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THE

IRISH LAW TIMES

DIGEST OF CASES

DECIDED BY

THE SUPERIOR AND OTHER COURTS IN IRELAND,

1867-1893.

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AND IN THE

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PREFACE.

THIS Digest contains all the cases reported in Volumes V. to XXVII. of the IRISH LAW TIMES REPORTS, and in the Miscellaneous parts of Volumes I. to XXVII. of the IRISH LAW TIMES AND SOLICITORS' JOURNAL.

The IRISH LAW TIMES REPORTS were not published as a separate series until the commencement of Vol. V. in 1871. Prior to that date the reported cases appeared in the Miscellaneous part of the IRISH LAW TIMES AND SOLICITORS' JOURNAL in the form of "Weekly Notes of Cases," and were supplied by the Reporters of the Council of Law Reporting in Ireland.

The system, which was adopted in the Digest of the English Law Reports, of collecting cases under their titles and sub-titles, has been followed throughout, with the exception of the cases under the Irish Land Acts and the Debtors' Act, which are arranged under each section, *seriatim*.

Many of the 4,750 cases here digested appeared without head-notes; all such have been summarised, so that at a glance the nature of each case can be seen without reference to the lengthened report.

The contemporaneous Reports published by the Council of Law Reporting have been consulted; and wherever a case contained in the Reports here digested was reported upon appeal in the Reports of the Council, a note has been added stating whether it was affirmed or reversed upon appeal, with a reference to the report upon appeal.

For brevity of notation, cases in the IRISH LAW TIMES REPORTS are cited by the volume and page in heavy type, thus—**XIV. 65**; and cases in the IRISH LAW TIMES AND SOLICITORS' JOURNAL are cited by the volume and page in heavy type, with the letter *M.* (Miscellaneous) inserted between them, thus—**XIV. *M.* 65.**

W. C. S.

DUBLIN, 24th June, 1895.

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Ad.	Indicates	Admiralty.
B.	,,	Bankruptcy.
B. (Local)	,,	Bankruptcy, Local Court.
C.	,,	Lord Chancellor.
C. A.	,,	Court of Appeal.
C. C.	,,	Consolidated Chamber.
C. C. R.	,,	Court for Crown Cases Reserved.
C. C. T.	,,	Commissioners of Church Temporalities.
C. G. S.	,,	Commissioners of the Great Seal.
C. N. P.	,,	Consolidated Nisi Prius.
C. O. T.	,,	Commission of Oyer and Terminer.
C. P.	,,	Common Pleas.
C. P. D.	,,	Common Pleas Division.
Ch. A.	,,	Chancery Appeal.
Cir. Cas.	,,	Circuit Cases.
Cir. C. R.	,,	Circuit Cases Reserved.
Cy. Ct. A.	,,	County Court Appeal (Equity and Dublin Appeals).
E.	,,	Exchequer.
E. C.	,,	Exchequer Chamber.
E. D.	,,	Exchequer Division.
H. L.	,,	House of Lords.
L. C.	,,	Land Commission.
L. C. A.	,,	Land Cases Appeal (Co. Dublin Appeals).
L. C. R.	,,	Land Cases Reserved.
L. E. C.	,,	Landed Estates Court.
L. J.	,,	Land Judge.
L. M. C.	,,	Lord Mayor's Court.
L. S.	,,	Land Sessions.
L. Sub-C.	,,	Land Sub-Commission.
M. O.	,,	Master's Office.
M. P. C.	,,	Metropolitan Police Court.
Mat.	,,	Matrimonial.
N. P.	,,	Nisi Prius.
P.	,,	Probate.
P. C.	,,	Privy Council.
Prov. Ct.	,,	Provincial Court.
Q. B.	,,	Queen's Bench.
Q. B. D.	,,	Queen's Bench Division.
Q. S.	,,	Quarter Sessions.
R.	,,	Rolls.
Rec. C.	,,	Recorder's Court (Dublin).
Rev. C.	,,	Revision Court.
S. C.	,,	Sheriff's Court.
T. M.	,,	Taxing Master.
V. C.	,,	Vice-Chancellor.
Vac. J.	,,	Vacation Judge.

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ERRATA AND ADDENDA.

ERRATA.

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,,	97	,,	3	from bottom	,, AMIT	,, ARMIT.
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,,	109	,,	19	,,	,, C.C.A.	,, C.C.R.
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INTEREST—2*a*.—*Contract for loan—Until completion or until same be broken off and such interest paid.*]—An agreement for a loan contained the following words:—"And the borrower shall also pay to the lender interest on £10,000, at the rate of 2½ per cent., from the 7th August, 1871, until the completion of the loan, or until the same shall be broken off and such interest paid, such interest to be paid on the completion of the loan, or in case the same shall be broken off, then on demand by the lender." The loan was broken off and the interest left unpaid. *Held*, that the borrower was only liable for interest up to the day of the breaking off of the loan.—CAIRNES *v.* LAMBERT - - - - - Q.B. VII. *M.* 355

PARLIAMENT—FRANCHISE—48*a*.—*Notice of objection—Sufficiency of direction.*]—A notice of objection was duly stamped with the stamp of the post office of Sligo, and, by the indorsement of it, it appeared that same was directed to Thomas Curran at Charles-street, without the addition of any post town. Charles-street was the place of abode of Curran, as set out on the list, and was within postal delivery of the borough of Sligo, and in the town of Sligo. The Court held the direction sufficient.—M'NIFFE *v.* WILSON - E.C. II. *M.* 649

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THE IRISH LAW TIMES REPORTS

AND

THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

DIGEST OF CASES IN VOLS. I.-XXVII.

1867—1893.

Cases reported in the IRISH LAW TIMES REPORTS are cited by the Volume and Page; cases reported in the Miscellaneous part of the IRISH LAW TIMES AND SOLICITORS' JOURNAL are cited by the Volume and Page, with the letter *M.* inserted between them.

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ACCORD AND SATISFACTION—*Non-completion of act of satisfaction.*] A defence showed that the plaintiff agreed to accept, in satisfaction of his claim, not an agreement, but the performance thereof:—*Held*, that all the acts agreed to be performed must be performed to *complete* the satisfaction; and that, as one remained unperformed, the defence amounted to accord *without* satisfaction and was bad. SHARKEY *v.* CALLALY - - - Q. B. III. *M.* 175

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ACQUIESCENCE—*Equitable Plea.*] In an action for injury to the plaintiff's watercourse by certain works of the defendant, the defendant pleaded an equitable plea that the injury arose from the removal of an embankment, which removal was necessary for some works of the defendant which the plaintiff knew of, and did not object to:—*Held*, that the defence was bad, as it did not aver that the plaintiff knew that the defendant was acting on the plaintiff's acquiescence, or that the acts relied upon were such as would induce any reasonable man to think that the plaintiff acquiesced. SMITH *v.* HAYES - - - - - - - E. I. *M.* 299

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ACRES.
1. —— *Devise—Construction—Parol evidence as to intention—5 Geo. IV., c. 74.*] A testator devised to A. forty-five acres of the lands of D., and to B. fifty acres of the same lands:—*Held*, that the words "acres" should be understood to mean statute acres, and that the policy of the Act of Geo. IV., defining the word acre, prevented the reception of any parol evidence to vary the meaning of the will. O'DONNELL *v.* O'DONNELL - - - - V. C. XII. *M.* 336
[This was affirmed on appeal, 13 L. R. Ir. 226.]

