother from taking fresh proceedings.

C. E. Jones supported the rule.

The COURT (LUSH, J., and MANISTY, J.) held that, as the order had been quashed in the absence of all evidence, there had been no decision by the sessions on the merits, so as to prevent a fresh order being obtained, from the justices at petty sessions, by the respondent against the appellant.

Rule discharged.

Common Pleas Division. May 13. } THE PATENT SAFETY GUN COTTON COMPANY *v.* WILSON.

Cheque—Stolen Cheque and Forged Indorsement—Negligence of Holder—Trover.

To an action for conversion of a cheque payable to the order of the plaintiffs, whose indorsement had been forged before it came into the defendant's possession, the defendant alleged, in his statement of defence, that the plaintiffs knowingly employed as a clerk a man who had been convicted of embezzlement, and who was a notorious thief, and that such clerk was allowed access to the rooms where the plaintiffs' letters and cheques were left lying about, and was empowered to receive and open such letters and cheques, and was sometimes employed to indorse cheques payable to the order of the plaintiffs; that the cheque, the subject of the action, was contained in a letter and received or stolen by the said clerk, who thereupon forged the indorsement, and procured one E., a publican, who had no notice of the forgery and theft, to cash the cheque, and that the defendant received it, with other cheques, in the ordinary course of business from the said E. without notice of the said forgery and theft, and gave full value for it.

The plaintiffs demurred to this.

W. D. Greene (*Pollard* with him) in support of the demurrer.

W. Medcalf, contrà.

GROVE, J., held that the said statement of defence showed sufficient gross negligence on the part of the plaintiffs to prevent their recovering in this action.

Demurrer disallowed.

Table of Cases.

HOUSE OF LORDS.

House of Lords. May 25, 27. { THE ATTORNEY-GENERAL v. THE GREAT EASTERN RAILWAY COMPANY.

Railway Company—Power to lease Rolling Stock.

This was an appeal from a decision of the Court of Appeal (reported 48 Law J. Rep. Chanc. 428), which reversed a judgment of the MASTER OF THE ROLLS.

The action was brought, at the relation of the Locomotive Manufacturers Association, and Railway Carriage and Waggon Builders Association, for an injunction to restrain the Great Eastern Railway Company from letting rolling stock to be used on the London, Tilbury, and Southend Railway. The latter company's line was in communication with the Eastern Counties (now the Great Eastern) Railway (through which lay its only access to London), and with the Blackwall Railway Company.

In 1854, under powers in the special Act of the Tilbury Railway Company, their line was leased to Peto, Betts, & Co., for twenty-one years, and the Eastern Counties Railway Company agreed to let rolling stock to the lessees during the lease.

In 1863 a special Act was passed which—after reciting that, by arrangement, the traffic on the Tilbury line was worked by the Eastern Counties Railway Company, and that it was expedient that the parties should have power to alter the terms of the lease, and the arrangements for working the Tilbury line—enacted (section 14) that 'the two companies (*i.e.* the Eastern Counties and the Blackwall Railway Companies) may enter into agreements with respect to the working, maintenance, and management of the Tilbury line' . . . 'the appointment of a joint committee, or any other matter incident to carrying out of the purposes of this Act.'

No new lease was made under this Act; but the Eastern Counties Company continued to let rolling stock to Peto, Betts, & Co., until the expiration of the lease in 1875; and, after that, under a deed of arrangement, to the Tilbury Company.

The Master of the Rolls held the deed of arrangement *ultra vires*, and granted an injunction; which, however, was dissolved by the Court of Appeal, where it was held by JAMES, L.J., and BRAMWELL, L.J. (1) that the arrangement did not require statutory authority; (2) that there was statutory authority in section 14 of the Act of 1863; and (3) that an action by the Attorney-General to restrain a proceeding which is *ultra vires* is not warranted, except where there is an injury to the public.

The Attorney-General appealed.

Mr. Kay, *Mr. Bompas*, and *Mr. Macnaghten* for the appellant.

Mr. Chitty and *Mr. Smart* for the respondent company.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) affirmed the judgment of the Court of Appeal; but on the second ground only, declining to express any opinion on the first and third.

House of Lords. May 28. THE MANAGERS OF THE METROPOLITAN ASYLUMS DISTRICT *v.* HILL AND OTHERS.

Order for New Trial upon Payment of Costs—Appeal.

This was an application by the respondents to obtain a decision as to the competency of an appeal from the judgment of the Court of Appeal (reported 49 Law J. Rep. Q.B. 228).

The appellants, defendants in the action, had obtained a rule for a new trial in the Queen's Bench Division. An appeal by the plaintiffs to the Court of Appeal was dismissed, and a new trial ordered, but upon condition that the defendants paid the costs of the previous trial.

The defendants appealed; and it was now contended that this was an appeal in respect of costs only, and, therefore, not competent.

The Solicitor-General (with him *Mr. Bompas* and *Mr. Finlay*) for the respondents.

Sir J. Holker (with him *Mr. Anderson*), for the appellants, was not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) held that the case did not fall within the rule against allowing appeals as to costs only, and dismissed the application of the respondents; but, inasmuch as it was made to save expense, they reserved the costs.

House of Lords. June 1. CARMICHAEL AND OTHERS *v.* GEE AND OTHERS.

Will—Direction to set apart Investments to produce Legacy—Insufficiency of Income—Charge on 'Corpus.'

This was an appeal from a decision of the Court of Appeal, reversing one of HALL, V.C., in the case of *Gee v. Mahood* (reported 47 Law J. Rep. Chanc. 641; 48 Law J. Rep. Chanc. 657).

A testator directed trustees to invest sufficient of his estate to produce an annuity of 1,200*l.* a year which he gave to his wife. There was a gift over of the investments after the death of the wife.

The estate proved insufficient to provide a sum which would produce 1,200*l.* a year out of income; and the question was, whether the wife was entitled to have the deficiency of the annuity made good out of the *corpus*. Hall, V.C., held that she was not; but her claim was sustained on appeal.

This appeal was then brought by those entitled in remainder to the *corpus*.

Mr. W. Pearson and *Mr. Vaughan Hawkins* for the appellants.

Mr. Graham Hastings, *Mr. Warmington*, and *Mr. Farwell*, for the respondents, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD HATHERLEY, LORD BLACKBURN, and LORD WATSON) dismissed the appeal, with costs.

COURT OF APPEAL.

Court of Appeal. JESSEL, M.R. JAMES, L.J. COTTON, L.J. May 25. *Re* RUTHERFORD. BROWN *v.* RUTHERFORD.

Promissory Note — Note payable Three Months after Demand—Payment asked after Twenty Years—Stale Demand—Presumption of Payment.

In 1857 John Rutherford gave to his nephew, Robert Rutherford, a promissory note, as follows:—

£150. May 20, 1857.

Three months after demand I promise to pay Mr. Robert Rutherford the sum of 150*l.* for value received in book debts. JOHN RUTHERFORD.

John Rutherford died in 1869, and Robert Rutherford in 1878. On the death of Robert Rutherford the note was found, amongst his papers, indorsed as follows:—

Interest, Nov. 1, 1857, 3*l.* 15*s.*
Interest, May 1, 1858, 3*l.* 15*s.*

The present action being for the administration of the estate of John Rutherford, the representative of Robert Rutherford sought to prove for the value of the note. Vice-Chancellor HALL had allowed the proof (see Notes of Cases, *ante*, p. 51).

The defendant, who represented the estate of John Rutherford, appealed.

Mr. Caldecott, for the appellant, argued that the claim was a stale demand; and that, independently of the Statute of Limitations, the note must be presumed to have been paid after the lapse of twenty years. The payment of interest showed that there had been a demand for payment, and the Statute of Limitations would, therefore, run.

Mr. J. Henderson, *contrà*, argued that the payment of interest was made to stave off demand of payment of the debt. There had been, in fact, no demand; and that, until demand, there was nothing due, and the Statute of Limitations would not run.

Their LORDSHIPS held that the payment of interest was evidence that the note was due; and that, at this distance of time, there having been no demand for either principal or interest since 1858, the note must be presumed to have been paid or satisfied.

Court of Appeal. BRAMWELL, L.J. BAGGALLAY, L.J. BRETT, L.J. May 26. WILKS *v.* JUDGE.

Practice — Appeal from Order of Divisional Court—Interlocutory Order—Rules of Court, Order LVIII., Rules 2, 4.

Appeal by the plaintiff from the Exchequer Division.

At the trial before STEPHEN, J., the plaintiff was nonsuited. He then obtained a rule for a new trial in the

Exchequer Division, which was discharged on May 6, 1880. He appealed from that decision, and gave notice of appeal on May 15 for May 24, and the case was entered in the list of appeals from orders on interlocutory motions.

Mr. Sills for the plaintiff.

Mr. Gould, for the respondent, took a preliminary objection, and contended that the appeal was wrongly entered in the interlocutory list; that the decision of the Exchequer Division was a final judgment; that, even if that were not so, still it was an interlocutory judgment and not an interlocutory order; and that the respondent was entitled to fourteen days' notice of appeal.

Mr. Sills, for the respondent, was not called upon.

Their LORDSHIPS overruled the objection; holding that the order of the Divisional Court was an interlocutory order. The appeal was then heard on the merits, and it was dismissed.

HIGH COURT OF JUSTICE.

Chancery Division.
BACON, V.C.
May 27.
} DUKE OF ROXBURGH *v.* COX.

Sale of Army Commission—Regimental Agents and Bankers—Banker's Lien.

In August, 1877, the defendants, as regimental agents of the Scots Fusilier Guards, were authorised by the Army Purchase Commissioners to pay to Lord Charles Ker 3,000*l.* on his retirement from the army being gazetted. In December, 1877, the defendants, who were also the bankers of Lord Charles Ker, wrote to him, enclosing a receipt to be signed by him, 'in order that, as soon as you are gazetted, no time may be lost in placing the amount to your credit, or otherwise disposing of the same as you may direct, less any regimental claims which may be preferred against you.' Lord Charles Ker's retirement was duly gazetted; and, on the same day, the plaintiff sent notice to the defendants that he had a charge on the 3,000*l.* The money was paid to the defendants on a receipt signed by Lord Charles Ker, and they now claimed a banker's lien on the sum in respect of 647*l.* 6*s.* owing to them from Lord Charles Ker.

Mr. Hemming and *Mr. B. B. Rogers*, for the plaintiff, contended that, as regimental agents, the defendants acted in a character distinct from that in which they acted as bankers; and that, in respect of the price of this commission, they acted in the former character only, as was shown by their own letter, and that, therefore, they had no lien on these moneys.

Sir H. Jackson, *Mr. Chitty*, and *Mr. A. T. Watson*, for the defendants, were not called upon.

BACON, V.C., said that, as bankers of Lord Charles Ker, the defendants were entitled to a lien on this fund; and made an order that the defendants should pay the residue of the fund to the plaintiff, and that the plaintiff should pay the costs of the action.

Chancery Division.
FRY, J.
May 28.
} NIVES *v.* NIVES.

Vendor's Lien—Future Instalments—Jurisdiction.

This was an action for specific performance, and to enforce a vendor's lien.

The contract was for the sale and purchase of a hairdresser's business and the lease of the premises where the business was carried on. The purchase money was payable by instalments. It appeared that some purchase money in respect of instalments already due was unpaid, and of the time for payment of future instalments five years was unexpired. One question in the action was, whether the Court would give judgment in respect of the payment of future instalments.

Mr. North and *Mr. Russell Roberts* for the plaintiff.

Mr. Fellows, *Mr. Cookson*, and *Mr. Beddall* for the defendants.

FRY, J., held that there was jurisdiction to make an order in respect of future instalments; and it would be convenient to do so in the present case. He gave judgment declaring a lien providing for the enforcement of the lien in respect of what was presently payable, and gave liberty to apply in respect of future instalments as they should become due.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
May 31.
} *In re* M'CULLOCH. *Ex parte* PYKE.

Bankruptcy—Assets in Ireland—Assets in England—Adjudication in both Countries—Jurisdiction—Conflict—Adjudication 'ex debito Justitiæ'—Bankruptcy Act, 1869, *s.* 8.

Appeal by Messrs. Pyke & Son from an order of the judge of the County Court at Liverpool.

The bankrupt, Peter M'Culloch, carried on business as a corn and provision broker at Liverpool, and at Monaghan, in Ireland. On April 19, 1880, a petition was filed against him in the Court of Bankruptcy in Ireland, and, on the same day, obtained a protection order for his Irish and English estates. A meeting of creditors was immediately afterwards held; but was adjourned to enable M'Culloch to submit some satisfactory proposition to the creditors. On May 1 the appellants, Messrs. Pyke & Son, carrying on business at Preston and at Liverpool, served on M'Culloch a debtor's summons, with which he failed to comply, thereby committing an act of bankruptcy; and on May 3 Messrs. Pyke & Son presented a bankruptcy petition against him in the Liverpool County Court, served it upon him in Ireland, and an English receiver was appointed. On May 4 the debtor filed his own bankruptcy petition in Ireland; and was, on the same day, adjudicated a bankrupt; the whole of his property, wheresoever situate, thereby becoming vested in the official assignee under that bankruptcy. On May 13 Messrs. Pyke & Son's petition was heard before the County Court judge, at Liverpool, who dismissed the petition on the ground that there was already an adjudication against him. Messrs. Pyke & Son had, it appeared, applied in Ireland to have the Irish adjudica-

tion annulled, but their application had failed. The total liabilities of M'Culloch were about 38,000*l.*, of which about 27,000*l.* was due to creditors in Ireland, and out of a total number of 112 creditors 71 were Irish.

The petitioning creditor's debt, trading, and act of bankruptcy were proved.

Mr. Winslow and *Mr. French* for the appellant: The requisites of section 8 have been proved, and so the adjudication is *ex debito justitiæ*. The title of the English trustee will relate back three days further than that of the Irish official assignee, and that is a good reason for allowing the English adjudication.

Mr. Charles Russell and *Mr. Walton* for the debtor: The adjudication is not *ex debito justitiæ*, but is a matter of discretion. Most of the assets and of the creditors are in Ireland; the Irish Courts are of competent jurisdiction; and, if the English adjudication is allowed, there may be a conflict of jurisdiction. The English adjudication should not be allowed.

The CHIEF JUDGE: I do not fear any conflict of jurisdiction. There are assets in both countries, and, in the absence of any equitable considerations against it, I think the appellant is entitled to an adjudication *ex debito justitiæ*.

Bankruptcy.
BACON, C.J. May 31. } *In re* KEMEYS-TYNTE. *Ex parte* GIBBON.

Bankruptcy — Annulling Adjudication on equitable Grounds—Real Property Limitation Act, 1874, *s.* 8—*Bankruptcy Act*, 1869, *s.* 8.

Appeal by the bankrupt from an order for adjudication by the judge of the Exeter County Court.

In 1860 Colonel Tynte became, upon the death of his father, tenant for life of large settled estates. Before that event he had incurred heavy liabilities upon the security of his expectations; and, amongst others, had become indebted to Henry Gibbon, a solicitor, upon an acceptance for 1,000*l.*, upon which judgment was recovered against him on January 23, 1862. In 1857 a Chancery suit was instituted to settle the priorities of various mortgage creditors of Colonel Tynte; and in December, 1860, an order was made in the suit under which Colonel Tynte's life estate had ever since been, and was still being, administered for the benefit of the creditors. Advertisements for creditors were issued; but Gibbon did not come in and prove his debt, though he was aware of the existence of the suit, and saw the advertisements, nor did he take any steps to enforce his judgment until the presentation of the present petition for adjudication. At the present time Colonel Tynte was upwards of eighty years of age, lived in a house at Torquay which belonged to one of his daughters, and had no means, except an allowance made out of the rents by the Court of Chancery to his wife on her separate receipt, to enable her to support herself, her husband, and family.

The petitioning creditor's debt and act of bankruptcy were duly proved.

Mr. Winslow and *Mr. R. Vaughan Williams* for the appellant: The facts show good equitable grounds for annulling the adjudication. Besides that, section 8 of the Real Property Limitation Act applies, the debt being a judgment debt.

Mr. Horton Smith and *Mr. Finlay Knight* for the respondent: The requisites of section 8 of the Bankruptcy Act, 1869, being proved, the order of adjudication is *ex debito justitiæ*. The Real Property Limitation Act does not apply, for we do not seek to charge the land.

The CHIEF JUDGE: I cannot doubt that the petitioning creditor was well aware of the Chancery suit; he should have proved his debt then. There is no evidence that Colonel Tynte has any other property except the life interest which is being administered for his creditors. This proceeding is most improper. Section 8 of the Real Property Limitation Act clearly applies; and on that ground, if there were no other, the adjudication ought to be annulled.

Adjudication annulled.

Table of Cases.

HOUSE OF LORDS.

House of Lords. May 7, 10, 11. June 7. } Postlethwaite *v.* Freeland and Another.

Charter-party—Demurrage.

This was an appeal from a judgment of the Court of Appeal affirming one of the Exchequer Division (see report, 48 Law J. Rep. Exch. 353).

The plaintiff claimed demurrage, under a charter-party, for undue delay in discharging a cargo from the ship Cumberland Lassie at the port of East London.

The charter-party contained the following clause: 'The cargo is to be discharged with all despatch, according to the custom of the port.'

According to the practice at East London, cargoes are discharged from ships by lighters, of which there are a very limited number. In consequence of the number of lighters being quite insufficient to serve the ships at the port when the Cumberland Lassie arrived, she was detained from the end of August to November, 1875.

The plaintiff contended that the want of lighters at East London was no answer to a claim for demurrage, but that the defendants were bound to procure proper means for discharging the vessel from elsewhere if necessary.

At the trial before Lord Coleridge, L.C.J., a verdict and judgment were given for the defendants. A rule for a new trial, obtained in the Exchequer Division, was discharged at the hearing, and this decision was affirmed by the Court of Appeal.

The plaintiff appealed.

Mr. Butt and *Mr. Cohen* (*Mr. Bigham* with them) for the appellant.

Mr. Watkin Williams and *Mr. M'Leod* for the respondents.

Their Lordships (Lord Selborne, L.C., Lord Hatherley, and Lord Blackburn) affirmed the judgment of the Court below; and dismissed the appeal, with costs.

COURT OF APPEAL.

Court of Appeal. Jessel, M.R. Cotton, L.J. Thesiger, L.J. June 2. } Jones *v.* Rimmer.

Vendor and Purchaser—Particulars of Sale—Omission to state Ground Rent—Rescission of Contract.

Appeal from the decision of the Vice-Chancellor of the County Palatine Court of Lancaster.

In a sale of leasehold property under the Court, the particulars described the property as held under a lease dated September, 1845, for a term of seventy-five years, subject to a mortgage. The particulars were silent on the subject of ground rent. The respondent purchased at the sale by auction for 1,400*l.*, being under the impression that there was no ground rent. He afterwards discovered that there was a ground rent of 43*l.* a year; and, on that ground, sought to rescind his contract. The property had been valued at 1,450*l.* by a valuer, who had taken the ground rent into account, and who had afterwards bid 1,390*l.* at the sale.

The Vice-Chancellor had rescinded the contract, and the vendor appealed.

On the appeal—

Mr. North and *Mr. Neville* argued that it was the duty of a purchaser to inquire whether there was a ground rent, or to consult the lease, the date of which was given, but no statement of its contents attempted, in the particulars.

Mr. Macnaghten and *Mr. Clare* argued that the ground rent ought to have been stated in the particulars, and that the purchaser had been misled.

Their Lordships decided that, although there was a technical argument of some strength in favour of the vendor, the substantial merit of the case was with the purchaser. The particulars ought to have stated the ground rent; and, under the circumstances, the vendor

had almost a right to be misled. The Vice-Chancellor's judgment, therefore, ought not to be interfered with, even as to costs.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 5.

ASHDOWN *v.* INGAMELLS.

Measure of Damages—Vendor and Purchaser—Agreement that Purchaser shall pay Purchase Money to Vendor's Creditors—Bankruptcy—Trustee's Right to sue for Breach of Agreement.

This was the plaintiff's appeal from the judgment of HUDDLESTON, B., at the trial without a jury, giving judgment for the defendant.

The action was brought by a trustee in bankruptcy to recover damages from the defendant for the breach of an agreement made with the plaintiff prior to the bankruptcy.

The agreement in question was for the sale, by the bankrupt to the defendant, of leasehold premises, and the goodwill and stock in trade of a business carried on by the vendor on the premises; the defendant, on his part, undertaking to pay to certain of the vendor's creditors debts owing from the vendor to them. The vendor, having performed his part of the consideration, became bankrupt, and the plaintiff was appointed trustee in the bankruptcy. The defendant having failed to pay to the creditors all the sums specified in the agreement, the plaintiff brought the present action. The defendant paid one shilling into Court.

Mr. De Gex and *Mr. J. Holmes Poulter* for the plaintiff.

Mr. Lush-Wilson for the defendant.

Their LORDSHIPS held that the trustee was entitled to recover substantial, and not merely nominal, damages from the defendant for the breach of his agreement with the bankrupt, and reversed the judgment of Huddleston, B.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
May 31.
June 1, 3, 7.

THE DUKE OF NORFOLK *v.* ARBUTHNOT.

Church—Chancel—Private Chapel—Trespass—Right to Light—2 & 3 Wm. IV. c. 71, ss. 3, 4.

Appeal by the defendant from the Common Pleas Division, reported 48 Law J. Rep. C.P. 737.

Mr. Charles and *Mr. Jeune* (with them *Mr. V. Gibbs*) for the appellant.

Sir J. Holker and *Mr. Phillimore*, for the plaintiff, were not called on to argue.

Their LORDSHIPS affirmed the judgment of the Common Pleas Division; holding that the plaintiff was entitled to the property in the building in dispute; that the defendant had no right to light and air as claimed, neither by immemorial prescription nor under the statute of William, because there had been acquiescence such as to destroy the right if it ever existed, and that they could not imply a lost grant.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
THESIGER, L.J.
June 7.

Re CLARK. MADDICK *v.* MARKS.

Will—Construction—Residuary Bequest—Execution of Power of Appointment—Wills Act, 1837, s. 27.

Appeal from the decision of BACON, V.C., reported 49 Law J. Rep. Chanc. 205.

Mr. Levett (*Sir H. M. Jackson* with him) for the appeal.

Mr. Hemming and *Mr. Popham*, for the respondents, were not called on.

Their LORDSHIPS confirmed the judgment of the Vice-Chancellor.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 7.

FORWOOD *v.* THE NORTH WALES MUTUAL INSURANCE COMPANY. THE SAME *v.* THE PROVINCIAL A1 MUTUAL INSURANCE COMPANY (LIMITED).

Ship and Shipping—Marine Insurance—Constructive total Loss.

Appeals from the Queen's Bench and Common Pleas Divisions, heard together. The first case is reported 49 Law J. Rep. Q.B. 243.

Actions on valued policies of insurance with mutual companies, containing provisions that the acts of the assurer or assured in recovering the property insured should not be a waiver or acceptance of abandonment, that the assurers might use all possible means to procure the safety of the ship if stranded or damaged, and that their acts in so doing should not be an acceptance or recognition of any abandonment of which the assured might give notice to them; and that they under any circumstances should only pay for the absolute damage caused by the perils insured against, which should in no case exceed the sum insured.

The ship of the plaintiff was damaged by perils insured against; he gave notice of abandonment, and claimed as for a constructive total loss.

LUSH, J., in the first action, and LORD COLERIDGE, C.J., in the second, gave judgment for the plaintiff.

The defendants appealed.

Mr. C. Russell and *Mr. Trevelyan* for the defendants in the first action.

Mr. Cohen and *Mr. J. G. Witt* for the defendants in the second action.

Mr. Butt and *Mr. Mathew*, for the plaintiff in the second action, were stopped by the Court.

Mr. Barnes (with him the *Solicitor-General, Sir F. Herschell*), for the plaintiff in the first action, was not called on.

Their LORDSHIPS gave judgment for the plaintiff in both actions, holding that he was entitled to claim as for a constructive total loss.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
THESIGER, L.J.
June 7, 8.

CUMMINGS *v.* FLETCHER.

Mortgage—Consolidation—Foreclosure—Two mortgaged Estates, one forfeited at Law, the other not.

Appeal from a decision of HALL, V.C., reported 49 Law J. Rep. Chanc. 117.

A building society had taken two mortgages for distinct debts, which respectively provided for reconveyance on payments of fixed monthly instalments. The mortgagor had become bankrupt; and, as to one of the mortgages, default had been made. But the other mortgage had passed into the hands of the National Provincial Bank of England, who had paid all the monthly instalments already due, and had offered to compound the instalments still to fall due by an immediate payment. On a special case, the Vice-Chancellor had made a declaration that the building society were entitled to resist the redemption of the bank's mortgage alone, and had a right to consolidate and foreclose the two mortgages.

Mr. Joshua Williams and *Mr. A. T. Watson* for the appellants.

Mr. Hastings and *Mr. P. V. Smith* for the respondents.

Their LORDSHIPS reversed the judgment of the Vice-Chancellor, on the ground that, as there had been no default as to the bank's mortgage, there was no right to consolidation.

HIGH COURT OF JUSTICE.

Chancery Division. JESSEL, M.R. June 4. } COOPER *v.* WHITTINGHAM.

Copyright—Importation of pirated Article—Knowledge of Piracy—Costs of Action—5 & 6 Vict. c. 45, s. 17.

In this case the defendant had imported certain magazines, having in them pirated articles, but alleged that he did not intend to sell the same. The defendant was the agent of an American house, who were the publishers of the magazines; and, immediately on the arrival thereof, the defendant was served with the writ and an interim injunction. The defendant subsequently gave an undertaking, and put in a defence stating the facts.

Mr. Crossley and *Mr. Gazdar* for the plaintiff.

Mr. Ince and *Mr. Hornell*, for the defendant, submitted that he ought not to pay the costs of the action.

The MASTER OF THE ROLLS was of opinion that, under section 17 of 5 & 6 Vict. c. 45, the mere importing the works was an illegal act, and that the defendant must pay the costs of the action.

Chancery Division. JESSEL, M.R. June 5. } *In re* HULL AND COUNTY BANK. BURGESS'S CASE.

Company—Winding up—Debts and Expenses of Winding up paid—Rescinding Contract to take Shares—Companies Act, 1862, s. 38.

Burgess applied for fifty shares in the above-named company. By return of post he received a letter of allotment; and, on the same day, his name was entered in the register of shareholders. Shortly afterwards he discovered that the statements in the prospectus by which he had been induced to apply for shares were untrue, and he wrote to the secretary of the company requesting that his application for shares might be cancelled. The secretary replied that he was too late; and asked him to send 50*l.*, the amount payable on the allotment of his shares. Burgess did not pay the 50*l.*, but took no further steps to have his name taken off the register, until, the company having been wound up, the liquidator took out a summons to put him on the list of contributories in respect of the 50*l.* At the date of the summons the liquidator had enough assets of the company in hand to pay all its debts and the expenses of the winding up. Burgess resisted the summons on the ground that, as against the other shareholders, he was entitled to rescind his contract to take the shares.

Mr. Chitty and *Mr. Grosvenor Woods* for Burgess.

Mr. Davey and *Mr. L. Barber* for the liquidator.

The MASTER OF THE ROLLS held that Burgess was not entitled to rescind, and that he must pay the 50*l.*, which were required for the purpose of adjusting the rights of the contributories amongst themselves; but, as the case was a representative one, he allowed him his costs out of the assets of the company.

Chancery Division. MALINS, V.C. June 1. } ROGERS *v.* MANLEY.

Practice—'Vivâ voce' Evidence—Surprise—Rebutting Evidence.

This was an action to set aside a deed of dissolution of partnership, and for specific performance of another alleged agreement for dissolution.

The evidence was taken *vivâ voce*. The plaintiff in his evidence stated that he and the defendant, on August 19, 1878, the day before the deed of dissolution was executed, were together for two hours in the evening upon Primrose Hill discussing the terms of dissolution, and that they afterwards went to the plaintiff's house, where the discussion was continued. The plaintiff's wife was also examined, and corroborated the plaintiff as to the conversation which took place at their house on the evening in question, and she was cross-examined as to the effect of the conversation.

The defendant, in his examination, denied having been upon Primrose Hill with the plaintiff on the evening in question, or that he had been to the plaintiff's house the same evening.

When the evidence for the defence was concluded,

Mr. Higgins and *Mr. Romer*, for the plaintiff, asked for leave to call further evidence to rebut the defendant's evidence on the above point.

Mr. Glasse, *Mr. Pearson*, and *Mr. Macnaghten*, for the defendant, opposed the application.

MALINS, V.C., allowed the plaintiff to go into further evidence, upon the ground that Mrs. Rogers had not been cross-examined as to the fact of the defendant having been at the plaintiff's house on the evening in question, and that the plaintiff had been taken by surprise by the defendant's denial of the fact; and three witnesses were afterwards examined who confirmed the plaintiff's statement.

Chancery Division. HALL, V.C. June 5. } *In re* JACKSON'S SALE TO OAKSHOTT. *In re* VENDOR AND PURCHASER ACT, 1874.

Sale of Land—Conditions of Sale—Construction—Power to rescind.

This was a summons by the purchasers of leasehold property, seeking a declaration that the vendor was not entitled to rescind.

The conditions of sale provided that objections and requisitions on title should be sent within fourteen days from the delivery of the abstract; and incorporated the common form conditions of the Birmingham Law Society, the eighth of which was as follows: 'Within the time limited . . . . the purchaser shall send . . . . a statement . . . . specifying the objections and requisitions (if any) to, or in respect of, the title, or the evidence thereof, which the purchaser may be entitled to make . . . . ; and, in default of such objections, &c., and subject only to such, &c., he shall be deemed to have accepted the title, and time shall in this respect, &c.; and for the purpose of any objection or requisition an abstract shall be deemed to be perfect, &c. And if the purchaser shall insist on any objection, &c. (not being a claim for compensation falling within the ninth of these conditions), which the vendor shall be unable, or on the the ground of expense shall decline, to remove . . . the vendor shall, notwithstanding any intermediate, &c., be at liberty, by notice, &c., to rescind the contract . . .; unless within ten days,' &c.

The ninth condition provided for compensation for error, &c., in the description of the property.

After the time for requisitions had expired, the vendor and purchaser were both made acquainted, for the first time, with an equitable mortgage upon the property; which the purchaser then immediately required to be paid off. After an interval of three months, in which some negotiations took place, and the vendor satisfied himself of the validity of the charge, he gave notice to rescind, stating that he was unwilling and unable, on the ground of expense, to satisfy this requisition. The claim was for 750*l.*, the purchase money being 860*l.*

The vendor had since his notice to rescind settled the mortgagee's claim on his own account.

Mr. Clare for the summons.

Mr. Wm. Barber for the vendor.

HALL, V.C., held that the condition only enabled the vendor to rescind upon the purchaser insisting upon objections such as were referred to in the earlier part of the condition—*i.e.* objections upon the abstract; and, therefore, that the case of an objection upon a matter subsequently transpiring was not covered. He allowed the summons, with costs.

Common Pleas Division. June 1. } *Re* THE HEREFORD ELECTION PETITION.

Election Petition—Security for Costs—Number of Sureties — Recognisance by one Surety — Parliamentary Elections Act, 1868 (31 & 32 *Vict. c.* 125), *s.* 6.

Application to set aside the petition which had been presented in this case under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), against the election of Mr. Reid and Mr. Pulley for the borough of Hereford, on the ground that the recognisance which had been entered into was not in accordance with section 6 of that Act. That section requires that, at the time of the presentation of the petition, or within three days afterwards, there shall be given security to the amount of 1,000*l.* for costs which may become payable by the petitioner; and that it shall be given 'either by recognisance, to be entered into by any number of sureties not exceeding four, or by a deposit of money.' In the present case a recognisance for 1,000*l.* had been entered into by one surety only. The sufficiency of such surety was not disputed; but, on behalf of the respondents, it was contended that the Act required that, where a recognisance was given, there should be more than one surety, as shown by the word 'sureties,' which was in the plural number.

Webster and *Lawrence* argued in support of the application.

Henry Matthews and *Anstie* appeared for the petitioner, but were not called upon.

The COURT (LORD COLERIDGE, C.J., and GROVE, J.) refused the application; being of opinion that, according to the plain meaning of the words of the Act, the recognisance might be by one surety only, as one was a number; and the object of the enactment was not to limit the minimum, but the maximum, number of sureties, so that in no event there should be more than four sureties, although there might be any number less than four.

Application refused.

Common Pleas Division. June 9. } *Re* WALLINGFORD ELECTION PETITION. WELLS (PETITIONER) *v.* WREN (RESPONDENT).

Parliament—Trial of Election Petition—Parliamentary Elections Act, 1868 (31 & 32 *Vict. c.* 125), *ss.* 2, 26 *—Jurisdiction to administer Interrogatories.*

The question in this case was, whether the Court or judge has power to order interrogatories to be delivered to the respondent to a Parliamentary election petition, and to require him to answer the same. The matter arose on an application to set aside an order of LINDLEY, J., dismissing a summons for liberty to deliver such interrogatories.

Pollard, for the petitioner, argued in support of such application, and referred, *inter alia*, to the Bewdley petition, in which Lush, J., had lately made an order for delivery of interrogatories.

Moulton appeared for the respondent, but was not called upon.

The COURT (LORD COLERIDGE, C.J., and GROVE, J.) held that the decision of Lindley, J., was correct; and that there was no power to make such order, since the jurisdiction which is given to the Court by section 2 of 31 & 32 Vict. c. 125, is expressly 'subject to the provisions of this Act;' and section 26 provides that 'until rules of Court have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the Court and judge in the case of election petitions under this Act;' and it was admitted that there was no such practice of the committee of the House of Commons of exhibiting interrogatories to a sitting member.

Application refused, with costs.

[It was stated by *A. L. Smith* that the attention of Lush, J., in the Bewdley case had not been called to section 26.]

Table of Cases.

HOUSE OF LORDS.

House of Lords. June 3, 4, 7, 8.] WALLINGFORD *v.* THE MUTUAL SOCIETY AND LIQUIDATOR.

Practice—Order XIV., Rule 1*—Time for appealing.*

This was an appeal from a decision of the Court of Appeal, which affirmed one of the Common Pleas Division refusing leave to appeal from an order of Manisty, J., made at chambers.

The appellant Wallingford was a member of the Mutual Society, from which he had obtained loans, which were to be repaid by instalments. He made default, and the society sued him for the total amount of the instalments unpaid. They then applied for judgment under Order XIV., Rule 1, which was granted by a Master. On appeal to Manisty, J., the defendant was allowed to defend on paying into Court, within one month, 5,000*l.*, being the total amount of the instalments, less the value of certain securities mortgaged to the society, and a sum claimed under a counter-claim.

The money was not paid, and the society signed judgment and levied execution, by which they obtained 1,300*l.*

A summons was afterwards taken out by the defendant for leave to appeal, which was refused by Field, J., and afterwards by the Common Pleas Division.

The Court of Appeal, while holding that the defendant ought to have been allowed to defend unconditionally, refused to reverse the judgment of the Common Pleas Division, on the ground that the appeal from the order of Manisty, J., was not in time, and that they would not interfere with the discretion of Field, J., in refusing to extend the time.

The defendant appealed.

Mr. Wills, Mr. Hadley, and *Mr. Thrupp* for the appellant.

Mr. J. Brown and *Mr. R. Brown* for the respondents.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD HATHERLEY, LORD BLACKBURN, and LORD WATSON) reversed the decision of the Court below; and ordered that the defendant should have leave to defend without any payment into Court, and that the 1,300*l.* received under the execution should be paid into Court. The cause was remitted, with directions.

COURT OF APPEAL.

Court of Appeal. JESSEL, M.R. COTTON, L.J. THESIGER, L.J. June 9. } MOLLOY *v.* KILBY.

New Party made Defendant to Counter-claim—Right to deliver Interrogatories to Plaintiff in original Action —Order XXX., Rule 1*—'Opposite' Parties.*

This was an appeal from an order of HALL, V.C., refusing to give leave to Izzard and his wife, who had been made co-defendants with the plaintiff to a counter-claim by Kilby, to deliver interrogatories to the plaintiff.

The plaintiff claimed to be owner of land, of which the defendant was lessee, and seeking to set aside the lease as to one undivided fourth. The defendant delivered a counter-claim, making the plaintiff and Izzard and his wife co-defendants, alleging that Mrs. Izzard claimed to be owner in fee, and asking to have it determined to whom he was to pay the rent.

Mr. Seward Brice for the appellants.

Mr. Methold, for the plaintiff, was not called upon.

Their LORDSHIPS affirmed the decision of Hall, V.C. The application was by a defendant to a counter-claim, who was not a defendant to the original action, to interrogate the plaintiff in the original action. The answer to that application was that there was no issue between the defendant to the counter-claim and the plaintiff in the original action. The plaintiff was a co-defendant, and that co-defendants were not opposite parties within the meaning of Order XXX., Rule 1.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 9.

BARTON *v.* TITCHMARSH.

Practice—Appeal—Prohibition to a County Court—19 & 20 *Vict. c.* 108, *s.* 42—*Appellate Jurisdiction Act*, 1876 (39 & 40 *Vict. c.* 59), *s.* 20.