2. —— *Statute measure—Evidence.*] Where words which *primâ facie* mean statute measure are used in a written agreement, no evidence of trade or customary meaning is admissible. MYERS *v.* BURKE - - Q. B. D. XXVI. *M.* 304

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1. —— *Defendant's debt paid by Plaintiff under compulsion of law—Wrongful act of Plaintiff—"No one can take advantage of his own wrong"—Money paid for the use of Defendant.*] Where the plaintiff's cattle, wrongfully on the lands of the defendant, have been lawfully distrained for Poor Rate and Grand Jury Cess due by the defendant, the trespass, even though not wilful on the part of the plaintiff, precludes him from recovering from the defendant the amount which he has paid the collectors in order to release his cattle. *Exall* v. *Partridge* (8 T. R. 308), distinguished. *England* v. *Marsden* (L. R. 1 C. P. 529) and *Edmunds* v. *Wallingford* (L. R. 14 Q. B. D. 811) discussed. (By Andrews, J.). BERESFORD *v.* KENNEDY. [Cir. Cas. XXI. 17

2. —— *Ex turpi causâ—Constructive assault—Infection with venereal disease during illicit intercourse—Consent to intercourse obtained by fraudulent concealment of disease—Tort—Damages for injury consequent on immorality—Non-suit, when appropriate.*] In an action for assaulting and beating the plaintiff, and infecting her with venereal disease, it appeared that the plaintiff had, for a lengthened period, consented to illicit sexual intercourse with the defendant, in ignorance of the fact, wilfully and deceitfully concealed by him, that he

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ACTION—*continued.*

was affected with the disease, had she known of which, she would not have consented to connection:—*Held*, that the action was not sustainable as for a constructive assault, as the concealment alleged to have vitiated the plaintiff's consent, as having been fraudulently obtained, did not consist of deceit as to the nature of the act itself to be done, and no duty of disclosure was imposed by the relations of the parties to each other capable of being legally enforced. *Held*, further, that an action of such a character was not maintainable, or fit to be tried in a court of justice, because the injury complained of was directly consequent on wilful immorality, and, though founded in tort, came within the maxim—"*ex turpi causâ non oritur actio.*" The principles applicable in such cases to criminal prosecutions for assault considered; and *R.* v. *Bennett* (4 F. & F. 1005) discussed and distinguished. Decision of Queen's Bench Division affirmed. HEGARTY *v.* SHINE - - **Q. B. D. XII. 100; C. A. XIII. 3**

3. —— *Statement of Claim disclosing no cause of action.*] A Statement of Claim alleged that the defendant entered into an agreement with the plaintiff to become tenant from year to year to him, at a rent of £25, of certain lands for the purpose of enabling the defendant to purchase the lands under the Land Purchase Acts, under the sanction of the Court, and that the defendant subsequently refused to carry out the agreement to purchase, whereby the plaintiff sustained the damage claimed, by loss of rent and profits, and claimed £500 damages. The lands were in the hands of a Receiver appointed by the Land Judge, and the Land Judge had accepted the defendant as tenant, at a yearly rent of £25. *Held*, that the Statement of Claim should be set aside as disclosing no cause of action. CASHEL *v.* KING **[Q. B. D. XXVII.** *M.* **486**

4. —— *To establish title—Practice—Motion to add and continue against new party as defendant—Rules, June*, 1891, *O. XVII., rr.* 2, 4—"*Terms*" *on adding a party—O. XVI., r.* 11.] A writ of summons claiming, firstly, to establish a title to certain lands; secondly, a declaration of title to the rents and profits of the same; thirdly, to recover possession of so much of the lands as were in the occupation of the defendant; fourthly, for an account of the rents and profits received by the defendant; fifthly, for an injunction restraining the defendant from receiving the rents and profits thereof; and, sixthly, to have a receiver appointed over the lands:—*Held* (per Harrison and Holmes, JJ.), not an action for the recovery of land. *Gledhill* v. *Hunter* (14 Ch. D. 492) distinguished. (Per O'Brien, J.)—Virtually an ejectment. Per Curiam:—In an action of this nature, brought to establish a prior title under a settlement forming part of the common case, there is no modification of the old rule that all interests under the settlement must be represented in the action. Where, in such an action, the sole defendant is the tenant for life of the settled estates, and, under the foregoing rule, the action is defective by reason of the non-joinder of the tenant in tail, and the tenant for life dies during the progress of the action, leave will not be given to the plaintiff under O. XVII., r. 4, to add the tenant in tail as a new defendant and continue against him.—*Semble:* in such a case, this should be applied for under O. XVI., r. 11. The practice as to reviving and continuing considered. HOWARD *v.* HOWARD. **[Q. B. D. XXVI. 101**

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ADULTERATION—FOOD (AND DRUGS).

1. —— *Milk—Sale—Complainant.*] The governor of a gaol, who was given milk free as part of his salary, was the complainant before the justices regarding the adulteration of it:—*Held*, that it was not sold to him, and the conviction thereunder was bad. DOOLEY *v.* MINCHIN Q. S. XI. *M.* 217

2. —— *Sale of Food and Drugs Amendment Act*, 1879, *ss.* 3, 4—*Refusal to supply milk for analysis—Milk in course of delivery—Delivery at door of residence in pursuance of contract.*] Milk is in the course of delivery, when it is being poured from the milkman's can into his pint measure at the door of a customer; and a refusal to give a sample to the inspector was properly punished by the imposition of a fine. PHELAN *v.* ROREE - - E. D. XVII. *M.* 649

3. —— *Sale of Food and Drugs Act*, 1875—*Who should prosecute under sec.* 13?] If the poor law guardians gave authority to an officer to get a sample under the Act, that officer was the proper person to prosecute. The grand jury have power to appoint an officer to prosecute. ANON. (By Dowse, B.) - - - - - - Cir. Cas. X. *M.* 187

4. —— *Sale of Food and Drugs Act*, 1875, *ss.* 14, 17—*Refusal to sell to inspector—Disclosure of purpose or of identity—Licensing Act*, 1872, *s.* 16 (2), (3).] It is not necessary, in order to support a conviction for a refusal to sell, that an inspector, under the Sale of Food and Drugs Act, 1875, should declare his identity or the purpose for which he requires the article. It is sufficient if the inspector ask for the article, tendering the price thereof, and it be refused him. CLARKIN *v.* M'CARTAN - - - - E. D. XXII. 95

5. —— *Sale of Food and Drugs Act*, 1875, *s.* 17.—*Case stated—Sale of article of food by wholesale*—42 & 43 *Vic., c.* 30, *s.* 5.] Butter was "exposed for sale" wholesale in a public market, and an inspector applied (under the provisions of sec. 17 of the Sale of Food and Drugs Act, 1875) to the person exposing the butter for sale to purchase a small quantity for the purposes of analysis, but he refused to sell the same to the inspector. On a prosecution by the inspector, the magistrate dismissed the complaint, on the ground that the section only applied to a sale of articles of food by retail:—*Held*, that section 7 of the Act applied to a sale by wholesale as well as by retail, and that the magistrates should have convicted the defendant. M'HUGH *v.* M'GRATH Q. B. D. XXVII. 102

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1. —— *Contract—Delay in Delivery.*] A decree for the full amount claimed was granted where the proprietors of a publication containing a paragraph advertisement of the defendant's establishment sued the defendant for the number of copies ordered by him. STRATTEN *v.* MANNING. [Rec. C. XXVI. *M.* 588

2. —— *Contract—Incorrect proof sent to advertiser.*] A decree for the amount claimed was granted where the proprietors of a publication containing a paragraph advertisement of the defendant's establishment sued him for the number of copies ordered by him: a proof was sent to him for approval, and was not stated to be incorrect until the book was published. STRATTEN *v.* HOPPER. Rec. C. XXVI. *M.* 588

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APPORTIONMENT.

1. —— *Interest in shares in banking companies between specific and residuary legatees.*] A testator bequeathed shares in banking companies to specific legatees. He also appointed residuary legatees. The specific legatees claimed the whole of the dividends, and the residuary legatees claimed the portion that had accrued up to the death of the testator:—*Held*, that the Apportionment Act, 1870, applied, and that the residuary legatees were entitled to that portion of the dividends that had accrued up to the death of the testator. *Roseingrave* v. *Burke* (Ir. R. 7 Eq. 186) and *Capron* v. *Capron* (22 W. R. 347) followed. DALY v. ATTORNEY-GENERAL [V. C. VIII. 70

2. —— *Jointure rentcharge.*] A jointure rentcharge for the life of the jointress is apportionable under the 3 & 4 Wm. IV., c. 22. SUTTON *v.* ENNIS - - R. IV. *M.* 417

3. —— *Rent—Bequest of all rent and arrears due at testator's death—Rents on leases prior to* 23 & 24 *Vict., c.* 154—*Gale current at death.*] V. seised for life, with remainder to S., devised, in 1866, to S. "the said property, with all rent and arrears of rent due on the said premises at his death:"—*Held*, that the apportioned part of the gale current at V.'s death was included in the bequest. 23 & 24 Vic., c. 154, s. 49, applied to leases and contracts made before that Act passed. Rents, received under such leases and contracts, are apportionable. SEALY v. STAWELL - - - - R. II. *M.* 398

4. —— *Rent—Claim by purchaser in Landed Estates Court.*] The provisions of the Apportionment Act, 1870, do not entitle a purchaser to obtain out of his purchase-money the equivalent of the portion of the rent of the premises payable for the period which had elapsed from the preceding gale day at the time of purchase. ESTATE OF KEILLOR L. E. C. VI. 181

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APPORTIONMENT—*continued.*

5. —— *Salary of Clerk of the Crown*—6 & 7 *Wm. IV., c.* 115. *sec.* 110—*Apportionment Act*, 1870.] T., a Clerk of the Crown, discharged the duties of his office for portion of a half-year, and then resigned. C., who was appointed to the post, discharged the duties until the next Assizes, and then obtained from the County Treasurer the full amount which 6 & 7 Wm. IV., c. 116, enables a Grand Jury to present as payment for duties done within the entire six months previous. In an action by T. against C. to recover an apportioned part of the half-year's salary:—*Held*, that the salary of the Clerk of the Crown was apportionable under the 33 & 34 Vic., c. 35, and that an action for money had and received lay to recover such apportionment. TREACY *v.* CORCORAN **C. P. VIII. 65**

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ARBITRATION.

1. —— *Award—Communication.*] An arbitrator made an award which he communicated to the defendant on October 18th, and on October 20th the plaintiff revoked his authority:—*Held*, that the mere mental act of a single arbitrator not communicated to anyone would not be a good award; but that he should evidence his having made up his mind by some external act. THOMPSON *v.* MILLER **C. P. I. *M.* 45**

2. —— *Clause—Consent to be made a rule of Court—Common Law Procedure Act*, 1856, *sec.* 20.] Contractors, by agreement, contracted with H. P., the equitable owner of Dunboy Castle, to execute certain works in and about said Castle, and it was by said agreement (to which the legal owners were no parties) provided that should any dispute arise between said contractors and the architect of H. P., that same should be referred to the arbitration of T. D., whose "decision" it was thereby also agreed should be binding on all parties, and should be made a rule of Court. Disputes having arisen, H. P. revoked his said submission to arbitration, and it was now, nevertheless, sought by said contractors to make the said agreement (and not the decision) a rule of Court:—*Held*, no rule on the motion. George, J., *dissentiente*. *In the matter of the contract between* PUXLEY AND COCKBURN **Q. B. IV. *M.* 591**

3. —— *Clause—Lease of quarries—Covenant to appoint an arbitrator—Breach of—Liability of personal representative of lessee.*] A summons and plaint averred that by lease the plaintiff demised to T. V., since deceased, certain quarries,

ARBITRATION—*continued.*

&c., to hold to the said lessee, his executors, administrators, and assigns, for 21 years, from 5th November, 1853, subject to a rent of £1,477, or such rent as might be ascertained as thereinafter provided; that it was agreed that at the end of every term of seven years, during the lease, it should be lawful for the plaintiff, his executors, administrators, or assigns, to investigate the receipts and expenditure in respect of the said premises, and the profits arising therefrom during the preceding seven years, and that the rent to be paid during the ensuing seven years of the said term should be ascertained, having regard to such profits; and in case of any difference as to the amount of such rent, between the plaintiff, his executors, administrators, or assigns, and the lessee, his executors, administrators, or assigns, that the amount of the said rent should be fixed by the award of two arbitrators, and of such umpire as in case of difference should be appointed; that difference arose, which had not been terminated when T. V. died, and the defendant, his administrator, entered, and the plaintiff requested the defendant to appoint an arbitrator; yet that the defendant did not, nor would not appoint such arbitrator, but therein wholly made default, whereby the plaintiff was and is hindered and prevented from having the rent of the said premises fixed and ascertained in manner aforesaid. The plaint concluded with an averment of special damages:—*Held*, on demurrer, that the summons and plaint showed a good cause of action. MARQUIS OF DONEGAL *v.* VERNER - - - - - **Q. B. VII. 13**