Appeal from the Exchequer Division.

The Exchequer Division made absolute a rule for a prohibition to the County Court of Hertfordshire.

The plaintiff appealed.

Mr. H. Browne for the plaintiff.

Mr. Cockerell for the judge.

Mr. Cooper and *Mr. Birch*, for the defendant, contended that, regard being had to section 42 of 19 & 20 Vict. c 108, and to section 20 of the Appellate Jurisdiction Act, 1876, there could be no appeal from the decision of the Divisional Court.

Their LORDSHIPS held that there was an appeal; that section 42 of 19 & 20 Vict. c. 108 applied to procedure only; and that the decision of the Divisional Court was an order which was, by the provisions of the Judicature Acts, the subject of an appeal.

The appeal was allowed.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 9.

DAWSON *v.* SHEPHERD. GRIER THIRD PARTY.

Practice—Power to give Costs to Third Party—Rules of Court, Order XVI., Rules 17, 18, 20, 21—*Order LV.*

Appeal from the Exchequer Division.

The third party was served with a notice by the defendant under Rule 18 of Order XVI.

An order was then made, giving the third party leave to attend the trial, to examine and cross-examine witnesses, and it was directed that he should be bound by the result of the trial; costs were, by this order, reserved.

The action was settled before trial, and the third party obtained an order from a master directing the defendant to pay him his costs.

On appeal by the defendant, MANISTY, J., rescinded this order; and his decision was affirmed by the Exchequer Division, in deference to the decision of the Queen's Bench Division in *The Yorkshire Waggon Company* v. *Newport*, L. R. 5 Q.B. Div. 268.

The third party appealed.

Mr. Finlay for the appellant.

Mr. Henn Collins, for the defendant, mentioned that Manisty, J. had stated, at chambers, that the decision in the case referred to was a decision on the particular facts of that case, and did not lay down any general rule.

Their LORDSHIPS allowed the appeal; holding that the third party was entitled to his costs, and that there was power under Order LV. to give them to him.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 10.

RAINBOW AND WIFE *v.* JUGGINS.

Principal and Surety—Collateral Security—Bankruptcy of Debtor—Proof of Debt without valuing the Security—Discharge of Surety.

Defendant's appeal from a judgment of MANISTY, J., on further consideration, after trial without a jury. (Reported below, 49 Law J. Rep. Q.B. 353.)

Mr. Alfred Wills and *Mr. H. D. Greene* for the plaintiff

Mr. Henry Matthews and *Mr. R. T. Reid* for the defendants.

Their LORDSHIPS affirmed the judgment of Manisty, J., without hearing counsel for the respondents.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
THESIGER, L.J.
June 14.

ROLLS *v.* THE VESTRY OF ST. GEORGE THE MARTYR, SOUTHWARK.

Metropolis Local Management Act, 1855 (18 & 19 *Vict. c.* 120), *ss.* 96, 154—*Street being a Highway—'Vest,' Meaning of—Property limited in Interest and Duration—Disused Street.*

Appeal from the decision of the MASTER OF THE ROLLS on a special case.

The plaintiff was tenant for life of some property, over which ran, until shortly before this action, two streets, called respectively Northampton Street and Amelia Street.

Under the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 96, these streets, being highways, were vested in the vestry of the parish.

By orders of quarter sessions, part of Northampton Street had been stopped up, and Amelia Street had been

diverted, and another street had been substituted for it and been taken over by the vestry.

The question raised by the special case was, whether the disused sites were vested in the vestry under section 96, which provides that 'the vestry and district board shall, within their parish and district, execute the office of and be surveyor of highways; and all streets being highways, and the pavements, stones, and other materials thereof, shall vest in and be under the management and control of the vestry or district board of the parish or district in which such highways are situated.'

The plaintiff claimed that the land occupied by the now disused streets was his own to deal with; the defendants asserting that he must purchase the land from them and have a reconveyance, as having been vested in them by the section, and not subsequently divested.

The Master of the Rolls, considering the case fell within the decision of the Court of Appeal in the case of *Coverdale* v. *Charlton*, 48 Law J. Rep. Q.B. 128, which was a decision on the word 'vest' in section 149 of the Public Health Act, 1875, held that the property in the disused streets still remained vested in the vestry.

The plaintiff appealed.

The Solicitor-General, *Mr. Chitty*, and *Mr. Dunning* for the appellant.

Mr. Davey and *Mr. Everitt*, *contrà*.

Their LORDSHIPS reversed the decision of the Master of the Rolls; holding that the case of *Coverdale* v. *Charlton* only decided that something more than an easement passed to the local board; that is, some right of property in, and on, and in respect of the soil—such a possessory right as would enable the board, as owners, to bring actions against trespassers; but that it did not decide that the soil and freehold passed in the ordinary sense, or that any defined stratum of the soil passed. But a property limited in interest and in duration passed to the vestry; and when the street ceased to exist, the object for which it was vested ceased, and the term for which it vested came to an end of itself, and no divesting clause was needed. There were no words of inheritance or perpetuity in the Act, nor did the power of sale contained in section 154 lead to a different conclusion, as it only referred to anything which remained vested in the vestry.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
THESIGER, L.J.
June 15.

WEBSTER *v.* BRITISH EMPIRE MUTUAL ASSURANCE COMPANY.

Policy of Assurance—Death of Assured—Delay in proving Will—Interest—3 & 4 Wm. IV. c. 42, s. 29.

In 1847 Robert Brown insured his life with the defendant company for 500*l.*, to be paid to his executors, administrators, and assigns, two months after proof of death. The policy was deposited as a security for a debt with Wm. Brown, who paid the premiums from 1848 down to December, 1874, when Robert Brown died. As he died insolvent, his executrix declined to prove his will.

The amount of Wm. Brown's debt, for which he held the policy as security, was greater than the value of the policy; but the company, though admitting that the death was proved, declined to pay the policy money, except to or by the consent of the legal personal representative of Robert Brown, as there had been no written assignment. William Brown was taking steps to obtain probate of Robert Brown's will; but died himself in 1878. The plaintiffs, who were his executors, claimed the policy moneys, with interest, from March, 1875, the date of the proof of death.

The MASTER OF THE ROLLS, under section 44 of the Chancery Amendment Act, 1852, dispensed with the presence of the legal personal representative of Robert Brown; and ordered payment, with interest at 4 per cent.

The company appealed on the question of interest.

Mr. Davey and *Mr. Millar* for the appellants.

Mr. Ince and *Mr. Bramwell Davis* for the respondents.

Their LORDSHIPS could not agree that interest ought to be allowed. Interest could only be payable either under a contract in the policy to do so—and there was no such contract in this case; or by way of damages for wrongfully withholding the money (under 3 & 4 Wm. IV. c. 42, s. 29), and the company had always been ready and willing to pay on receiving a valid discharge. It was William Brown himself who had caused the delay, by neglecting to clothe himself with the rights of the legal personal representative, which was necessary to complete his title. *Appeal allowed.*

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
THESIGER, L.J.
June 15.

TAYLOR *v.* GRANGE.

Partition—Right to—Active Trusts to be performed.

Appeal from decision of FRY, J., dismissing an action for partition, on the ground that there were active trusts to be performed by trustees. The case is reported 49 Law J. Rep. Chanc. 24.

Mr. Cookson and *Mr. Whitehorne* for the appellant.

Mr. Fischer and *Mr. Colt*, for the respondent, were not called upon.

Their LORDSHIPS affirmed the decision on the same grounds.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
June 7.

Re RICHARDSON. RICHARDSON *v.* RICHARDSON.

Practice — Costs — Administration Action — Assets deficient—Creditor's Action.

This action was instituted by an administrator against the sole next-of-kin; and, as the plaintiff declined to proceed, inasmuch as the assets were insufficient to pay the debts in full, the conduct of the action was given to a creditor.

Mr. Farwell, for the creditor having the conduct, asked, on further consideration, for the costs of the action as between solicitor and client; and referred to *Re Burrell*, 39 Law J. Rep. Chanc. 544; L. R. 9 Eq. 443.

Mr. B. B. Rogers for the former plaintiff.

Mr. Morshead for the defendant.

The MASTER OF THE ROLLS did not consider that *Re Burrell* was correctly decided; but that the true principle as to the allowance of costs where the assets were deficient was laid down in *Thomas* v. *Jones*, Dr. & Sm. 134; 29 Law J. Rep. Chanc. 570; and that it was only in a creditor's action, as opposed to that of a residuary legatee or next-of-kin, that costs as between solicitor and client would be allowed. In the present case he considered the action was in effect a creditor's action; and he, therefore, allowed the costs as between solicitor and client.

Chancery Division.
JESSEL, M.R.
June 11.

In re SIMPSON'S TRADE-MARK.

Trade-mark—Registration—Mode of Opposing—Trade-marks Act, 1875—*Trade-mark Rules*, 16, 43, 44.

This was a motion by the proprietors of a registered trade-mark, asking for a declaration that the applicants for the registration of another trade-mark were not entitled to registration, and for an injunction to restrain them from taking any further steps to register; and that leave might be given to proceed under the notice of motion, and not by special case.

It was objected that the motion was wrong in form, and the moving parties should have waited for the applicants to have taken steps to register, and should have obtained in chambers the directions of the judge as to the mode of bringing the case before the Court.

Mr. Aston and *Mr. G. E. Wright*, and *Mr. Chitty* and *Mr. Sebastian*, for the parties.

The MASTER OF THE ROLLS said that the Act and Rules did not give those persons who opposed the registration the power to take the initiative on motion to restrain the registration. That must be done by action. The application to the Court referred to in Order XLIV. was intended to be by the persons seeking to register. The effect of such a proceeding as the present would be to transpose the position of the parties from plaintiff to defendant. The proper mode of trying the question would be by his directing the persons intending to register to take out a summons in chambers for leave to register, which would be adjourned into Court in the usual way. The motion could stand over, and come on with the summons. The briefs and evidence on the motion could be used on the summons; and the costs could then be dealt with.

Chancery Division.
JESSEL, M.R.
June 14.

BENTHAM *v.* WILSON.

Will—Gift to Second Cousins—Exclusion of First Cousins once removed.

John Parker, by his will, bequeathed his property 'one-third to my first cousins, and two-thirds to my second cousins.' A special case was stated for the opinion of the Court, under Order XXXIV., Rule 1, the question being whether the term 'second cousins' included children or grandchildren of the testator's first cousins.

Mr. Bagshawe, *Mr. Wigglesworth*, *Mr. W. Barber*, and *Mr. Byrne* were for the different parties.

The MASTER OF THE ROLLS answered the question in the negative.

Chancery Division.
JESSEL, M.R.
June 14.

BALL *v.* KEMP-WELCH.

Practice—Costs of Partition Action—Cannon v. *Johnson*, *L.R.* 11 *Eq.* 90, *followed.*

This was a partition action asking for the sale of the estate in question, as to which all parties were agreed. The plaintiff was interested in the estate to the extent of one-sixth; the remaining five-sixths belonged to the defendants.

Mr. G. J. Foster Cooke, for the plaintiff, asked that, following the rule laid down in *Cannon* v. *Johnson*, L.R. 11 Eq. 90, the costs should be borne by the parties in proportion to their interests in the estate.

Mr. V. Smith submitted that each party should bear his own costs up to the hearing.

The MASTER OF THE ROLLS ordered the costs to be paid in proportion to the interests of the parties.

Chancery Division.
JESSEL, M.R.
June 15.

GATHERCOLE *v.* SMITH.

Incumbents Resignation Act, 1871, *s.* 10—*Pension—Action against present Incumbent—Right of Set-off.*

This was an action by a past against the present incumbent of a benefice for the arrears of a pension granted to the former incumbent under the above Act. The defendant claimed a right of set-off under a judgment which he had against the plaintiff.

Mr. Chitty and *Mr. W. W. Cooper* for the plaintiff.

Mr. Ince, *Mr. Bompas*, and *Mr. Smart* for the defendant.

The MASTER OF THE ROLLS, declining to follow a judgment of Coleridge, C.J., to the contrary effect, held that under section 10 of the Act the pension was intended to be an inalienable provision for the incumbent, and that no right of set-off, as under any assignment, could prevail against the plaintiff's claim. He, therefore, gave judgment for the plaintiff, with costs, for the amount claimed.

Chancery Division.
MALINS, V.C.
June 5.

MASON *v.* BRENTINI.

Practice—Costs—Action dismissed, with Costs—Counter-claim dismissed, with Costs—Apportionment.

Summons to vary taxing master's certificate.

This was an action for an injunction to restrain the defendant from raising a certain building to a greater

height than before, so as to interfere with the plaintiff's light, and for damages. The defendant, by way of counter-claim, claimed damages by reason of the plaintiff's proceedings in the action.

At the hearing, on December 5, 1879, both the claim and the counter-claim were dismissed, with costs. The plaintiff had not taken in any bill of costs in respect of the counter-claim. The taxing master taxed the defendant's bill in respect of the costs of the action at 31*l.*; and allowed the plaintiff 10*l.* 10*s.* in respect of the costs of the counter-claim.

The plaintiff objected to the allowance of all items in the defendant's bill of costs, which were common to the action and counter-claim. The taxing master overruled the objection, considering *Sauer* v. *Bilton*, L.R. 11 Chanc. Div. 416; s.c. 48 Law J. Rep. Chanc. 545, to have decided that in such cases the plaintiff should pay to the defendant the general costs of the action, and the defendant should only pay to the plaintiff the amount by which the costs had been increased by reason of the counter-claim.

Mr. Glasse and *Mr. E. Cutler* for the summons.

Mr. Higgins and *Mr. Langworthy*, for the defendant, were not called upon.

MALINS, V.C., was of opinion that a new principle of taxation had been introduced by the Judicature Acts in such cases as this. The true principle had been laid down by Mr. Justice Fry in his judgment in *Sauer* v. *Bilton*. The objection must, therefore, be disallowed.

Chancery Division. MALINS, V.C. June 11. } *In re* GOSMAN.

Petition of Right—Next of Kin—Rights of the Crown—Solicitor to the Treasury—Moneys paid to—Interest on.

A suit having been instituted with regard to the property, both real and personal, of a testator, which it was alleged had been given to trustees upon a secret trust, and it having been declared that, so far as the personalty was concerned, the gift was void, inquiries were directed as to the next of kin of the testator, and, none coming forward, an order was made that the executors should resign the property, consisting of leasehold houses, to the Solicitor to the Treasury, to be held by him in trust for the Crown.

This was effected by a document under the Royal sign manual in September, 1872; and, at the same time, a sum of 6,673*l.* 7*s.* 3*d.*, being the accumulated rents of the leasehold property, was handed over to him.

The suppliant in this petition of right having together with others in the same degree of relationship proved their title as next of kin of the testator, and having been declared entitled to the personal property which had been assigned to the Solicitor to the Treasury, the only question now on the further consideration was as to the liability of the Crown to pay interest on the sum so paid in respect of rents, and on a further large sum which had been received for rents while the property had been in the hands of the Solicitor to the Treasury.

Mr. Higgins and *Mr. G. Murray*, for the suppliant, relied on *Edgar* v. *Reynolds*, 27 Law J. Rep. Chanc. 502, in support of the claim for interest.

Mr. Pearson and *Mr. Romer* for parties in the same interest.

Mr. Rigby, for the Crown, resisted the claim on the ground that the moneys were not paid to the Solicitor of the Treasury as administrator, as in the case cited, but as an ordinary individual.

MALINS, V.C., decided that the Crown must pay interest, at the rate of 4*l.* per cent., upon all the moneys received by the Solicitor to the Treasury.

Chancery Division. BACON, V.C. June 4. } SEEAR *v.* LAWSON.

Practice — Champerty and Maintenance — Assignment 'pendente Lite'—Trustee in Bankruptcy—Rules of Court, 1875, *Order L., Rule* 3, *Bankruptcy Act*, 1869, *ss.* 25, 111.

Motion by defendant to discharge order of course, giving liberty to H. W. Chatterton to carry on the action. Seear was trustee in bankruptcy of Benjamin Webster, who had mortgaged the Adelphi Theatre and other property to Messrs. Gatti. The action was brought to set aside an alleged assignment, dated October 9, 1879, to Lawson by Webster of his equity of redemption in the properties. The writ was issued on March 4, 1880, and on March 9 Webster's creditors resolved to accept an offer made by H. W. Chatterton to purchase the bankrupt's equity of redemption, an assignment of which to H. W. Chatterton was afterwards made. The order of course was made at the Rolls on April 23, 1880, on a petition of course presented by Chatterton.

Sir H. M. Jackson and *Mr. Grosvenor Woods* for the motion: The assignment to Chatterton was made *pendente lite*; is, therefore, of the nature of maintenance and champerty, and consequently void. This is an abuse of Order L., Rule 3, which can only apply to a valid assignment.

Mr. Winslow and *Mr. Terrell* for H. W. Chatterton: An assignment by a trustee in bankruptcy of the bankrupt's rights of action is not champerty or maintenance. It is the policy of the Bankruptcy Acts that such rights should be assigned. But, at any rate, the assignment of a right of action, if made together with the property the subject of the action, is not within the rules against champerty and maintenance.

Sir H. M. Jackson in reply.

BACON, V.C.: It is the duty of a bankrupt's trustee to realise the whole of his estate, and this trustee has performed that duty by selling to H. W. Chatterton the subject of the suit. That is not champerty or maintenance.

Motion dismissed, with costs.

Chancery Division. BACON, V.C. June 4. } ASCROFT *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Lands Clauses Consolidation Act, s. 92—*Part of House.*

Motion on behalf of the plaintiffs to restrain the defendant company from taking part only of certain pro-

perty of the plaintiffs at Wigan. The property consisted of twelve small cottage tenements, mostly in a dilapidated condition, in the form of a quadrangle, with a yard in the centre used by all the occupants for drying clothes, &c., and having several privies for the use of the occupants. The part which the company proposed to take included four of the cottages at one end of the quadrangle, and two privies, which were the only accommodation of the kind for one of the cottages to be taken, and also for three of the cottages not included in the notice. The plaintiffs served on the company a counter notice, requiring them to take the whole of the property.

Sir H. M. Jackson and *Mr. Finch* for the plaintiffs: Section 92 of the Lands Clauses Act, 1845, requires the whole of a house to be taken.

Mr. Hemming and *Mr. O. L. Clare*, for the railway company: This yard and privies do not form part of any of the houses taken within the decisions on that subject.

BACON, V.C.: The whole matter will have to be decided at the hearing; but, for the purpose of this motion, I must hold the whole property to be one tenement, and I must grant the injunction.

Chancery Division. BACON, V.C. June 5. } ATTORNEY-GENERAL *v.* BOROUGH OF BIRMINGHAM.

Practice—Adding Parties after Decree—Rules of Court, Order XVI., Rule 13—*Public Health Act*, 1875, *ss.* 279, 281.

Adjourned summons, to add the Birmingham Tame and Rea District Drainage Board as defendants. The action was commenced in 1858 to restrain the corporation of Birmingham from discharging sewage into the River Tame. An interlocutory restraining order was made on July 23, 1858, and an order extending the injunction on March 16, 1871. The bill was afterwards amended; and a decree was made on April 16, 1875, granting a perpetual injunction, the plaintiffs undertaking not to enforce it for five years, so that the defendants might have time to execute certain works with the object of stopping the nuisance. The five years expired on April 16, 1880. The plaintiffs alleged that the nuisance continued, and were desirous of enforcing their decree by sequestration. Under the provisions of the Public Health Act, 1875, the Local Government Board made a provisional order, on June 5, 1877, forming the Birmingham, Tame, and Rea District Drainage Board. That order was confirmed by the Local Government Board's Provisional Orders Confirmation (Joint Boards) Act, 1877. By the provisional order, it was ordered that the drainage board 'shall have, exercise, perform, and be subject to, all the powers, rights, duties, capacities, liabilities, and obligations of a local or urban sanitary authority' under the Public Health Act, 1875.

The plaintiffs, the relators, now took out a summons, under Rules of Court, 1875, Order XVI., Rule 13, to add the drainage board as defendants.

Mr. Carson for the summons: The joint board have taken over the liabilities of the defendants, and so are necessary parties to enable us to enforce our decree. The judgment is enforceable as a judgment of the High Court, having been perfected before November 1, 1875.

Mr. Cozens-Hardy for the borough of Birmingham: Under Order XVI., Rule 13, parties can only be added before decree. Such an order as is asked would bind the joint board by proceedings taken before they came into existence. Fresh proceedings should be taken against them. We object to the expenses being increased by adding fresh parties.

BACON, V.C., allowed the summons; and ordered service upon the added defendants of a copy of the amended information and bill. Costs, costs in the action.

Chancery Division. BACON, V.C. June 11. } DUPUY *v.* WELSFORD.

Next Friend—Removal of—Refusal to appeal.

Adjourned summons by three of the plaintiffs, who were adult, to remove the next friend of other co-plaintiffs who were not *sui juris*, because he refused to appeal.

Mr. Caldecott for the summons.

Mr. Fischer for the defendants.

Mr. E. S. Ford for the next friend.

BACON, V.C., made an order removing the next friend.

Chancery Division. HALL, V.C. June 8. } *In re* LANE. LUARD *v.* LANE.

Will—Construction—Specific Legacy—Ademption—Debentures—Debenture Stock.

The testator, C. B. Lane, bequeathed upon certain trusts 'all my debentures in the San Paulo Brazilian Railway.' The testator had ten 5 per cent. debentures of 100*l.* each in this railway. The debentures having become due on January 1, 1877, the testator, in lieu of payment, accepted 930*l.* 5½ per cent. debenture stock in the same company, which stock was standing in his name at the time of his death. The only question was, whether this debenture stock passed under the above bequest in the will.

Mr. Kaye for the plaintiff.

Mr. Freeling, *Mr. Methold*, and *Mr. Thurst an Holland* for the defendants.

HALL, V.C., held that the debenture stock was a substantially different thing from the debentures bequeathed by the will; and that, as such stock had been accepted by the testator, by his own choice, it did not pass by the bequest.

Chancery Division. HALL, V.C. June 8. } PENSTON *v.* PENSTON.

Will—Construction—Gift over to 'surviving Children or their Heirs'—Child dying before Date of Will.

The testator, Robert Penston, by his will, dated in 1834, devised his real estate to his son Samuel for life,

and after his decease to his said son's wife Hannah for life, and after her decease upon trust to sell and divide the proceeds among 'my surviving children or their heirs.' There were six children, one of whom died before the date of the will; and the principal question was whether the next of kin of such child was entitled to share.

Mr. Stirling, *Mr. Byrne*, *Mr. Beaumont*, *Mr. Everitt*, and *Mr. Maddison* appeared.

HALL, V.C., said that the gift over was in effect a gift to the children then surviving, or the heirs (*i.e.* statutory next of kin) of the children not then surviving, which included the next of kin of the child who died before the date of the will.

Chancery Division. FRY, J. June 12, 14. } STEEL *v.* DIXON.

Practice—Pleadings—Order XVI., Rule 17—*Questions between Co-defendants.*

The two plaintiffs, Steel and Chater, and the two first defendants, Dixon and Gurney, were sureties for one Robinson; and, as such, had each to pay 200*l.* The third defendant was Saffery, the trustee in bankruptcy. The statement of claim alleged that the defendants, Dixon and Gurney, had taken security from Robinson, and the plaintiffs claimed to participate in the money realised by the security. After the defence of Dixon and Gurney had been put in, Saffery put in a statement of defence, in which he alleged that the security given to Dixon and Gurney was void as being a fraudulent preference, and made other statements as to the conduct of Dixon and Gurney. This was a motion on the part of Dixon and Gurney to have the paragraphs in Saffery's statement of defence, relating to fraudulent preference and their conduct, struck out; or, in the alternative, that they might plead in reply to such part of their co-defendant's statement of defence.

Mr. North and *Mr. Chubb* for the motion.

Mr. Millar and *Mr. Maidlow* for Saffery.

Mr. Cookson and *Mr. Warmington* for the plaintiffs.

FRY, J., refused to make such order as was asked for; but allowed Dixon and Gurney to serve such notice as they might be advised on Saffery, under Order XVI., Rule 17, to raise for decision any question which appeared in the paragraph of the statement of defence objected to. He reserved costs as between the co-defendants, directing Dixon and Gurney to pay the plaintiffs' costs of this application, without prejudice to their getting them over from Saffery.

Common Pleas Division. June 9. } *Re* TEWKESBURY ELECTION PETITION.

Parliament—Place of Trial of Election Petition—31 *&* 32 *Vict. c.* 125, *s.* 11, *subs.* 11—*Special Circumstances.*

A. L. Smith applied for an order that the petition in this case should be tried at Gloucester instead of at Tewkesbury. The application was made on an affidavit by the Mayor of Tewkesbury that, though there was a town hall, it was impossible to provide in the borough proper accommodation for the judges and their attendants, or a suitable place for the trial. Both the petitioner and respondent had consented to the trial being at Gloucester instead of at Tewkesbury; and LUSH, J., had made an order to that effect; but, after the opinion of HAWKINS, J., in the Evesham election petition that the order must be made by 'the Court,' and that the judge had no power to make it, the present application was now made.

The COURT (LORD COLERIDGE, C.J., and GROVE, J.) confirmed the opinion of Hawkins, J., that an order of this kind must be made by the Court. In the present case, from a dislike to differ from that which in the exercise of his discretion Lush, J., had ordered, the Court granted the application; but intimated that, for the future, special circumstances more than mere inconvenience, as appeared in this case, must be shown before an order would be made for appointing the trial elsewhere than in the borough to which the petition relates.

Order granted.

Common Pleas Division. June 9, 14. } HALL *v.* JUPE.

Marine Insurance—Constructive total Loss—Right of Master to sell Ship—Case of stringent Necessity—Evidence.

Action by owner of vessel against the insurer for a total loss. The vessel, on coming out of a foreign port, struck on a reef. The master made an agreement with one Green to do his best to discharge the cargo and get the ship off. Green used an insufficient number of hands for this purpose, and ultimately the agreement was cancelled, Green having, in the meantime, made a survey of the ship, and condemned her as unseaworthy, and likely to go to pieces. Afterwards, on the same day, the master sold the vessel and cargo to Green. At the time of the sale the wind had gone down, and the vessel was in no actual danger; and Green, then bringing to his aid a large number of hands, got the vessel off at the second high tide after she had struck.

Under these circumstances LORD COLERIDGE, C.J., at the trial ruled that there was no evidence on which a jury could reasonably find such stringent necessity for the sale as would fix the assurer, and he accordingly directed a nonsuit, and entered judgment for the defendant. A rule *nisi* was afterwards obtained to set aside such nonsuit, on the ground that there was evidence on which a jury might have found that the ship was properly sold.

C. Russell and *Myburgh* showed cause.

Butt and *J. C. Mathew* were in support of the rule.

Cur. adv. vult.

GROVE, J., now held that the rule should be made absolute, as, in his opinion, the case should not have been withdrawn from the jury.

LORD COLERIDGE, C.J., retained his opinion that at the time of the sale there was no evidence of such urgent necessity as would fix the assurer, and that his ruling at the trial was right.

The rule dropped.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
June 7.
In re LACEY. *Ex parte* BOND.

Bankruptcy—Composition—Rights of Creditor not bound by Composition—Proof—Jurisdiction—Bankruptcy Act, 1869, *ss.* 72, 126.

Appeal from order of the Registrar of the County Court at Chelmsford, sitting as judge.

Bond recovered judgment against Lacey on September 21, 1875, for 69*l.* 10*s.* 3*d.* Lacey filed a petition for liquidation in August, 1877; and, in September, 1877, his creditors resolved to accept a composition of 19*s.* 11½*d.*, payable in instalments within two years from the registration of the resolutions, which took place in December, 1877. No trustee was appointed. Bond was not included as a creditor in the debtor's statement of affairs, and took no steps to enforce his judgment till March 3, 1879, when he filed a proof of his debt. Lacey himself rejected the proof, and the registrar confirmed the rejection, saying that he had no jurisdiction to interfere.

Mr. Winslow and *Mr. Rose-Innes* for the appellant: Although not bound by the composition, the appellant is entitled to the benefit of it.

Mr. E. C. Willis for the debtor: The Court cannot decide upon the validity of this debt after registration of the resolution and after such a lapse of time.

The CHIEF JUDGE: The order of the registrar must be discharged, and the matter referred back to the County Court, with a direction that the proof be admitted. The appellant can then get an order for payment of the composition.

Bankruptcy.
BACON, C.J.
June 14.
In re ROGERS. *Ex parte* BEETENSON.

Bill of Sale—Setting forth Consideration—Bills of Sale Act, 1878, *s.* 8.

Appeal from the Hanley County Court.

The point for decision was whether the consideration for a bill of sale, dated October 24, 1879, from the debtor to A. Challinor, was truly stated. The consideration, as stated in the bill of sale, was: '560*l.* this day paid by the mortgagee to the mortgagor.' In fact, 500*l.* was paid to the mortgagor; 20*l.*, at the mortgagor's request, to a valuer, who valued the property for the purpose of the loan; and 40*l.* represented costs of the bill of sale and other documents which the debtor requested Challinor to include in the bill of sale, instead of deducting the amount from the 560*l.*

The County Court judge held that the consideration was properly stated; and affirmed the validity of the bill of sale.

The trustee in the debtor's liquidation appealed.

Mr. E. C. Willis for the appellant.

Mr. Winslow and *Mr. F. Knight* for the bill of sale holder.

The CHIEF JUDGE held that the consideration was not properly set forth, and that the bill of sale was invalid against the trustee.

Appeal allowed, with costs.

Table of Cases.

HOUSE OF LORDS.

House of Lords. June 16, 17, 18. } STURLA *v.* FRECCIA.

Evidence—Public Document—Admissibility to prove Birthplace and Age.

This was an appeal from a decision of the Court of Appeal (reported 49 Law J. Rep. 41) affirming one of MALINS, V.C.

The parties were claimants, as next-of-kin, to the estate of a Mrs. Mangini Brown; and the question was whether her father, Antonio Mangini, consul for Genoa, in London, was Antonio Mangini, of S. Ilario, born in 1735, whose next-of-kin were the respondents; or Antonio Mangini, of Quarto, born in 1744, whose next-of-kin was the appellant.

The appellant desired to put in evidence a report from the Giunta de Marina of Genoa to the Senate, made in 1790, recommending Mangini for the post of agent, to which he was in consequence appointed. The report contained several particulars as to Mangini, and, amongst them, described him as a native of Quarto, aged about forty-five.

Malins, V.C., and the Court of Appeal refused to admit the document.

Mr. J. Pearson and *Mr. Willes* (*Mr. E. Beaumont* with them) for the appellant.

Mr. Higgins, *Mr. Everitt*, *Mr. Bagshawe*, and *Mr. B Eyre*, for the respondents, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD HATHERLEY, LORD BLACKBURN, and LORD WATSON) held the document inadmissible; and dismissed the appeal with costs.

House of Lords. May 31. June 21. } PITT *v.* JONES.

Partition Act, 1868, *ss.* 3, 4, 5.

This was an appeal from a judgment of the Court of Appeal (reported 48 Law J. Rep. Chanc. 352) reversing one of MALINS, V.C., in a suit of *Gilbert* v. *Smith*.

The action was brought for a partition of property in Birmingham, of which the plaintiffs were entitled to about three-sixteenths, and the defendants to about thirteen-sixteenths. The plaintiffs applied to have the property sold; the defendants, while admitting that an actual partition was impracticable, objected to a sale, and offered to purchase the plaintiffs' interest at a valuation under section 5 of the Partition Act, 1868 (31 & 32 Vict. c. 40).

Malins, V.C., held that the case fell within section 5, and directed a valuation; but the Court of Appeal were of opinion that, inasmuch as it was within section 3, it was excluded from the operation of section 5.

This appeal was then brought.

Mr. J. Pearson and *Mr. Bardswell* for the appellants.

Mr. Bristowe and *Mr. Lewin* for some of the respondents.

Mr. Glasse and *Mr. W. Cooper* for other respondents.

Their LORDSHIPS (LORD BLACKBURN and LORD WATSON, *dissentiente* LORD HATHERLEY) affirmed the decision of the Court of Appeal; and dismissed the appeal, with costs.

COURT OF APPEAL.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 16.

WARD *v.* PILLEY.

Practice—Reference—Jurisdiction to refer to Official Referee—Judicature Act, 1873, *s.* 57, *Order XXXVI., Rule* 5.

Appeal from a decision of the Queen's Bench Division, refusing to refer the questions of fact in an action to an official referee.

The action was to recover the amount of a builder's bill, consisting of a considerable number of items.

The plaintiff sued on a *quantum meruit*; and the defence set up was, that the plaintiff was employed by the defendant to do the work for a specific sum, and that the charges in the bill were excessive. Other issues, not involving matters of mere account, were raised by the parties on the pleadings. On February 24 notice of trial was given. On May 28 a summons to refer compulsorily, under section 57 of the Judicature Act, 1873, was taken out by the defendant. The Master having made an order to refer, the plaintiff appealed, and LINDLEY, J., in chambers affirmed the order. On appeal the Queen's Bench Division (LUSH, J., and FIELD, J.) reversed the order, on the ground that the matter was not one 'requiring a prolonged examination of accounts' within section 57; and, therefore, that the Court had no jurisdiction to refer under that section.

On appeal, *Mr. Harmsworth* appeared for the defendant, and *Mr. Boxall* for the plaintiff.

Their LORDSHIPS reversed the decision of the Queen's Bench Division, and held that the Court had jurisdiction to refer the whole matter compulsorily to an official referee under section 57; and, further, that Rule 5 of Order XXXVI., which provides that in certain cases an application to refer shall be made within four days of notice of trial, did not apply to references under section 57; and, therefore, that the defendant's summons was not out of time.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 16.

FLETCHER *v.* HUDSON.

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 253, *Rule* 70, *Schedule II.—Consent of Attorney-General to bring Action.*

Appeal from a judgment of the Exchequer Division.

The action was to recover a penalty of 50*l.* from the defendant, under Rule 70, Schedule II., of the Public Health Act, 1875, for sitting as a member of a local board while disqualified.

BOWEN, J., ordered a stay of proceedings in the action, on the ground that the plaintiff had not obtained the consent of the Attorney-General, under section 253 of the same Act. The Exchequer Division (HUDDLESTON, J., and STEPHEN, J.), reversed the order, and the defendant appealed.

Mr. W. G. Harrison and *Mr. Crompton* for the defendant.

Mr. A. Charles and *Mr. Cock* for the plaintiff.

Their LORDSHIPS affirmed the decision of the Exchequer Division; holding that, on the true construction of section 253 and Schedule II., Rule 70, of the Public Health Act, 1875, the consent of the Attorney-General was not necessary.

Court of Appeal.
COCKBURN, L.C.J.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 22.

THE PROTECTOR ENDOWMENT SOCIETY *v.* GRICE.

Bond—Conditions—Repayment by Instalments—Proviso for immediate Payment on single Default—Penalty.

Appeal from a judgment, for the defendant, of BOWEN, J., after trial without a jury (reported 49 Law J. Rep. Q.B. 247).

Mr. Herschell, Mr. Foulkes, and *Mr. Archibald* for the plaintiffs.

Mr. Bompas and *Mr. Forest Fulton* for the defendant.

Their LORDSHIPS reversed the judgment of Bowen, J.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
June 18.

DOWNES *v.* HUGHES & Co. (LIMITED).

Practice — Trial by Jury — Infringement of Patent — Complicated Issues — Trial before Judge — Rules of Court, 1875, *Order XXXVI., Rule* 26.

This was an action to restrain the infringement of a patent, the patent being in respect of a combination. The plaintiff had given notice of trial before a jury; and the defendant now moved that the action might be heard before the judge, without a jury, under Order XXXVI., Rule 26.

Mr. Lawson and *Mr. Buckley* for the parties.

The MASTER OF THE ROLLS held that the issues were not fit to be tried before a jury, involving, as they did, complicated questions as to the infringement of a patent for a combination, and, also, as to the sufficiency of the specification; and he, therefore, directed the trial before himself, without a jury.

Chancery Division.
HALL, V.C.
June 17.

HERBERT *v.* WEBSTER.

Perpetuity—Restraint on Anticipation—Gift to Class of which some Members 'in esse.'

In 1874 moneys were settled by Mr. and Mrs. Sharpe upon trusts (in effect), after their death and subject to a power of appointment which was not exercised, for all their children or any their child who being sons should attain twenty-one, or being daughters attain twenty-one or marry, in equal shares; but, if daughters, to their separate use and without power of anticipation.

The settlors died, having had two children, both being daughters, who were married at the date of the settlement.

This was a special case for the opinion of the Court, whether the beneficiaries were entitled free from the restraint on anticipation.

Mr. P. Lambert for the plaintiff.

Mr. G. W. Lawrance and *Mr. Jason Smith* for the defendants.

HALL, V.C., following *Wilson* v. *Wilson*, 28 Law J. Rep. Chanc. 95, held that the gift to the children *in esse*, and the restraint attaching thereto, could be taken as distinct; and that the restraint was, therefore, effectual.

Chancery Division. FRY, J. June 16, 17, 18. } WILMOT *v.* BARBER.