4. —— *Consent to—Setting aside award—Practice.*] A consent to arbitration had been signed and the award had been made. The award was objected to on several grounds, and it was intended to have it set aside. A motion was granted to make the consent to submit to arbitration a rule of Court, and a conditional order made setting aside the award, which order was made absolute on the ground of surprise, as not sufficient notice of one of the arbitrators' meetings and of the award was given to one of the parties. The parties to have power to appoint other arbitrators. JONES *v.* REVINGTON **[Q. B. VII. *M.* 259, 355**

5. —— *Discharge of order to confirm award.*] An order to confirm an award was discharged where it appeared that the arbitrators had included in it matters which were not submitted to them. *In the matter of an agreement to arbitrate between* WELLS AND CALDWELL **C. P. VII. *M.* 448**

6. —— *Extension of time for making award.*] The time for making an award was extended for two months. HAZLETON *v.* CLEMENTS - - - **C. C. VII. *M.* 429**

7. —— *Making consent rule of Court.*] A consent to refer matters of differences to arbitration, when not in a cause, cannot be made a rule of Court by side-bar rule, but a conditional order will be granted. *In re* HANAKEY *v.* LENNON **[C. C. VII. *M.* 408**

8. —— *Making consent rule of Court.*] A consent to refer the amount of damages in a case to arbitration was made a rule of Court on motion, and not by side-bar rule. SHEA *v.* SEYMOUR - - - - - **C. C. I. *M.* 64**

9. —— *Motion to compel the carrying out of an award—Dispute of arbitrators' jurisdiction.*] A motion to compel the payment of money under an award was resisted on the ground that the arbitrators had outstepped their jurisdiction; the Court made an order for payment of the undisputed portion of the money. WOLFE *v.* TUTHILL **Q. B. VII. *M.* 584**

10. —— *Reference, by agreement, of certain disputes between agent and principal to arbitration of two persons named—Independence of arbitrator.*] T. entered into a contract in July, 1892, with D. to act as commission agent for D. The contract contained an agreement, to refer to two arbitrators (one nominated by each of the parties, their names being inserted in the contract), "any question or dispute arising as to the meaning or carrying out of these presents." T. having

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ARBITRATION—*continued.*

determined his agency on 10th March, 1893, D. appointed T.'s arbitrator to the vacancy with T.'s knowledge and assent. T. instituted proceedings to recover certain sums due on commission and for money paid. Motion by D. to stay proceedings and to compel T. to have resort to the arbitrators:—*Held*, that in the altered relations of T.'s arbitrator to D., it would be inequitable to suspend T.'s right of action or to compel him to have resort to the referees named. THOMPSON *v.* DAWSON AND CO. **Q. B. D. XXVII. 84**

11. —— *Reference by parol—Condition in fire insurance policy—Arbitration void for want of finality—Costs in discretion of arbitrators—Taxation of costs—Verdict entered upon findings of jury—Motion for judgment—Application for judgment non obstante verdicto—O. XXXIX., rr.* 4, 9.] To an action upon a fire policy the defendants pleaded, *inter alia*, that, according to a condition of the policy, all differences between the company and the insured should be referred to arbitration, and that the cost of the reference should be in the discretion of the arbitrators; that the amount to be paid by the defendants had been so referred; that the arbitrators had awarded that the defendants should pay the plaintiff £150, and whatever costs might have arisen in the case up to the date of the award; that the defendants had tendered a cheque for £150, and were willing to pay a fair sum for costs, but that the plaintiff demanded too large a sum. At the trial the jury found that the arbitrators had been appointed pursuant to the conditions in the policy, and the judge directed a verdict for the defendants. On motion that the judgment entered for defendants should be set aside and judgment entered for the plaintiff:—*Held*, that where a submission to arbitration is as a whole by parol, it cannot be made a rule of Court; that where a parol submission refers to the arbitrators the cost of the reference, an award which does not expressly or impliedly determine by whom the costs are to be paid is bad for want of finality; and that the defence, to have been a valid one, should have alleged not only an award, but a performance of the award:—*Held*, further, that an application to enter judgment *non obstante verdicto* cannot, where judgment has been directed at the trial, be made by motion for judgment; that O. XXXIX., r. 9, which enables a party to move upon admissions of fact in the pleadings, contemplates an application before judgment only, and a party proceeding under that rule must first set aside the judgment directed against him at the trial, under O. XXXIX., r. 4; that where, however, the judge ought to have told the jury that, upon the admitted facts, the defence was not proved, under O. XXXIX., r. 4, the Divisional Court can enter the verdict as in their opinion it ought to have been entered—*i.e.*, in the present case, for the plaintiff. ROULSTONE *v.* ALLIANCE INSURANCE CO. - - - - **E. D. XIII. 66**

12. —— *Setting aside award—Informality.*] The Court set aside an award where the arbitrators found a bulk sum instead of finding on the particular counts, and remitted it back to them for reconsideration. BYRNE *v.* BYRNE **[C. P. VII. *M.* 568**

——Clause—Deed of Partnership - - **IX. 3**
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——Clause—Policy of insurance—Construction of **VI. 31**
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ARRANGEMENT.

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ARRAY—Challenge.

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ARREARS—Interest—Due by husband living with wife to her - - - - - - **I. *M.* 778**
See PRACTICE—LANDED ESTATES COURT—INTEREST. 1.

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ARREARS OF RENT (IRELAND) ACT, 1882.