Specific Performance—Breach of Covenant—Acquiescence—Fraud.

This was an action for specific performance of an agreement by the defendant Barber to grant to the plaintiff a sublease of certain lands he held under a lease from his co-defendant Bowyer. This lease contained a covenant, on the part of the tenant, not to assign or sublet without the consent, in writing, of the lessor, and a proviso for re-entry in case of breach. The plaintiff alleged that Bowyer had stood by while he (the plaintiff) expended money on the property in ignorance of the restriction against underletting, and could not refuse to concur in the sublease.

Mr. Cookson and *Mr. T. A. Roberts* for the plaintiff.

Mr. North and *Mr. Freeling* for the defendants.

FRY, J., held that, in order that the landlord, Bowyer, should be precluded from his legal right to withhold his consent, it was requisite (1) that the plaintiff should have been under a mistake; (2) that he should have expended money or done something on the faith of his mistaken belief; (3) the landlord must have known what his own rights were; (4) he must have known that the plaintiff was acting in a mistaken belief; and (5) he must have encouraged the plaintiff in laying out money or doing the other act, either directly or by abstaining from asserting his legal right. He held that those requisites had not been proved, and gave judgment for the defendants.

Chancery Division. FRY J. June 19. } AUSTIN *v.* MEAD.

Donatio Mortis Causâ—Deposit—Cheque—Promissory Note.

Mr. Mead, in his last illness, and in contemplation of death, wished to give his wife two bills of exchange, and 500*l*., part of a sum of 2,700*l*. which he had on deposit at his bank, subject to withdrawal on giving a day's notice. With that object he handed the bills of exchange and the banker's receipt to a friend, to procure the produce of the bills and the 500*l*. for Mrs. Mead. Notice was given to the bank of the intention to withdraw the money, and the testator signed the form of cheque required by the bank in case of withdrawal or deposit in favour of a third person, filled in for 500*l*. Mr. Mead died before the notice of withdrawal had expired or the bills of exchange became due. The object of this action was to ascertain whether there was a complete *donatio mortis causâ*.

Mr. Joyce for the plaintiff, the executor of Mr. Mead.

Mr. North and *Mr. T. C. Jarvis* for Mrs. Mead, the donee.

Mr. Fraser for persons interested in the residue.

FRY, J., held that there was no complete gift of the 500*l*. He reserved judgment as to the bills of exchange.

Queen's Bench Division. May 5. June 10. } WOODHOUSE *v.* WALKER.

Permissive Waste—Tenant for Life with Obligation to repair—Action for Non-repair against Executor of Tenant for Life—3 & 4 Wm. IV. c. 42, s. 2.

Action brought by reversioner in fee against the executor of the tenant for life, to recover damages for permissive waste occasioned by the non-repair of the premises during the lifetime of the tenant for life.

The devise had been to a woman 'for her separate use during her life, she keeping the houses in repair,' with remainder to the plaintiff. She enjoyed the property for several years, but did no repairs; at her death plaintiff entered, and, having done the necessary repairs, sought to recover the amount from her executor.

In the County Court, judgment was given for the defendant, on the ground that no action lay under 3 & 4 Wm. IV. c. 42, s. 2; and this was an appeal by special case from that judgment.

Whitaker (of the Equity bar) for the plaintiff appellant.

Percy Gye for the defendant.

Cur. adv. vult.

June 10.—The COURT (LUSH, J., and FIELD, J.) gave judgment for the plaintiff; holding that, as the tenant for life took under a devise containing an express condition that she should repair, the immediate reversioner had a right of action against her at common law for permissive waste; and, this being so, the right was continued against her executor by 3 & 4 Wm. IV. c. 42, s. 2.

Queen's Bench Division. June 21. } BARKER *v.* HEMMING.

Practice—Costs in Action—Set-off.

This was an appeal from a decision of LINDLEY, J., affirming an order of a Master on taxation.

The plaintiff, Barker, commenced an action against Johnson and Hemming, as drawer and acceptor of a bill of exchange. The action was abandoned as against Hemming, and he became entitled to his costs therein. Judgment went by default against Johnson; execution issued, and the sheriff seized certain goods. Thereupon Hemming claimed the goods, and an interpleader issue was tried, in which Hemming's claim was barred, with costs.

In taxing the costs of the action, the Master allowed the costs due from Hemming in respect of the interpleader to be set off by the plaintiff against those which he was entitled to receive in respect of the action.

Lindley, J., affirmed the Master's order.

Gore for the defendant Hemming.

J. W. Mellor and *Baylis* for the plaintiff.

The COURT (COCKBURN, L.C.J., and BOWEN, J.) held that the order of the Master was wrong, and allowed the appeal. The proceedings in the action and in the interpleader were distinct, and costs in the one could not be set off against costs in the other.

Common Pleas Division. June 16. } BALL *v.* HAYWARD.

Costs—Action for Recovery of Land—Third Person, not Party, ordered to pay Costs—Judicature Acts.

This was an action to recover land, in which the defendant obtained judgment. A rule had been obtained

by *Ambrose* for the defendant, calling on Thomas Molyneux to show cause why he should not pay the defendant's costs in this action when taxed. The rule was obtained on its being shown that Molyneux was really the person suing, and that the plaintiff on the record was only his nominee.

Lofthouse showed cause, and contended that, before the Judicature Acts, the Court had jurisdiction to order a person, not party to the record, to pay the costs only in an action of ejectment; and, that action no longer existing, the Court should not exercise such a jurisdiction in this action, as it would then make a distinction between it and other actions, which was not included by the Judicature Acts.

The COURT (LORD COLERIDGE, C.J., and GROVE, J.), however, made the rule absolute.

Rule absolute.

Common Pleas Division.
May 5. June 23.

DITCHAM *v.* WORRALL.

Infant—Breach of Promise of Marriage—Ratification—Fresh Promise—37 & 38 Vict. c. 62.

Action for breach of promise of marriage.

In January, 1875, when the defendant was under age, he offered to marry the plaintiff, and this offer was then accepted. The defendant came of age in December, 1875; and afterwards, towards the end of 1878, he asked the plaintiff to fix a day for the marriage, and she accordingly fixed June 5, 1879. In April, however, of that year, the plaintiff's mother being seriously ill, the defendant, at the plaintiff's request, reluctantly assented to postpone the marriage for a month. The parties afterwards quarrelled; and ultimately the defendant refused to marry the plaintiff, and the present action was brought. The cause came on to be tried before LORD COLERIDGE, C.J., in Middlesex, when the learned judge withdrew the case from the jury, except as to damages; and it was agreed that the Court should enter judgment for the plaintiff for 400*l.* damages, if the Court should be of opinion that there was reasonable evidence of a promise to marry not referable to a ratification only, so as to take the case out of 37 & 38 Vict. c. 62.

Henry Matthews (*Stokes* with him) moved for judgment accordingly.

Bucknell, contrà, for the defendant.

Cur. adv. vult.

The COURT now delivered judgment—DENMAN, J., and LINDLEY, J., that there was such evidence of a fresh promise after the defendant had come of age; LORD COLERIDGE, C.J., that there was not.

Judgment for the plaintiff.

Table of Cases.

HOUSE OF LORDS.

House of Lords. June 21, 24, 25. } THE CITY BANK *v.* BARROW AND ANOTHER.

Pledging of Goods by Bailee—Canadian Law—Notice.

This was an appeal from a judgment of the Court of Appeal, which reversed one of LINDLEY, J.

The respondents employed Walter Bonnell, a tanner and leather merchant in Canada, having an office in London as Walter Bonnell & Co., to tan hides and consign them to London. Certain hides were accordingly, in the year 1876, tanned and consigned by Bonnell to W. Bonnell & Co. Bonnell drew bills on W. Bonnell & Co. against the hides, and sold the bills to the Bank of Toronto, hypothecating the bills of lading as security. The bills of exchange and bills of lading were transmitted by the Bank of Toronto to the City Bank, which, on the former being dishonoured, took possession of the hides.

The respondents, on discovering this, tendered the amount of Bonnell's charges for tanning, &c., and claimed the goods.

Bonnell was a leather merchant as well as a tanner; and it was admitted that the banks had no notice that the hides did not belong to him. It was contended for the appellants that Bonnell was a factor entitled to pledge the goods by English law; or, if not, at all events by Canadian law; and, further, that, by Canadian law, the bank could hold, in the absence of notice, even if Bonnell had no title to pledge.

Lindley, J., decided against the bank on the first two contentions, but gave judgment in its favour on the third.

The Court of Appeal decided against it on all three grounds.

Mr. Cohen and *Mr. R. V. Williams* for the appellants.

Sir F. Herschell (*Solicitor-General*) and *Mr. Horne Payne*, for the respondents, were not called upon.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD HATHERLEY, LORD BLACKBURN, and LORD WATSON) affirmed the judgment of the Court of Appeal; and dismissed the appeal, with costs.

COURT OF APPEAL.

Court of Appeal. James, L.J. Cotton, L.J. Thesiger, L.J. June 17, 18. } *In re* Fox, Walker, & Co. *Ex parte* Bishop.

Proof — Liability provable — Discounter — General Guarantee—Indorser—Bankruptcy Act, 1869, *s.* 31.

Appeal from the decision of the CHIEF JUDGE in Bankruptcy, admitting a proof by the trustee in bankruptcy of Sanderson & Co. against the estate of Fox, Walker, & Co.

The case is reported *ante*, p. 39, sub nom. *In re Fox, Walker, & Co., ex parte Turquand.*

Their LORDSHIPS dismissed the appeal; but reserved judgment on the point whether Sanderson & Co.'s trustee was entitled to prove for interest on the amount which he had paid up to the commencement of Fox, Walker, & Co.'s liquidation.

Court of Appeal.
COTTON, L.J.
June 19.
} *Re* COLYER.

Trustee Act, 1850, *s.* 32—*New Trustees—Discharge of Lunatic Trustee and Appointment of continuing Trustee in Place of themselves and Lunatic Trustee.*

Petition for the appointment of new trustees.

One of three trustees had become lunatic; and a petition was presented in lunacy and Chancery, praying that the lunatic might be discharged, and the two other trustees appointed trustees in the place of the three.

All the beneficiaries were *sui juris*, and joined in the petition.

Mr. W. P. Beale, for the petition, referred to *In re Stokes's Trusts*, 41 Law J. Rep. Chanc. 290; L.R. 13 Eq. 333; *In re Harford's Trusts*, L.R. 13 Chanc. Div. 135; and *In re Dalgleish's Settlement*, L.R. 4 Chanc. Div. 143, as cases where similar orders had been made, the Court of Appeal having reappointed as trustees two already existing trustees.

COTTON, L.J., declined to follow *In re Stokes's Trusts* and *In re Harford's Trusts*, and to reappoint the two existing trustees in the place of three, when the effect would be to oust one of the trustees; and required the original number to be filled up.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 29.
} REGINA *v.* SHEWARD.

'Certiorari'—Lands Clauses Consolidation Act (6 *Vict. c.* 18)—*Inquisition to assess Compensation under—Time within which a 'Certiorari' will be granted to quash Inquisition—Discretion.*

Appeal from a judgment of the Queen's Bench Division (reported 49 Law J. Rep. Q.B. 329) refusing a *certiorari* to bring up, for the purpose of quashing it, an inquisition held to assess compensation under the Lands Clauses Consolidation Act.

Sir H. Giffard, Mr. Bidder, and *Mr. J. G. Hollway* for the prosecutor.

Sir H. James and *Mr. Latham* for the defendant.

Their LORDSHIPS unanimously affirmed the judgment of the Queen's Bench Division.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 29.
} M'DONALD *v.* CHESNEY.

Bankruptcy—Composition—Debtor's Statement—Bankruptcy Act, 1869, *s.* 126.

Appeal of the plaintiff from the judgment of the Common Pleas Division (GROVE, J., and LINDLEY, J.) upon the report of an official referee.

The question arose on a counter-claim set up by the defendant against the plaintiff. The defendant, having been appointed trustee in the bankruptcy of one Porter, sold the bankrupt's book debts to the plaintiff. The plaintiff became bankrupt, and resolutions for accepting a composition were duly passed at two meetings of the creditors under section 126 of the Bankruptcy Act, 1869. The plaintiff, in his statement to the creditors, scheduled the defendant (who did not assent to the composition) as a creditor in respect of two sums of 82*l.* and 119*l.*, which were the sums due to the defendant for the purchase of Porter's book debts, but the plaintiff omitted to put in the schedule a debt of 8*l.* which was owing to the defendant personally for services rendered by him to the plaintiff. The defendant counter-claimed in respect of all the above three sums, and the report of the official referee found that all of them were due to the defendant.

The Common Pleas Division gave judgment for the defendant for the amount claimed.

Mr. W. Graham for the plaintiff.

Mr. F. Clarke for the defendant.

Their LORDSHIPS held that the defendant was not bound by the composition; and affirmed the judgment of the Common Pleas Division.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
THESIGER, L.J.
Feb. 17. June 30.
} SULLIVAN *v.* MITCALFE AND OTHERS.

Company—Prospectus—What Contracts should be disclosed in Prospectus—Companies Act, 1867, *s.* 38.

Appeal from an order of GROVE, J.

The action was to recover the price paid by the plaintiff for shares in a company, which the plaintiff alleged that he had been induced to purchase on the faith of a prospectus fraudulent within section 38 of the Companies Act, 1867. The statement of claim alleged that the defendants issued the prospectus, and were, at the time of such issue, promoters and directors of the company; that the prospectus disclosed a provisional agreement for the purchase, on behalf of the company, of certain patent rights, for the purchase and development of which the company was formed; but that the prospectus did not disclose other contracts between the promoters of the company and the vendors of the patent rights, by which the latter were to retain part only of the purchase money—by far the larger portion of it being divided between all or some of the promoters; that the defendants were well aware that these contracts had been entered into, and had omitted to specify them in the prospectus.

The defendants demurred to the statement of claim.

Grove, J., having overruled the demurrer, the defendants appealed.

Mr. W. G. Harrison, Mr. Talfourd Salter, and *Mr. R. M. Bray* for the defendants.

Mr. Collins and *Mr. S. Brice* for the plaintiff.

Cur. adv. vult.

June 30.—Their LORDSHIPS (BAGGALLAY, L.J., and THESIGER, L.J.; BRAMWELL, L.J., dissenting) affirmed the judgment of Grove, J.; holding that the omission of the defendants to specify the contracts mentioned in the statement of claim rendered the prospectus 'fraudulent' within section 38 of the Companies Act, 1867.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
THESIGER, L.J.
May 31. June 1.
July 2.
} PUGH *v.* GOLDEN VALLEY RAILWAY COMPANY.

Railway Clauses Consolidation Act (8 & 9 *Vict. c.* 20), *s.* 16—*Construction—Diversion of River—Necessity.*

Appeal from decision of FRY, J., in favour of the plaintiff. The case is reported 48 Law J. Rep. Chanc. 666.

The company appealed.
Mr. Davey and *Mr. Speed* for the appellants.
Mr. Robinson and *Mr. Maclean* for the plaintiff.
Their LORDSHIPS dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division. JESSEL, M.R. June 25. } HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR WAR *v.* CHUBB.

Practice—Action by Crown—Undertaking in Damages.

In this case the defendants requested that a motion for an injunction might stand over to enable them to answer affidavits; and the plaintiff asked, in the meantime, for an interim injunction. This was not objected to, but the defendants required the plaintiff to give the usual undertaking in damages.

The Solicitor-General (*Sir Farrer Herschell*) and *Mr. Rigby*, for the plaintiff, submitted that the Crown was not bound to give any undertaking in damages.

Mr. Whitehorne for the defendants.

The MASTER OF THE ROLLS said he could make no exception in favour of the Crown; and that, unless the undertaking were given, the interim injunction could not be granted.

On this expression of opinion the plaintiff's counsel gave the usual undertaking in damages on behalf of the Crown.

Chancery Division. JESSEL, M.R. June 26. } *Re* ARTISANS AND LABOURERS' DWELLINGS IMPROVEMENT ACT. *Ex parte* JONES.

Practice—Land compulsorily taken by Corporation—Petition by Mortgagor for Payment out to Mortgagee—Costs.

In this case the Board of Works had taken land compulsorily under the provisions of the Artisans and Labourers' Dwellings Improvement Act, and paid the purchase-money into Court. The land was mortgaged, and the amount of the mortgage debt was greater than the amount of the purchase-money. The mortgagor presented a petition that the money might be paid out to the mortgagee in part discharge of his debt. He served the mortgagee with the petition, and the mortgagee appeared separately at the hearing.

Mr. Crossley, for the petitioner, submitted that the mortgagee's costs ought to be paid by the board.

Mr. Solomon for the mortgagee.

Mr. Pownall, for the board, submitted that it ought not to pay more than 40*s.* for the mortgagee's costs, and cited *In re Halstead United Charities*, L.R. 20 Eq. 48.

The MASTER OF THE ROLLS said that he should follow the case cited; and ordered that the board should pay the mortgagee for his costs 40*s.*, and the costs of an affidavit of service of the petition on him. The mortgagee to add the rest of his costs to his security.

Chancery Division. JESSEL, M.R. July 3. } *In re* BOYD'S SETTLED ESTATES.

Settled Estate—Proceeds of Sale—Investment on Mortgage of Real Estate—Term in Freeholds.

In this case a settled estate had been sold, and the proceeds paid into Court. The investment clause in the settlement authorised the trustees to invest on mortgage of real estate. It was proposed to lend the proceeds of sale on mortgage of a portion term of 300 years in freeholds, and a petition was presented asking the sanction of the Court.

Mr. Chitty, *Mr. Wolstenholme*, and *Mr. R. F. Turner* for the parties.

The MASTER OF THE ROLLS was of opinion that the power did not include leasehold securities of any kind; and refused the application.

Chancery Division. MALINS, V.C. July 3. } *In re* ALBION LIFE ASSURANCE SOCIETY.

Unlimited Assurance Company—Shareholders and Assurance Members—Contributory—Primary Liability.

This was a company, established under the Companies Act, 1862, with unlimited liability. By the memorandum of association the capital was to be 50,000*l.*, divided into 5,000 shares of 10*l.* each. It had been recently decided by FRY, J., in *Winstone's Case*, 48 Law J. Rep. Chanc. 607; L.R. 12 Chanc. Div. 239, that an 'assurance member,' or policyholder with participation in profits, was liable as a contributory.

This was a summons taken out by the official liquidator, for the purpose of making a call on the assurance members.

Mr. Glasse and *Mr. Boome* for the official liquidator.

Mr. Higgins and *Mr. Hatfield Green* for shareholders.

Mr. Macnaghten and *Mr. Borthwick* for policyholders.

MALINS, V.C., said that Fry, J., in deciding that an assurance member was liable to be placed on the list of contributories, expressly left the amount and extent of his liability an open question. This was an unlimited company; and, therefore, every shareholder was liable to be called upon to contribute to his last farthing. On the other hand, as long as the company was a going concern, there was nothing in the articles of association enabling any call to be made upon a policyholder. Surely the persons who were alone liable, while the company was a going concern, were the persons primarily liable when the concern stopped. There must, therefore, be a declaration that the shareholders were primarily liable to pay the debts of the company.

Chancery Division. MALINS, V.C. July 5. } *Re* FINCH. ABBISS *v.* BURNEY.

Will—Devise of Real Estate to Trustees in Fee—Equitable Limitations—Contingent Remainder—Executory Devise.

Robert Finch, by his will, dated August 19, 1828, after giving certain pecuniary legacies, devised unto William Macdonald and three others, their heirs and assigns, all his freehold estates upon trust, to pay the rents thereof unto his wife, Maria Finch, during her life; and, after her decease, upon trust, to retain for their own use the rents during the life of Henry Mayer; and, after his decease, upon trust, to convey his freehold estate and the rents thereof 'unto such son of William Macdonald as should first attain the age of twenty-five years, when he should have attained his said age of twenty-five years.'

The testator died in the year 1830; his widow died

in 1839. Douglas Macdonald, the eldest son of William Macdonald, attained the age of twenty-five in 1836, and died in the lifetime of Henry Mayer, who died in 1877. Upon his death this action was brought, claiming, amongst other things, a declaration that the gift of real estate in favour of such son of William Macdonald as should first attain the age of twenty-five years was void for remoteness.

Mr. Joshua Williams and *Mr. Worsley Knox*, for the heir-at-law of Douglas Macdonald, contended that, if these limitations had been legal, the contingent remainder would have been clearly well given; and that the limitation was equally good as an equitable limitation. The Court would never construe any limitation as an executory devise which could fairly be regarded as a remainder.

Mr. Davey and *Mr. Chapman Barber*, for the heir-at-law of the testator, contended that this was an equitable executory interest; and, as it might, by possibility, have vested beyond the limit of a life in being and twenty-one years after, was void for remoteness.

MALINS, V.C., said it had been argued that the doctrines governing contingent remainders had no application to equitable limitations. That argument was unsustainable. This was a contingent remainder, which would have clearly taken effect if it had been a legal limitation; and equally took effect being an equitable limitation. The heir-at-law of Douglas Macdonald was, therefore, absolutely entitled to the real estate.

Chancery Division.
BACON, V.C.
June 22.
} STANSFIELD *v.* STANSFIELD.

Will—Construction—Gift to Children—'Personæ designatæ,' or Class.

J. Stansfield, by his will dated February 19, 1870, specifically devised certain freeholds to trustees on trust to pay the income to his wife for life for her separate use; and also specifically bequeathed certain chattels to his wife for life, and at her decease directed that the freeholds and chattels should be sold, and that the money arising from such sale should be divided equally between 'his nine children,' and he gave and bequeathed the same accordingly. He then gave all his money and other personal estate, not thereinbefore specifically bequeathed, to trustees to convert and pay the proceeds equally to and between 'all his children,' except that his eldest son, John, should—for reasons stated—receive 30*l.* less than each of his other children, and he gave and bequeathed the same accordingly.

The testator's wife died in his lifetime. The testator died on December 23, 1876, leaving seven children only him surviving. This was a special case to obtain the opinion of the Court whether the residuary bequest was a bequest to the children as a class, or as *personæ designatæ*.

Mr. W. Barber, *Mr. Bush*, and *Mr. C. Herbert Smith* for the parties.

BACON, V.C., said that the testator had explained the residuary bequest to 'all his children' by the preceding bequest to 'his nine children,' and that they took as *personæ designatæ*.

Chancery Division.
BACON, V.C.
June 25.
} STONES *v.* RATCLIFFE.

Practice—Rules of Court, 1875, *Order XL., Rule* 11—*Preliminary Accounts—Further Hearing.*

In an action by a legatee against an executor, to obtain payment of his legacy, and, if necessary, to have the testator's estate administered, the defendant, by his statement of defence, declared himself willing to account. The plaintiff moved for an account under Order XL., Rule 11; minutes were prepared, and the only question was as to the form of the minutes with regard to the further hearing of the action.

Mr. F. H. Colt for the plaintiff.

Mr. Borrett for the defendant.

BACON, V.C., made the order for an account; and approved of the insertion in the minutes of the words: 'And this action is not to come into the paper for trial until the chief clerk's certificate has been made.'

Chancery Division.
BACON, V.C.
June 26.
} *In re* HAMMANT. LETT *v.* HAMMANT. HAUGHEY *v.* LETT.

Legacies—Cumulative, or in Substitution.

Further consideration.

Mary Hammant, deceased, by her will, gave all her property to trustees upon trust to sell, and out of the proceeds to pay, *inter alia*, 'the sum of 50*l.* to each of the grandchildren of my brother, Thomas Taylor; and then to pay to John Magenis, the son of my niece, Ann Magenis, the sum of 25*l.*; and then to pay to Ellen Pollard, the wife of Thomas Pollard, 25*l.*; to Margaret Denny, of Union Buildings, Woolwich, aforesaid, 25*l.*, for her separate use. I direct my trustees to pay to the two eldest children of my niece's first husband, the late Daniel Hawkey, the sum of 50*l.* each.'

The chief clerk found that John Magenis and the two eldest children of Daniel Hawkey were also grandchildren of the testatrix's brother, Thomas Taylor. The point for decision was, whether the respective legacies of 25*l.* and 50*l.* each to those persons were cumulative legacies in addition to the legacies of 50*l.* each which they would take as grandchildren of Thomas Taylor.

Mr. Badcock for the plaintiffs, the executors and trustees.

Mr. Woodroffe for John Magenis and the two eldest children of Daniel Hawkey.

Mr. Borrett for the residuary legatees.

BACON, V.C.: In my opinion, the legacy of 25*l.* to John Magenis shows a special intention to benefit that person, and that legacy is, therefore, cumulative; but the two legacies of 50*l.* to the two eldest children of Daniel Hawkey are not cumulative.

Table of Cases.

HOUSE OF LORDS.

House of Lords. July 5. } THE SOUTH-EASTERN RAILWAY COMPANY *v.* SMITHERMAN AND OTHERS.

Contributory Negligence.

This was an appeal from a decision of the Court of Appeal refusing to grant a new trial in an action brought under Lord Campbell's Act for compensation for the death of one Henry Smitherman.

The deceased was at the station of East Farleigh, about to travel by a train of the appellant company. Upon hearing the signal announcing the approach of his train, he started to cross the line to the platform where the train would draw up. The train was, however, preceded by another which did not stop, and by which the deceased was run over and killed. It was alleged that some of the company's servants, on observing his danger, shouted to him to stop; and the question was, whether he had contributed by his own negligence to the result by purposely disregarding the warnings.

The jury found in favour of the plaintiffs, with damages amounting in all to 900*l*. An order for a new trial was made in the Exchequer Division; but was reversed by the Court of Appeal, which, however, reduced the damages to 700*l*.

The company appealed.

Mr. Benjamin, *Mr. Cohen*, and *Mr. Bremner* for the appellants.

Mr. Bargrave Deane for the respondents.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD PENZANCE, LORD BLACKBURN, and LORD WATSON) reversed the judgment of the Court of Appeal, and restored the order for a new trial.

House of Lords. July 5, 6, 8. } PEARKS *v.* MOSELEY AND OTHERS.

Gift to a Class—Remoteness as to some of the Class—Gift void as to all.

This was an appeal from a decision of the Court of Appeal affirming one of the MASTER OF THE ROLLS.

Joseph Moseley, by his will, left personal property upon trust for his son William Moseley for life, and after his death for all his children who should attain twenty-one, and the issue of such of them as should die under that age leaving issue, 'which issue should afterwards attain the age of twenty-one, or die under that age, leaving issue at his, her, or their decease, or respective deceases, as tenants in common of more than one; but such issue to take only the share or shares which his, her, or their parent or parents respectively would have taken if living.'

William Moseley had issue three children, two of whom died infants, and without issue. The third, Harriet, attained the age of twenty-one, and was married to H. Pearks. On the death of William Moseley, Mr. and Mrs. Pearks, and the trustees of their marriage settlement, filed a petition praying that the fund might be paid to them.

The residuary legatee under the will of Joseph Moseley opposed, upon the ground that the gift, so far as regarded the grandchildren and remoter issue of William Moseley, was too remote; and that, as the gift was a class gift, the whole in consequence failed.

The Master of the Rolls rejected the prayer, and directed payment to the residuary legatee, upon the authority of the decision in *Smith* v. *Smith*, L. R. 5 Chanc. App. 342.

The Court of Appeal confirmed the decision of the Master of the Rolls, considering themselves also bound to follow *Smith* v. *Smith*; but they expressed their concurrence with the reasoning of Malins, V.C., who, on a previous petition on a similar clause in the same will (*Re Moseley's Trusts*, 40 Law J. Rep. Chanc. 275), held the gift good as to the children of the life tenant, though void as to remoter issue.

The present appeal was brought at the suggestion of the Court of Appeal.

Mr. Chitty, *Mr. W. Barber*, and *Mr. Romer* for the appellants.

Mr. Waller, *Mr. Davey*, and *Mr. Rawlinson* for the respondents.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD PENZANCE, LORD BLACKBURN, and LORD WATSON) held *Smith* v. *Smith* to have been well decided; and dismissed the appeal. By agreement of the parties, the costs were ordered to be paid out of the estate.

HIGH COURT OF JUSTICE.

Chancery Division. MALINS, V.C. July 10. } *In re* SIR THOMAS NEAVE AND MESSRS. CHAPMAN AND WREN AND VENDOR AND PURCHASER ACT, 1874.

Will—Power of Sale—Trustees, with Consent in Writing of Tenants for Life—Infant Tenant in Tail in Possession—Exercise of Power of Sale by Trustees—Good Title.

Sir Thomas Neave, by his will dated in 1842, devised his real estate to trustees upon trust for his son, R. D. Neave, for life; then for his grandson, A. Neave, for life; and, after his decease, in trust for A. Neave's eldest son in tail male. And it was provided that it should be lawful for the trustees, with the consent in writing of the person for the time being entitled as beneficial tenant for life in possession under the trust limitations therein contained, to sell the said hereditaments in manner therein directed.

Both tenants for life were dead, and there was an infant tenant in tail.

The trustees had entered into an agreement for the sale of part of the devised land with Chapman and Wren, who objected to completing on the ground of the infancy of the tenant in tail, on which account the power of sale could not be effectually exercised.

Mr. Sturges for the trustees.

Mr. J. T. Humphrey for the purchasers.

MALINS, V.C., decided that the power of sale could be effectually exercised by the trustees, notwithstanding the infancy of the tenant in tail in possession.

Chancery Division. MALINS, V.C. July 12. } *Re* KNOWLES. ROOSE *v.* CHALK.

Will—No residuary Bequest—Executors—No Next of Kin—Rights of the Crown—Executors absolutely entitled.

This action was commenced for the administration of the estate of Mrs. Cecilia Eliza Knowles, who made her will, dated May 11, 1878, whereby, after directing her just debts and funeral expenses to be paid by her executors, appointed the plaintiff, her friend and medical man, and the defendant, a solicitor, her executors; and, after giving a number of legacies, including one to the plaintiff of 1,000*l.*, and another to the defendant of 100*l.*, revoked all other wills made by her. The testatrix died in December, 1878, without any next of kin, and possessed of considerable personal estate, much more than sufficient to pay her debts, funeral expenses, and legacies.

The executors proved the will, and paid the debts and legacies.

The executors now claimed to be entitled to the residuary personal estate for their own benefit in equal moieties.

Mr. Glasse, *Mr. Pearson*, *Mr. Davenport*, and *Mr. E. Beaumont* for the executors.

Mr. Rigby, for the Crown, resisted the claim, and contended that, the testatrix having died without any known next of kin, her personal estate belonged to the Crown.

MALINS, V.C., decided that the executors were entitled to the residuary personal estate absolutely, in equal moieties.

Chancery Division. HALL, V.C. June 26. } CLAY *v.* TETTLEY.

Power of Sale of Land—Charge of Debts—Power to Executors—'Administrator cum Testamento annexo'—22 & 23 Vict. c. 35.

Thomas Clay, deceased, by his will directed that all his just debts, &c., should be paid by his executors thereinafter named; and, in case his personal estate was insufficient, he charged his real estate with payment of the deficiency. He gave his real and personal estate to his wife, Eliza Clay, for life, with remainders over; and then directed that his executors should, upon the decease of his wife, sell and divide the estate; and appointed two executors. The executors renounced probate, and the widow took out administration with the will annexed. The question arose, upon a contract for sale of real estate by the administratrix, whether she could exercise the power contained in the charge of debts.

Mr. Simmonds appeared for the vendor.

Mr. Cadman Jones for the purchaser.

HALL, V.C., held that the title could not be forced on the purchaser. The expressed intent of the will was that the executors should be the persons to sell. The Act 22 & 23 Vict. c. 35 did not assist, for it did not give the power to the legal personal representative for the time being.

Chancery Division. Hall, V.C. June 29. } *In re* Youle. Roberts *v.* Youle.

Will—Construction—Uncertainty—Gift over on Death before the Execution of the Trusts.

The testator, William Youle (who died in 1879), by his will, dated November 30, 1878, gave all his real and personal estate to trustees, upon trust for sale and conversion, with a discretionary power to postpone such sale and conversion, and to stand possessed of the proceeds upon trust to pay and divide the same equally between his four children, three sons and one daughter (naming them), the share of his daughter to be retained and held upon certain trusts; and he directed that 'in the event of any of his said children dying previous to his decease or the execution of all or any of the trusts of his will, leaving lawful issue' surviving, the trustees should pay to the issue the share which his or their 'parent would have taken or been entitled to if living.'

The four children survived the testator. The daughter and one son had children living. The trustees, in the exercise of their power, postponed the sale and conversion of portions of the estate; and the question arose whether the sons were entitled absolutely, or whether their shares ought to be retained by the trustees until the execution of all the trusts of the will, or, at all events, until the actual sale and conversion.

Mr. S. Roberts for the plaintiff, a trustee of the will.

Mr. Dunning for the three sons.

Mr. W. Barber, for the children of one of the three sons, relied on *Johnson* v. *Crook*, 48 Law J. Rep. Chanc. 777; L. R. 12 Chanc. Div. 639.

Hall, V.C., held that the gift over was void for uncertainty; and that the three sons were absolutely and indefeasibly entitled. Without declining to follow *Johnson* v. *Crook*, he distinguished it on the ground that in that case it was only the share, 'or such part or parts thereof' as should not have been actually received, which was given over, and not, as here, the whole share.

Chancery Division. Fry, J. June 26. } Hall *v.* Litchfield Brewery Company.

Easement—Air—Presumption of Covenant.

This was an action for damages in respect of injury caused by new buildings of the defendant company by obstruction to the free access to the plaintiff's buildings of light and air. Part of the injury complained of was caused by the interruption of the flow of air into a slaughter-house, which had been used as such upwards of thirty years.

Mr. Cookson and *Mr. Ch. Browne* for the plaintiff.

Mr. Millar and *Mr. Kirby* for the defendants.

Fry, J. held that an action for the right to free access of air would not lie in general, and is not, therefore, subject of prescription; but that the Court will presume, after evidence of uninterrupted enjoyment for the number of years proved in this case, that there had been a covenant not to interrupt the flow of air, and awarded damages for breach of such implied covenant.

Chancery Division. Fry, J. June 29. } Austin *v.* Mead.

'Donatio Mortis Causâ'—Promissory Note.

Fry, J. mentioned this case, noted *ante*, p. 95, and said he had come to the conclusion that there was a good *donatio mortis causâ* of the promissory notes.

Chancery Division. Denman, J., for Fry, J. July 8. } Webster *v.* Whewell.

Practice—Inspection of Deeds — Title Deeds — Order XXXI., Rules 14, 15, 17.

This was an action (among other things) to restrain trespass by building on a portion of a yard. The statement of claim contained this sentence: 'The whole of the yard is the absolute property of the plaintiffs, and was conveyed to them, or their predecessors in title, by a deed dated August 16, 1866.' The defendant gave notice, under Order XXXI, Rules 14, 15, requiring the production of the deed of August, 1866, for inspection. The plaintiffs refused to produce it till the statement of defence was put in. At the trial the defendant objected to the deed being put in evidence.

Mr. Cookson and *Mr. William Barber* for the plaintiffs.

Mr. North and *Mr. Yate Lee* for the defendant.

Denman, J., held that the plaintiffs had sufficient cause for not complying with the notice till the statement of defence was put in; and allowed the document to be put in evidence.

Chancery Division. Denman, J., for Fry, J. July 5, 6, 12. } Lovesy *v.* Smith.

Settlement—Rectification—Evidence.

By this action a lady, the widow of Mr. Lovesy, sought the rectification of a settlement made on the occasion of her second marriage. During the pendency of the action she married her third husband, and the trustees were made co-plaintiffs.

The settlement related to her personal property. After the decease of the survivor of the husband and wife, half the *corpus* was given to the husband absolutely in default of children. She claimed to have that limitation altered; so as, in the event which had happened of her husband predeceasing her, and there being no children of the marriage, the whole should revert to herself.

Her second husband had been solicitor to her first husband and herself. The facts she testified to in support of her claim were that her then intended husband had promised to settle her property on herself; that the settlement had been prepared in great haste; that it had been brought to her at five o'clock in the morning of the day on which she was married at a time when she was wearied with sitting up waiting for it; that it had not been properly read over to her, and she had executed it while completing

her marriage toilet; and that she had not had independent advice. There was independent evidence which showed that the settlement had been dictated by Mr. Lovesy on the night previous to the marriage, and had been engrossed at once. The settlement contained evident clerical errors, and bore marks of haste.

Mr. North and *Mr. Owen* for the plaintiff.

Mr. Cookson and *Mr. Begg* for the trustees of the settlement.

Mr. Crossley and *Mr. Jason Smith* for the next of kin of the deceased husband.

DENMAN, J., made the rectification.

Chancery Division.
DENMAN, J., for FRY, J.
July 12, 13.
} BALLARD *v.* SHUTT.

Vendor and Purchaser—Possession—Interest.

This was an action for specific performance, brought by the purchaser of a plot of building land. A few days after the contract the purchaser had placed a notice board on the property stating that it was for sale, and applications were to be made to himself. A question in the action was, whether he had, by so doing, taken possession so as to make him liable to pay interest from the day he so took possession.

Mr. Cookson and *Mr. Stock* for the plaintiff.