1. —— **s. 1** (3)—"*Usual day of payment*" *of rent—Deferred payment—Rent usually collected after gale days, but on determinate days fixed by land agent.*] Where the course of dealing between the landlord and tenant showed that in every half-year the agent named a particular day on which the rent, which had accrued due on the previous gale day, should be paid:—*Held*, that this showed a usual payment on a particular day, within sec. 1. KIERAN *v.* BURROWES **L. C. XVII. *M.* 452**

2. —— **s. 1** (3)—"*Usual day of payment*" *of rent—Deferred payment—Rent usually collected after certain period subsequent to gale day, but on indeterminate days.*] In order to deprive a tenant of the benefit *primâ facie* arising from the initiatory provisions of sec. 1 (3) of the Arrears of Rent Act, 1882 (45 & 46 Vic., c. 47), it lies on the landlord, relying on the terminal proviso thereof, to establish affirmatively that, according to the "ordinary course of dealing" between him and the particular tenant the rent has "usually been paid on some day after the day on which it became legally due." Such deferred day of payment must be a definite day upon which the rent has been usually paid, or a day capable of being fixed and defined with as much certainty as that upon which, in law and fact, the rent accrued due. MONAGHAN *v.* LESLIE **[L. C. XVI. 119**

3. —— **s. 1** (3)—*Payments in* 1881, *and prior to November* 30, 1882, *more than enough to discharge rent for* 1881—*Application of overplus.*] Where a tenant, during the year 1881, and prior to the 30th Nov., 1882, has made payments more than sufficient to discharge the rent for the year 1881, the overplus must be first applied in discharge of the "antecedent arrears," and not in discharge of the rent of 1882. JOHNSTONE *v.* HUGHES **[Q. S. XVIII. 35**

4. —— **ss. 1** (3), **4**—*Case for Court of Appeal—Question of Law—Costs, payment of, by Treasury.*] The Court refused to state a case for the opinion of the Court of Appeal where there were not facts upon which to raise a definite question of law; and, after communication with the Treasury, announced that the Treasury would pay the costs of both parties. MONAGHAN *v.* LESLIE - - - **L. C. XVII. *M.* 59**

5. —— **ss. 1** (3), **13**—*Suspension of proceedings—Motion after judgment signed and execution issued—*"*Antecedent arrears*"—"*Usual day of payment.*"] The plaintiff having sued to recover one and a half years' rent, payable in respect of a holding of land up to May, 1882, the defendant, who had paid a year's rent in June, 1881, offered to pay the November rent of 1881, and applied, after final judgment and execution issued, to postpone or suspend the proceedings, under sec. 13 of the Arrears of Rent (Ir.) Act, 1882 (45 & 46 Vic., c. 47), on the ground that the payment in June, 1881, was applicable, in part, to the May rent of that year; that arrears prior to 1881 thereby became and still were due; and that the case came within the purview of the Act:—*Held*, that as the May rent was usually paid in December following, the payment in June was not applicable thereto; that the May rent was still due, and no antecedent arrears had become due; and that the application should be refused accordingly. QUINN *v.* M'ARDLE **[Q. B. D. XVI. 95**

6. —— **ss. 1** (3), **13**—*Suspension of proceedings—*"*Antecedent arrears*"—*Receipt for rent due in* 1880—*Appropriation of payment to rent due in* 1881.] Sec. 13 of the Arrears of

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ARREARS OF RENT (IRELAND) ACT, 1882—*continued.*

Rent Act, 1882, enabling the Court to suspend proceedings for the recovery of a holding for non-payment of rent in respect of the year 1881 and antecedent arrears, does not apply, unless, in addition to rent due in respect of 1881, arrears antecedent to 1881 be due and sued for in such proceedings. Where, on a motion to stay proceedings in an action to recover land for non-payment of rent due in 1881 and 1882, it appeared that a receipt had been given for a half-year's rent up to November, 1880, and it was contended that, by virtue of sec. 1 (3), this payment should be appropriated to the rent accrued due in 1881:—*Held*, that the application could not be sustained within the provisions of sec. 13. HAMILTON *v.* MAGUIRE

[Q. B. D. XVI. 103

7. —— **ss. 1 (3), 13**—*Suspension of proceedings—"Usual day of payment" of rent—Deferred payment—Hanging gale.*] Sec. 1 (3) of the Arrears of Rent (Ir.) Act, 1882, enacts that all payments on account of rent made by the tenant to the landlord in or subsequent to 1881, but before November 30, 1882, shall be deemed to have been made on account of the rent payable in respect of 1881, to the extent to which the rent for that year had at the time of such payment accrued due, provided that where it appears that, according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed to be the time at which the rent accrued due. In construing this enactment, and applying the latter proviso, the usual day of payment by each particular tenant must be ascertained, regardless of what may be usual on the estate; and where the tenant, not paying regularly, has no such usual day, all that can be done is to assume in favour of the tenant, as is implied in the previous part of the enactment, that the question as to the usual day of payment is not to be influenced by the non-payment of recent years. If payments were previously made regularly, the tenant should be entitled to the benefit of the prior part of the enactment. The last clause,—that the usual day of payment shall be deemed to be the time at which the rent accrued due,—taken in connection with the preceding words, must be considered, not as a definition of what should be deemed the usual day of payment, but, as defining what should be deemed the time at which the rent accrued due, and thus to declare that it be deemed to be, not the legal, but the usual day of payment, in order to put a limit on the prior part of the clause. Where a process was brought to recover £14 14s., being £2 18s. balance of rent to November, 1880, and £11 16s. for one year's rent to November, 1881, it appeared that the tenant had made payments of £6 on May 28th, and £8 on December 24th, 1881. Prior to the accruing of the present arrear, the usual time of payment, a few years since, for both the May and November gales, was between November 1st and Christmas each year. The tenant having applied for a suspension of the proceedings, under sec. 13 of the Arrears of Rent Act, 1882:—*Held*, that the May and November gales should be deemed to have accrued due only after November 1st; that the payment made on May 28th, 1881, could not be applied in discharge of the gale which fell legally due on May 1st, 1881, but that the payment made on December 24th, 1881, should be applied in discharge of so much of the year's rent which legally accrued due on November 1st, 1881, leaving a balance of £5 16s. owing; and that the proceedings should be stayed on the terms of lodgment in Court of said balance and costs. ATKINSON *v.* KERR

[Q. S. XVI. 100

8. —— **ss. 1, 13**—*Suspension of proceedings—Antecedent arrears.*] Sec. 13 of the Arrears of Rent (Ir.) Act, 1882, enabling the Court to suspend proceedings for the recovery of rent, or for the recovery of a holding for non-payment on account of the rent in respect of the year 1881 and antecedent arrears, does not apply unless, in addition to rent due in respect of 1881, arrears antecedent to 1881 be due, and be sued for in such proceedings. ATKINSON *v.* JEFFERS

[Q. S. XVI. 99

ARREARS OF RENT (IRELAND) ACT, 1882—*continued.*

9. —— **s. 11**—*Land Law (Ireland) Act*, 1881—*Holding under lease for lives.*] Where a tenant held two farms, one under a lease for lives, and the other as tenant from year to year, the valuation of which exceeded £30 a year:—*Held*, that as both were holdings to which the Land Law (Ireland) Act applied, the application of the tenant should be dismissed. HOLTON *v.* DE MONTMORENCY **L. Sub-C. XVII. *M.* 453**

10. —— **s. 13**—*Proceedings pending—Stay of decrees granted at former sessions—Jurisdiction of County Court.*] The County Court possesses no jurisdiction to stay proceedings, under the Arrears of Rent Act, 1882, on a decree for rent or for possession granted at a former sessions, the proceedings being no longer "pending." M'GEOUGH *v.* CROZIER