Mr. North and *Mr. Hamilton Humphreys* for the defendant.

DENMAN, J., held that the purchaser was liable to pay interest.

Common Pleas Division.
June 30.
} BURNAND *v.* RODOCANACHI.

Insurance—War Risks—Valued Policy—Total Loss—Money received by one Sovereign State under Treaty with another for War Losses of Subjects.

A cargo belonging to the defendant, which had been insured by the plaintiff on a valued policy against war risks, was totally destroyed by the Alabama during the war between the United States and the Confederate States of America, and the loss formed one of the items of the claim made by the United States against Great Britain which was dealt with by the award at Geneva. After the sum awarded at Geneva had been paid by Great Britain to the United States, payments were made out of it to claimants by a Court constituted under an Act of Congress passed in 1874, which, *inter alia*, contained a clause that no claim should be admissible for any loss in respect of which the party injured had received compensation or indemnity from any insurer; but that, if such compensation or indemnity were not equal to the loss actually suffered, allowance might be made for the difference. The clause also declared that no claim should be admissible by or in favour of a person who was in the situation of the plaintiff. Defendant claimed and obtained a sum of money from the Court so constituted in the United States as compensation for his said loss, after he had been paid by the plaintiff the full amount as valued by the policy; and the defendant did so on the ground that his actual loss exceeded the sum paid by the plaintiff under the policy. The question in the present action, which was tried before LORD COLERIDGE, C.J., without a jury, was whether the defendant had obtained this money from the United States Court under circumstances which would make him trustee in respect of it for the plaintiff so that the plaintiff could recover it in this action.

Butt, Cohen, and *J. C. Mathew* for the plaintiff.

Sir H. James and the *Hon. A. Gathorne Hardy* for the defendant.

Cur. adv. vult.

LORD COLERIDGE, C.J., now delivered judgment for the plaintiff; holding, firstly, that the valuation stated in the policy was conclusive as between the parties of the amount, as there had been, in fact, an actual total loss of the cargo insured; and, secondly, that the money which the defendant got from the United States Court was recovered by him as a right which, though not enforceable by law, was with such a character of equity about it as made him in respect of it a trustee for the plaintiff; and that the plaintiff was entitled now to recover it in an English Court, although it might have been the intention of the American statute that he should not have it.

Judgment for plaintiff.

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HOUSE OF LORDS.

House of Lords. May 27, 28. July 15. } THE ECCLESIASTICAL COMMISSIONERS FOR ENGLAND v. ROWE.

Statute of Limitations (3 & 4 *Wm. IV. c.* 271)—*Renewed Lease—Succession of Ecclesiastical Commissioners to Estates of Corporation sole*—3 & 4 *Vict. c.* 113, *s.* 57.

This was an appeal from a decision of the Court of Appeal reversing one of MELLOR, J. (see report, 48 LAW J. Rep. Q.B. 152).

The Ecclesiastical Commissioners brought the action to recover a piece of land which was provisionally allotted in 1816 in respect of tenements held upon lease from the Dean of St. Asaph.

Before the final award the tenant died, and his representatives assigned the lease to one Jones; and, in 1821, sold the allotment (of which, however, no conveyance was made) to a person from whom the defendant claimed.

The lease of the tenements was surrendered and renewed in 1820, and on various subsequent occasions, without mention of the allotment; and the purchaser of the allotment, and those claiming through her, were continuously in possession till this action was brought.

In 1854, on the death of Dr. Luxmoore, Dean of St. Asaph, the estates of the deanery became vested in the Ecclesiastical Commissioners, subject, as to the particular tenements, to a lease which the commissioners bought up in 1859.

The action was tried by Mellor, J., who held that the defendant had had possession adverse to the plaintiff for twenty years, but not for sixty years; and that the commissioners were entitled, under 3 & 4 Vict. c. 113, s. 57, to bring an action within the same period as the Dean might have done. He, therefore, gave judgment for the defendant.

This judgment was reversed by the Court of Appeal, which held that the commissioners were limited to twenty years from the time when the right first accrued.

The Commissioners appealed.

Mr. Southgate, *Mr. M'Intyre*, and *Mr. C. Higgins* for the appellants.

Sir F. Herschell (*Solicitor-General*) and *Mr. Morgan Lloyd* for the respondent.

Their LORDSHIPS (LORD SELBORNE, L.C., and LORD WATSON, *dissentiente* LORD BLACKBURN) reversed the judgment of the Court of Appeal; and restored that of Mellor, J., without costs.

House of Lords. July 13, 15, 16. } ELLIS LEVER & Co. v. THE DUNKIRK COLLIERY COMPANY.

Contract for Supply of Coal—Breach—Measure of Damages.

This was an appeal from a judgment of the Court of Appeal affirming one of the MASTER OF THE ROLLS.

The action was brought for specific performance of a contract to supply coal, and for damages. The Master of the Rolls gave judgment for the plaintiffs, the Dunkirk Colliery Company, and referred the case to a special referee to inquire into the damages. The special referee found that the plaintiffs were entitled to 2,967*l.* 10*s.*, as the difference between the contract price and the price at which the plaintiffs could have obtained a supply at the times at which the coal should have been delivered.

The plaintiffs then contended, before the Master of the

Rolls, that they were entitled to the difference between the contract price and the price at which the coals in question were sold by the defendants. The Master of the Rolls took this view, and ordered the defendants to pay 5,300*l.* The Court of Appeal reversed the order, as made without jurisdiction, and referred the matter back to the special referee, who then awarded 3,600*l.* The Master of the Rolls, on motion, made an order raising the damages to 5,300*l.*, which order was affirmed by the Court of Appeal.

The defendants appealed.

Mr. Benjamin, *Mr. Gully*, and *Mr. Cartwright* for the appellants.

Mr. Chitty, *Mr. Jordan*, and *Mr. W. P. Beale* for the respondents.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) varied the order by reducing the damages by 585*l.* No order was made as to costs.

House of Lords. July 19, 20. } DUCKWORTH *v.* WATSON AND RAVENSCROFT *v.* WATSON.

This was an appeal from a decision of the Court of Appeal reversing a decision of the MASTER OF THE ROLLS in favour of the appellant, Duckworth. The question in dispute, which turned entirely upon the construction of an intricate will, was as to the proportions in which the residuary estate of John Battersby, the testator in the cause, should be distributed.

Mr. Kay, *Mr. Benjamin*, *Mr. Davey*, *Sir H. Jackson*, *Mr. Ford North*, *Mr. Kekewich*, *Mr. Rigby*, *Mr. Renshaw*, *Mr. Ingle Joyce*, *Mr. Northmore Lawrence*, *Mr. Humphreys*, *Mr. Byrne*, and *Mr. Clare* appeared for the different parties.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) affirmed the decision of the Court below; and dismissed the appeal, with costs.

COURT OF APPEAL.

Court of Appeal. JAMES, L.J. BRETT, L.J. COTTON, L.J. July 15. } *Re* HART. *Ex parte* BAYLEY.

Mortgagee in Possession — Liquidation — Injunction — Jurisdiction—The Bankruptcy Act, 1869, *ss.* 65, 72.

Appeal from order of registrar, acting as CHIEF JUDGE, restraining the appellant, a mortgagee, from taking any further proceedings under the seizure made by him under his mortgage of the liquidating debtor's (the mortgagor's) leasehold business premises and trade effects. The appellant went into possession under his mortgage deed a few days before the filing of the liquidation petition, refused to give up possession to the receiver appointed in the liquidation, and proceeded to sell under his mortgage powers.

The mortgage deed was to secure an advance of 2,500*l.*, and the debtor was to pay, in lieu of interest, a sum equal to one half of the net profits of the business. It was alleged that, by virtue of the provisions of the deed, the appellant was in partnership with the debtor.

Mr. Winslow and *Mr. Evans*, for the appellant, contended that the Court had no jurisdiction to interfere with the rights of a mortgagee under his security; and, further, even if there were jurisdiction, no case for the interference of the Court was made out.

Mr. Horton Smith and *Mr. J. E. Linklater*, for the respondent, argued, *contrà*, that the Court had jurisdiction under sections 65 and 72 of the Act, and that the circumstances of the case were so suspicious as to justify the interference of the Court.

Their LORDSHIPS held that they had jurisdiction to look into the matter, and ought to do so to see if any reasonable grounds existed for interfering with the mortgagee; but an injunction ought not to be granted unless a *primâ facie* case were made out. Mere suspicion was insufficient. Here no *primâ facie* case was made out, but only suggestions were put forward that eventually the trustee, when appointed, might be able to set aside the deed as fraudulent. Under the circumstances the appeal would be allowed, with costs.

Court of Appeal. JAMES, L.J. BRETT, L.J. COTTON, L.J. July 13, 16. } SMITH *v.* ANDERSONS.

Companies Act, 1862, *s.* 4—*Association of more than Twenty Persons—Non-registration—Illegal Contract.*

Appeal by the defendants from a judgment of the MASTER OF THE ROLLS, in which he held, on the authority of his former decision (*Sykes* v. *Beadon*, 48 Law J. Rep. Chanc. 522), that an association called the Submarine Cables Trust was an illegal association, as being formed of more than twenty persons, having for its object the acquisition of gain, and not being registered under section 4 of the Companies Act, 1862.

Five of the defendants were trustees of a deed, dated September 6, 1871, made between themselves of the one part, and another defendant, called the covenantee for and on behalf of all the holders for the time being of the certificates thereafter mentioned, of the other part.

The deed recited (*inter alia*) that divers persons had subscribed for the purchase, by the trustees, of the stock, shares, and debentures of submarine telegraph companies (the particulars of which were set forth in a schedule), and that these securities had been transferred into the names of the trustees; that it was intended to issue to the subscribers 4,200 certificates, a certificate of the nominal amount of 100*l.* being delivered in respect of every subscription for 90*l.* The deed provided that the trustees should hold the securities transferred to them (which were specified in a schedule), and all annual produce thereof, and by the interest on the investments, and by sales at a profit, to redeem the certificates at a premium by annual drawings; the remainder of the securities to be distributed among the holders of 'coupons of reversion.' The certificates to be redeemed were to be selected by lot.

Most of the stocks originally transferred to the trustees remained standing in their names when the action was commenced.

The action was brought by one of the certificate holders, claiming to have the trusts of the deed, or such of them as were not contrary to law, carried into execution under the directions of the Court, and to have the securities, the subject of the trusts, divided between the plaintiff and the other certificate holders in proportion to the amounts of their respective subscriptions, and an injunction restraining the trustees from dealing with the securities in the meantime.

Mr. Chitty and *Mr. Speed* for the appellants.

Mr. Ince and *Mr. M'Laren* for the plaintiff.

Their LORDSHIPS reversed the decision of the Master of the Rolls. They held that there was no association between the certificate holders within the section. An association within that section could not be constituted by a number of persons who had no mutual rights or obligations. These persons could not be said to be associated for the purpose of carrying on business. They were unable to enter into any contract. If any business was to be carried on, it was to be carried on by the trustees, who were under twenty in number, and, therefore, not within the section. There was a great difference between trustees and directors. The latter were servants of the company, contracted for and on behalf of the company; the former were principally owners of the trust property, subject only to an equitable obligation, as between themselves and their *cestui que trusts*, to account to those *cestui que trusts*. In the present case, what was to be done by the trustees was no more a business than that done by the trustees of a large property under a marriage settlement, who had large powers of investment. This was merely a trust deed for the purpose of securing a good investment spread over a number of securities, so that one might equalise another. The action was accordingly dismissed, with costs in both Courts.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
BRETT, L.J.
July 21.
} MASON *v.* BRENTINI.

Practice— Costs— Counter-claim and Claim both dismissed.

In this action the claim of the plaintiff and counter-claim of defendant had been both dismissed.

The costs of the action had been taxed by the taxing master on the principle laid down by Mr. Justice Fry in the case of *Saner* v. *Bilton*, 48 Law J. Rep. Chanc. 545— the costs of the claim at 350*l.*, and of the counter-claim at 10*l.* 10*s.* The plaintiff took out a summons to review the taxation, on the ground that such of the costs of the claim as were common to both should be apportioned; and MALINS, V.C., dismissed the summons, holding that the principle adopted was correct, the costs not having been increased by the counter-claim.

The plaintiff appealed.

Mr. Glasse and *Mr. Cutler* for the appellant.

Mr. N. Higgins and *Mr. Langworthy* for the defendant.

Their LORDSHIPS dismissed the appeal, with costs; holding that the principle adopted was the correct and just principle.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
July 19.
} *Re* HARRIS. JACKSON *v.* GOVERNORS OF QUEEN ANNE'S BOUNTY.

Statutes of Mortmain—Impure Personalty—Bond charged on Police Rates.

In this case a question was raised, on adjourned summons, whether certain bonds secured on police rates were pure or impure personalty. The bonds, after reciting the statutes giving the justices power to purchase and hold lands for the purpose of station houses, and to defray the expense of building, repairing, and finishing such station houses, out of the police rates, and to borrow money for such purposes, and to charge the future police rates with the amount of the loans, with interest, charged the future police rates of the division with the repayment, by instalments, of the amount advanced, with interest. The bonds were executed by the justices assembled in general session of the division of the county in which the money was borrowed.

Mr. Speed (with him *Mr. Davey*) contended that the bonds were a charge on the lands of the division, and impure personalty.

Mr. Chitty and *Mr. Whitehorne* for the plaintiffs, *contrà*, were not called upon.

The MASTER OF THE ROLLS held that, according to the principle laid down in *Attree* v. *Hawe*, 47 Law J. Rep. Chanc. 863; s.c. L.R. 9 Chanc. Div. 337, the police bonds were not charged on any lands, and were pure personalty.

Chancery Division.
HALL, V.C.
July 8, 14.
} *In re* ATHILL. ATHILL *v.* ATHILL.

Mortgage of Freeholds—Contemporaneous Mortgage of Leaseholds for same Debt—'Collateral Security'— Mortgage Debt, how to be borne.

George Athill, the intestate, applied in the year 1870 to the trustees of one Fowler, deceased, to advance the sum of 4,000*l.* on mortgage of certain freehold estates belonging to Athill. These freeholds were valued at 6,400*l.*, and were let to weekly tenants. The trustees, who were only empowered to lend on mortgage of freeholds, considered that these freeholds alone were scarcely a sufficient security, but were willing to make the loan if Athill would give them an additional security on certain leasehold property of his. This was agreed to, and two mortgages were accordingly executed on November 10, 1870. The first of these, relating to the freeholds, contained a recital that the trustees had agreed to advance the 4,900*l.* on a joint account upon having the repayment secured as thereinafter mentioned, 'and by a *collateral security* or indenture intended to bear even date with these presents, whereby it is intended that the mortgagor shall demise certain leasehold hereditaments, &c.,' and was in other respects in the ordinary form of a mortgage of freeholds for 4,900*l.* The second deed, relating to the leaseholds, contained a recital of the first deed, and that 'upon the treaty for the said advance it was agreed that the same principal and interest should be *further* secured by these presents,' was expressed to be in consideration of 4,900*l.* advanced, &c., 'and which sum is so secured by indenture of even date herewith as aforesaid,' and was in other respects in the ordinary form of a mortgage of leaseholds by demise for 4,900*l.* In the administration of the intestate's estate the question arose whether the mortgage debt was payable primarily out of the freeholds, so far as they were sufficient to discharge it, or whether it was to be borne rateably by the freeholds and leaseholds, according to their values.

Mr. W. Pearson and *Mr. E. Ward*, for the plaintiff, the heir at law, argued that there was nothing in the deeds or in the circumstances of the loan to show that the freeholds were to be resorted to in the first instance, and referred to *Early* v. *Early*, V.C.H. Nov. 5, 1878; LAW JOURNAL Notes of Cases. 1878, p. 141.

Mr. Graham Hastings and *Mr. Beaumont*, for the defendant, the widow and administratrix, contended that 'collateral security' meant 'secondary' or 'subsidiary' security, and cited *The Marquis of Bute* v. *Cunningham*, 2 Russ. 275.

HALL, V.C., distinguished the case last cited; and held, both upon the frame of the securities (containing, as they did, no express provision that the freeholds were to be the primary security), and upon the facts of the case, that the mortgage debt must be borne rateably by the freeholds and leaseholds, according to their values.

Chancery Division.
HALL, V.C.
June 11, 18, 25.
July 3, 10, 19.
In re THE CAMPDEN CHARITIES, KENSINGTON.

Charity—Administration—Scheme—Cy-près—Diversion of eleemosynary Funds to educational Purposes.

Lord Campden, by his will, dated in 1629, gave a sum of 200*l.* upon trust for the good and benefit of the poor of Kensington for ever, in such manner as Lord Noel and Sir W. Blake and the churchwardens of the parish of Kensington from time to time should think fit to establish, for ever. By the will of Lady Campden, dated in 1643, 200*l.* was given to trustees upon trust that they should, within 18 months, purchase lands of the annual value of 10*l.*, one half whereof should be applied from time to time for ever for and towards the better relief of the most poor and needy people, of good life and conversation, that should be inhabiting within the parish of Kensington; and the other half should be applied yearly, for ever, to put forth one poor boy, or more, being of the said parish, to be apprenticed. The 5*l.* to the poor was to be paid to them, half-yearly, for ever, at Lady Day and Michaelmas, in the church or the porch thereof, at Kensington. There was a third charity, known as 'Cromwell's Gift,' which had been from time to time administered upon the same trusts as Lord and Lady Campden's gifts. The charity property had largely increased in value, and the income now amounted to upwards of 3,500*l.* a year, out of which more than 2,000*l.* was attributable to Lady Campden's gift and a moiety of Cromwell's gift. These charities had, until the year 1878, been applied by the trustees partly in apprenticing boys, and partly in pensions to the deserving poor of the parish. In that year the Charity Commissioners propounded a scheme (which they subsequently settled) for the administration of the charities, under which the greater part of the income was made applicable to educational purposes in connection with the School Board schools. It was in evidence that there was no want of deserving recipients of the charity according to the mode in which the trustees had administered it. This was a petition by certain parishioners of Kensington by way of appeal against the scheme of the commissioners.

Mr. Graham Hastings and *Mr. Lewin* for the petitioners.

Mr. Davey and *Mr. Vaughan Hawkins* for the commissioners in support of the scheme.

July 19.—HALL, V.C., held (1) That Cromwell's gift should be deemed to belong to the other two charities equally. (2) That the income of Lord Campden's charity might be dealt with by applying part thereof for educational purposes. (3) That no part of the income of Lady Campden's charity was applicable to educational purposes, but that it ought to be applied, as to one half, for the benefit of the poor as personal recipients thereof in the form of pensions or otherwise; and, as to the other half, for the apprenticing of boys. The scheme was, therefore, remitted back to the commissioners to be re-framed by them in accordance with directions to the above effect.

Chancery Division.
DENMAN, J., for FRY, J.
July 14.
DUKE *v.* LITTLEBOY.

Trades Unions Act, 1871, *s.* 4, *subs.* 3 (*a*).

This was an action by officers of a central trade union against officers and trustees of a branch society, with the object of preventing the branch society from seceding. The claim was for an injunction to restrain the defendants from distributing funds in their hands among the members of the branch, or dealing with the funds contrary to the rules of the central society, and for payment to the treasurer of the central society of such funds after the deduction of sufficient for the current expenses of the branch. Some of the rules of the trade union were in restraint of trade.

Mr. Cookson and *Mr. Cary* for the plaintiffs.

Mr. North and *Mr. Bush* for the defendants.

DENMAN, J., held that the action was one to enforce an agreement for the application of the funds of a trade union to provide benefits to members; and, therefore, section 4, subsection 3 (*a*) of the Trades Unions Act, 1871, prevented the Act from enabling it to be enforced; and, inasmuch as previously to the Act it could not have been enforced, judgment must be given for the defendants.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
July 19.
Re COPSEY.

Practice—Motion by Receiver in Liquidation—Adoption by Trustee.

A notice of motion to commit certain persons for contempt of Court was given by the receiver appointed in this liquidation; but, before the motion came on to be heard, a different person was appointed trustee.

The trustee wished to adopt the receiver's motion; and the question arose whether he could do so without giving a fresh notice of motion, or placing any formal document on the file.

Mr. E. C. Willis for the motion.

Mr. J. P. Grain, contrà.

The CHIEF JUDGE held that the motion was properly before the Court.

Table of Cases.

HOUSE OF LORDS.

House of Lords. July 8, 9. } ACCRINGTON LOCAL BOARD OF HEALTH *v.* NUTTER.

This was an appeal from a decision of the Court of Appeal reversing a judgment of the Queen's Bench Division.

The action was brought, by the respondent against the appellants, to recover compensation under the Public Health Act, 1848, for damage sustained by the raising, by the appellants, of the footpath of a street in front of the respondent's house; the question being, whether this footpath was within the compensation clauses of that Act.

The Queen's Bench Division decided in favour of the appellants, and the Court of Appeal reversed that decision.

Mr. Russell and *Mr. Crompton* for the appellants.

Mr. Gully and *Mr. Jordan* for the respondents.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD PENZANCE, LORD BLACKBURN, and LORD WATSON) affirmed the judgment of the Court of Appeal; and dismissed the appeal, with costs.

House of Lords. July 20, 22. } THE PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* THE LONDON AND PROVINCIAL SUPPLY ASSOCIATION (LIMITED).

This was an appeal from a decision of the Court of Appeal reversing a decision of the Queen's Bench Division, which had overruled a decision of the judge of the County Court of Bloomsbury, in an action for a penalty under the Pharmacy Act, 1858 (31 & 32 Vict. c. 121.)

The Pharmacy Act, 1868, sections 1 and 15, makes it 'unlawful for any person to,' and imposes a penalty on 'any person who shall sell or keep an open shop for retailing, dispensing, or compounding poisons, or who shall take or use the title of chemist and druggist, or chemist or druggist, not being a duly registered pharmaceutical chemist.

The respondents were a limited company, registered under the Companies Acts, 1862 and 1867; and, amongst other kinds of business, they sold, and kept an open shop for retailing, dispensing, and compounding, poisons within the Pharmacy Act, 1868. The shop was under the management of a shareholder and two assistants, who were duly registered pharmaceutical chemists.

The question was, whether the word 'person' in the Pharmacy Act included artificial persons as well as

natural, it being admitted that artificial persons were incapable of becoming duly qualified chemists under the Act.

The judge of the County Court decided in favour of the respondents. The Queen's Bench Division reversed that decision, holding the respondents to be both within the letter and the scope of the Act.

The Court of Appeal reversed the decision of the Queen's Bench Division, on the ground that the word 'person' in an Act of Parliament does not *primâ facie* include a corporation, and that the respondents were not within the mischief aimed at by the Act.

This appeal was then brought.

Mr. Benjamin and *Mr. Lumley Smith* for the appellants.

Mr. A. Wills and *Mr. Finlay* for the respondents.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) held that the word 'person' may, and, perhaps, *primâ facie* does, in a public statute include a person in law; but that, where a statute provides that persons are not to do a particular act, unless they comply with certain conditions, the Legislature *primâ facie*, unless the context shows a contrary intention, only contemplates a class of persons who can comply. In the present case, the context showed that the Legislature was not thinking of artificial persons, and the liberty of trade was not to be curtailed by unnecessary inference.

The judgment in the Court below was, therefore, affirmed; and the appeal dismissed, with costs.

House of Lords. June 29. July 1, 2, 23. — THE STOOMVAART MAATSCHAPPY NEDERLAND *v.* THE PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY.

This was an appeal from a judgment of the Court of Appeal varying a judgment of the Admiralty Division. The appellants, owners of the screw steamship Voorwaarts, claimed damages for a collision between their vessel and the screw steamship Khedive, belonging to the respondents.

The questions at issue were pure questions of fact, and the evidence was very conflicting. The judge of the Admiralty Division pronounced both vessels to have been to blame, and made the usual order for the division of the damage, without any order as to costs. The Court of Appeal varied this decree by pronouncing the Voorwaarts to have been solely in fault, and gave relief to the respondents on this footing, with their costs in both Courts.

Sir F. Herschell (*Solicitor-General*), *Mr. Milward*, *Mr. Webster*, and *Mr. Phillimore* for the appellants.

Mr. Butt, *Mr. Watkin Williams*, and *Mr. Clarkson* for the respondents.

Their LORDSHIPS (LORD BLACKBURN, LORD WATSON, and LORD HATHERLEY) reversed the decision of the Court of Appeal; and restored the decision of the Admiralty Division, with costs to the appellants in the Court below and of the appeal.

COURT OF APPEAL.

Court of Appeal. JAMES, L.J. BRETT, L.J. COTTON, L.J. July 13, 23, 24. — THE TOTTENHAM LOCAL BOARD *v.* ROWELL.

Public Health Act, 1848 (11 & 12 *Vict. c.* 63), *ss.* 69, 129—*Local Government Act*, 1858 (21 & 22 *Vict. c.* 98), *ss.* 62, 63—*Local Government Amendment Act*, 1861 (24 & 25 *Vict. c.* 61), *s.* 24—*Sir John Jervis's Act* (11 & 12 *Vict. c.* 43), *s.* 11—*Charge on Land—Summary Proceedings not taken within Six Months—Paving and Sewering Expenses.*

Appeal from judgment of MALINS, V.C., dismissing the plaintiff's action. (The case is reported below, 49 Law J. Rep. Chanc. 147.)

The plaintiff appealed.

Mr. N. Higgins and *Mr. Ilbert* for the plaintiffs.

Mr. J. Pearson and *Mr. Manby* for the respondents.

Their LORDSHIPS held that upon the grammatical construction of section 62 of the Local Government Act, 1858, a charge was imposed upon the premises as soon as the expenses were incurred by the Board, and that there was no limitation of the time during which the charge was to remain in existence. This charge was not merely subsidiary to the summary remedies given by the Act against the owners and occupiers of the premises; and, although such summary proceedings were, of necessity, to be taken within the period of six months, the charge was not affected by such limit of time, but remained in force and might be resorted to when the summary remedies had failed to produce payment, or, as here, had not been put in force. The plaintiffs were accordingly entitled to the charge which they claimed on the land of the defendant for the assessed portion of the rate, and had not lost their right to enforce it by lapse of time.

HIGH COURT OF JUSTICE.

Chancery Division. JESSEL, M.R. July 23. — BRAGINTON *v.* YATES.

Practice—Notice of Trial before Official Referee—Jurisdiction—Judicature Act, 1873, *ss.* 56, 57—*Rules of Court*, 1875, *Order XXXVI., Rules* 2, 3.

In this case the plaintiffs gave notice of trial of the action before an official referee; and the defendants now moved that, notwithstanding the notice, the action might be tried before a judge, and that the notice might be set aside on the ground that there was no power, under the Judicature Acts and Rules, to give notice of trial in that way.

Mr. Davey and *Mr. Maidlow* for the defendants.

Mr. Chitty and *Mr. Brodie Cooper* for the plaintiffs.

The MASTER OF THE ROLLS said he was bound by the decision of the Court of Appeal in *Longman* v. *East*, 47 Law J. Rep. C.P. 211; s. c. L. R. 3 C.P. Div. 142, where it was held that the Court or judge had no power under

sections 56 and 57 of the Judicature Act, 1873, to refer an action to an official referee. He therefore allowed the motion, with costs.

Chancery Division. MALINS, V.C. July 19, 20. } *In re* SPRAGUE. MILEY *v.* CAPE.

Will—Life Interest until Alienation—Power of Appointment—In default of Appointment to Children on attaining Twenty-five—Void Gift—Trustee in Bankruptcy.

Daniel Sprague, by his will, dated in 1864, among other things, directed that so much of the sums of money to which each of his three sons (of whom S. D. Sprague was one) would be entitled under his will as would produce the sum of 250*l.* per annum for each of them should be held by his executors and trustees upon trust, to invest the amount, and to pay the interest to each of his sons for his benefit during his life, or until he should do any act by which his interest therein should be alienated, charged, or encumbered; and, after the decease of each of his sons, or his bankruptcy or insolvency, then as well the principal so set apart to produce the sum of 250*l.* as the future yearly produce of the same, should be held in trust for all the children of the son so dying or forfeiting his interest in such shares as each son should by deed or will appoint; and, in default of appointment, in trust for all the children of each son respectively, who, being a son or sons, should attain the age of twenty-five, or, being a daughter or daughters, should attain that age or marry, equally.

The testator died in 1868; and, by a deed dated in March, 1872, to which S. D. Sprague and the other children of the testator were parties, and also the trustees of the will, after reciting that the testator had made a bequest in favour of S. D. Sprague's children, which would, in default of appointment, be void for remoteness, it was agreed that the principal sum, from which the 250*l.* a year arose, should be held by the trustees in favour of S. D. Sprague's children, in acordance with the trusts of the testator's will.

S. D. Sprague afterwards became bankrupt, not having previously exercised the power of appointment among his children.

The trustee in bankruptcy of S. D. Sprague now claimed to be entitled to the principal sum from which the 250*l.* a year arose.

Mr. Glasse and *Mr. Davenport* appeared for the trustees of the will.

Mr. Higgins and *Mr. W. W. Cooper* for the trustee in bankruptcy.

Mr. Pearson, *Mr. Freeman* and *Mr. F. T. Procter* for the children of S. D. Sprague.

Mr. E. Ford for other parties.

MALINS, V.C., was of opinion that, under the will alone, as the property was to be held by the trustees in default of appointment in trust for the children who should attain twenty-five, which gift was void for remoteness, the trustee in bankruptcy was entitled; but that by the deed of 1872 a new trust was created, which was a valid one, under which the children of S. D. Sprague became entitled to the exclusion of the trustee in bankruptcy.

Chancery Division. MALINS, V.C. July 20, 21. } WELLMAN *v.* WELLMAN.

Settlement—No Power of Revocation—Rectification.

This was an action for the rectification of a settlement made in 1861. Noel Wellman was seised in fee of an estate called the Wick Norton estate. He was also entitled for life to, and his son, Charles Wellman, was tenant in tail in remainder of, an estate called the West Zoyland estate. When Charles came of age he barred his estate tail in the latter estate, which was sold for 18,000*l.*, and the purchase money was expended in erecting a mansion on the Wick Norton estate.

By an indenture of settlement, dated October 1, 1861, the Wick Norton estate was conveyed to trustees to the use of Noel Wellman for life, remainder to Charles Wellman for life and his first and other sons in tail male, with remainder to the second and other sons of Noel Wellman for life and their sons in tail male. This settlement was now sought to be rectified on the ground that the original draft contained a power of revocation, which was not introduced in the engrossment which was executed. There was no evidence to show who had struck the clause out, or on whose authority it was done. Noel Wellman and his son Charles both made an affidavit stating that they were ignorant of the effect of the deed, and that it was contrary to their desire or intention to settle the estate in the manner in which it was settled entirely out of their power.

Mr. Bristowe and *Mr. Morshead* for the plaintiffs Noel Wellman and Charles Wellman.

Mr. Glasse and *Mr. S. Dickinson* for the eldest son of Charles Wellman, an infant.

Mr. W. W. Karslake for the younger children of Noel Wellman.

Mr. Langworthy for the trustees of the settlement.

Mr. Fooks for a mortgagee.

MALINS, V.C., said it required no argument to show that such a settlement as this could not be allowed to stand; that it was contrary to the interests of the family that such a deed should have been executed, under which no provision was made for the wives and younger children both of the father and son; and, under the circumstances, he should make a decree for the rectification of the deed; and he thought a proper settlement ought to be prepared under the direction of the Court.

Chancery Division. MALINS, V.C. July 22. } *In re* THE ANGLO-VIRGINIAN FREEHOLD LAND COMPANY.

Company—Winding-up Petition—Abandonment of Petition—Opposing Creditors—Costs of Appearance.

A petition was presented for winding up this company, which was answered for April 9, 1880. The usual advertisements were issued in the *Gazette*; and, on April 8, Messrs. Waterton & Co. sent to the petitioner's solicitor for a copy of the petition, but were unable to obtain it. On the following day Messrs. Waterton appeared by counsel to oppose the petition; but, on the petition being

called on, no counsel appeared in support, and the petition was taken as abandoned, and Messrs. Waterton were allowed their costs of appearance.

Mr. Seward Brice now moved that the order, so far as regarded the payment of these costs, might be discharged.

Mr. Grosvenor Woods, for Messrs. Waterton, in support of the order.

MALINS, V.C., was of opinion that, the petition having been advertised in the *Gazette*, which was an invitation for creditors to attend, Messrs. Waterton were justified in appearing, and, so appearing, were entitled to their costs; and he dismissed the motion, with costs.

Chancery Division.
HALL, V.C.
July 23, 24, 26.
CHAMBERLAIN *v.* NAPIER.

Scotch Settlement—Conflict of Laws—Law governing Construction of Settlement—Power of Appointment, whether exclusive—'Such Child or Children.'

In January, 1857, the settlement made on the marriage of Sir J. J. Chamberlain (a domiciled Englishman) and a Miss Wilson (a domiciled Scotchwoman) was executed in Scotland, and trusts were separately declared of the several properties brought into settlement, which were thereby treated as personalty; those relating to the husband's fortune being in English form, while those relating to the wife's fortune were in Scotch form. The trusts of the husband's fortune were for the husband and wife successively for life, and, after the decease of the survivor in trust, 'for such child or children of the said intended marriage, and, if more than one, in such shares, and in such manner and form, and to vest at such time or times, and to be subject to such powers and restrictions,' as the husband and wife by deed, or the survivor by deed or will, should appoint. The general clauses of the settlement (*e.g.* a power to the trustees 'to assume' other trustees, and that a majority should be a quorum) were mainly in Scotch form. The wife survived; and by deed in March, 1871, she appointed the whole of the husband's fortune to her eldest son, the present baronet, absolutely. Two questions arose—(1) whether the settlement as to the husband's fortune was to be construed according to English, or according to Scotch, law? (2) whether the exclusive appointment of 1871 was authorised by the terms of the power?

Mr. W. Pearson and *Mr. E. Ward*, for the plaintiff the present baronet, contended that, upon the face of the settlement, it was manifestly the intention of the parties that, as regards the husband's fortune, the settlement should be construed according to English law; and, further, that according to English law the power was exclusive and the appointment valid.

Mr. Crossley and *Mr. Young*, for the younger children of the marriage, contended that there was nothing in the case to take it out of the ordinary rule, that a contract relating to the personal estate must be construed according to the law of the place where it was executed; and, further, that, even if English law applied, the power was not exclusive, and the appointment bad. They stated that, according to Scotch law, the appointment was clearly bad.

Mr. Graham Hastings and *Mr. Byrne* and *Mr. Farwell* also appeared.

HALL, V.C., said that the rule merely was that the contract should *primâ facie* be construed according to the *lex loci contractus*; but that rule did not apply when there was an intention manifested to the contrary. Here the marked contrast between the two sets of trusts clearly evidenced an intention that, as to the husband's fortune, the settlement should be construed according to English law. He further held that the power was exclusive and the appointment valid.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
James, L.J.
Brett, L.J.
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July 15, 22, 29.

In re Gourlay. *Ex parte* Abbott.

Judgment Creditor—Writ of 'Elegit'—Seizure of Goods by Sheriff—Inquisition and Appraisement by Jury—Liquidation Petition—Secured Creditor—The Bankruptcy Act, 1869, *ss.* 16 (*subs.* 5) *and* 87.

Appeal from decision of the Chief Judge, reported 49 Law J. Rep. Bankr. 20 (*sub nom. Re Goulay, ex parte Ormanday*).

Mr. De Gex and *Mr. Jordan* for the appellant trustee.

Mr. Winslow and *Mr. E. C. Willis* for the judgment creditor, the respondent.

Their Lordships affirmed the decision of the Chief Judge.

Court of Appeal.
James, L.J.
Brett, L.J.
Cotton, L.J.
Aug. 3.

Ascroft v. London and North-Western Railway Company.

Lands Clauses Consolidation Act, s. 92—*Part of House.*

In this appeal from an interlocutory injunction granted by Bacon, V.C. (noted *ante*, p. 89), the injunction was dissolved upon terms.

Mr. Hemming and *Mr. Clare* for the appellant.

Sir H. M. Jackson and *Mr. Finch* for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.
Jessel, M.R.
July 29.

Emma Silver Mining Company v. Grant.

Company—Promoter—Money obtained from Vendor—Order to refund—Bankruptcy of Promoter—Order of Discharge—'Debt incurred by means of Fraud or Breach of Trust'—Bankruptcy Act, 1869, *s.* 49.

In this case his lordship, in February, 1879, as reported L. R. 11 Chanc. Div. 918, found certain issues against the defendant that he was a 'promoter' of the company, and that he had received large sums as 'promoter' from the vendors without the knowledge of the company, for which he was accountable. The defendant had subsequently filed a petition for liquidation, but had now obtained his discharge. A motion for a personal judgment against him was now made, on the ground that the 'debt was incurred by means of fraud and breach of trust;' and that the defendant, by section 49 of the Bankruptcy Act, 1869, was not released by his liquidation.

Mr. Davey and *Mr. Grosvenor Woods* for the plaintiff company.

Mr. Benjamin and *Mr. Everitt* for the defendant Grant.