[Q. S. XVI. 110

11. —— **s. 16**—*Termination of tenant's interest, and new tenancy created—Purchase by new tenant under Land Purchase Act*, 1885—*Silence on conveyance as to charge.*] The Irish Land Commission brought a civil bill to recover seven half-yearly gales of rent-charge, which was created under sec. 16 of the Act on the joint application of the landlord, U., and tenant, C. After the date of the order of the Land Commission charging the repayment of the sum advanced by the rent-charge on the lands, the tenant C. was ejected for non-payment of rent, and did not redeem. A new letting was made by U. to the defendant, S., and subsequently S. purchased his holding under the Land Purchase Act, 1885. U. conveyed the lands to S. in fee-simple, and S. conveyed them to the Land Commission by way of mortgage to secure the repayment of the purchase-money. No mention was made of the rent-charge in the agreement for sale or in the conveyance:—*Held*, that the liability thereto vested, on the ejectment of C., in U., whose estate was then vested in the Land Commission, and that the civil bill should be dismissed. (By Holmes, J.) IRISH LAND COMMISSION *v.* SCANNELL **Cir. Cas. XXVI. 76** *note*

12. —— **s. 16**—*Advance secured by charging order—Landlord's interest—Sale of tenancy—"Prescribed manner"—Jurisdiction of County Court.*] Where, under the Arrears of Rent (Ir.) Act, 1882, s. 16, a holding is charged with a yearly rent-charge for the repayment of an advance made under the provisions of the section to the landlord, and the tenant in possession of the holding at the date of the advance subsequently makes default in payment of such rent-charge, and is then evicted by the landlord for non-payment of rent, and the lands are thereupon let to another person under an independent contract of tenancy, the County Court has no jurisdiction, under the 16th section, to order the sale of the landlord's interest in the holding, but the amount of the instalments and residue of the charge shall be raised by sale of the tenancy. "Such tenancy" means the interest of the defaulting tenant or his successors in title, and not that created by a subsequent independent contract. IRISH LAND COMMISSION *v.* CLIFFORD

[Q. S. XXVI. 75

ARREST.

1. —— *Breaking window—Discharge of prisoner.*] A motion to discharge from custody defendants, who had been arrested in their own house by the bailiffs who entered with force through the window, was granted. DONOVAN *v.* O'DONOVAN

[E. VII. *M.* 303

2. —— *Breaking open inner door—Execution of* fi. fa.—*Lodger—Entry originally lawful.*] Two bailiffs, one of whom, W., had a *fi. fa.* and the other, C., a *ca. sa.* against the defendant, entered lawfully a house in which the defendant lodged. W. broke open the door of the defendant's room, and there seized goods which did not belong to the defendant whom C. arrested. On motion by the defendant to be discharged from custody:—*Held*, that it should be refused, as C., having entered the house without breaking the outer door, was entitled to break the room door to arrest the defendant. LEVITT *v.* DYMOKE - - - **Q. B. III. *M.* 22**

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ARREST—*continued.*

3. —— *Married woman without separate property—Debt contracted before marriage*—33 & 34 *Vic., c.* 93, *s.* 12.] A *femme sole* having contracted a debt prior to the passing of the Married Women's Property Act, 1870, married after that Act came into operation. No settlement was executed upon her marriage, and no provision was made for payment of her previous creditors. She was subsequently sued alone, under sec. 12, and, judgment having been recovered against her in respect of the debt contracted before her marriage, she was arrested on a writ of *ca. sa.* in December, 1872. Upon an application for her discharge from custody, on the ground that at the time of arrest she was a married woman, and that she had no separate property or means of paying the judgment debt, the Court refused the motion. NAGLE *v.* O'DONNELL [C. P. VII. 25

4. —— *Motion for discharge from custody under a committal order.*] An application for discharge from custody, which was made on the ground that the arrest order was made upon untrue statements, and that the statement that the defendant was about to proceed to America was untrue, while the plaintiffs were American merchants and the cause of action arose there, was granted. JUDD *v.* M'CARTHY [E. VII. *M.* 246

5. —— *Motion to discharge prisoner from custody—Sheriff.*] A motion to discharge a man who had been arrested by the sheriff of a county, and who was brought into the bailiwick of another sheriff, was refused. CURRAN *v.* LYSAGHT [Q. B. VII. *M.* 313

6. —— *Pleading—Conclusion of mixed law and fact—Justification of arrest under warrant "duly issued"—Jurisdiction.*] Where, to an action for false arrest, the defendant pleaded that the arrest was under a warrant "duly issued" by him as a justice of the peace, with respect to a matter within his jurisdiction, the defence was set aside, as the facts relied on as giving jurisdiction were not averred. *Donohoe* v. *Keogh* (17 Ir. C. L. R. 39) followed. SCOTT *v.* M'VICKERS E. X. 136

7. —— *Privilege—Barony constable.*] A barony constable attending on the grand jury is not privileged from arrest. (By Monahan, C.J.) ANON - Cir. Cas. II. *M.* 543

8. —— *Sunday — Warrant — Conviction — Habeas corpus.*] When the information upon which the prisoner was arrested, the sentence, the warrant of commitment, and the commitment (which was in default of finding sureties for good behaviour), all took place on a Sunday, a conditional order for a habeas corpus was made absolute, and the prisoner brought up and discharged. R. *v.* RAMSAY Q. B. I. *M.* 622, 701

9. —— *Writ of ca. sa. on judgment for a sum of* £10, *exclusive of costs*—11 & 12 *Vic. c.* 28, *ss.* 1, 2, 3—3 & 4 *Vic. c.* 105, *s.* 26—*Practice.*] A writ of *ca. sa.* cannot be issued on a judgment originally recovered for a sum of £10 debt, exclusive of costs, notwithstanding that interest has afterwards accrued on the judgment debt, and that the amount of such debt and interest exceeds £10. BEBE *v.* MELLON C. C. IV. *M.* 275

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ASSIGNMENT OF DEBT.

1. —— *Judgment—Motion for an order for the enrolment of an assignment of judgment.*] A deed of assignment of a judgment did not contain any mention of any sum being due: the Court directed that the memorial of it should be enrolled. M'CARTHY *v.* M'CARTHY - - C. C. VII. *M.* 636

2. —— *Notice.*] Action for work and labour, and on the common money counts. Defence (among others): plaintiff's insolvency since the cause of action accrued. Replication: that before insolvency plaintiff assigned the debt for value, and that the debtor had notice. No proof of notice was given:—*Held*, that it was necessary. HUNTER *v.* HUNTER [Q. B. III. *M.* 99

3. —— *Notice—Bankruptcy—Interest in land—Mortgage—Equity of redemption—Order and disposition of bankrupt—Property passing to assignees.*] B. bequeathed premises to D. and W. upon trust for sale, and to divide the proceeds equally between his children, W. B., A. B., and F. F., the share of F. F. to be divided after her death among her children as she should appoint. Subsequently F. F.'s share was fixed at £3,000 by agreement. The trustees conveyed the premises to W. B. and A. B., who mortgaged them to the trustees to secure the £3,000. F. F. had three children, and in 1843 she by deed appointed, subject to her own life interest, to A. M. K. £1,400, to J. F. £100, to Fanny F. £600; and by deed of same date A. M. K.'s share was settled on her and her husband and their children, of whom there were two. A. M. K.'s husband died in 1850, whereupon A. M. K. became entitled (subject to her mother's life interest) to £500 out of the £1,400, and to not less than a life interest in the remaining £900. Subsequently A. M. K., J. F., and Fanny F. conveyed their reversionary interest in the £3,000 to the plaintiff to secure £300 to him on their mother's death, with intermediate interest. This deed was registered, but no notice of it was given to W., the surviving trustee of B.'s will. A. M. K. and J. F. were adjudicated bankrupts in 1866, and F. F. died in 1873:—*Held*, that W. had no actual notice of the deed; that the moneys of the bankrupts included in the mortgage were within their order and disposition at the time of their adjudication, and that that deed did not convey any interest in land to the mortgagee. DANIEL *v.* FREEMAN - - - - - R. X. *M.* 657
[This was reversed on appeal. I. R. 11 Eq. 638.]

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ASSIGNMENT OF DEBT- *continued.*

4. —— *Payable in futuro—Receipts for orders of Treasurer of Grand Jury—Equitable execution.*] An assignment by a contractor, of receipts for orders of the treasurer of a grand jury for payment for work which has been presented for by the grand jury, is a good equitable assignment, as between the assignor and assignee, of the amount which is due and payable at a time subsequent to such assignment; and consequently a conditional order, obtained after such assignment by a third party, appointing a receiver by way of equitable execution over the amount of the presentment orders so assigned, will not be made absolute. (By Porter, M.R.) MASSEREENE *v.* COOKE [Vac. J. XXII. 49

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PRACTICE—COMMON LAW—GARNISHEE.

ATTORNEY.

See SOLICITOR.

ATTORNEY-GENERAL—*Costs of—When appearing as defendant in his official capacity—Decree for plaintiff.*] The Attorney-General appeared as a defendant in his official capacity, in an action for establishing a title to a foreshore; the plaintiff's title being clear, the other defendants withdrew from the action at the trial, and a decree was given for the plaintiff, the Attorney-General to bear his own costs. KILMOREY *v.* ATTORNEY-GENERAL - V. C. XXVI. 130

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—— Party—Administration suit - - IV. *M.* 472
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AUCTION.

1. —— *Auctioneer—Sale of goods—Executor de son tort.*] An auctioneer is not liable as executor *de son tort* who, acting under the instructions of his employer, does not deliver over possession of chattels, his employer receiving the purchase-money directly on the spot. (By Gibson, J.) KENNEDY *v.* M'EVOY - - - - Cir. Cas. XXVII. 11

2. —— *Fees paid by purchaser to auctioneer—Subsequently sale declared off.*] Where a sale was declared off in consequence of the vendor's inability to make title:—*Held*, that the auctioneer was not liable to repay the auction fees to the purchaser. (By Andrews, J.) ADAMS *v.* M'KEOWN [Cir. Cas. XXVI. *M.* 504

3. —— *Puffer—Sale under the Court—Liberty to bid.*] In a mortgage suit a decree was made for the sale of the mortgaged property, and a clerk of the solicitors to the mortgagees bid at the auction on their behalf without the leave of the Court:—

AUCTION- *continued.*

Held, on an application to set aside the sale, that one puffer did not invalidate the sale, that the clerk was not a puffer, and that the sale would not be set aside because the leave of the Court had not been obtained even if the clerk were a puffer. SHANNON *v.* BELLEW - - - R. I. *M.* 386

4. —— *Purchaser not signing acknowledgment or paying deposit—Proposal by another to purchase at advanced price—Inducing intending purchaser to withdraw proposal—Contempt of Court.*] At a sale of premises by auction, subject to the approval of the Court, M., who had undertaken to bid £1,000, signed no acknowledgment as purchaser, and paid no deposit. C., who had attended the auction, without bidding, applied that the sale to M. should not be confirmed, and offered to give £1,200 for the premises; but, whilst his proposal was under the consideration of the Court, withdrew same at the instance of M., who proposed that if he were allowed to become purchaser, he would afterwards make over the premises to C. for £1,250. Eventually, however, M. consented to withdraw as an intending purchaser, and C. proposed to the Court for the sum of £1,250:—*Held*, that M., having been guilty of contempt of Court, should abide his own costs and expenses, and that the proposal made by C. should be confirmed. *Re* A. N.: *Ex parte* MULLINS - - - - - B. IX. 80

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—Deposit receipt—Husband and Wife—Injunction. [I. *M.* 82
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—Deposit receipt—Joint names of husband and wife. [IX. 187
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BANKER.

1. —*Account—Rate of interest payable from death of customer.*] Interest allowed at the rate of £6 per cent. from the death of a customer of a bank, upon the balance of the banking account of the customer who, during his lifetime, had been in the habit of paying interest to the bank at that rate, according to the usage of the bank—it appearing to the Court from this course of dealing between them, with other circumstances, that there had been what amounted to a contract for payment of interest at that rate. M'CARTHY *v.* ROCHE - **V. C. X. 141**

2. —*Bankers' Act, 33 Geo. II., c. 14 (Ir.)—Meaning of creditor and banker—Trust deed—Levelling securities—Equitable mortgage.*] The Bankers' Act (33 Geo. II., c. 14 (Ir.)) has not been repealed, and it applies to bankers who issue notes. The holders of bills and notes current at the time when the banker stops payment, and at the date of the approval of the trust deed, are creditors within the meaning of that Act, and are to be taken into account in calculating the majority in value of the creditors as the 11th section requires. DAVIES *v.* KENNEDY - - - - **Ch. A. III.** *M.* **558**

3. —*Bankers' Act, 33 Geo. II., c. 14 (Ir.)—Meaning of Banker within Act—Meaning of creditor.*] Kennedy carried on a bank of deposit and discount, but not of issue. B. & P. claimed to be entitled to have priority over the trustees for Kennedy's creditors in respect of a judgment registered as a mortgage against the lands sold in the matter, and as in respect of an equitable mortgage:—*Held*, that 33 Geo. II., c. 14 (Ir.), had not been repealed; that Kennedy was a banker within the meaning of that Act; that the judgment mortgage and equitable mortgage were both void, as not being securities within the excepting clause of the Bankers' Act; and that certain banks were creditors of Kennedy although the advances to him had been made on bills of exchange, the acceptances of third parties, and not endorsed by him. *In the matter of the Estate of* KENNEDY - - - **L. E. C. I.** *M.* **442**