The MASTER OF THE ROLLS was of opinion that the debt had been incurred by fraud, and also by means of a breach of trust; and made an order for payment of the amount found due from the defendant by the findings in the issues.

Chancery Division.
JESSEL, M.R.
July 30.
} CHRISTIE *v.* SANDBERG.

Charity—Jurisdiction of County Court—Claims of Managers of School against their Collector—Charitable Trusts Act (16 & 17 *Vict. c.* 137), *s.* 17.

In re a plaint in the County Court at Settle.

In this case cause was shown against an order *nisi* made for removing a plaint by *certiorari* to this Court. The plaint was by the managers of a school against the incumbent of the parish for an account and payment of moneys of the school received by him. The order *nisi* had been obtained on the ground that the matter in dispute related to a charity, and that the County Court had no jurisdiction to entertain the same under section 17 of the Charitable Trusts Act (16 & 17 Vict. c. 137). The defendant also claimed to be a joint manager with the plaintiffs.

Mr. Bagshawe and *Mr. W. Barber* showed cause.

Mr. Ince and *Mr. Whitaker* in support of the rule.

The MASTER OF THE ROLLS discharged the order *nisi*; being of opinion that no question relating to a charity was involved, and that the claim simply amounted to one by the managers of a school against their collector for the sums in his hands.

Chancery Division.
MALINS, V.C.
July 30.
} *Re* SHIPPERDSON'S TRUSTS.

Trustee Act, 1850, *s.* 32—*New Trustees—Appointment of continuing Trustees in Place of themselves and a retiring Trustee.*

Edmund H. Shipperdson, by his will, dated March 6, 1878, appointed Edmund Hopper and three others trustees. A petition was now presented, stating that Edmund Hopper was about to leave the country, and was therefore desirous of retiring from the trusteeship; and praying that the three trustees may be appointed 'trustees of the will in the place of, and in substitution for,' the four trustees.

Mr. Glasse and *Mr. Whitehorne* for the petition.

Mr. C. H. Turner for the respondents.

MALINS, V.C., said that he had no doubt about his having power to make the order. The order would be as prayed, prefacing it with a declaration that Edmund Hopper was desirous to retire from the trusts of the will.

Chancery Division.
MALINS, V.C.
Aug. 2.
} *Re* BOYSE. CROFTON *v.* CROFTON.

Administration Decree — Foreign Creditor — Intended Action to enforce Claim in Foreign Country—Injunction.

In this action the ordinary decree had been made to administer the estate of the late Jane S. Boyse, widow, who for several years previous to her death had resided at Marseilles with a M. Gauthier. The usual advertisements had been issued for creditors. Messrs. Delpiano, French tradesmen resident at Marseilles, had sent in a claim; notice had been given to them by the defendant, the administrator, to prove their claim; and in May, 1880, they filed an affidavit to prove a debt for 30,000 francs for carriages, &c., supplied to Mrs. Boyse at her request.

On July 24 they wrote to the defendant's solicitors, saying that they withdrew their claim, and stating that they intended to take immediate proceedings in France against the defendant. The defendant thereupon moved for an injunction to restrain them from commencing any action or other proceedings in France, or otherwise than by application in the action, for the purpose of enforcing their claim against the estate; and that they might be ordered to pay the costs of the motion.

Mr. Glasse and *Mr. Hadley* appeared in support of the motion.

Mr. Vaughan Hawkins for the French creditors.

MALINS, V.C., said that these French creditors, having brought in a claim and found it contested, had then withdrawn it. He should feel very great difficulty in granting an injunction against foreigners resident in a foreign country. Besides, it would be quite useless for the French creditors to take any proceedings other than such as would establish their debt in this Court. The motion must be refused; but without costs.

Chancery Division.
BACON, V.C.
July 29.
} WOODWARD *v.* GEARY.

Practice—Separate Appearance of Husband and Wife—Two Sets of Costs allowed.

This was an action for administration of a will brought against the executrix, Mrs. Geary, and her husband. Mrs. Geary and her husband were living apart, and Mrs. Geary obtained an order to appear and defend separately. The question was now raised, on further consideration, whether Mr. and Mrs. Geary were entitled to separate costs out of the estate. The plaintiff had taken an order for an account separately against both Mr. and Mrs. Geary. The chief clerk found that nothing had been received or paid by Mr. Geary on account of the estate, and that Mrs. Geary had fully accounted.

Mr. Miller, Mr. Owen, Mr. Mitchell, and *Mr. Berkeley* for the parties.

BACON, V.C., said that, under the circumstances, Mr. and Mrs. Geary were entitled to two sets of costs out of the estate.

Chancery Division. Bacon, V.C. July 30. } Benbow & Sons *v.* Low, Son, & Haydon (by Original Action); and Low, Son, & Haydon *v.* Benbow & Sons (by Counter-claim).

Practice—Discovery—Interrogatories—Rules of Court, 1875, *Order XXXI., Rules* 5, 8, 9.

Adjourned summons.

The action was brought to restrain the defendants from using a trade name—viz. 'Low's Highly Perfumed Brown Windsor Soap'—either with or without certain labels or wrappers, and from selling their soap as the plaintiffs'. The defendants, by their counter-claim, claimed similar relief; and, also, claimed an account of all soap sold by the plaintiffs as and for soap of the defendants, and of the profits of such sale.

Both plaintiffs and defendants claimed their right under two persons who were in business in copartnership up to the year 1861, and made and sold this particular soap under this particular name. In that year the partnership was dissolved, and the respective predecessors of the plaintiffs and defendants respectively set up separate businesses for the manufacture of soap, &c. The question in dispute among them was, who was entitled to use the name and wrappers originally applied to, and used with, the soap?

The defendants, among other interrogatories, exhibited the following: 'Let the plaintiffs set forth the respective quantities of soap sold by them and their predecessors in business in connection with their labels and wrappers, bearing the plaintiffs' alleged trade-mark, from the year 1862 to the year 1879, both inclusive; distinguishing the quantities sold in each year, and distinguishing between the quantities sold in England and in the United States of America, and on the continent of Europe respectively.'

The plaintiffs declined to answer this interrogatory 'on the following amongst other grounds—that the accounts here asked for form part of the relief sought by the defendants' counter-claim, and that the defendants are not entitled to such accounts until after they have obtained judgment in their favour on their counter-claim; that such accounts are not necessary for the trial of the action; and that the interrogatory is not material at this stage of the action.'

The summons was taken out by the defendants to compel the plaintiffs to answer the interrogatory.

Sir H. M. Jackson and *Mr. Byrne* for the defendants.

Mr. Willis Bund for the plaintiffs.

Bacon, V.C., disallowed the interrogatory.

Chancery Division. Bacon, V.C. Aug. 4. } *Re* Automaton Block Signal Company (Limited).

Company — Winding up—Practice — Advertisement in local Newspapers—General Orders, 1862, *Rule* 2.

This was a petition for continuing the winding up of the company under the supervision of the Court. The company carried on business at Blackburn, in Lancashire. The petition had been advertised in two daily papers—the *Manchester Courier* and the *Manchester Guardian*. The respondents objected that the advertisements in these papers was not a sufficient compliance with Rule 2 of the Order of 1862, which directs the advertisement to be in 'two local newspapers circulating in the district;' but that the petition ought to have been advertised in two Blackburn weekly papers, in which, according to their affidavits, all advertisements relating to the company had hitherto appeared. It was not, however, denied that the Manchester papers circulated in the district.

Sir H. Jackson and *Mr. Gregory Walker* for the petition.

Mr. Buckley, for some shareholders, opposed.

Mr. Jepson for the liquidator.

Bacon, V.C., said that the petition had been properly advertised in compliance with the rule; and made the usual supervision order.

Chancery Division. Bacon, V.C. Aug. 4. } Wainman *v.* Wainman.

Practice—Security for Costs—Both Parties out of Jurisdiction.

This was an adjourned summons taken out by the defendant, asking that the plaintiff might give security for the costs of the action, on the ground that he was resident out of the jurisdiction. The plaintiff resisted the application, on the ground that the defendant was also resident out of the jurisdiction.

Mr. Brice, for the summons, cited *Sturla* v. *Freccia*, July 18, 1877, where the Court of Appeal directed additional security to be given, though the parties were all foreigners, overruling the order of Malins, V.C., reported W. N. 1877, 166.

Mr. E. T. Holland for the plaintiff.

Bacon, V.C., held that it was the practice of the Court to direct security to be given in such a case; and made an order accordingly.

Divisional Court. (Sitting for Q.B., C.P., and Exch. Divisions.) July 29. } Grant *v.* Holland.

Practice—Time for applying for a new Trial—Rules of Court, 1875, *Order XXXIX., Rule* 1*a.*

In this case, the trial of the action had taken place in London on Thursday, July 1, when verdict and judgment were given for the defendant. The next Divisional Court to hear motions sat upon Monday, July 5. The plaintiff obtained a rule *nisi* for a new trial from the Divisional Court which sat on Thursday, July 8. The defendant subsequently obtained a rule *nisi* to set aside the previous rule on the ground of irregularity, and as being out of time. The ground of irregularity was explained by statement of counsel; and the second point—as to time—now came on for argument.

Candy, for the plaintiff, showed cause against the second rule *nisi*.

Pollard, for the defendant, in support of the rule, argued that Order XXXIX., Rule 1*a*, as amended by the Rules of March, 1879, absolutely required that the

motion for a new trial should be made within four days, provided that a Court competent to hear the motion sat on any of those four days. Here, such a Court had sat on the third day.

The COURT (COCKBURN, L.C.J., and HAWKINS, J.) held that the application for the new trial was in time. According to the proper interpretation of the rule, the applicant has the whole of four days; and if a Divisional Court does not sit on the fourth day, then he has until the next sitting of the Divisional Court.

Rule discharged, with costs.

Divisional Court.
(Sitting for Q.B., C.P., and Exch. Divisions.)
Aug. 2.

ASQUITH *v.* MOLINEAUX.

Practice—Time for giving Notice of Trial—Rules of Court, 1875, *Order XXXVI., Rule* 3.

This was an appeal from LOPES, J., sitting at chambers, who had refused to set aside a notice of trial given by the plaintiff with his reply. As a matter of fact, the reply did not close the pleadings; for a formal rejoinder was necessary from the defendant in order to join issue. The rejoinder had been delivered.

Clay, for the defendant, argued that the intention of Order XXXVI., Rule 3, was, as interpreted by Stephen, J., in *The Metropolitan Inner Circle Completion Railway Company* v. *The Metropolitan Railway Company*, 49 Law J. Rep. Exch. 505, that notice of trial could only be given with the reply, when the reply actually closed the pleadings.

Smart (of the Chancery bar), for the plaintiff, was not called upon.

The COURT (COCKBURN, L.C.J., and HAWKINS, J.) held that the words of the rule were clear. The plaintiff was within his strict right in giving notice of trial with his reply.

Appeal dismissed. Plaintiff's costs to be costs in the cause.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
Selborne, L.C.
Lord Coleridge, C.J.
Brett, L.J.
Nov. 4.
} Hamlyn v. Betteley.

Practice—Interpleader Issue—Trial of, by Jury—Judicature Act, 1873 (36 & 37 *Vict. c.* 66), *s.* 100—*Rules of Court, Order I., Rule* 2—*Order XXXVI., Rules* 2 *and* 3, 1 & 2 *Wm. IV. c.* 58—23 & 24 *Vict. c.* 126.

Appeal from the judgment of Kelly, C.B., at the trial without a jury.

An interpleader issue having been directed between the plaintiff (the claimant, under a bill of sale, of goods taken in execution) and the defendant (the execution creditor), the usual order was made for the trial of the issue.

The trial took place before Denman, J., and a jury.

A new trial was ordered, when the plaintiff gave notice of trial before a judge alone.

On the case coming on before Kelly, C.B., without a jury, it was objected, on behalf of the defendant, that there was no power to try the case without a jury. The objection was overruled, the trial proceeded, and judgment was given for the plaintiff.

The defendant appealed.

Mr. Murphy and *Mr. J. G. Witt* for the appellant.

Mr. Willis and *Mr. Edward Pollock* for the plaintiff.

Their Lordships held that, an order having been made that the issue should be tried, it was not competent for the plaintiff to give a notice for trial without a jury; and they, therefore, allowed the appeal, and ordered a new trial, and ordered the plaintiff to pay the costs of the appeal and of the abortive trial.

Court of Appeal.
Jessel, M.R.
James, L.J.
Cotton, L.J.
Nov. 4.
} Benbow v. Low.

Practice—Discovery—Interrogatories—Rules of Court, Order XXXI., Rules 5, 8, 9.

Appeal from decision of Bacon, V.C. (noted *ante*, p. 115), disallowing interrogatories on the ground that the discovery sought formed part of the relief claimed by their counter-claim, and was not necessary or material at that stage of the action.

Sir H. Jackson and *Mr. E. W. Byrne* for the appellants.

Mr. Aston and *Mr. Willis-Bund* for the respondents.

Decision affirmed.

Court of Appeal.
Jessel, M.R.
James, L.J.
Cotton, L.J.
Nov. 4.
} Republic of Costa Rica v. Strousberg.

Special Examiner—Judgment Debtor—Rules of Court, 1875, *Order XLV., Rule* 1—*Examination.*

Appeal from decision of Malins, V.C. (reported 49 Law J. Rep. Chanc. 701), holding that, under an order

under Order LXV., directing the examination of a judgment debtor 'as to whether any, and what, debts are owing to him,' the examination is not to go beyond the question of what debts are owing to the debtor.

Mr. Glasse, *Mr. Kekewich*, and *Mr. Giffard* for the appellants.

Mr. Higgins and *Mr. Medd* for the defendant.

Their LORDSHIPS reversed the decision of the Vice-Chancellor; being of opinion that the defendant was bound to answer all questions that were pertinent to the matter and would enable the plaintiff to ascertain what debts, if any, were due to the defendant, and could not restrict the examination to the simple question 'whether any, and what, debts are due to him.'

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
COTTON, L.J.
Nov. 4.

WARNER *v.* MOSSES.

Practice—Agreement to take Evidence by Affidavit—Procedure when Agreement cannot be performed—Order XXXVII., Rules 1, 4*—Order XXXVIII.*

In this action, the parties agreed to take the evidence by affidavit. Afterwards the plaintiff ascertained that some persons who could give material evidence on his behalf refused to make affidavits, and thereupon obtained an order in chambers 'to examine witnesses *ex parte* on oath before an examiner, touching the matters in question in this action.'

The defendant appealed against this order.

Mr. S. Dickinson for the appellant.

Sir H. Jackson and *Mr. G. Woods* for the respondent.

Their LORDSHIPS discharged the order; being of opinion that there was no jurisdiction to make it, and that, even if there were jurisdiction, it could not be maintained under the circumstances. When parties agree to take evidence by affidavit, and either party afterwards finds that he has made a mistake, and that some of his witnesses will not make affidavits, his proper course is to take out a summons for leave to be relieved from the agreement; and the Court will, in a proper case, make an order giving the other party the option either to allow the particular witnesses to be examined *vivâ voce* at the trial, or to discharge the agreement, and to have all the evidence taken orally at the trial.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
COTTON, L.J.
Nov. 5.

Re VON HAGEN. SPERLING *v.* ROCHEFORT.

General Power to appoint Real Estate by Will—Gift over in default of Appointment—Appointment to Trustees upon Trust for C.—Death of C. in Lifetime of Appointor—Resulting Trust for Settlor or Appointor's Heir-at-law.

Appeal from decision of MALINS, V.C. (reported 49 Law J. Rep. Chanc. 705).

Mr. Joshua Williams and *Mr. E. S. Ford* for the appellant.

Mr. J. Pearson and *Mr. Rodwell* for the respondent.

Their LORDSHIPS reversed the decision of the Vice-Chancellor; holding that there was no distinction between real and personal estate in such cases; that it was a question not of intention but of resulting trust; that the case was governed by the cases of *Brickenden* v. *Williams*, 38 Law J. Rep. Chanc. 222, and *Wilkinson* v. *Schneider*, 39 Law J. Rep. Chanc. 410; and that there was a resulting trust for the appointor's heir-at-law.

Court of Appeal.
SELBORNE, L.C.
LORD COLERIDGE, C.J.
BRETT, L.J.
Nov. 8.

REGINA *v.* THE JUSTICES OF SURREY.

Prison Act, 1877 (40 & 41 *Vict. c.* 21), *ss.* 4, 57—3 & 4 *Vict. c.* 54, *s.* 2—*Maintenance of insane Prisoners.*

Appeal from the Queen's Bench Division (see 48 Law J. Rep. M.C. 188).

Appeal against a rule absolute for a *mandamus* directing the justices of Surrey to order their treasurer to pay the expenses incurred in respect of a prisoner who, being certified to be insane, had been transferred from the county gaol to the county lunatic asylum.

The justices appealed.

The Solicitor-General (*Sir F. Herschell*) and *Mr. Clarke* for the appellants.

Sir J. Holker (with him *Mr. Poland* and *Mr. A. L. Smith*), for the Crown, was stopped by the Court.

Their LORDSHIPS held that the county was liable to pay the expenses in question; and dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
July 31.

In re ENNIS. WATERTON *v.* ENNIS.

Administration—Intestate—Advances to Children—Form of Inquiry.

This was an action for the administration of the estate of an intestate. It appeared that he had, in his lifetime, paid various sums of money to or on account of some of his children. The proposed minutes, following the form given in 2 'Seton on Decrees,' 853, directed an inquiry as to whether any of the children 'derived or received from him, in his lifetime, any and what sum of money or other estates and property in the nature of an advancement in the world.'

Mr. B. B. Rogers and *Mr. Jason Smith* were for the different parties.

The MASTER OF THE ROLLS said that the inquiry should follow the words of the Statute of Distributions (22 & 23 Car. II. c. 10, s. 5), and be whether any child had had 'any estate by the settlement of the intestate,' or had been 'advanced by the intestate, in his lifetime, by portion or portions.'

Chancery Division.
JESSEL, M.R.
Aug. 3.

HUGHES *v.* GARRARD.

Sale of Business—Soliciting Customers of Old Firm—Motion for Injunction.

The defendant and the plaintiffs had been in partnership. The defendant, in consideration of 5,000*l.*, sold to

the plaintiffs 'all his share and interest' in the old firm, and agreed that he would on a day named retire from the said firm and the business carried on by them, and transfer to the plaintiffs 'all his share and interest as aforesaid;' and that 'such business' should, as from that date, belong exclusively to the plaintiffs.

The sale having been made, the defendant set up in business on his own account; and the plaintiffs alleged that, in carrying on such business, he solicited customers of the old firm. They therefore moved to restrain him from applying to any person who was a customer of the old firm at the date of his (the defendant's) retiring therefrom.

Mr. Chitty and *Mr. Northmore Lawrence* were for the plaintiffs.

Mr. Ince was for the defendant.

The MASTER OF THE ROLLS was, himself, of opinion that the plaintiffs were entitled to an injunction; but considered himself bound by the recent decision of the Court of Appeal, in a case of *Leggott* v. *Barrett* (not yet reported), to refuse it.

Chancery Division. JESSEL, M.R. Nov. 6. } *In re* GREAT BRITAIN MUTUAL LIFE ASSURANCE SOCIETY.

Life Assurance Society's Act, 1870 (33 & 34 *Vict. c.* 61), *s.* 21—*Winding up—Policy-holder—Creditor—Fiat—Injunction.*

In this case a petition, under the Companies Act, 1862, was presented by the holder of a policy on a life that had fallen in, for the winding up of the society on the ground of its insolvency. The procedure by special fiat and inquiry in chambers as to the solvency of the society under section 21 of the Life Assurance Companies Act, 1870, had not been followed. The petition had been advertised in the usual way under the Companies Act, 1862, and was about to be heard.

Mr. Roxburgh and *Mr. W. W. Karslake* now moved that the fiat might be struck out, so that the petitioner might, in effect, be compelled to proceed by special fiat under the Life Assurance Companies Act, 1870.

Mr. Chitty, *Mr. Ince*, and *Mr. Beddall*, for the petitioner, opposed the application.

The MASTER OF THE ROLLS was of opinion that, according to the literal interpretation of section 21, the petitioner was a 'policy-holder,' and therefore that she had not the ordinary right of petitioning as a creditor under the Companies Act, 1862. She must follow the practice under the Life Assurance Companies Act, 1870, and the motion must be allowed, with costs.

Chancery Division. MALINS, V.C. Nov. 3. } *In re* JENNENS. WILLIS *v.* EARL HOWE.

Demurrer—Will—Intestacy—Real and Personal Estate—Statute of Limitations (3 & 4 *Wm. IV. c.* 27), *s.* 26—23 & 24 *Vict. c.* 38, *s.* 13—*Secret Trust.*

This action was commenced by persons claiming as heirs-at-law and personal representatives of one William Jennens—who died in 1798, and who had made a will in 1726, giving all his property to his mother (who died in his lifetime), but made no other disposition of it—against Earl Howe, the present owner of the real estates, and the persons who had become entitled to the personal estate, which was of a large amount; and it was in fact an action for ejectment and for an account of the personal estate of the testator.

Demurrers were put in by Earl Howe and by Earl Beauchamp and others who had become possessed of the personal estate.

Mr. Lewin appeared in support of the demurrer of Earl Howe.

Mr. Pearson and *Mr. Cecil Russell* in support of the demurrer of Earl Beauchamp.

Mr. Higgins and *Mr. C. H. Turner* in support of the demurrers of the other parties.

Mr. Bristowe and *Mr. Mulligan*, in support of the claim, contended that, as far as the real estate was concerned, they were within section 26 of the Statute of Limitations, as the estates had been obtained by the predecessors of Earl Howe by means of fraud and concealment; and that, as to the personal estate, section 13 of the Act 23 & 24 Vict. c. 38 was not retrospective; and, further, that that section only applied to persons who had died absolutely intestate, and not to testators.

MALINS, V.C., decided that the first demurrer must be allowed, on the ground that the plaintiffs had shown no case of fraud or concealment bringing them within section 26 of the Statute of Limitations; and that the other two demurrers must also be allowed on the ground that section 13 of 23 & 24 Vict. c. 38 was retrospective, and had been inserted in the Act for the purpose of meeting this very case; and, moreover, that the matter had been adjudicated upon, in 1867, by James, L.J., then Vice-Chancellor, in an unreported case relating to the same property, when he held that the section was retrospective, and allowed the demurrer then filed.

Chancery Division. MALINS, V.C. Nov. 6. } *In re* THE ALEXANDRA PALACE COMPANY.

Company—Winding up—Public Officer—Documents—Interrogatories—Rules of Court, Order XXXI., Rules 1, 4, 5.

In the course of the winding up of the above company, the London Financial Corporation carried in a claim for sums amounting in the whole to 150,000*l.*, alleging that they were creditors of the company for that amount paid in shares taken by them in the Alexandra Palace Company *ultra vires*, a fact known to the latter company when they issued the shares.

The accountant of the Financial Corporation had made an affidavit of documents, and a summons had been taken out in chambers for a further affidavit, which summons was abandoned and another taken out, that the liquidator of the Alexandra Palace Company might be at liberty to deliver interrogatories in writing for the examination of the secretary of the Financial Corporation.

This summons had been adjourned to the judge in chambers, and had been adjourned by him into Court, and now came on.

Mr. Higgins and *Mr. Speed*, in support of the summons, contended that there was no difference, since the Judicature Act, between the proceedings in an action and those under a winding up; and that, under Order XXXI., Rules 1 and 4, they were entitled to the order.

Mr. Everitt, for the London Financial Corporation, opposed the application.

MALINS, V.C., decided that the proceedings in a winding up were in the nature of an action; and that the official liquidator was entitled to the order as asked.

Chancery Division. Bacon, V.C. Nov. 5. } SEEAR *v.* LAWSON. CHATTERTON *v.* LAWSON.

Title of Action—Assignment of Plaintiff's Interest 'pendente Lite'—Order L., Rules 3, 4—Rules of Court, 1875.

Summons, by the defendant, to have the title of this action altered from *Seear* v. *Lawson* to *Chatterton* v. *Lawson*.

The action was a redemption action, brought by the trustee in bankruptcy of the owners of the equity of redemption in certain property. After its commencement, the trustee assigned the equity of redemption to Chatterton, who by an order, of course, made at the Rolls, obtained liberty to attend the proceedings and to carry on the action.

Sir H. M. Jackson and *Mr. Grosvenor Woods* for the defendant.

Mr. Winslow and *Mr. Terrell* for Chatterton.

BACON, V.C.: I cannot discharge the order at the Rolls, giving Chatterton leave to carry on the action of *Seear* v. *Lawson*. Chatterton has bought Seear's right in the property, and can recover nothing more than that right. In my opinion, the record is quite right.

Chancery Division. Denman, J., for Fry, J. July 13, 14. Aug. 7. } NEVILL *v.* SNELLING.

Expectant Heir—Catching Bargain—Usury—Infancy.

The plaintiff was a younger son of the Marquis of Abergavenny; he was entitled to no property, but was dependent entirely upon his father. He received from the defendant, a money lender, a circular letter, offering loans on easy terms. He applied to the defendant for advances, and received several advances on the security of promissory notes for three months. The transactions extended over a period of fifteen months. At the time of the first transaction the plaintiff was under age. Most of the notes were renewed from time to time. Promissory notes for 65*l.* were given for loans of 50*l.*, and notes for 125*l.* for loans of 100*l.*: 15*l.* was paid whenever a note for 65*l.* was renewed.

This action was brought in consequence of bankruptcy proceedings being taken by the defendant against the plaintiff. The plaintiff claimed to have the notes taken only for security for what money had actually been advanced, with simple interest at 5*l.* per cent., and for an injunction restraining bankruptcy proceedings.

In giving evidence, the defendant admitted that he originally made the advances with the expectation of being able to get the money out of the plaintiff's relations by bankruptcy proceedings, or other pressure.

Mr. North and *Mr. E. Ward* for the plaintiff.

Mr. Cookson, *Mr. Everitt*, and *Mr. Glyn* for the defendant.

DENMAN, J., gave judgment for the plaintiff.

Common Pleas Division. Nov. 3. } BURCHELL *v.* HICKISSON.

Negligence—Child unable to take care of itself—Trap.

The plaintiff, a boy four years old, accompanied his sister, who was going on business, to the defendant's house. A flight of steps, protected on either side by railings, led up to the front door. One of these railings was displaced, and the plaintiff, following his sister up the steps, fell through the gap into the area, and was injured. The defendant occupied the basement of the house and let the remainder, together with the front steps and railings. At the time of letting, the railings were out of repair, and there was no agreement or covenant to repair.

The action was tried before GROVE, J., and resulted in a verdict for the plaintiff for 15*l.* A rule *nisi* was subsequently obtained by the defendant to set aside the verdict and enter a nonsuit on the ground that there was no evidence of negligence, and no evidence to show that anything in the nature of a trap existed. Against this rule,

Fitzgerald showed cause.

Willoughby and *J. Gerald Laing* appeared in support.

The COURT (LINDLEY, J., and LOPES, J.) held that plaintiff was in no higher position than that of a person lawfully on the premises; that the duty, therefore, of the defendant towards him was to take care there was no concealed danger or trap; and that there was no evidence of such to go to the jury.

Rule absolute.

Common Pleas Division. Nov. 5. } *In re* ALICE ELIZA SMITH.

Acknowledgment by Married Woman in New Zealand—Affidavit before Ordinary Commissioners—3 & 4 Wm. IV. c. 74, s. 83—15 & 16 Vict. c. 86, s. 22.

Alice Eliza Smith, residing with her husband in New Zealand, was tenant in tail, under a settlement, of certain property in England. A disentailing deed had been prepared with a view to a settlement of the property; and this deed had been acknowledged by Mrs. Smith in New Zealand, before a commissioner authorised to administer oaths, and not before a commissioner specially appointed by the Court of Common Pleas, as required in such case by the 3 & 4 Wm. IV. c. 74, s. 83. The officer of the Court of Common Pleas, at Westminster, doubting whether he could file the certificate of acknowledgment,

A. Morley now applied for an order empowering the officer of Court to file the certificate; and contended that section 22 of 15 & 16 Vict. c. 86, by which (*inter alia*) all acknowledgments required for the purpose of enrolling any deed in the High Court of Chancery may be sworn in any colony before any notary public or person lawfully authorised to administer oaths in such colony, superseded the provisions of 3 & 4 Wm. IV. c. 83.

The COURT (LINDLEY, J., and LOPES, J.) granted the application.

Order accordingly.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
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Nov. 3.

In re CLAY AND TETLEY.

Will—Power of Sale—Charge of Debts—Attempted Exercise by Administratrix 'cum Testamento annexo'—Time for Appealing—Order LVII., Rule 8—*Order LVIII., Rule* 15.

Appeal from decision of HALL, V.C. The case is reported *ante*, p. 102. The Vice-Chancellor had held that an administratrix *cum testamento annexo* could not exercise a power of sale contained in a charge of debts under the 22 & 23 Vict. c. 35, s. 16, upon a summons taken out by the vendor.

The order dismissing the summons was dated June 26, and was to the effect that 'the Court, being of opinion that a good title had not been shown to the hereditaments, did not think fit to make any order, but that the applicant should pay the costs of the application.'

The vendor gave notice of appeal on July 17 after 2 o'clock.

Mr. Simmonds for the vendor.

Mr. Cadman Jones, for the respondent, took the preliminary objection that the notice of appeal was too late; and referred to Order LVII., Rule 8 (April, 1880), and Order LVIII., Rule 15.

The MASTER OF THE ROLLS said that, when the order dismissing an application contained a declaration or expression of opinion of the judge, binding on the parties, that was not a simple refusal of the application within Rule 15 of Order LVIII.; and that the objection could not be sustained.

The appeal was then heard; and dismissed, with costs.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
COTTON, L.J.
Nov. 3.

In re ALBION LIFE ASSURANCE SOCIETY.

Insurance Company—Shareholders and Policyholders.

Appeal from decision of MALINS, V.C. (reported, *ante*, p. 99), holding that the shareholders were, as between themselves and the policyholders, primarily liable to pay the debts of the company.

The shareholders appealed.

Mr. Higgins, *Mr. Davey*, and *Mr. Hatfield Green* for the appellants.

Mr. Macnaghten and *Mr. Borthwick* for the policyholders.

Mr. Glasse and *Mr. Boome* for the official liquidator.

Their LORDSHIPS dismissed the appeal, with costs.

Court of Appeal.
SELBORNE, L.C.
COCKBURN, C.J.
BRETT, L.J.
Nov. 11.

MAYOR, &c., OF SALTASH *v.* GOODMAN.

Practice—Costs—Application for Security for Costs—When to be made.

Application for security for costs of an appeal.

Judgment for the plaintiffs in the action was given on March 30, by the Common Pleas Division. Notice of appeal was given on April 16. Taxation of costs was completed November 4; but the Master reported that the delay was not owing to the defendant. On a *fi. fa.* it was found that the defendant had no goods upon which to levy; so the plaintiffs made the present application, the appeal standing in the general list, nine out of the paper for the day.

Mr. Petheram appeared for the plaintiffs.

Mr. Muir Mackenzie for the defendant.

Their LORDSHIPS said that application for security for costs should be made promptly, and before expense had been incurred by the appellant in respect of his appeal; and they, therefore, refused the application on the ground that it was made too late.

Court of Appeal.
SELBORNE, L.C.
COCKBURN, C.J.
BRETT, L.J.
Nov. 11, 12, 13, 15.

THE WEST INDIA AND PANAMA TELEGRAPH COMPANY (LIMITED) *v.* THE HOME AND COLONIAL MARINE INSURANCE COMPANY (LIMITED).

Marine Insurance—Time Policy—Perils insured against—Defect in the Subject-matter of Insurance.

Appeal of the defendants from the judgment of BAGGALLAY, L.J., after trial without a jury.

The plaintiffs insured a ship with the defendants by a time policy, which contained a clause stating that the perils which the defendants were to be liable for were 'of the seas, men-of-war, fire . . . barratry of the master and mariners, and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the aforesaid subject-matter of this insurance, or any part thereof.'

The ship was damaged by the explosion of the boiler, which was proved to have been very thin, and to have burst either from bilge water getting to it, or from want of proper scraping.

The plaintiffs sued upon the policy for the amount insured; and Baggallay, L.J., gave judgment for the plaintiffs.

The defendants appealed.

Mr. Benjamin and *Mr. Arbuthnot* for the appellants.

Mr. Cohen and *Mr. Mathew* for the plaintiffs.

Their LORDSHIPS held that the plaintiffs were entitled to recover; and dismissed the appeal.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Nov. 12, 15.

LLOYDS *v.* HARPER.

Guarantee—Death of Guarantor—Notice thereof—Determination of Guarantee.

Appeal from the decision of FRY, J.

The case is reported *ante*, page 9, and 49 Law J. Rep. Chanc. 217.

Mr. M. Cookson and *Mr. Cracknall* for the appellant.

Mr. North and *Mr. Millar*, *contrà*, were not called upon.

Their LORDSHIPS agreed with Fry, J., on all points; and dismissed the appeal, with costs.

JAMES, L.J., and LUSH, L.J., expressed doubts as to the correctness of the decision in the case of *West* v. *Houghton*, L.R. 4 C.P. Div. 197.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
Nov. 8.

ASLATT *v.* THE MAYOR AND CORPORATION OF SOUTHAMPTON.

Alderman—Private Arrangement with Creditors—Disqualification—Municipal Corporations Act, 1835, *s.* 52; *Debtors Act*, 1869, *s.* 21.

The plaintiff, who is an alderman of the borough of Southampton, in January last, being then also an alderman, sent to his creditors a circular letter containing proposals for a composition of his debts, which proposals were, in most instances, accepted by them. But no composition deed was registered, nor did he take any proceedings for liquidation. The Municipal Corporations

Act 1835, s. 52, enacts that if any alderman of any borough shall (*inter alia*) 'compound by deed' with his creditors, he shall thereupon immediately become disqualified and shall cease to hold his office. And the Debtors Act, 1869, s. 21, provides that this disqualification 'shall extend to every arrangement or composition by a mayor, alderman, or town councillor with his creditors under the Bankruptcy Act, 1869, whether the same is made by deed, or otherwise.' On November 4 the Mayor of Southampton summoned a meeting of the corporation to declare the office of alderman held by the plaintiff void, and to elect another alderman in his place. The plaintiff thereupon applied by motion to restrain them from so doing.

Mr. Chitty and *Mr. Maidlow* for the plaintiff.

Mr. Ince and *Mr. Thurstan Holland*, for the defendants, submitted that the plaintiff was disqualified; and also that the Chancery Division had no jurisdiction to grant an injunction in such a case, it being one of those specially assigned, by the Judicature Acts, to the Queen's Bench Division.

The MASTER OF THE ROLLS held that the plaintiff had not become disqualified; and that this Court had jurisdiction to grant an injunction. He accordingly granted it, with costs against the defendants.

Chancery Division.
JESSEL, M.R.
Nov. 11.

COPE v. COPE.

Administrator 'durante minore Ætate'—Mortgage and Sale of Assets—Prejudice of Infant.

Godfrey Cope died intestate in the year 1875, leaving a widow and infant children. Letters of administration were granted to Frederick Cope, for the use and benefit of the children until one of them should attain twenty-one. Godfrey Cope, at the time of his death, was entitled to a share in the residuary estate of W. Stark, and had mortgaged his share during his lifetime. In September, 1876, Frederick Cope, the administrator, mortgaged the above-mentioned share to T. E. Smith. By another deed of October, 1876, in which all the prior mortgagees joined, F. Cope mortgaged to the defendants, the Equitable Reversionary Interest Society, freed from the mortgage which had been created by Godfrey Cope. And in February, 1877, F. Cope assigned the same share absolutely to those defendants.

This was an action brought by the children of Godfrey Cope, who claimed administration of their father's estate, and also that the mortgages and assignment made by F. Cope might be set aside as not being for their benefit, but, on the contrary, to their prejudice. The statement of claim alleged that F. Cope applied exclusively for his own purposes the moneys received by him under these deeds, but there was no allegation that the defendant society knew of this.

The society demurred.

Mr. B. B. Rogers for the demurrer.

Mr. T. L. Wilkinson for the plaintiff.

The MASTER OF THE ROLLS held that an administrator *durante minore ætate* has the same powers as any other administrator; and that, in the absence of any knowledge by the defendants that he was dealing improperly with the assets, the transactions in question were valid. His lordship accordingly allowed the demurrer.

Chancery Division.
JESSEL, M.R.
Nov. 13.

UNION BANK OF LONDON v. INGRAM.

Mortgages in Possession—Covenant to pay Interest, with Proviso for reducing Rate on punctual Payment—Payment to Receiver for collecting Rents—Stains v. Banks, 9 Jur. (N.S.), 1,049, was reversed on Appeal (Reg. Lib. 7 B., 1863, 1,761).

Two questions were raised by this adjourned summons: 1. Whether a mortgagor is entitled to the benefit of a proviso for reduction of the rate of interest on punctual payment, on taking the accounts against a mortgagee in possession. 2. Whether such a mortgagee is in every case precluded from charging the mortgagor with the expense of paying a receiver to collect the rents.

Mr. Bagshawe and *Mr. Methold*, for the plaintiff, a second mortgagee, relied upon *Stains* v. *Banks*, 9 Jur. (N.S.), 1,049.

Mr. Ince, *Mr. G. S. Fryer*, *Mr. Mellor*, *Mr. Everitt*, *Mr. Davey*, and *Mr. T. Holland* appeared for the other parties.

The MASTER OF THE ROLLS, having sent for the registrar's book, ascertained (Reg. Lib. 7 B., 1863, 1,761) that *Stains* v. *Banks* had been reversed on appeal; and, therefore, decided against the mortgagor on both points.

Chancery Division.
JESSEL, M.R.
Nov. 16.

DENT v. LONDON TRAMWAYS COMPANY.

Company—Preference Shares—Dividend—Payment out of Capital—Profits of particular Year.

This was an action for a declaration that the plaintiffs were entitled to be paid a dividend in full out of the profits of a particular year, notwithstanding the fact of a previous decision holding the ordinary shareholders not entitled to any dividend for that year, such dividend, in their case, being held to be a payment out of capital. The company had for some years been improperly paying dividends to the ordinary shareholders instead of expending such sums in the repair and maintenance of their tramways. It was contended by the company that they were entitled to retain the dividends otherwise payable to the preference shareholders to recoup the previous amounts referable to repairs. By the special resolution authorising the issue of the preference shares, they were

to bear a preferential dividend of 6 per cent. per annum over the ordinary shares of the company, 'dependent upon the profits of the particular year only.' From the report of certain accountants, it appeared that, for the year in question, the net profits were more than sufficient to pay the preference shareholders in full.

Mr. Davey and *Mr. Stirling* for the plaintiffs.

Mr. Chitty and *Mr. Romer* for the defendants.

The MASTER OF THE ROLLS was of opinion that the preference shareholders were entitled to be paid their dividends out of the profits of each particular year, and were not bound to recoup any amounts previously improperly paid away. He, therefore, made a declaration as asked by the plaintiffs.

Chancery Division.
MALINS, V.C.
Nov. 8.

Re LONDESBOROUGH.
BRIDGEMAN *v.* FITZGERALD.

Will — Construction — Words — Pictures — 'Objects of Vertu and Taste.'

Special case.

The late Lord Londesborough, by his will, dated May 16, 1855, bequeathed unto his wife, the defendant, Ursula, Lady Fitzgerald (then Ursula, Lady Londesborough), absolutely all his and her jewels, trinkets, gold and silver plate, ornamental and other china, and all 'objects of vertu and taste.' And the testator declared that his wife should be entitled during her life to his leasehold house at Carlton House Terrace, and the statuary, furniture, and other effects therein at the time of his death. By a codicil, after bequeathing certain pieces of plate to each of his children, he repeated the bequest to his wife contained in his will.

At his death there were in his house at Carlton House Terrace ten valuable paintings. The question raised by the special case was whether these paintings passed to Lady Fitzgerald absolutely under the bequest in the codicil, or whether they passed, under the description in the will, of the leasehold house, and the statuary, furniture, and other effects therein.

Mr. Langworthy for the plaintiffs, the trustees of the will.

Mr. Bristowe and *Mr. B. B. Rogers* for Lord and Lady Fitzgerald.

Mr. J. Pearson and *Mr. Renshaw* for the other defendants.

MALINS, V.C., said it had been decided that pictures would pass under the words 'furniture and other effects.' It seemed very improbable that a man, possessed of such valuable pictures, if he had intended to give them to his wife, should have omitted to use the word 'pictures.' Upon the whole he was of opinion that these pictures were not given to the wife absolutely, but passed under the words 'furniture and other effects.'

Chancery Division.
BACON, V.C.
Nov. 13.

JENNER *v.* TURNER.

Will—Devise of Real Estate—Condition subsequent—Restraint on Marriage—Validity.

Testatrix devised real estate to trustees on trust for her father for life, with remainder to her brother, J. W. Turner, for life, with remainder to his first and other sons in tail, with remainders over; and provided that, if her said brother should marry during her life without her consent in writing, or if he should already have married, or should thereafter marry, a domestic servant, or a person who was, or had been, or who should, at any previous time, have been a domestic servant, then the real estate should go over in favour of the plaintiffs. The testatrix died in 1867. Her father died in 1871, and J. W. Turner went into possession of the real estate, and in 1872 married a person who had been a domestic servant. He died in 1879, leaving issue; and, after his death, the plaintiffs claimed the real estate under the gift over.

Sir H. Jackson and *Mr. Wolstenholme* for the plaintiffs.

Mr. Hemming and *Mr. B. B. Rogers*, for the issue, contended that the condition subsequent did not divest the previously vested gift; and, further, that the condition was against public policy, and void.

Sir H. Jackson in reply.

BACON, V.C., held that the gift over of the real estate was valid; and gave judgment in favour of the plaintiffs.

Chancery Division.
BACON, V.C.
Nov. 13.

LANGHAM *v.* GAMBLE.

Will—Construction—Gift to Next of Kin, as if Testator's Daughter, a married Woman, had died 'unmarried.'

Petition, which involved the construction of a clause in the will of S. E. Wilkinson.

The testator gave one-fourth of his residuary estate, upon trust, for his daughter, Mrs. Gamble, for life, with remainder as she should by will appoint; and, in default of appointment, for the persons who, under the statutes for the distribution of the effects of intestates, would have been entitled thereto if Mrs. Gamble had died 'unmarried.'

Mrs. Gamble died intestate, leaving a husband and two children; and the point for decision was whether 'unmarried' meant 'without having been married' so as to exclude both husband and children, or merely 'not then under coverture,' so as to exclude the husband, but to admit the children.

Mr. Hemming and *Mr. Warmington* for the petitioners, nephews and nieces of the intestate, Mrs. Gamble.

Sir H. M. Jackson and *Mr. Simmonds* for Mrs. Gamble's children.

Mr. Shebbeare for other next of kin.

BACON, V.C.: The cases of *Clarke* v. *Colls*, 9 H. L. C. 601, and *Day* v. *Barnard*, 1 Dr. & Sm. 351, 30 Law J. Rep. Chanc. 220, are conclusive that, in such a context as this, the word 'unmarried' means 'not then under coverture'—*i.e.* is only intended to exclude the husband, not the children; and, apart from authority, I should have come to the same conclusion.

Chancery Division.
HALL, V.C.
Nov. 9, 10.
} JAMES *v.* GILES.

Action to recover Deed—Fraud by Solicitor—Forged Memorandum of Deposit—Purchase for Value without Notice—Judicature Act, s. 25, subs. 11.

This was an action to recover possession of a lease under the following circumstances: The plaintiff, James, the lessee, mortgaged the property, comprised in the lease, to the plaintiffs, Rumsey and Smith, for 530*l.*, by way of underlease, and the lease was handed to one Reade, as solicitor for Rumsey and Smith. Reade also procured from James a memorandum, signed by James, relating to the insurance of the mortgaged property. Reade cunningly and fraudulently altered such memorandum in such a way that it appeared to be a memorandum of the deposit of the lease by James with Reade as a security for 530*l.* advanced by Reade to James. Reade then obtained a loan of 250*l.* from the defendant on an equitable sub-mortgage of the memorandum as so altered, and of the lease, which was deposited with the defendant. The defendant had no knowledge or suspicion of the fraud committed by Reade.

Mr. W. Pearson and *Mr. Maclean* for the plaintiffs.

Mr. Graham Hastings and *Mr. W. Renshaw*, for the defendant, argued that the defendant was a purchaser of the lease for value without notice, from whom, according to the well-known rule in equity, the Court will take nothing away; that the rule of equity differed from the rule of law; and that, therefore, under section 25, subsection 11, of the Judicature Act (36 & 37 Vict. c. 66), the rule of equity must prevail. They relied on *Heath* v. *Crealock*, 44 Law J. Rep. Chanc. 157; L. R. 10 Chanc. 22.

HALL, V.C., held that section 25, subsection 11 of the Judicature Act did not apply, inasmuch as the plaintiffs had a complete legal title to the possession of the lease; and gave judgment for the plaintiffs.

Chancery Division.
HALL, V.C.
Nov. 11.
} APPLEBY *v.* WARING.

Discovery—Affidavit of Documents—Further Affidavit.

The plaintiff represented the commissioners for the construction of a railway in Uruguay, under an agreement with whom the railway had been in part constructed by the defendants. The action was brought upon the agreement, seeking payment of certain moneys and an account of net profits made by the defendants. The statement of defence showed that one section of the line had, some years ago, been completed and opened for traffic; and it set out a clause of the agreement which provided that the concessionaires were, for the purpose of ascertaining the net profits, to be satisfied with a declaration by the contractors, and not to inspect accounts; and pleaded that the defendants were prepared to make a statutory declaration that the works had resulted in a loss.

The defendants made the usual affidavit of documents, which mentioned no accounts or vouchers.

Mr. Buckley, for the plaintiff, moved for a further affidavit of documents; arguing that the defence raised a reasonable suspicion that there must be documents of account.

Mr. J. T. Prior for the defendants.

HALL, V.C., refused the application. He was not judicially convinced that there were, or ever had been, such documents as suggested. It was possible that the contractors' work might have been done without them; and there was not such assurance in his lordship's mind of the incorrectness of the affidavit as to warrant the order sought.

Chancery Division.
HALL, V.C.
Nov. 12.
} *In re* WILKES'S ESTATE.

Lands Clauses Consolidation Act, s. 74—Estates in Lease—Tenant for Life and Remainderman—Form of Order.

A railway company had, in exercise of their compulsory powers, taken certain lands, of which the petitioner was tenant for life under a will. The lands were subject to certain leases—principally repairing leases—granted subsequently to the testator's decease. The dividends of the purchase money, when invested, were considerably in excess of the aggregate of the rents reserved by the leases; and the question arose as to what proportion of such dividends the tenant for life was entitled.

Mr. W. Renshaw, *Mr. Bailey*, and *Mr. Jason Smith* appeared.

HALL, V.C., directed that the purchase money should be apportioned amongst the several properties in lease; and that, out of the dividends of each apportioned part, a yearly sum, equal to the rent received by the lease in respect of which it was so apportioned, should, during the term thereby created, be paid to the tenant for life, and the residue thereof accumulated, with liberty to the tenant for life to apply, on the expiration of such term, for payment to him of the increased dividends, including the dividends on the accumulations.

Chancery Division. HALL, V.C. Nov. 15. } *In re* MAMMOTH COPPEROPOLIS OF UTAH.

Companies Act, s. 165—*Summons against Directors to repay Dividends improperly distributed — Lapse of Time.*

This was the adjourned hearing of a summons under section 165 of the Companies Act, 1862, by the liquidator of the company, for an order that the late directors should repay 3,452*l.* 5*s.*, the amount of a dividend declared by them in December, 1872.

The company went into liquidation in November, 1876, and the present summons was taken out in July, 1879. It did not appear that there were any debts now subsisting, except one of small amount to a former shareholder who had participated in the dividend in question; the liquidator was stated, however, not to have received his costs payable in the winding up.

Mr. Wm. Pearson and *Mr. Northmore Lawrence*, for the summons, set up the case that there were no profits out of which the dividend could be paid; and that the directors knew, or ought to have ascertained, this.

Mr. Graham Hastings and *Mr. Brooksbank* for the respondents.

HALL, V.C., dismissed the summons, with costs. The lapse of time put the respondents in a difficulty with regard to any defence upon the accounts and facts; and also with regard to any claim for indemnity which they might have against other persons. They were entitled, therefore, to object to this as a stale demand, unless some proper excuse were made out for the delay, which was not the case.

Queen's Bench Division. (*Magistrates' Case.*) Nov. 10. } MOGG (APPELLANT) *v.* OVERSEERS OF YATTON (RESPONDENTS).

Poor Rate—Occupation by Owner of Land—Sale of Grass—License of Pasturage.

Case stated by justices.

The appellant, owner of grass land, upon the determination of a previous tenancy, advertised for sale by auction, and sold, the grass thereupon from May to March. The purchasers were to feed it with certain stock, and to dress the dung, cut the thistles, and leave the fences in good repair. At the sale, the auctioneer stated that the sale was made free from all rates, tithes, and taxes. The overseers inserted the owner's name as occupier in the rate book, and the justices granted a warrant of distress against him for non-payment of the rate.

Austie for the appellant.

Castle for the respondents.

The COURT (MANISTY, J., and BOWEN, J.) gave judgment for the respondents; holding that, under all the circumstances of the case, the transaction between the vendor and purchasers amounted only to a license to them to turn in their cattle on his land, and did not constitute them tenant occupiers so as to make them liable to be rated.

Queen's Bench Division. (*Magistrates' Case.*) Nov. 13. } EYTAR (APPELLANT) *v.* THE OVERSEERS OF MOLD (RESPONDENTS).

Rating Act, 1874 (37 & 38 *Vict. c.* 54), *s.* 4, *subs.* a—*Valuation of Land used as a Plantation—Assessment of Sporting Rights.*

Appeal against a poor-rate.

The appellant is the owner and occupier of certain woodlands; and, in assessing their rateable value, a sum of 2*s.* per acre had been added by the respondents to the natural and unimproved value of the land, in respect of the game. The appellant contended that the land, being woodland only, under the Rating Act, 1874, was not liable to be assessed for any right of shooting.

By the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 4, subs. a, the rateable value of any land used only for a plantation or wood shall be estimated 'as if the land, instead of being a plantation or a wood, were let and occupied in its natural and unimproved state.'

F. Marshall and *Banks* for the appellant.

Darling and *Roberts* for the respondents.

The COURT (FIELD, J., and MANISTY, J.) gave judgment for the respondents; holding that land in its natural and unimproved state was to be valued with the game on it.

Judgment for the respondents.

Queen's Bench Division. (*Magistrates' Case.*) Nov. 13. } ROUCH *v.* HALL.

Sale of Food and Drugs Act, 1875, 1879 (38 & 39 *Vict. c.* 63, *s.* 14, *and* 42 & 43 *Vict. c.* 61, *s.* 3)—*Adulterated Milk in Course of Transit—No Delivery of Sample to Agent of Seller.*

Appeal from a decision by a metropolitan police magistrate.

The respondent, who resided near Coventry, was charged with having, on March 18, sold, to the prejudice of the purchaser, a pint of milk adulterated with 16 per cent. of water. It appeared that he had contracted to supply milk to a dealer in London; and that, on March 18, the appellant, being at the Euston Station, seized a milk can, and required the railway porter to give him a sample for the purpose of having it analysed. The appellant then gave notice to the porter of his intention to have the analysis made, gave him the required sample, and treated him as the agent of the respondent under section 14 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), which requires a purchaser to 'notify to the seller, or his agent selling the article, his intention to have the same analysed,' &c.

By the Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3, any inspector, &c., 'may procure at the place of

delivery any sample of milk in course of delivery to the purchaser or consignee, in pursuance of any contract for the sale to such purchaser or consignee of such milk; and . . . . shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction shall be enforced in like manner in all respects as if such inspector, &c., had purchased the same from the seller or consignee under section 13 of the principal Act.'

The magistrate dismissed the summons; holding that the appellant was bound to take all the steps provided by 38 & 39 Vict. c. 63, s. 14; and that he had not, in pursuance of such section, handed a portion of the milk to the agent of the seller.

Tickell, for the appellant, admitted that a porter was not an agent of the seller; but contended that section 14 of the Act of 1875 did not apply to samples of milk taken under section 3 of the Act of 1879.

The respondent did not appear.

The COURT (FIELD, J., and MANISTY, J.) held that section 14 of the principal Act was not incorporated into section 3 of 42 & 43 Vict. c. 31; and that, accordingly, the due performance of the conditions contained in the former section were not necessary to ensure a conviction.

Case remitted.

Queen's Bench Division. Nov. 15. } TENNANT & Co. *v.* ELLIS & Co.

Costs—County Courts Admiralty Jurisdiction—31 & 32 *Vict. c.* 71, *ss.* 3 *and* 9—*R.S.C., Order LV., Rule* 1.

This was a motion for a rule to the Master to tax the plaintiffs' costs.

The action was for damage to a cargo of sugar, in which 300*l.* had been claimed, and in which the plaintiffs had obtained a verdict and judgment for 73*l.*

The defendants objected, upon taxation, to the plaintiffs having their costs, on the ground that the judge had not certified that it was a proper Admiralty cause to be tried in a Superior Court.

The County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), in section 8, enacts that 'if any person shall take in any Superior Court proceedings which he might, without agreement, have taken in a County Court (except by order of such Superior Court or of a County Court having Admiralty jurisdiction), and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act, he shall not be entitled to costs unless the judge of the Superior Court, before whom the cause is tried or heard, shall certify that it was a proper Admiralty cause to be tried in a Superior Court.'

Section 3 subsection 3 gives jurisdiction to the County Court in '— as to any claim for damage to cargo— any cause in which the amount claimed does not exceed 300*l.*'

Patchett, for the plaintiff, contended that the above section was, in effect, repealed by Order LV., Rule 1, of the R.S.C. Judicature Act, 1875, which provided that costs should follow the event, and cited *Garnett* v. *Bradley*, 48 Law J. Rep. H.L. 186.

Hilbery, contrà.

The COURT (FIELD, J., and MANISTY, J.) made the order asked for, holding that the plaintiff was entitled to his costs by virtue of Order LV., which had repealed section 8 of the County Courts Admiralty Jurisdiction Act, 1868.

Common Pleas Division. Nov. 13. } SANDERS (APPELLANT) *v.* SEARSON (RESPONDENT).

Parliament—County Vote.

Appeal from Revising Barrister's Court.

The appellant was tenant and in occupation of a house in a borough, in respect of which he possessed a vote for the borough. He subsequently became tenant and occupier of a piece of land within the borough of sufficient value to confer on him a vote for the county.

The land was a mile distant from the house, but both tenancies were held under the same landlord; and it was objected that the name of the appellant ought not to be retained on the list of voters for the county, on the ground that the land was occupied 'together with' the house within the meaning of section 25 of 2 Wm. IV. c. 45. By that section no person shall be entitled to vote for a county in respect of land occupied together with a house, such house being, either separately or jointly with the land occupied therewith, of such value [at that time required to be of the annual value of 10*l.*] as would confer on him the right of voting for any borough. The revising barrister disallowed the objection, and retained the name of the appellant on the list of voters for the county.

Merewether for the appellant.

Hensman for the respondent.

The COURT (GROVE, J., LINDLEY, J., and LOPES, J.) held that the object of section 25 was that a person in occupation of a house should not utilise any land required for the enjoyment of the house in order to obtain a vote for the county; but that where the land was distinct and separate from the house, the occupier was entitled to a vote for the county, and was not restricted to his vote for the borough.

Decision affirmed.

COURT OF BANKRUPTCY.

Bankruptcy. BACON, C.J. Nov. 15. } *In re* HOLMES. *Ex parte* HOLMES.

Liquidation—Composition—Enforcing Security—Liquidation closed—Power of the Court—Bankruptcy Act, 1869, *ss.* 28, 125—*Bankruptcy Rules*, 1870, *Rule* 78.

Appeal from the County Court at Gloucester.

On April 21, 1879, the statutory majority of the creditors of Simeon Holmes resolved upon a liquidation by arrangement, and appointed a trustee. These resolu-

tions were duly registered. On May 7 they passed further resolutions to accept a composition, and to grant the debtor his discharge upon payment of the composition and costs. The last-mentioned resolutions were duly approved by the Court. Both composition and costs were duly paid.

At the date of the resolutions for liquidation the debtor was, and, at the date of the present application, still remained, a registered holder of 500 fully paid-up 10*l.* shares in the Llantwitt and Black Vein Coal Company (Limited). The debtor was indebted to the company to the extent of more than 1,000*l.*, under an order in an action in the Chancery Division made on November 8, 1878. The company did not come in under the liquidation proceedings, but, on June 28, 1880, gave notice of motion before the County Court judge, under Rule 78, Bankruptcy Rules, 1870, for an order declaring that they were entitled to a lien for their judgment debt on the debtor's 500 shares. The County Court judge, on July 20, made the order asked for.

The debtor and other persons interested appealed.

Mr. Yate Lee, for the appellants: The Court had no jurisdiction to make the order, as the liquidation was closed. Rule 78 does not not apply to composition. [He was stopped by the Court.]

Mr. Bagshawe and *Mr. F. Knight*, for the company: The liquidation was not closed for all purposes, as is shown by *In re Prager*, L. R. 3 Chanc. Div. 115. This proceeding must be taken to be a liquidation under section 125. The estate, therefore, remains in the trustee; and the Court of Bankruptcy has jurisdiction.

The CHIEF JUDGE: The company's application has been, in my opinion, made under a mistaken view of the Act. Resolutions for composition having been duly passed, the only power remaining in the Court is to enforce the carrying out of the resolutions. The mortgagees must bring their action in the Chancery Division to enforce their security; and, having enforced it, if their debt is still unsatisfied, they can come in and prove in the liquidation for the balance; but they cannot realise the security in this liquidation.

Appeal allowed, with costs.

Table of Cases.

COURT OF APPEAL.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Nov. 11.

In re PARKER. *Ex parte* CHARING CROSS ADVANCE AND DEPOSIT BANK.

Bill of Sale—Consideration—Receipt Clause.

Parker executed a bill of sale to the bank, 'in consideration [as stated in the deed] of 120*l.* paid on its execution by the grantees to the grantor.'

The sum of 90*l.* was only really advanced, the remaining 30*l.* being retained by the grantees 'for interest and expenses.' The deed was duly attested.

Immediately below the attestation clause there was a receipt for 90*l.*, which was signed by the grantor. The receipt stated that the 90*l.*, together with the agreed sum of 30*l.* for interest and expenses, made the sum of 120*l.*

The grantor filed a liquidation petition; and Mr. Registrar Hazlitt, as CHIEF JUDGE, declared the deed void as against the trustee, on the ground that the true consideration had not been set out as required by the Bills of Sale Act, 1878, s. 8.

The bank appealed.

Mr. Guiry, for the appellants, argued that, assuming the real consideration was not set forth within the case of *Ex parte National Mercantile Bank, re Haynes*, 49 Law J. Rep. Bankr. 62, yet that the receipt must be taken as part of the same instrument, and that that showed the true state of the facts, and consequently would support the bill of sale.

Mr. J. F. H. Bethell for the trustee.

Their LORDSHIPS affirmed the decision of the registrar. The deed, independently of the receipt, clearly did not state the real consideration, as the receipt could not be held to form part of the deed. The case referred to differed from the present, because here the only liability, in respect of the 'interest and expenses,' arose from the contract of loan, which the bill of sale completed; while in the other case there was, independently of the transaction of loan, a then actually subsisting debt.

Court of Appeal.
BAGGALLAY, L.J.
BRETT, L.J.
COTTON, L.J.
Nov. 17.

WARBURTON *v.* HEYWORTH.

Master and Servant—Weekly Hiring—Piece-work—Construction of Contract—Employers and Workmen Act, 1875 (38 & 39 *Vict. c.* 90), *s.* 11.

Appeal from a judgment of the Queen's Bench Division on a case stated by justices.

The case stated the following facts: The appellant, a woman subject to the provisions of the Factory Acts, worked as a weaver in a cotton mill. She was paid by the piece, and all work done at the mill was booked up at 3 o'clock on Wednesday afternoon in each week, and paid for on the following Saturday, the work done after 3 o'clock on a Wednesday being carried forward and paid for on the Saturday of the following week. The employment was subject to printed rules in force at the mill, which provided that no person should leave work for any cause whatever without giving fourteen days' previous notice, to expire on a Saturday; and that any person leaving work without giving that notice, or before the expiration thereof, should forfeit all wages then due, or earned, or unpaid. The appellant left her work, without giving any notice, at 12.30 P.M. on a Wednesday, having previously carried in the work she had completed, which was booked up. No claim was made by the respondent, her employer, for any damage sustained through the appellant having so left her work, and she claimed, before the justices, under section 4 of the Employers and Workmen Act, 1875, a week's wages up to 3 o'clock on the Wednesday on which she left work. The justices found that there was a weekly hiring of the appellant; that the week ended at 3 o'clock on the Wednesday; that the appellant had not completed her week when she left without notice, and that no wages were due to her; and they dismissed her complaint.

By section 11 of the Employers and Workmen Act, 1875, 'in the case of a woman . . . . . subject to the provisions of the Factory Acts . . . . . any forfeiture on the ground of absence or leaving work shall

not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.'

The Queen's Bench Division affirmed the order of justices.

Mr. Hopwood and *Mr. R. S. Wright* for the appellant.

Mr. Gully and *Mr. Attenborough* for the respondent.

Their LORDSHIPS held that the facts stated in the case showed that there was not a weekly hiring, but that the appellant was employed to do piece-work, to be paid for by the piece; that the sum claimed was due when she left work; so that section 11 applied to prevent a forfeiture under the rules; and they, therefore, reversed the judgment of the Queen's Bench Division.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
LUSH, L.J.
Nov. 18.

In re KITCHIN. *Ex parte* PUNNETT.

First and second Mortgage—Distress by first Mortgagee under Attornment in his Mortgage Deed—Distress by second Mortgagee under similar Attornment in second Mortgage.

Kitchin, a publican, mortgaged the Pelican hotel, of which he was owner in fee, to a mortgagee to secure advances. The deed contained a clause of attornment. He subsequently mortgaged the same property to another to secure the sum of 4,500*l.* The second deed recited the former mortgage, and contained an attornment clause precisely similar to that in the former mortgage.

On July 3, 1879, Kitchin presented his petition for liquidation, and a trustee was appointed.

The first mortgagee subsequently distrained for a quarter's rent due in July; and, subsequently, in September, the second mortgagee also distrained for a half-year's rent due on August 24.

The trustee, admitting the validity of the distress by the first mortgagee under the attornment clause in his deed, disputed the validity of the distress levied by the second mortgagee.

The registrar held that the trustee's contention was right.

The second mortgagee appealed.

Mr. Winslow and *Mr. Heath* for the appellant.

Mr. A. Wills and *Mr. A. Powell, contra.*

Their LORDSHIPS held that the case was really concluded by *Morton* v. *Wood*, L. R. 4 Q.B. 293, and there was nothing which prevented the second mortgagee from creating the relationship of landlord and tenant, and that the fact of there being a prior attornment made no difference; and, secondly, in answer to the argument that the attornment creating a tenancy from year to year the term vested in the trustee, and that he was entitled to retain the fixtures added by the mortgagor subsequently to the mortgage, held that, the chief object of the attornment being to give additional security for the payment of the mortgage, the relationship of landlord and tenant, which it created for some purposes, was only ancillary to its main object, and did not compel the mortgagee to elect between his position of landlord and mortgagee; and, accordingly, decided that the fixtures passed to the mortgagee as part of the mortgage security.

Court of Appeal.
JESSEL, M.R.
JAMES, L.J.
LUSH, L.J.
Nov. 18.

Re PHILLIPS. *Ex parte* NATIONAL MERCANTILE BANK.

Bill of Sale—Growing Crops—Severed and stacked—Chattels—Registration.

By a bill of sale, dated December 23, 1878, a farmer, in consideration of 575*l.*, 'granted, assigned, and transferred to the bank all and singular the furniture, fixtures, &c., of the farm house . . . and the live and dead farm stock, growing crops, utensils, and implements of husbandry, and future growing crops, and other goods, chattels, and effects of and belonging to the mortgagor then in and about the farm yards and premises. Together with all his tenant rights and interests yet to come and unexpired in and to the said lands and premises. . . . Together with all other furniture, fixtures, and live and dead farm stock, growing crops, and utensils . . . and future growing crops, &c.'

The deed contained a covenant by the mortgagor 'not . . . to remove or permit or suffer the goods, chattels, and effects, or any of them, to be removed from the house or premises for any purpose, without consent.'

The bill of sale was not registered.

The grantor had become insolvent; and a trustee had been appointed.

The bank claimed to seize some of the crops which had been cut and stacked; which the trustee disputed, on the ground of the non-registration of the bill of sale.

The registrar, sitting for the CHIEF JUDGE, decided in favour of the trustee.

The bank appealed.

Mr. Winslow and *Mr. Robson* for the appellants.

Mr. Hemming and *Mr. E. C. Willis, contra,* were not called upon.

Their LORDSHIPS affirmed the decision of the registrar. Growing crops, being an interest in land, passed with the land by the deed; and the deed conveying them did not require registration. The mortgagor being left in possession, the rents and profits of the land, by the ordinary law, belonged to him; and he was justified in cutting the crops. But when the crops were cut and severed, they then became chattels; and to entitle the bank to claim them then in that character, the deed should have been registered; and, not having been so registered, was void as against the trustee.

Court of Appeal.
BRAMWELL, L.J.
BAGGALLAY, L.J.
BRETT, L.J.
June 12, 14, 15, 17, 18.
Nov. 19.

GLYN, MILLS, CURRIE, & CO. *v.* THE EAST AND WEST INDIA DOCK COMPANY.

Ship and Shipping—Consignment of Goods—Pledge by Consignee during Voyage—Sets of Bills of Lading—Title of Holder—Warehouseman.

Appeal by the defendants from a judgment of FIELD, J., after trial without a jury, reported 49 LAW J. Rep. Q.B. 303.

The Solicitor-General (*Sir F. Herschell*), *Mr. Bompas,* and *Mr. J. C. Mathew* for the plaintiffs.

Mr. Watkin Williams and *Mr. Pollard* for the defendants.

Cur. adv. vult.

Nov. 19.—Their LORDSHIPS (BRETT, L.J., dissenting) reversed the judgment of Field, J., and gave judgment for the defendants.

Court of Appeal.
BAGGALLAY, L.J.
BRETT, L.J.
COTTON, L.J.
Nov. 19.

RIVAZ *v.* GERUSSI BROTHERS AND ANOTHER.

Ship and Shipping—Marine Insurance—Open Policies—False Declaration of Value—Facts material to the Risk.

Appeal from a judgment of FIELD, J., after trial with a jury.

The action was brought to set aside two policies of marine insurance effected by the defendants with the plaintiff, and dated respectively October 1 and 5, 1875.

The defendants had previously effected other open policies upon shipments of fruit from ports in Greece to London and Liverpool, and had made false declarations of the value of the goods shipped to which the policies attached, by stating the value, after the goods arrived and the risks were over, at a much smaller amount than was the fact. The policies of October 1 and 5 were to follow the previous open policies, and notice of the former declarations of value was given to the plaintiff. The jury found that the declarations under the policies effected prior to October 1 and 5 were made falsely and fraudulently; that it was material to the plaintiff's subscription of the policies of October 1 and 5 to know the real value (which the defendants concealed) of the goods declared under the former policies; that the plaintiff was induced to subscribe the policies of October 1 and 5 on the faith of the former false declarations; and that the policies of October 1 and 5 were effected with the fraudulent intention on the defendants' part of making false declarations of the value of the goods to which these policies were to attach.

On these findings, Field, J., gave judgment for the plaintiff.

The Attorney-General (Sir H. James), *Mr. Benjamin*, and *Mr. Romer* appeared for the defendants.

Mr. Butt and *Mr. J. C. Mathew* for the plaintiff.

Their LORDSHIPS affirmed the judgment of FIELD, J.; being of opinion that there was evidence upon which the jury might properly find that there had been a concealment by the defendants, when the policies of October 1 and 5 were effected, of facts material to be known to the underwriters in insuring against the risks proposed. The policies, therefore, were set aside as having been obtained by fraud; and the defendants were held not to be entitled to recover the premiums paid in respect of them.

Court of Appeal.
LORD SELBORNE, L.C.
BAGGALLAY, L.J.
BRETT, L.J.
Nov. 20.

LUCAS *v.* DICKER.

Bankruptcy—Bankruptcy Act, 1869 (32 & 33 *Vict. c.* 71), *s.* 95—*Execution Creditor—Title of Trustee—Act of Bankruptcy—Notice.*

Appeal from a judgment of the Common Pleas Division, reported 49 Law J. Rep. C.P. 415.

Sir J. Holker and *Mr. Pitt Lewis* for the appellant.

Mr. A. Wills and *Mr. W. Graham* for the respondent.

Their LORDSHIPS unanimously affirmed the judgment of the Common Pleas Division.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
Nov. 20.

SALT *v.* COOPER.

Practice—Judgment in Common Pleas Division—Equitable Execution—Receiver in Common Pleas Division—Judicature Act, 1873, *s.* 24—*Rules of Court*, 1875, *Order XLII., Rule* 1 — *Bankruptcy Receiver — Priority.*

In this case the plaintiff had recovered judgment in the Common Pleas Division for a money demand; and, to enforce equitable execution, he obtained, in the same action, *ex parte* in the vacation, the appointment of a receiver of the defendant's mortgaged estates. It appeared that on the same day, but earlier in the day, a receiver of the defendant's property had been appointed by the Bankruptcy Court on a bankruptcy petition presented against him. The action had been transferred to this Division, and the plaintiff now moved to continue the receiver. The defendant's bankruptcy was eventually turned into liquidation by arrangement, and the receiver appointed continued in the liquidation.

Mr. Ince and *Mr. Fooks* for the plaintiff.

Mr. Macnaghten and *Mr. Oswald* for the defendant's trustee in liquidation.

The MASTER OF THE ROLLS, although not without doubt, held (1) that the motion for a receiver was properly made in the action in the Common Pleas Division, and that no new action to enforce the judgment need be commenced in the Chancery Division; but (2) that the motion must, on the merits, be refused, as the receiver in the bankruptcy had priority, and that the property passed to the trustee in liquidation.

Chancery Division.
MALINS, V.C.
Nov. 15.

SHEEHAN *v.* THE GREAT EASTERN RAILWAY COMPANY.

Practice—Patent—Co-owners—Want of Parties—Rules of Court, Order XVI., Rules 13, 14, 17.

This was an action for an account of royalties for the use of a patent taken out by the plaintiff, and which was dated in 1873. It appeared that the plaintiff had, in the years 1875 and 1876, assigned part of his interest in his profits of the patent to certain persons who had not been made parties to the action.

This was the hearing of the action; and an objection was now raised by the defendant company that the co-owners with the plaintiff of the patent ought to have been parties, either plaintiffs or defendants, to the action.

Mr. Glasse, *Mr. Arthur Charles*, and *Mr. Smart* for the defendants.

Mr. Higgins and *Mr M'Swinney* for the plaintiff.

MALINS, V.C., overruled the objection on the ground that the defendants ought to have taken an objection at an earlier stage of the proceedings; and also on the ground that the right of one co-owner of a patent to sue alone was clear—referring to 'Lindley on Partnership,' 3rd ed., vol. 1, page 69.

Chancery Division.
MALINS, V.C.
Nov. 18.
} VIRET *v.* VIRET.

Statute of Frauds—Letter of intending Husband—Agreement to settle Wife's Property.

This was an action by a husband against his wife and the infant child of the marriage, claiming a declaration that a letter dated January 16, 1878, written by the plaintiff to the lady's solicitor the day before the marriage, did not constitute an agreement for a settlement of the lady's property.

The property in question was entirely reversionary. On January 14, 1878, the Rev. C. Mackenzie, the surviving trustee of a settlement (comprising part of the lady's property), wrote to the plaintiff as follows: 'I trust that, if you are tempted to marry before the settlements are signed, you will, before the wedding, write a letter to our solicitors contracting to settle on Constance (the wife) all her fortune coming to her eventually;' and, on January 16, 1878, the plaintiff, in compliance with Mr. Mackenzie's suggestion, wrote to the lady's solicitor as follows: 'In the event of my marriage with Miss Wright taking place before the settlements are ready, I agree to Miss Wright's fortune being settled on herself, subject to certain conditions chiefly relating to myself and the children of our marriage, if any.' The plaintiff afterwards made and proved a memorandum in writing stating the conditions referred to. The marriage took place on January 17, 1878.

Mr. Millar and *Mr. Warrington* for the plaintiff.

Mr. Everitt for the wife.

Mr. Colt for the infant child of the marriage.

MALINS, V.C., held that the marriage must be presumed to have taken place upon the faith of the letter of January 16, 1878. That letter constituted a binding agreement for a settlement of the lady's property; and there must, therefore, be a reference to chambers to approve of a proper settlement.

Chancery Division.
HALL, V.C.
Nov. 16.
} PETERS *v.* LEWES AND EAST GRINSTEAD RAILWAY COMPANY.

Lands Clauses Consolidation Act, 1845, *ss.* 7, 9—*Sale by Trustees for Parties absolutely entitled—Appointment of one Trustee as Surveyor, under s.* 9—*Power of Sale, when determining.*

The testator, T. Hopkinson (who died on July 28, 1878), after appointing executors and trustees, bequeathed all his residuary estate to them upon trust for his wife for life, and, after her decease, upon trust to pay, assign, transfer, or assure the same unto his two daughters—of whom the plaintiff was one—in equal shares, for their separate use, with a certain gift over in favour of their issue, in events which did not happen; and, 'for the purpose of division,' he thereby empowered his trustees to sell his residuary estate. One of the trustees was an eminent surveyor, and the will contained a special clause enabling any professional trustee to charge for his professional services. The defendant railway company gave the testator a notice to treat for the purchase of a part of a certain freehold property, and, after the testator's death, the trustees and the tenant for life served the company with a notice, under section 92 of the Lands Clauses Act, requiring them to take the whole property, and brought an action against the company to enforce such notice. In January, 1879, the tenant for life died, and in February the company submitted to take the whole, and offered 3,300*l.* The trustees then caused a valuation to be made, under section 9, by 'two able practical surveyors,' the trustee who was a surveyor being himself appointed as surveyor on the part of the trustees. By the valuation so made, the price was fixed at 3,400*l.*, and 100*l.* for surveyor's fee. The plaintiff having declined to concur in the sale, the conveyance was taken from the trustees alone, the beneficiaries not being made parties. The conveyance recited that the trustees had agreed to sell for a price to be ascertained by valuation; and by it the trustees purported to convey under the powers conferred on them by the Lands Clauses Act, 'or otherwise.'

This action was brought to obtain a declaration that the sale was ineffectual as regarded the plaintiff's undivided moiety, upon the grounds, first, that the power of sale given by the will ceased on the death of the tenant for life, and that, therefore, the trustees could not exercise that power; secondly, that the trustees, being mere trustees for persons *sui juris* absolutely entitled, were not empowered to sell under section 7 of the Lands Clauses Act; and, thirdly, that even if they were so empowered, they had not duly proceeded under the Act, as the valuation by one of the trustees as surveyor on behalf of the trustees was informal.

Mr. Kekewich and *Mr. Shebbeare* for the plaintiff.

Mr. W. Pearson and *Mr. Prior* for the company.

HALL, V.C., held, first, that the power of sale contained in the will ceased on the death of the tenant for life; secondly, that the trustees were persons empowered to sell under section 7 of the Lands Clauses Act; but, thirdly, that they had not duly proceeded under the Act, inasmuch as the appointment of one of themselves to act as surveyor, under section 9, was a fatal irregularity, and also because the Act did not empower them to sell for a price to be fixed by valuation, but only to sell for a price fixed by agreement, and afterwards to ascertain by valuation whether such price was sufficient; and he gave judgment for the plaintiffs.

Queen's Bench Division.
Nov. 12, 17.
} ROBINSON *v.* CURRY.

Penal Action—Limitation—Party grieved—Goldsmiths' Company—Counterfeit Hall-mark—7 & 8 Vict. c. 22 *—3 & 4 Wm. IV. c.* 42, *s.* 3.

Action by the deputy-warden of the Goldsmiths' Company of London against the defendant, a dealer in silver wares, to recover penalties for having sold in the year 1872 divers wares of silver, which had thereupon a counterfeit imitation of the Goldsmiths' Company's mark, under 7 & 8 Vict. c. 22. Plea, that the alleged cause of action did not accrue within two years before action brought. Demurrer, on the ground that the Goldsmiths' Company were not a party grieved within 3 & 4 Wm. IV. c. 42, so as to be bound by that or any other statute.

A. Wills (*Coxon* and *Herbert Pollock* with him) in support of the demurrer.

Sir J. Holker (*Crump* with him) *contra.*

Cur. adv. vult.

Nov. 17.—The COURT (FIELD, J., and MANISTY, J.) gave judgment for the defendant; holding that, as the statute had given to the specified companies certain privileges and imposed on them certain duties, and had given them a right to recover and retain these penalties, they were parties grieved and bound to sue within two years. *Demurrer overruled.*

Table of Cases.

HOUSE OF LORDS.

House of Lords. July 22, 23, 26. Nov. 27. } DUNCAN, FOX, & Co. *v.* THE NORTH AND SOUTH WALES BANK.

Bill of Exchange—Principal and Surety—Right of Indorser to Securities of Acceptor in Hands of Creditor.

This was an appeal from a decision of the Court of Appeal (reported 48 Law J. Rep. Chanc. 376), which reversed a judgment of the Vice-Chancellor of the Duchy of Lancaster.

S. C. Radford, one of the partners in the firm of S. Radford & Sons, deposited with the North and South Wales Bank certain securities to secure the balance from time to time due to the bank by the firm. S. Radford & Co. subsequently became bankrupt, being at the time indebted to the bank, amongst other things, on three bills of exchange, drawn on S. Radford & Co., indorsed by Duncan, Fox, & Co., and discounted for the latter by the bank. The securities deposited by S. C. Radford were more than sufficient to discharge all debts of the bankrupts to the bank, including those due in respect of the bills in question.

The bank demanded payment of the amount due on the bills from Duncan, Fox, & Co., who thereupon commenced this action, claiming a declaration that they were sureties for S. Radford & Co. in respect of the amounts due on the bills, and that the bank might be ordered, upon payment by them of the balance of account found to be due from the bankrupt to the bank, to deliver the securities to them; and they also claimed, as equitable mortgagees, foreclosure against S. C. Radford.

The bank were in the position of stakeholders, the real defendants being Balfour, Williamson, & Co., who were appointed to represent the unsecured creditors of the bankrupts.

The Vice-Chancellor held the plaintiffs entitled to the relief asked; but the Court of Appeal held otherwise.

The plaintiffs appealed.

Mr. Kay and *Mr. Robinson* (*Mr. Neville* with them) for the appellants.

Mr. Benjamin and *Mr. Marten* (*Mr. F. Thompson* with them) for the respondents, Balfour, Williamson, & Co.

Sir H. Jackson, *Mr. Peile*, and *Mr. Rotch* for the bank.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD GORDON) reversed the judgment of the Court of Appeal; and restored that of the Vice-Chancellor.

House of Lords. Nov. 24, 27. } DEBENHAM AND ANOTHER *v.* MELLON.

Husband and Wife — Wife's Authority to pledge Husband's Credit for Necessaries—Secret Revocation of Authority.

This was an appeal from a judgment of the Court of Appeal (reported 49 Law J. Rep. Q.B. 497) which affirmed a judgment of BOWEN, J.

The action was brought to recover 42*l.* for clothing supplied for the defendant's wife and children on the order of the wife during cohabitation. It was admitted that the articles supplied were necessaries. There had been no previous dealings with the plaintiffs; and, some time before the goods in question were ordered, the defendant had forbidden his wife to buy goods on his credit, but had not in any way published the fact that he had so forbidden her.

Bowen, J., gave judgment for the defendant; and his decision was affirmed by the Court of Appeal.

The plaintiffs appealed.

Mr. Benjamin and *Mr. A. L. Smith* for the appellants.

Mr. Willis and *Mr. M'Call* for the respondent.

Their LORDSHIPS (LORD SELBORNE, L.C., LORD BLACKBURN, and LORD WATSON) held that the decision in *Jolly* v. *Rees*, 33 Law J. Rep. C.P. 177; 15 C. B. Rep. (N.S.) 628, was correct, and governed this case. The appeal was dismissed, with costs.

COURT OF APPEAL.

Court of Appeal. BAGGALLAY, L.J. BRETT, L.J. COTTON, L.J. Nov. 24. } SMITH *v.* COWELL.

Judgment Debtor possessed of Equity of Redemption—Mode and Time of applying for Receiver—Interlocutory Order.—27 & 28 Vict. c. 112. s. 1—Judicature Act, 1873, *s.* 25, *subs.* 8—*Rules of Court, Order XLII., Rules* 1, 23.

Appeal from the Queen's Bench Division.

The plaintiff obtained judgment in an action in the Queen's Bench Division. He sued out an *elegit*; the sheriff returned *nihil*. He then applied, by motion, in the Queen's Bench Division for a receiver. The Queen's Bench Division refused the motion.

The plaintiff appealed.

Mr. Willis Bund for the appellant.

Mr. R. Williams for the defendant.

Their LORDSHIPS allowed the appeal, and granted the order; holding that an application for a receiver in an action can, since the Judicature Act, be made in the Division of the Court in which judgment in an action brought is signed, and without bringing a new action on that judgment.

Court of Appeal. JAMES, L.J. COTTON, L.J. LUSH, L.J. Nov. 25. } *Re* STANLEY. *Ex parte* MILWARD.

Liquidation—Registration of Resolutions—Prior Adjudication of Bankruptcy.

On October 4, 1880, Stanley was adjudicated a bankrupt on the petition of Messrs. Milward. Stanley filed a liquidation petition; and the first meeting of the creditors under the liquidation was held on October 11, when resolutions were passed for liquidation of the bankrupt's affairs by arrangement, and to accept 6*d.* in the pound; and at a second meeting, held on October 22, the resolutions were confirmed.

Before the second meeting Stanley's solicitors were served with notice of Messrs. Milward's objection to the registration of the resolutions, on the ground, among others, that Stanley had been adjudicated a bankrupt.

Mr. Registrar Pepys, sitting for the CHIEF JUDGE, overruling the objection, ordered the resolutions to be registered.

Messrs. Milward appealed.

Mr. Finlay Knight for the appellants.

Mr. M'Call, contrà, relied on *Ex parte Davis, re Russ*, L. R. 2 Chanc. Div. 231.

Their LORDSHIPS reversed the decision of the registrar, and annulled the registration.

Court of Appeal. JAMES, L.J. COTTON, L.J. LUSH, L.J. Nov. 25. } *In re* RAGGETT. *Ex parte* WILLIAMS.

Mortgage — Consolidation — One Security no longer existing.

Raggett and Williams, two of the bankrupts, were in partnership; and, on April 4, 1877, they took a lease of certain premises, which they used afterwards as an office. That lease contained a proviso determining the lease on the bankruptcy of the lessees.

The leasehold premises were mortgaged by Raggett and Williams to another person named Williams.

On June 13, 1877, Raggett and Williams took into partnership Beadon; and, by clause 3 of the partnership deed, it was agreed that the offices should be held by the other two partners in trust and as a part of the capital of the partnership.

The partners afterwards, on March 21, 1879, mortgaged to the same mortgagee (Williams) a debt owing to them and certain securities which they held for the same.

On July 23, 1879, the partners became bankrupt, and the lease determined under the proviso.

The mortgagee claimed to consolidate the debt due on the leasehold premises with the other security, although the lease had determined.

Mr. Registrar Pepys refused the application.

The creditor appealed.

Mr. Romer for the appellant.

Mr. Winslow and *Mr. Lawrence, contrà.*

Their LORDSHIPS dismissed the appeal, with costs; holding that, when one of the securities had ceased to exist, the right to consolidate had gone; JAMES, L.J., holding that a mortgagee had no right to consolidate a mortgage made by three persons, with a mortgage by two as trustees for the three.

Court of Appeal.
LORD COLERIDGE, C.J.
BAGGALLAY, L.J.
BRETT, L.J.
Nov. 29.

WINSPEAR *v.* THE ACCIDENT INSURANCE COMPANY.

Insurance—Construction of Policy—Death by Drowning.

Appeal of the defendants from a judgment of the Exchequer Division on a special case. Action by an executor to recover 1,000*l.* on a policy of insurance against death or accident effected with the defendants.

The sum insured for became payable in case the insured 'shall sustain any personal injury caused by accidental external and visible means. . . . And the direct effect of such injury shall occasion the death of the insured within three calendar months of the happening of such injury;' with a proviso that 'this insurance shall not extend to death by suicide . . . or to any injury caused by or arising from natural disease, or weakness or exhaustion consequent upon disease.' The insured had an epileptic fit whilst crossing a shallow stream, and fell into it and was drowned.

Mr. A. Cohen and *Mr. Gainsford Bruce* for the defendants.

Mr. F. O. Crump for the plaintiff.

Their LORDSHIPS unanimously affirmed the judgment of the Exchequer Division; being of opinion that, on the true construction of the policy, the death of the insured was caused by one of the injuries insured against, and was not within the exceptions in the proviso.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Nov. 16, 27, 29, 30.

VERNON *v.* VESTRY OF ST. JAMES'S, WESTMINSTER.

Nuisance—Urinal—Metropolis Local Management Act (18 & 19 *Vict. c.* 120)*—Injunction.*

Appeal by the vestry from the decision of MALINS, V.C. The case is reported 49 Law J. Rep. Chanc. 130.

Mr. Bristowe and *Mr. Gregory Walker* for the appellants.

Mr. Glasse and *Mr. Samuel Dickinson,* for the plaintiff, were not called upon.

Their LORDSHIPS dismissed the appeal, with costs.

Court of Appeal.
LORD SELBORNE, L.C.
BAGGALLAY, L.J.
BRETT, L.J.
Dec. 1.

CARTER *v.* STUBBS.

Practice—Extension of Time—Order LVII., Rule 6.

Appeal from the Common Pleas Division.

On June 17 a Master's order was made dismissing the action unless the plaintiff answered certain interrogatories within seven days. The plaintiff swore an affidavit in answer to the interrogatories on the seventh day, but did not file it until the eighth day.

On July 2 the plaintiff took out a summons to rescind the order of June 17, and on July 9 a Master made an order rescinding it. On appeal to HAWKINS, J., at chambers, the hearing of the appeal summons was adjourned until July 20. In the meantime the plaintiff took out two further summonses—one, to show cause why the time for appealing from the order of June 17 should not be extended; and the other, to show cause why the same order should not be varied by altering the seven days to fourteen. On July 20, Hawkins, J., made an order in favour of the plaintiff on each of the two summonses.

The Common Pleas Division affirmed this order, and rescinded the order of July 9.

The defendant appealed.

Mr. Gould for the defendant.

Mr. R. T. Reid for the plaintiff.

Their LORDSHIPS held that Hawkins, J., had jurisdiction to make the orders appealed against; that the Court would not interfere with the discretion exercised by Hawkins, J., and the Common Pleas Division; and they therefore dismissed the appeal.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
Nov. 26.

ASHTON *v.* SHORROCK.

Practice—Motion for Release of Prisoner—Precedence over other Motions.

In this case a question was raised whether a motion for the release of a prisoner in custody for a contempt was entitled to precedence on motion days over other motions.

Mr. Bagshawe, Mr. Heath, and *Mr. Farwell* for the parties.

The MASTER OF THE ROLLS said that such a motion was always entitled to precedence over any other motion, as it affected the liberty of the subject.

Chancery Division.
JESSEL, M.R.
Nov. 29, 30.
} COULDERY *v.* BARTRUM.

Debtor and Creditor — Composition—Security — Valuation—Right to surplus Proceeds—Bankruptcy Act, 1869—*Bankruptcy Rules*, 1870.

In this case the plaintiffs were debtors, who had made a composition with their creditors under the Bankruptcy Act, 1869. The defendants were secured creditors, who put a value on their security, and proved and received the composition on the difference. The security realised more than the value named by the creditors; and this action was brought to recover the surplus, and for a reconveyance.

Mr. Ince and *Mr. Maidlow* for the plaintiffs.

Mr. Ingle Joyce for the trustee of the composition deed.

Mr. Roxburgh, *Mr. Chitty*, *Mr. Eastwick*, and *Mr. Hart* for the defendants.

The MASTER OF THE ROLLS held that the composition and value placed on the security when paid were a complete satisfaction for the debt; and he accordingly gave judgment for the plaintiffs.

Chancery Division.
BACON, V.C.
Nov. 20, 27.
} *Re* LENNARD. THEOBALD *v.* KING.

Will — Wasting Securities — Leaseholds — Conversion—Discretion to Trustees.

Further consideration.

A testator directed his trustees to stand possessed of his real and personal property, upon trust, for his daughter Emily King for her natural life, and subject thereto for her children.

The will contained the following proviso: 'It shall be lawful for my said trustees or trustee, in their or his absolute discretion, and if and when they shall think fit, but not otherwise, to sell and dispose of the said freehold and leasehold hereditaments, and personal estate not consisting of money . . . and, generally, in such manner as my said trustees or trustee, . . . at their or his discretion, shall see fit, and in every respect as he or they could sell the same if beneficially entitled thereto.' Part of the property consisted of leaseholds, held for short unexpired terms, which the trustees had not yet sold.

The children contended that they were entitled to have the leaseholds converted at once; the daughter that she was entitled to enjoy them in specie.

Sir H. M. Jackson and *Mr. Bush* for the trustees.

Mr. Simmonds for the daughter Emily King.

Mr. C. H. Turner for the children.

BACON, V.C.: No case has ever yet decided that, where the trustees have a discretion whether to sell or to leave unsold, wasting property must be converted. *Brown* v. *Gellatly*, Law J. Rep. 2 Chanc. 752, is no decision to the contrary, as it depended upon its own particular facts, which are not the facts in this case. In my opinion, the tenant for life is entitled to the income of the unconverted leaseholds so long as the trustees, in their discretion, retain them unconverted.

Chancery Division.
HALL, V.C.
Nov. 20.
} WYE VALLEY RAILWAY COMPANY *v.* HAWES.

Practice—Third Party Notice—Rules of Court, 1875, *Order XVI., Rules* 17, 18, 21.

In an action by the above company, against their directors, contractors, and financiers, seeking to hold the defendants personally liable for a sum of money alleged to have been improperly paid to the shareholders, out of the capital of the company, by way of dividend, the defendants took out a summons for leave to serve third party notices on the shareholders, under Order XVI., Rule 18, on the ground that, if the defendants should be held so liable, they would have a right over against the shareholders, to recover from them the sums received by them as dividends. It was stated that the shareholders were 450 in number. The summons having been adjourned into Court, two questions were separately argued: viz. (1) whether the application for leave in such a case should be *ex parte* or on notice to the plaintiffs; and (2) whether the case was one in which the leave should be granted.

Mr. Romer, for the defendants, argued, first, that, on an application for leave to serve a third party notice pure and simple, under Rule 18 (as distinguished from a notice under Rule 17), the plaintiff was in no wise affected until further proceedings were taken under Rules 20 and 21, and that, therefore, the application ought to be made *ex parte*; and, secondly, that the case was a simple case of a right to indemnity, in which the granting of the leave would not embarrass or interfere with the conduct of the action by the plaintiffs.

Mr. Whitehorne, contrà.

HALL, V.C., held that applications for leave to serve a third party notice, under Order XVI., Rule 18, ought, in every case, to be upon notice; and that, in the exercise of his judicial discretion, he ought not to grant the leave, as the granting of it might materially embarrass the plaintiffs in their further proceedings in the action.

Chancery Division.
HALL, V.C.
Nov. 27.
} *In re* TRADE MARKS REGISTRATION ACTS. SYKES & CO.'S APPLICATIONS.

Trade Marks—Bleacher's Mark—Initial Letters of Firm—Distinctiveness—Registration with Note as to Mode of User.

Motion to direct applications for registration to be proceeded with of two marks placed in the second class by the committee of experts for cotton marks.

The marks were (1) a shield enclosing a swan, and the letters S. & Co. E. in a certain position, and other varying letters; (2) a shield enclosing the letters R. S. E. in a certain position, and other varying letters.

The varying letters were stated to denote the month and year and the maker up of the piece.

The applicants were calico bleachers, and stated that the marks were intended to be used, as they had been used, in the inside fold of the pieces on which they were stamped; whereas merchants and manufacturers' quality, marks, and initials were stamped on the outside of the piece.

Mr. Graham Hastings and *Mr. E. S. Ford* for the applicants.

Mr. Rigby, for the registrar: The shields are mere borders, which the committee, under instructions from the commissioners of patents, put out of consideration. Letters representing the initials of firms, or denoting quality, are in general use in the cotton trade, and, therefore, have been always refused registration. With regard to the swan, there are many applications relating to similar devices.

HALL, V.C., considered the marks distinctive within the meaning of the statute; and the mode of user could be restricted by a note upon the register, so as to prevent confusion with other marks used in the cotton trade. He directed the registration to be proceeded with, and a note to be put on the register stating that the marks were to be stamped on the inside fold of the piece; and that the swan was not to be used alone as a mark.

Chancery Division. HALL, V.C. Nov. 27. } GREEN *v.* THE METROPOLITAN BOARD OF WORKS.

Fines and Recoveries Act (3 & 4 *Wm. IV. c.* 74), *s.* 77—*Conveyance of Married Woman's Lands—Concurrence of Husband — Execution of Conveyance — Summons under the Vendor and Purchaser Act*, 1874.

F. G. Green and Mary Ann, his wife, were parties to an indenture, whereby a share of real estate belonging to the wife (the legal estate being vested in trustees) was expressed to be conveyed to the husband. The deed was executed by the wife and the trustees, and separately acknowledged by the wife, but was not executed by the husband. It was prepared upon the husband's instructions, and he afterwards acted as owner of the property. He had since died.

Mr. Pownall, for the purchasers, contended that the wife's estate did not pass, her husband not having concurred in the deed.

Mr. Vernon R. Smith, for the vendors: Concurrence does not merely mean joining in the execution (section 91); and the husband sufficiently concurred.

Mr. Chester for Mrs. Green.

HALL, V.C., held that the deed was ineffectual to pass the wife's estate without actual execution by the husband.

Chancery Division. HALL, V.C. Nov. 29. } SEAR *v.* THE HOUSE PROPERTY AND INVESTMENT COMPANY (LIMITED).

Landlord and Tenant—Construction of Lease—Lessee's License to assign not to be unreasonably withheld—Covenant by Lessor, or Qualification of Lessee's Covenant.

The plaintiff sought an injunction restraining the defendants from unreasonably withholding their license to an underlease by him of certain property which he held under a lease from their predecessors in title, or damages for such unreasonable withholding.

The statement of claim showed that the lease contained, among the lessee's covenants, a covenant not to assign or underlet without the lessor's consent in writing; 'but such consent not to be unreasonably withheld.' The defendants demurred to this pleading, on the ground that it showed no covenant or contract binding them to grant the license.

Mr. Graham Hastings and *Mr. Gover* for the demurrer.

Mr. W. Pearson and *Mr. Northmore Lawrence* for the plaintiff.

HALL, V.C., allowed the demurrer.

Chancery Division. HALL, V.C. Nov. 29. } KANE *v.* KANE.

Marriage Settlement—Covenant to settle after-acquired Property—Exception of Property otherwise settled—Property given to Wife to her separate Use.

Mr. and Mrs. Kane's marriage settlement contained a covenant by the intended husband and wife severally with the trustees, for the settlement of property coming to her during their joint lives, except property which should previously be otherwise settled. The trusts of the settlement were for the separate use of the wife for life without power of anticipation; then for the husband till he should marry again; and, subsequently, for the benefit of the children.

During the coverture Mrs. Gooch made a codicil bequeathing to Mrs. Kane 2,000*l.* for her sole and separate use; and the husband and children of the marriage sought a declaration that this legacy was bound by the marriage settlement.

Mr. W. F. Robinson and *Mr. Blackmore* for the plaintiffs.

Mr. Graham Hastings and *Mr. Ingle Joyce* for the wife.

Mr. Cottrell for the trustee.

HALL, V.C., held that the legacy was, by virtue of the trust for separate use, within the exception to the covenant; and was not bound by the marriage settlement.

Chancery Division. Fry, J. Nov. 29. } SYKES *v.* BROOK.

Practice—Official Referees—Trial.

Both the parties to this action were desirous that certain issues should be referred to an official referee; and, when the action came on for trial, application was made to the judge for such reference. And it was submitted that the proper course was to direct the reference, and order the trial to stand over; and not to give judgment and direct the reference under the judgment, and reserve further consideration.

Mr. Eyre for the plaintiff.

Mr. Millar and *Mr. Gregory Walker* for the defendant.

FRY, J., directed the reference, and ordered the action to stand over.

Queen's Bench Division. (Magistrates' Case.) Nov. 6, 25. } REGINA *v.* THE JUSTICES OF ABERGAVENNY.

Poor Law—Pauper—Order of Removal made without corroborative Evidence—Appeal to Sessions—Grounds of Appeal—Reception of corroborative Evidence on Appeal.

Case stated from quarter sessions.

The pauper was the widow of J. W. (who died in February, 1879), and had resided with him, from 1871 till the time of his death, in the Monmouth Union. Between 1871 and 1876 the residence was such as to render her and her husband irremovable. In 1876, and subsequently, the pauper and her husband received relief from the Monmouth Union while residing in it. After the death of J. W. the pauper went to reside in the Abergavenny Union, and became chargeable thereto shortly afterwards.

On March 26, 1879, an order was made by two justices for the removal of the pauper to the Monmouth Union, upon the evidence of the pauper only, without any corroboration.

The guardians of the Monmouth Union appealed to the sessions, on the grounds that (1) the pauper had not acquired a residence for a term of three years prior to February, 1879, according to 39 & 40 Vict. c. 61, s. 34; and (2) that there was no corroboration of the pauper's evidence before the justices making the order of removal, as required by the same section. The sessions held that it was competent to them to receive corroborative evidence which they considered to be sufficient; but they decided that the pauper had not acquired a settlement, by residence, within 39 & 40 Vict. c. 61, s. 34; consequently they quashed the order of removal.

A. T. Lawrence, in support of the order of the sessions, admitted that a residence had been acquired in the Monmouth Union under 39 & 40 Vict. c. 61, s. 34 (see *The Guardians of the Brompton Union* v. *The Guardians of the Carlisle Union*, 47 Law J. Rep. M.C. 114); but contended that the order, which was admittedly bad, when made, for want of corroborative evidence, could not be remedied, on appeal, by the reception of corroborative evidence.

Maddy, contrà, argued that the appeal to the sessions was in the nature of a rehearing, and that, accordingly, the evidence was rightly received, even though it was not given at the time when the order was made.

Cur. adv. vult.

The COURT (MANISTY, J., and BOWEN, J.) held that, upon the above facts, the sessions rightly received corroborative evidence, there being other grounds of appeal which could not be decided without hearing such evidence. Whether they could have received it if the only ground of appeal had been that the order of removal was a nullity, owing to its having been made upon the evidence of the pauper only, without any corroboration—*Quære.*

Order of removal confirmed.

Queen's Bench Division. (Magistrates' Case.) Nov. 20, 27. } CLARKE (APPELLANT) *v.* THE ALDERBURY UNION (RESPONDENTS).

Poor Rate—Refreshment Contractor—Quarter Sessions—Appeal against Assessment—Admissibility of Evidence—Annual Value less than Rent—Case stated by Sessions—No 'Certiorari'—Costs of Proceedings in Superior Court—Rules of Court, 1880, *Order LXII., Rules* 55, 59.

The appellant was a refreshment contractor and the lessee of the refreshment rooms at the Salisbury station of the London and South-Western Railway. The appellant was rated by the respondents, on July 19, 1879, at 1,000*l.* gross estimated rental, and 900*l.* rateable value. On appeal to the sessions, the appellant contended that he had made a mistake in offering so large a rental, and that he was over-rated by several hundred pounds. In order to prove this, he tendered evidence as to sums received, and also prices actually paid for provisions and salaries; but such evidence was objected to by the respondents, on the ground that the appellant, after offering to pay the particular rent, could not be heard to say that the annual value was less than such rent. The sessions, however, overruled the objection, and, having heard the evidence, reduced the rate. The question raised was, whether the evidence was admissible.

Meadows White (*Bullen* with him) for the appellants.

A. Wills and *Prior Goldney* for the respondents.

The COURT (FIELD, J., and BOWEN, J.) held that the evidence in question was admissible, and accordingly they confirmed the order of the sessions.

On a subsequent day (November 27) *Meadows White* applied for costs. By the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40, a writ of *certiorari* is no longer required for the removal to this Court of an order in relation to which a special case is stated by the sessions. There is no machinery provided at present as to what is

to be done in these cases. [FIELD, J.: The proper course is for the appellant to apply to the clerk of the peace to get the order transmitted to the Crown Office.] The application for costs is made under the Rules of Court, 1880, Order LXII., Rule 55, by which the rules of the Supreme Court as to costs (see Order LV.) are to apply to all civil proceedings on the Crown side of the Queen's Bench Division. Rule 59 of the same Order (LXII), no doubt, says that 'for the purpose of this Order proceedings in *mandamus, quo warranto*, and prohibition shall be deemed civil proceedings;' but the framers of the rule did not thereby intend to exclude all other civil proceedings on the Crown side. The fact is there is sometimes something of a quasi-criminal nature in the three proceedings mentioned in Rule 59, and but for that rule it is doubtful whether they could have been classed as 'civil proceedings.' Under Order LV. of the Rules of Court, 1875, the costs incident to proceedings in the High Court are in the discretion of the Court; and under that order the present application is made.

A. Wills, for the respondents, admitted that he could not successfully resist the application.

The COURT (FIELD, J., and MANISTY, J.): Order LXII., Rule 59, was not intended to be confined to the three proceedings therein mentioned, but was framed *ex abundanti cautelâ*. The general policy of the order is that costs should be in the discretion of the Court.

Application for costs granted.

Common Pleas Division. Nov. 20. CARRARD *v.* MEEK.

Bill of Sale—Consideration—Prior unregistered Bill of Sale—41 & 42 Vict. c. 31, ss. 4, 9.

Interpleader issue to determine whether certain goods in the possession of one Blin were the property of the plaintiff, who claimed them under a bill of sale; or the defendant, who had seized them in execution of a judgment recovered against Blin.

In November, 1878, part of the same goods had been seized by the sheriff for a debt of 28*l.*, and thereupon sold by him to the plaintiff for that amount. The receipt given by the sheriff was not registered. At the same time, the plaintiff purchased the remainder of the goods for 81*l.*, and took a receipt from Blin. This receipt was not registered. On January 10, 1879, an execution was levied on the same goods for 16*l.* The plaintiff claimed them, and the sheriff interpleaded. On the hearing of the interpleader summons the claim of the plaintiff was barred. The plaintiff thereupon paid to the sheriff 16*l.*, the amount for which the execution was levied, and took from Blin a bill of sale on all the before-mentioned goods, which bill was expressed to be made 'in consideration of the payment of 81*l.* by Carrard to Blin, and in further consideration of the payment of 16*l.* by the said Carrard to the sheriff for and at the request of the said Blin.' The defendant subsequently obtained judgment against Blin for 79*l.*; execution was levied for that amount on the before-mentioned goods, and they were now claimed by the plaintiff.

T. Willes Chitty for the plaintiff.

Wallace, for the defendant, contended that the consideration was not truly stated in the bill of sale within the meaning of section 8 of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31); and that, as it had been given in lieu of the receipt of November, 1878, which ought to have been registered, it was void under section 9 of the said Act, by which it is enacted that 'where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, it shall be absolutely void, unless it is proved that the subsequent bill of sale was given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.'

The COURT (LINDLEY, J., and LOPES, J.) held that the consideration was truly stated; and that the bill of sale was not affected by section 9, which did not apply to bills of sale executed after the expiration of the seven days.

Judgment for the plaintiff.

Common Pleas Division. (*Magistrates' Case.*) Nov. 29. GRAINGER (APPELLANT) *v.* AYNSLEY & CO. (RESPONDENTS). BROMLEY (APPELLANT) *v.* TAMS (RESPONDENT).

Employers and Workmen Act, 1875, *ss.* 3, 10—*Workman employing Sub-workmen.*

The facts in both cases were substantially the same. The respondents were earthenware manufacturers, and the appellants were in their employ as potters' printers. By the custom of the trade, the potter printer contracted to work from Martinmas to Martinmas, subject to a month's notice to quit; and he employed another person, called a transferrer, to assist him in his work. The respondents having proposed to reduce the wages of the workmen in their employ, the matter was submitted to arbitration, and resulted in an award making a reduction of 8¼ per cent. to commence from the ensuing Martinmas. The appellants and other workmen were willing to continue their employment at the reduced rate, but the transferrers refused, and went out on strike. The appellants continued each day to present themselves at the works of the respondents ready to work, but were unable to do so in consequence of the strike of the transferrers. The appellants were summoned before the stipendiary magistrate for Stoke-upon-Trent for absenting themselves from the respondents' employment, and were adjudged to be liable, and were ordered to pay damages and costs. From this decision they now appealed.

Hopwood (*R. S. Wright* and *Darling* with him), for the appellants, contended (1) that the dispute was

not a dispute within the meaning of the Employers and Workmen Act (38 & 39 Vict. c. 90); (2) that the appellants were not workmen within the meaning of the said Act as defined by section 10, which is as follows: 'The expression "workman" does not include a domestic or menial servant, but save as aforesaid means any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service, or a contract personally to execute any work or labour.'

The COURT (LINDLEY, J., and LOPES, J.) affirmed the decision of the magistrate; holding (1) that the dispute 'arose out of, or was incidental to, the relation of employer and workmen' within the meaning of section 3 of the Act; (2) that the appellants were workmen within the meaning of section 10.

Appeal dismissed.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
Nov. 29.

In re YOUNG. *Ex parte* BARWICK.

Bill of Sale—Consideration—Bills of Sale Act, 1878, *s.* 8.

Appeal from an order of the judge of the Bedfordshire County Court dismissing an application by the trustee in the liquidation to have a certain bill of sale, dated January 14, 1879, given by the debtor to Miss Field, declared void, on the ground that the consideration was not truly set forth. The consideration was stated to be 'the sum of 65*l.* now advanced.' It was, in fact, advanced in sums of 12*l.*, 16*l.*, 20*l.*, 10*l.*, and 7*l.* (amounting to 65*l.* in all), at different periods from April 17, 1877, up to October 16, 1878.

Mr. E. C. Willis for the appellant, the trustee.

Mr. Jaques, for the respondent, relied upon *The Credit Company* v. *Pott*, 42 L. T. (N.S.) 592.

The CHIEF JUDGE held that the facts of the case referred to were different; that the consideration was not truly stated; and that the appeal must be allowed, with costs.

Table of Cases.

HIGH COURT OF JUSTICE.

HIGH COURT OF JUSTICE.

Crown Case Reserved. Dec. 4. } REGINA *v.* SALMON AND OTHERS.

Coram LORD COLERIDGE, L.C.J., FIELD, J., LOPES, J., STEPHEN, J., and WILLIAMS, J.

Manslaughter—Unlawful Act—Culpable Negligence.

Case reserved by LORD COLERIDGE.

A. was a member of a rifle corps. On May 29 he attended the rifle practice. After the practice it was his duty to take his rifle back to the armoury. He did not do so, and the drill instructor missed six cartridges from the magazine when he went there about half an hour after the practice was over. A., with B. and C., then fixed a temporary target in an apple tree in a garden, and fired with the rifle from a distance of 400 yards. One of the shots killed a boy who was in the apple tree. The jury found A., B., and C. guilty of manslaughter. There was no evidence which of the prisoners fired the shot which caused death, and the question reserved was whether there was any evidence upon which either or all of the prisoners could be convicted of manslaughter.

Norris appeared for the prosecution.

No counsel appeared for the prisoners.

HELD, that the conviction was right; because the prisoners all joined in a dangerous act, without taking proper precautions, whereby a person was killed.

Conviction affirmed.

Chancery Division. JESSEL, M.R. Dec. 3. } WOOD *v.* SWANN.

Practice—Writ issued by next Friend—Solicitor—Invalidity of Proceedings.

In this case the writ had been issued by the next friend of a married woman, not being a solicitor.

Mr. C. H. Turner now moved that the writ and all subsequent proceedings in the action might be set aside,

on the ground of the improper issue of the writ; and that the next friend might pay the costs.

The next friend did not appear.

The MASTER OF THE ROLLS said that he had never heard that any one not a solicitor or a plaintiff in person could issue a writ; and he therefore made the order asked for.

Chancery Division.
JESSEL, M.R.
Dec. 6.
} GOWAN *v.* GOWAN.

Executory Settlement—Children—Powers of Appointment.

The testatrix in this case, by will, gave 5,000*l.* to be held by her trustees and executors until her son married, 'the said sum then to be settled on his wife and children.' The son having married, a question arose as to the proper form of the settlement to be made of the 5,000*l.*

Mr. Langworthy for the son, the plaintiff, submitted that the settlement should contain a power for the husband and wife jointly during the coverture, by deed or will, and for the survivor by will, to appoint the fund amongst the children, with remainder in default of any such appointment to the children equally. But he called attention to the report of a case of *Smithers* v. *Green* (Seton on 'Decrees,' 675), where such powers were omitted from the settlement, although the form was stated to have been approved of by the Master of the Rolls as the proper settlement in the absence of any special circumstance.

Mr. Cecil Russell and *Mr. Langley* appeared for other parties.

The MASTER OF THE ROLLS said that there must have been some special reason for the form of the settlement in *Smithers* v. *Green*, and that in ordinary cases the husband and wife, or the survivor, ought to have powers of appointing the fund amongst the children.

Chancery Division.
JESSEL, M.R.
Dec. 6.
} EVANS *v.* WILLIAMSON.

Devise of Real Estate—Gift of Personal Estate—Growing Crops.

Margaret Roose, deceased, by will made in 1879, gave all her real estate to her daughter, the defendant, Grace Williamson, for her separate use for life, with remainder to her children. She gave to her granddaughter, Catherine Evans Williamson, 1,000*l.*, and all 'the household furniture, farming stock, goods, chattels, and effects, which should be in and about' a farm called Frondeg, at the time of the testatrix's decease. And she gave all the residue of her personal estate to the plaintiffs, upon trusts, to sell and convert and pay the income thereof to Grace Williamson for life, with remainder to her husband for life, with remainders in favour of the children of Grace Williamson, with a proviso that it should be lawful for her trustees, at the request of Grace Williamson, to postpone the sale of the 'farming stock' on a farm called Parry's Farm, occupied by her, and to allow the husband of Grace Williamson to purchase the same at a valuation.

The question in the case was, whether the growing crops on the real estate of the testatrix passed under the devise of real estate to Grace Williamson and her children; or whether it formed a part of the testatrix's personal estate, and so passed to her trustees, the plaintiffs.

Mr. Ince and *Mr. J. N. Lloyd* for the plaintiffs.

Mr. Russell Roberts for the defendant, Grace Williamson.

The MASTER OF THE ROLLS held that the growing crops passed to the plaintiffs as part of the testatrix's personal estate.

Chancery Division.
BACON, V.C.
Dec. 2, 7.
} JOHNSTONE *v.* COX.

Price of Commission—Mortgage—Date when Notice should be given—Priorities.

This was an action to decide the priorities of three sets of mortgagees (who had no notice of each other's securities) on the sum of 800*l.*, representing the price of the commission of Captain A. M. Smith. The money was paid to Messrs. Cox & Co. on March 29, 1879, by the Army Purchase Commissioners, to be paid to Captain Smith 'on his retirement;' and Messrs. Cox, according to their usual practice, carried it to the credit of the commissioners 'on account of Captain A. M. Smith.' Captain Smith's retirement was gazetted on May 17; and he signed a receipt for the money on June 27, when (subject to regimental claims) Messrs. Cox & Co. would have been prepared to pay the money over to him, but for the notices of mortgages, which were as follows: The first mortgagee gave notice to Cox & Co. on March 29; the second mortgagee gave notice on May 17; and the third mortgagee gave notice both on March 29 and on May 17.

Sir H. Jackson and *Mr. Grosvenor Woods* for the plaintiff, the third mortgagee.

Mr. Horton Smith and *Mr. Romer* for the first mortgagee.

Mr. Hemming and *Mr. Jason Smith* for the second mortgagee.

Mr. Grosvenor Woods in reply.

BACON, V.C., said that Cox & Co. were not bound to pay the money to Captain Smith until his retirement was gazetted, on May 17; that notices given before that date were, therefore, ineffectual; and that, by virtue of their notices, the second mortgagee was entitled to rank first, and the third mortgagee to rank second. The costs of all the mortgagees to be paid out of the fund.

Chancery Division.
FRY, J.
Nov. 30.
} COCKBURN *v.* EDWARDS.

Solicitor—Negligence—Measure of Damages—Mortgage—Power of Sale.

The plaintiff purchased a house in Ramsgate for 600*l.* The defendant acted as his solicitor, and promised a

mortgage on the property to the amount of 450*l.*; and also advanced 50*l.* himself, and took a second mortgage. This mortgage contained an absolute power of sale, which did not require notice to be given to the mortgagor. The defendant sold under the power. The statement of claim alleged that the plaintiff had not been informed of the peculiar nature of the mortgage which was executed, and had not received notice of the sale, and claimed damages.

Mr. Cookson and *Mr. Barber* for the plaintiff.

Mr. North and *Mr. Bardswell* for the defendant.

FRY, J., held that the plaintiff had not been told the onerous nature of the mortgage, and had not received notice of the intended sale, and awarded damages in respect of four items—(1) the costs of the sale of his property; (2) the expense he would be put to in repurchasing similar property; (3) the increased value of a similar house in a similar position in Ramsgate; and (4) the difference between 'solicitor and client' and 'party and party' costs of this action.

Chancery Division. FRY, J. Dec. 6. } EAMES *v.* HACON.

Foreign Letters of Administration—Domicile—Power to give Receipt.

The plaintiff, the widow of an intestate, had obtained letters of administration to the estate of the deceased in Ireland, in the ordinary form granted in the case of the deceased being domiciled in Ireland. She had also obtained supplementary letters of administration in England. Miss Forbes, of Bombay, acting under a power of attorney from her, had also obtained letters of administration for the presidency of Bombay; and, getting in the estate of the deceased in that presidency, had remitted the clear balance to the defendants, with instructions to pay the same to the parties entitled. The question in this action was whether the plaintiff could give a valid receipt for the sum in the hands of the defendants.

Mr. North and *Mr. G. E. Wright* for the plaintiff.

Mr. Method for the defendants.

FRY, J., held that the plaintiff was entitled to give a receipt, and receive the fund in the hands of the defendants.

Queen's Bench Division. Dec. 2. } IN THE MATTER OF AN ACTION BETWEEN JOHN MORGAN AND JOHN REISS.

County Courts Act, 1875 (38 & 39 *Vict. c.* 50, *s.* 6)—*General Request to Judge to take Notes—Signature of County Court Judge.*

The plaintiff in the above case had obtained a rule *nisi*, calling upon a County Court judge to show cause why he should not sign certain notes taken by him in an action.

It appeared that an application had been made to the judge in question, when the action came on for hearing, to take notes of the evidence, as it was an important case, and might be taken to appeal.

The main question argued was, whether a general request of this kind was a sufficient compliance with section 6 of 38 & 39 Vict. c. 50, which requires a County Court judge, in certain cases, 'at the request of either party, to make a note of any question of law raised . . . and of the facts in evidence in relation thereto,' &c.

A. Cohen (*Tindal Atkinson* with him) contended that a general request was insufficient, and would entail on a County Court judge an enormous amount of unnecessary labour; but that there must be a request to make a note of the questions of law which it was intended to raise. Though the judge did, as a matter of fact, take notes, he objected, on principle, to produce them, as they were merely rough notes taken for his own use, and might not improbably be misunderstood.

Holl and *Terrell* appeared to support the rule.

THE COURT (LORD COLERIDGE, C.J., and FIELD, J.) discharged the rule, on the ground that there had been no application to the judge to take any notes within section 6, and that the latter was not bound to sign imperfect notes which were not taken with view to an appeal.

Rule discharged.

Queen's Bench Division. (*Magistrates' Case.*) Dec. 2. } *Ex parte* AUSTEN.

'Certiorari'—Defect in Conviction by Justices—Conviction drawn up and filed—Application for Rule—Return—Right to substitute fresh Conviction.

This was a rule to show cause why a writ of *certiorari* should not issue to bring up a certain conviction made by justices, for the purpose of having the same quashed.

It appeared that the conviction in question (which was admittedly bad) had been returned to the clerk of the peace; but that, after the rule *nisi* had been granted, the justices had drawn up a fresh and more formal conviction.

Willis and *Laxton* showed cause; and contended that it was competent for the justices, in answer to this rule, to return the conviction in a proper shape.

C. E. Jones appeared to support the rule, but was not called upon to argue.

THE COURT (LORD COLERIDGE, C.J., and FIELD, J.), upon the above facts, made the rule absolute for a *certiorari* to issue, without expressing any opinion as to what might be the result of a motion to quash.

Rule absolute.

Common Pleas Division. Dec. 2. } HOOPER *v.* THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Railway Company—Negligence—Passenger's Luggage—Liability for Loss apart from Contract.

The plaintiff took a ticket at Stourbridge, issued by the Great Western Railway Company, and entitling him

to travel from Stourbridge, on the Great Western Railway, to Euston, on the defendants' railway. From Stourbridge to Birmingham the plaintiff travelled by the Great Western Railway; at Birmingham he changed into a London and North-Western Railway train, by which he travelled to Euston. His portmanteau was seen to be transferred at Birmingham into the defendants' van; but at Euston it was not forthcoming; and it was not recovered till three months afterwards, when its contents were injured by articles of a perishable nature which the plaintiff had packed inside it. The action was tried in the County Court, when the plaintiff was nonsuited, on the ground that there was no evidence of any contract between him and the defendants. The plaintiff, subsequently, obtained a rule calling on the defendants to show cause why this judgment should not be set aside, and a verdict instead be entered for the plaintiff.

Page showed cause.

Terrell in support.

The COURT (DENMAN, J., and LINDLEY, J.) held that the case was governed by *Foulkes* v. *The Metropolitan Railway Company*, 49 Law J. Rep. C.P. 361; for it was shown that the defendants had received the portmanteau, and they were, therefore, responsible for its loss, in accordance with the principle of that decision.

Judgment for the plaintiff.

Common Pleas Division. Dec. 7. } MILLINGTON *v.* LORING.

Embarrassing Pleading—Breach of Promise of Marriage.

Statement of claim in an action for breach of promise of marriage, stating a promise and breach, alleged that 'the plaintiff, relying on the said agreement, permitted the defendant to debauch and carnally know her, whereby the defendant infected the plaintiff with a venereal disease.' HAWKINS, J., at chambers, having ordered the above paragraph to be struck out, the plaintiff appealed.

Somerville for the plaintiff.

Crump for the defendant.

The COURT (DENMAN, J., and LINDLEY, J.) affirmed the order of Hawkins, J., holding the allegation to be embarrassing.

Appeal dismissed.

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Court of Appeal.
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BAGGALLAY, L.J.
BRETT, L.J.
Dec. 7, 8.

MULLINS *v.* THE TREASURER OF THE COUNTY OF SURREY.

Justice of the Peace—Order for Expenses of conveying Prisoners to Gaol—Prison Authority—The Prisons Act, 1877 (40 & 41 *Vict. c.* 21), *ss.* 4, 28, 57.

Appeal from a judgment of the Queen's Bench Division on a special case, reported 49 Law J. Rep. Q.B. 257.

The Solicitor-General (*Sir F. Herschell*), *Mr. E. Clarke*, and *Mr. E. Baggallay* for the appellants.

Sir Hardinge Giffard and *Mr. Avory* for the respondent.

Their LORDSHIPS reversed the judgment of the Queen's Bench Division.

Court of Appeal.
JESSEL, M.R.
COTTON, L.J.
LUSH, L.J.
Dec. 9.

Re LACEY. *Ex parte* LACEY.

Bankruptcy—Composition—Rights of Creditor not bound by Composition—Proof.

Appeal from a decision of BACON, C.J.

The case is reported *ante*, p. 92, *sub nom. In re Lacey, ex parte Bond.* The Chief Judge allowed a creditor on a judgment for the sum of 69*l.* 10*s.* 3*d.*, whose name was not entered in the debtor's statement of affairs, and who was accordingly not bound by a composition agreed upon by the other creditors, to file a proof of his debt after a lapse of nearly two years after the registration of the resolutions, and after the composition had been duly paid.

The debtor appealed.

Mr. E. C. Willis for the appellant.

Mr. Winslow and *Mr. Rose Innes*, for the respondent, relied on *Ex parte Carew*, 44 Law J. Rep. Bankr., 67; L. R. 10 Chanc. 308.

Their LORDSHIPS discharged the order of the Chief Judge; holding that to admit the creditor's proof for her debt was an extension of the doctrine supposed to be laid down in *Ex parte Carew*, which could not be sanctioned. In this case there was no property, no trustees, nothing remaining to be done. This was merely a personal demand of a creditor against a debtor, which the Court of Bankruptcy, having no property to administer, could not entertain. In the case relied on, the claim of the creditor was mentioned in the debtor's statement of affairs; the amount of the claim being disputed in another Court, and a fund was handed over to trustees to pay the debts, including the claimant's; and the Court refused to hand over to the debtor the balance of the fund without satisfying or providing for the claimant's debt.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Dec. 9.

Re BOWIE. *Ex parte* BREWELL.

Bankruptcy—'Reside' or 'carry on Business'—Jurisdiction of London Bankruptcy Court — Bankers' Clerks—Bankruptcy Act 1869 (32 & 33 *Vict. c.* 71), *s.* 59.

Bowie was a clerk in a joint stock bank, which carried on business within the limits of the jurisdiction of the London Bankruptcy Court. It appeared that he was

living, and had for ten years been living, with his mother, outside the jurisdiction.

Brewell, who claimed to be a creditor for 147*l.* 16*s.* 3*d.*, issued a debtor's summons out of the London Bankruptcy Court, and served it on Bowie at the bank, who moved to dismiss it for irregularity, on the ground that he resided outside the jurisdiction of the London Bankruptcy Court.

Mr. Registrar Murray made an order accordingly.

Brewell appealed.

Mr. Winslow and *Mr. Bigham* for the appellant.

Mr. M'Intyre and *Mr. Yelverton* for the respondent.

Their LORDSHIPS discharged the order appealed from. The words 'reside' and 'carry on business' had no technical meaning, but must be construed having regard to the intention of the Act, which, in distributing the business between the London Bankruptcy Court and the Provincial Courts, had in view the convenience of the parties; that the alleged bankrupt should be sued or proceeded against in what might be called his national forum; and that it was quite clear that he carried on business within the jurisdiction, it not being essential that he should be carrying on business as a principal.

JAMES, L.J., was disposed to hold that he might fairly be said to reside at the bank for the purposes of the Act.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Dec. 9.

In re BUNYARD. *Ex parte* NEWTON.
In re BUNYARD. *Ex parte* GRIFFIN.

Bill of Exchange—Security for Sum less than Bill—Accommodation Bill—Acceptor Bankrupt—Proof by Holder against Acceptor's Estate for full Amount—Restriction as to Receipt of Dividends.

These cases were argued on June 24, 1880, before BAGGALLAY, L.J., and COTTON, L.J., and judgment was delivered to-day.

The question raised in each appeal was, whether the holder of a bill of exchange, taken from the drawer as security for a sum less than the amount of the bill, is entitled, as against the estate of the bankrupt who had accepted for the accommodation of the drawer, to prove (1) only for the amount due to the holder; or (2) for the amount of the bill, with a restriction that he shall not receive the dividends on his proof to an amount exceeding the sum due to him on his security.

Their LORDSHIPS adopted the latter view, and gave judgment accordingly.

Mr. E. C. Willis and *Mr. Finlay Knight*, *Mr. De Gex* and *Mr. Kingsford*, were the counsel engaged.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Dec. 11, 13.

In re THE WITHERNSEA BRICK WORKS COMPANY.

Company—Execution Creditor—Seizure by Sheriff before Winding-up Petition — Secured Creditor—The Judicature Act, 1875, *s.* 10.

Appeal from the decision of MALINS, V.C.

On July 8, 1880, a judgment creditor of the company for over 50*l.* issued execution, and, on July 10, the sheriff seized some goods of the company under execution. On July 14 a petition for winding up the company was presented; and, on July 15, an injunction was obtained, restraining the sheriff from proceeding under the execution. On July 30 the company was ordered to be wound up.

The judgment creditor then applied in the winding-up for leave to enforce his execution; and the Vice-Chancellor—following the decision of FRY, J., *In re Richards & Co.*, 48 Law J. Rep. Chanc. 555; L.R. 11 Chanc. Div. 676, differing from that of the MASTER OF THE ROLLS *In re the Printing and Numerical Registering Company*, 47 Law J. Rep. Chanc. 580; L.R. 8 Chanc. Div. 535—gave leave.

The liquidator appealed.

Mr. Glasse and *Mr. Boome* for the appellant.

Mr. Macnaghten and *Mr. Nalder* for the creditor.

Their LORDSHIPS affirmed the decision of the Vice-Chancellor. All that was intended by section 10 of the Judicature Act, 1875, was to adopt the rule in bankruptcy as to the administration of assets, but not to import into a winding-up the rule in bankruptcy as to whether a security could or could not be avoided under certain circumstances, any more than it was intended to import the rules in bankruptcy as to fraudulent preference or order and disposition.

Court of Appeal.
LORD SELBORNE, L.C.
BAGGALLAY, L.J.
BRETT, L.J.
Dec. 14.

THE ATTORNEY-GENERAL *v.* DOWLING.

Revenue—Succession Duty—Mortgage of Base Fee—Resettlement.

Appeal from a judgment of the Exchequer Division, reported 49 Law J. Rep. Exch. 621.

Sir H. Giffard and *Mr. W. W. Karslake* for the appellant, the Attorney-General.

Mr. H. Davey and *Mr. Jason Smith* for the respondent.

Their LORDSHIPS unanimously affirmed the judgment of the Exchequer Division.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
Dec. 13.

In re NORTHERN COUNTIES FIRE INSURANCE COMPANY. MACFARLANE'S CLAIM.

Company—Fire Policy—Fire after Winding up—Proof—Companies Act, 1862, *s.* 158, *Rule* 25—*Bankruptcy Act*, 1869, *s.* 31—*Bankruptcy Rules*, 1870, *Rule* 67, *Form* 32—*Bankruptcy Forms*, 1870—*Judicature Act*, 1875, *s.* 10.

A question was raised, in this case, whether the holder of a fire policy was entitled to prove, in the winding up of a company, for the full amount of the policy, where the fire occurred after the winding up, and before the time fixed for claims to be sent in; or only for a proportionate amount of the loss and year's premium.

Mr. Chitty and *Mr. R. F. Norton* appeared for the claimant and policyholder.

Mr. Davey and *Mr. Oswald* for the official liquidator.

Mr. Grosvenor Woods watched the case for another policyholder.

The MASTER OF THE ROLLS was of opinion that, whether the case was governed by the rules in Bankruptcy, by reason of section 10 of the Judicature Act,

1875, or by the Companies Act, 1862, the applicant was entitled to prove for the full amount of the policy; and he, accordingly, made a declaration to that effect.

Chancery Division. Bacon, V.C. Dec. 11. } *In re* Campbell. Campbell *v.* Campbell.

Executor—Retainer—Loss of Right to retain—Institution by Executor of Action on behalf of himself and all other Creditors.

Further consideration.

An executor, who was also a creditor, instituted an administration action on behalf of himself and all other the creditors of the testator. The chief clerk, by his certificate, found that there was a balance in the hands of the executor of 95*l*. The executor now claimed to retain out of the balance his own debt in preference to those of the other creditors.

Mr. Fischer and *Mr. W. W. Knox* for the summons.

Sir H. M. Jackson and *Mr. W. S. Owen, contrà.*

Bacon, V.C., held that the executor's right of retainer was not lost by his having instituted the administration action.

Queen's Bench Division. Dec. 11. } Regina *v.* Gaunt.

Elementary Education Act, 1870 (33 & 34 *Vict. c.* 75), *s.* 91—*School Board Election—Corrupt Practices—Summary Conviction—Jurisdiction of Justices.*

This was a rule calling upon certain justices to show cause why a certain conviction, made by them at petty sessions, should not be quashed for want of jurisdiction.

The conviction in question was for a corrupt offence under the Elementary Education Act, 1870, s. 91, by virtue of which 'any person who, at the election of any member of a school board, . . . is guilty of corrupt practices, shall, on conviction for each offence, be liable to a penalty not exceeding two pounds, and be disqualified, for the term of six years after such election, from exercising any franchise at any election under this Act, or at any municipal or Parliamentary election.'

No counsel appeared to support the conviction; but

T. C. Tunnard Moore supported the rule, and argued that the offender could not be convicted summarily, but only upon indictment. The Act used the words 'summary conviction' when it was intended that the justices at petty sessions should have jurisdiction over the offence. (See sections 87, 88, 89, 90.)

The Court (Lord Coleridge, C.J., and Manisty, J.) held that section 91 must be read as though the word 'summary' had been inserted. The rule was accordingly discharged.

Conviction affirmed.

Common Pleas Division. Dec. 1, 8. } Phillipson *v.* Hale.

Friendly Society—Loan to Member—Set-off of Deposit—3 & 4 Vict. c. 110—*Companies Act*, 1862.

Appeal from the County Court.

The plaintiff, official liquidator of a loan society, registered under 3 & 4 Vict. c. 110, sued the defendant for the amount of a loan granted to him by the society, and secured by a bond. The defendant, who was a shareholder in the society, sought to set off moneys paid by him in part payment of his shares in the society, and exceeding the amount of the loan. By rule 25 of the society 'members wishing to withdraw from the society may do so on giving notice in accordance with the following scale [set out]. Members who are borrowers or sureties cannot withdraw their deposits until the loan is repaid; and, if at any time there are more applications to withdraw than there are funds to meet the requirements, the claims of each applicant will be considered by precedence.'

Previous to the granting of the loan the defendant had given the requisite notice of withdrawal; but the directors, being unable to comply with the notice, had granted him a loan upon the said bond for an amount equal to about two-thirds of his deposits. The County Court judge having allowed the set-off, the plaintiff appealed.

W. R. Smith for the plaintiff.

Alexander Glen for the defendant.

The Court (Denman, J., and Lindley, J.) held that the defendant was precluded by rule 25, and by the provisions of 3 & 4 Vict. c. 110, and the winding-up provisions of the Companies Act, 1862, from setting off the amount of his deposits as a shareholder in the society against the debt due from him to the society.

Appeal allowed.

Common Pleas Division. Dec. 6. { Harmon *v.* Park and another. *In re* Election Petition for Sunderland Borough.

Respondent in Election Petition—Returning Officer—Municipal Corporation Act, 1835 (5 & 6 *Wm. IV. c.* 76)—*The Ballot Act*, 1872 (35 & 36 *Vict. c.* 33)—*Corrupt Practices* (*Municipal Elections*) *Act* (35 & 36 *Vict. c.* 60).

An extraordinary vacancy having occurred in the office of councillor for West Ward, one of the wards of the borough of Sunderland, a municipal corporation under 5 & 6 Wm. IV. c. 76, the petitioner, being a duly qualified candidate, was nominated, in writing, in his right name of Mark Harmon by two, and seconded by eight other, enrolled burgesses of the said borough. The name of the petitioner appeared, however, on the burgess roll as Mark Harmond; and the mayor, on October 7, 1880, allowed an objection made by the only other candidate, the respondent, Robert Park, to the nomination of the petitioner on the ground that the name of the candidate, Mark Harmon, did not appear on the burgess roll. Pursuant to notice issued by the town clerk on October 8, 1880, the alderman of the said ward attended at the town hall or corporation buildings on October 15, 1880, and declared the said Robert Park, the only other candidate nominated for the said vacancy, to have been duly elected. The said Mark Harmon petitioned against the said election, and joined the mayor, Samuel Storey, as respondent. On November 22, 1880, Stephen, J., ordered that the said Samuel Storey should be dismissed from the petition, on the ground that he was improperly joined, not being the returning officer within the meaning of the Corrupt Practices (Municipal Elections) Act (35 & 36 Vict. c. 60), s. 2.

The petitioner appealed.

G. Bruce for the petitioner.

Ridley for the respondent.

The COURT (DENMAN, J., and LINDLEY, J.) rescinded the order, on the ground that, though the mayor did not preside throughout the whole election, he yet did preside when the election was virtually complete, what followed being merely machinery for making known the result of the election; and, so presiding, was a returning officer within the meaning of the Corrupt Practices (Municipal Elections) Act (35 & 36 Vict. c. 60), s. 13, subs. 6; and was, therefore, rightly joined as respondent.

Order rescinded. Costs to abide the event of the petition.

This case was heard before the Court of Appeal on the 15th inst., when their lordships reversed the order of the Common Pleas Division, and restored the order made at chambers by Mr. Justice Stephen.

COURT OF BANKRUPTCY.

Bankruptcy.
BACON, C.J.
Dec. 13.

Ex parte ALLEN. *In re* LEAROYD, WILTON & Co.

Court of Bankruptcy—Jurisdiction—Bankruptcy Act, 1869, s. 72.

Appeal from the Huddersfield County Court.

The debtors, woollen merchants in London, between May and September, 1879, had purchased, in Huddersfield and other towns in Yorkshire, woollen cloth to the value of 14,000*l.* or 15,000*l.*, which they almost immediately pledged, at rates of interest varying from 65 to 300 per cent., with various parties in London. Amongst other pledges, the debtors in July, 1879, pledged part of the goods, to the amount of 6,391*l.* 8*s.* 3*d.*, to Allen. On September 30, 1879, the debtors filed a petition for liquidation.

The trustee in the debtors' liquidation desired to set aside the pledges to Allen as being fraudulent, on the following grounds: That they were transfers of substantially the whole of the debtor's property, without any advance, and that Allen was aware that the debtors had bought the goods for the purpose of pledging them.

Upon the trustee's motion, the judge of the County Court, on October 15, 1880, made an order that, 'it appearing to the Court that there are questions of fact arising on the motion, which ought to be tried by a jury,' those questions should be tried accordingly in the Huddersfield County Court; that the evidence be taken *viva voce*; and that the Court should settle the questions of fact to be submitted to the jury in case the parties could not agree upon them.

From this order Allen appealed.

Mr. De Gex, Mr. Winslow, and *Mr. S. Woolf* for the appellant: In the County Court we can only get a jury of five, who are chosen from the ordinary list for the borough. We desire a special jury.

Mr. E. C. Willis and *Mr. Warmington* for the trustee.

The CHIEF JUDGE: The Court of Bankruptcy, no doubt, has jurisdiction to hear this matter; but, in the exercise of its discretion, I am of opinion that it ought not to do so, but leave the matter to be disposed of by the ordinary tribunals. The question at issue is of great importance. The appellant desires to have a special jury, and I do not think that the question should be left to be tried by a County Court jury of five. The order of the County Court must be set aside; the costs will be reserved.

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BAGALLAY, L.J.
BRETT, L.J.
Dec. 17.

MILLINGTON *v.* LORING.

Practice—Pleading—Order XIX., Rule 4—Order XXVII., Rule 1.

A statement of claim in an action for breach of promise of marriage, after stating the promise and breach, contained a paragraph alleging that the 'plaintiff, relying on the said agreement, permitted the defendant to debauch and criminally know her, whereby the defendant infected the complainant with a venereal disease.' HAWKINS, J., at chambers, having struck out this paragraph, the Common Pleas Division affirmed his order (*ante* 144), and the plaintiff appealed.

Mr. Somerville for the plaintiff.

Mr. Crump for the defendant.

Their LORDSHIPS reversed the decision of the Common Pleas Division, holding that the matters stated in the paragraph could be properly pleaded within Rule 4 of Order XIX., and ought not to be struck out under Rule 1 of Order XXVII. The order of Hawkins, J., was therefore rescinded.

Court of Appeal.
LORD SELBORNE, L.C.
BRAMWELL, L.J.
BRETT, L.J.
Dec. 17, 18.

ROYLE *v.* BUSBY & SONS.

Debtor and Creditor—Execution—Sheriff's Fees—Liability of Execution Creditor's Solicitor to pay Sheriff's Fees.

Appeal from a judgment of BOWEN, J.

The solicitors of a creditor, who had recovered judgment in an action against a limited company, lodged with the sheriff a warrant on a *fieri facias* to levy on the goods of the company. No officer was named or selected by the solicitors to execute the warrant. The sheriff's officer seized the goods, and remained in possession until an order to wind up the company was made on a petition filed before the seizure. In an action by the sheriff's officer against the solicitors to recover fees and possession money up to the date of the winding-up order, Bowen, J., gave judgment for the defendants.

Mr. Bigham for the plaintiff.

Mr. R. Henn Collins for the defendants.

Their LORDSHIPS unanimously affirmed the judgment of Bowen, J., holding that, in the absence of any con-

tract between the solicitors and the sheriff, the solicitors were not liable. Their lordships followed *Mayberry* v. *Mansfield*, 9 Q.B. 754, and dissented from *Brewer* v. *Jones*, 10 Exch. 655.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Dec. 17, 20.

HARVEY (OTHERWISE FARNIE) *v.* FARNIE.

Marriage in England—Domiciled Scotchman—English-woman—Divorce in Scotland—Validity of Decree of Scotch Court.

Appeal from a decision of the President of the Probate Division, upon a petition holding that the Scotch Court had power to dissolve a marriage which had been solemnised in England between a domiciled Scotchman and an Englishwoman.

The case is reported 49 Law J. Rep. P. D. & A. 33.

The petitioner appealed.

Mr. Fooks, *Mr. Benjamin*, *Mr. Davey*, and *Mr. W. C. Fooks* for the appellant.

Mr. Deane and *Mr. Wood* (*Mr. Winch* with them) for the respondent.

Their LORDSHIPS affirmed the decision of the President, and dismissed the appeal.

Court of Appeal.
LORD SELBORNE, L.C.
BAGGALLAY, L.J.
BRETT, L.J.
Dec. 20.

REGINA *v.* SAVIN.

Practice—Appeal—Case stated by Quarter Sessions for the Opinion of a Superior Court—Leave to appeal—Judicature Act, 1873, *s.* 45.

Upon appeal from an order of justices at petty sessions, ordering the appellant to pay a sum of money to the respondent, under section 23 of the Highways and Locomotives (Amendment) Act, 1878, quarter sessions affirmed the order, subject to a case stated for the opinion of the Queen's Bench Division; and a *certiorari* having issued, in the usual manner, to bring up the case, the Queen's Bench Division affirmed the order of quarter sessions, and refused leave to appeal.

On appeal from the Queen's Bench Division,

Mr. J. H. Etherington Smith (*Mr. Plowden* with him), for the respondent, took the preliminary objection that leave to appeal was necessary, under section 45 of the Judicature Act, 1873.

Mr. M'Intyre and *Mr. W. Graham* for the appellant.

Their LORDSHIPS held that, under section 45, no leave was necessary in cases like the present, where the Queen's Bench Division were exercising the original jurisdiction exercised by them before the Judicature Acts, and not an accidental jurisdiction under statute; that the case was different from *Regina* v. *The Swindon New Town Local Board*, 49 Law J. Rep. Q.B. 522, and was within the doubt expressed by Lord Cairns, L.C., in *The Overseers of Walsall* v. *The London and North Western Railway Company*, 48 Law J. Rep. M.C. 65. Their lordships, therefore, heard the appeal; and, in the result, gave judgment against the appellant, without calling on the respondent's counsel.

Court of Appeal.
JAMES, L.J.
COTTON, L.J.
LUSH, L.J.
Dec. 18, 21.

SALT *v.* COOPER.

Equitable Execution—Receiver in Common Pleas Division—Bankruptcy Receiver—Bankruptcy Act, s. 95—*Priority.*

Appeal from a decision of JESSEL, M.R. (noted *ante*, p. 131), holding that a receiver appointed by the Bankruptcy Court had priority over a receiver appointed on the same day, but later in the day, by Mr. Justice Stephen, upon the application of the plaintiff in the action who had recovered judgment in the action in the Common Pleas Division.

The plaintiff appealed.

Mr. Winslow and *Mr. W. C. Forbes*, for the appellant, relied on section 95 of the Bankruptcy Act.

Mr. Macnaghten and *Mr. Oswald* were not called upon.

Their LORDSHIPS affirmed the decision of the Master of the Rolls, holding that section 95 had no application; and dismissed the appeal, with costs.

HIGH COURT OF JUSTICE.

Chancery Division.
JESSEL, M.R.
Dec. 17.

In re FIRTH HOUSE PAPER MILLS COMPANY.

Company—Winding-up—Execution Creditor—Payment to Sheriff of Part of Debt—Stay of Execution—Companies Act, ss. 85, 87, 163.

In this case, certain creditors had foreborne to issue execution for a debt against the company until June 7, 1880, on the faith of a promise of payment by that time of the managing director of the company. The money was not paid, and execution was issued on June 9. On the same day a payment of 100*l.* on account of the debt was made to the deputy-sheriff, who, by consent, was not to advertise a sale for a few days. On June 10 the deputy-sheriff received notice of a winding-up petition presented on June 8 by a creditor, and one presented by the company on June 10. Notices of a meeting to be held on June 14, to pass a resolution for a voluntary winding-up, were issued by the secretary on June 4. In the winding-up, a claim was brought by the creditors (1) for payment to them of the 100*l.* by the deputy sheriff, he being also the official liquidator; (2) for preferential payment to them, out of the assets of the balance of their debt, on the ground that they had been induced by the company to give them indulgence, and that they would otherwise have issued their execution.

Mr. Ince, *Mr. Nalder*, and *Mr. Grosvenor Woods* for the creditors.

Mr. Chitty and *Mr. Whitehorne* for the official liquidator.

The MASTER OF THE ROLLS, declining to consider *Re Great Ship Company's Case*, 33 Law J. Rep. Chanc. 245, 4 D. J. & S. 63, and other cases, down to *Re Richards & Co.*, 48 Law J. Rep. Chanc. 555, L. R. 11, Chanc. D. 676, as any guide for him in the exercise of the judicial discretion given to him by the combined effect of sections 85, 87, and 163, to allow the creditors priority, held that they were not entitled to any preferential payment out of the assets of the balance of their debt, though they were entitled to be paid the 100*l.* after deducting the sheriff's poundage, as such sum was paid to and received by the sheriff as their agent, without any notice of the winding-up.

Chancery Division. MALINS, V.C. Dec. 18. } *Re* STEWART. CROWDER *v.* STEWART.

Executor—Retainer—32 & 33 *Vict. c.* 46.

Adjourned summons.

This was an application by Mr. Henry Bissill, one of the three executors of the late William Stewart, the testator in the action, to exercise his right of retainer.

William Stewart, as one of the children of the late Charles Stewart, was entitled to one-fifth share of the residue of his estate. An action had been instituted to administer this estate in the Chancery Division, and a receiver appointed. Mr. Bissill now applied to receive a sum of 186*l.*, being the amount in the hands of the receiver, payable on account of income in respect of his testator's share of residue.

Mr. Glasse and *Mr. Bissill* for the summons.

Mr. John Pearson and *Mr. Badcock*, for the general creditors of the late William Stewart, submitted that the Act of 32 & 33 Vict. c. 46 had abolished the executor's right of retainer.

MALINS, V.C., said that, apart from the question as to the effect of the recent Act, there was really no dispute between the parties. That Act provided that all the creditors, 'as well specialty as simple contract, should be treated as standing in equal degree'—that is to say, equally as between specialty and simple contract creditors—and did not, in any way, interfere with the executor's right of retainer. There must, therefore, be an order as asked for by the summons.

Chancery Division. HALL, V.C. Dec. 17. } *In re* SAVAGE'S TRUSTS.

Will—Construction—Direction to apply Share of Residue 'as Part of my Residuary Estate.'

The testator by his will, dated October 29, 1869, directed that his trustees should stand possessed of the residue of his estate upon trust as to one seventh part thereof to invest the same, and to pay the income to his daughter F. for life, and after her death to hold the same in trust for her children or child attaining the age of twenty-one; and if there should be no such child, then to apply the said share as part of his residuary estate.

And he declared other trusts of the remaining six seventh shares of his residuary estate.

F. died, having had one child only, a daughter, and she did not attain the age of twenty-one.

The question was, whether F.'s share was distributable among the remaining residuary legatees, or whether there was an intestacy as to such share.

Mr. Pearson and *Mr. Cadman Jones* for the plaintiffs, the residuary legatees, relied upon *Crawshaw* v. *Crawshaw*, 49 Law J. Rep. Chanc. 662.

Mr. Robinson and *Mr. Dundas Gardiner*, for some of the next-of-kin, cited *Humble* v. *Shore*, 7 Hare, 247; and *Hetherington* v. *Longrigg*, 15 Chanc. Div. 635.

Mr. Graham Hastings and *Mr. Borthwick* for others of the next-of-kin.

Mr. Hadley for the trustees.

HALL, V.C., held that the case was not distinguishable from *Humble* v. *Shore*, and that there was, therefore, an intestacy.

Queen's Bench Division. FRY, J. Dec. 15, 16. } EDWARDS *v.* THE MIDLAND RAILWAY COMPANY.

Corporation—Malice.

This was the hearing, on further consideration, of an action for malicious prosecution.

A question reserved was, whether a corporation could be liable for an act which required malice in order to be actionable.

Staveley Hill and *A. T. Lawrence* for the plaintiff.

Powell and *Evans* for the company.

FRY, J., held that the company were liable.

Common Pleas Division. Dec. 20. } *In re* SALE.

Parliament—County Vote—12l. Occupier—Proof of Notice of Claim—6 Vict. c. 18, *s.* 38.

Registration case.

The claimant, John Sale, had, previous to the last revision, been on the list of 12*l.* occupiers entitled to vote for the north division of the county of Warwick; but, in consequence of his change of abode, the overseers had omitted his name from the list of occupiers for the present year. He thereupon sent in notice of claim, and was inserted by the overseers in the 12*l.* list of claimants. His qualifaction was proved; but the revising barrister disallowed his claim, on the ground that there was no evidence that he had signed the notice of claim or had authorised any one to sign on his behalf. The revising barrister having refused to state a case on appeal, a rule *nisi* was obtained, under 41 & 42 Vict. c. 26, s. 37, calling on him to show cause why he should not state a case.

Lawrance and *Coltman* showed cause against.

Mellor and *Crompton* appeared in support.

The COURT (GROVE, J., and LOPES, J.) discharged the rule, holding that the barrister was entitled, under 6 Vict. c. 18, s. 38, to require proof that the claimant had given due notice of claim.

Rule discharged.

Exchequer Division.
FRY, J.
Dec. 15.

MATHEWS *v.* JEFFERY.

Metropolitan Burials Act, 15 & 16 *Vict. c.* 85, *s.* 33—*Graves—Real Estate.*

The Hanley corporation were the burial board of their district. The Metropolitan Burials Act, by a subsequent Act, has been made applicable to local burial boards. Acting under section 33 of that Act the corporation granted certain grave spaces in Hanley cemetery to Eliza Mathews, her heirs and assigns. The plaintiff was the eldest son and heir of Eliza Mathews, and also her administrator. The defendant was the husband of a sister of the plaintiff, who claimed a right to bury his children in the grave spaces. A question of law in the action heard on further consideration was, whether the plaintiff had the control over the grave spaces and was entitled to prevent the defendant from using them.

Jelf and *H. D. Green* for the plaintiff.

Anstey and *Tyssen* for the defendant.

FRY, J., held that the plaintiff was entitled.

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