4. —*Cheque—Payment by cheque—Dishonour—Sale of goods—Property not passing—Fraudulent misrepresentation—Rescission of contract—Trover—Money had and received.*] It is not necessary that a fraud by the vendee of chattels should be indictable, in order to entitle the vendor to rescind the contract of sale by reason thereof. The drawing and giving of a cheque upon a bank, in payment, amounts to an implied representation that the drawer has authority to draw upon the bank, against assets, *co instanti* applicable towards payment. The giving of an unproductive cheque in payment, on a sale of chattels for ready money, by a vendee, then knowing that there are no assets in bank against which he has authority to draw, at the time of the cheque being taken by the vendor upon the faith that there are immediate funds applicable towards payment, amounts to a fraudulent misrepresentation by the vendee; and such misrepresentation will entitle the vendor to rescind the contract and resume the goods, notwithstanding that the vendee, upon reasonable grounds, believes, at the time, that there would be funds in bank to pay the cheque when presented, and though he were not indictable for obtaining the goods by false pretences. LOUGHNAN *v.* BARRY [C. P. VI. 186

BANKER—*continued.*

5. —*Cheque—Payment by cheque—No funds in bank to meet it—Sale of goods—Fraud—Principal and agent—Pleading—Evidence.*] N., a cattle-jobber, having bought cattle from the plaintiff, gave him a cheque in payment, and transmitted the cattle to the defendants, as salesmasters, for re-sale. The course of dealing between N. and the defendants was, for the defendants to lodge in bank to N.'s credit the proceeds of the sale by them of cattle so transmitted, whereby the bank was placed in funds to meet cheques so drawn by N. in payment for the cattle, the defendants receiving commission on the re-sale, but allowing N. a portion thereof, as also paying him a salary. N., when so purchasing and paying for plaintiff's cattle, relied on the defendants to lodge the proceeds, and intended that the bank should be so placed in funds to meet the cheque. The defendants sold the cattle in market overt, but did not lodge the proceeds, and the cheque was dishonoured. The proceeds were retained in discharge of the balance of a cross-account against N. When the cattle were so re-sold, and the proceeds so applied, the defendant Barry was aware of the circumstances under which the cattle had been bought, of their having been paid for by a cheque, and of the bank not being in funds to meet it. The plaintiff suing in trover and for money had and received, Monahan, C. J., at the trial, left to the jury the question whether, at the time of buying the cattle and giving the cheque, N. had any reasonable grounds for believing, and did believe that the cheque would be honoured. The jury finding in the affirmative, and a verdict being had for the defendants, on motion for a new trial:—*Held*, that a cheque being an instrument purporting to be payable on the instant, the question that should have been left to the jury was, whether, at the time the cheque was drawn, N. had reasonable grounds for believing that there were actual funds to meet it.—*Semble*, that an action for money received would lie. LOUGHNAN *v.* BARRY **C. P. V. 189**

6. —*Lien—Cheque stopped—Bills of Exchange Act*, 1882, *s.* 75.] A., having an account in the Hibernian Bank at S., drew a cheque on the bank in favour of B., who indorsed and cashed it at a branch of the bank at L. On the day after payment the branch at S. received, before banking hours, both the cheque forwarded from L., and a written order from A. to stop payment of the cheque:—*Held*, that the bank had no right of action against B., the indorsee; that A., the drawer, was the principal debtor, and the bank had a lien upon A.'s funds at S. for the amount paid on the cheque. HIBERNIAN BANKING CO. *v.* MAGUIRE **Q. S. XXVI.** *M.* **659**

7. —*Lien—Lodgment of title deeds—Overdrafts.*] A banker has a general lien on title deeds lodged with him to secure overdrafts. When bills indorsed to a bank are dishonoured by the parties primarily liable, and not paid by the customer who indorsed them, they are treated as overdrafts when charged to the account of the customer. *In re* WILLIAMS [B. III. *M.* 239

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BANKRUPTCY—ACT OF BANKRUPTCY.

1. —— *Assignment of all a debtor's property in trust for all his creditors—Assent, petitioning creditor estopped by—Acts of agent.*] A creditor who is present, either in person or by an authorised agent at a meeting of creditors, when the execution of an assignment by the debtor of all his estate and effects, for the benefit of all his creditors, is sanctioned and directed, and who does nothing to signify dissent on his part, will be held estopped, as a privy thereto, from taking advantage of the deed as an act of bankruptcy. *In re* S. **B. VIII. 43**

2. —— *Assignment of trader's property to trustees for benefit of creditors.*] A., finding himself unable to meet his engagements with his creditors, signed a deed, assigning portion of his property to trustees for the benefit of his creditors. B., a hostile creditor, who refused to sign the deed, obtained an adjudication of bankruptcy against A., alleging that the signing of the deed by A. was an act of bankruptcy within the meaning of the Irish Bankruptcy Act. Upon cause shown by A. against such adjudication:—*Held*, that, considering the nature of the deed of assignment, the signing thereof by A. was not an act of bankruptcy, and the cause shown was allowed with costs. *Re* WYNNE **B. V. 24**

3. —— *Assignment of bulk of trader's property—Purchase with notice of prior act of bankruptcy—*20 & 21 *Vic., c.* 60, *s.* 92.] An assignment under pressure, by an insolvent trader, of substantially the whole of his property, partly in consideration of a pre-existing debt and partly of a present advance, to a purchaser aware that the assignor intended to abscond with the money advanced, and not to pay any of his creditors, is an act of bankruptcy, where the necessary effect of enforcing the assignment is to stop the trader's business, and so defeat his creditors, and the assignee must have been aware of that consequence. JAMES *v.* EBBITT **C. P. VII. 7**

4. —— *Assignment of trader's property—Defeating and delaying creditors—Consideration—Pre-existing debt—Advances made on faith of agreement for transfer—*20 & 21 *Vic., c.* 60, *s.* 92.] Where a trader, in embarrassed circumstances, transfers the entire of his property, with a nominal exception, to a creditor, in consideration of pre-existing debts and liabilities, he thereby, *ipso facto*, commits an act of bankruptcy, within 20 & 21 Vic., c. 60, sec. 92, notwithstanding that his actual intention may not have been to defeat or delay his general creditors. (Per O'Brien, J.)—A transfer of all a trader's effects, in consideration partly of a substantial present advance and partly of an antecedent debt, is not necessarily, *ipso facto*, an act of bankruptcy, within 20 & 21 Vic., c. 60, s. 92. It would be for the jury to determine whether the intent and object of the parties to the transfer was *bonâ fide*, or whether it was executed for the purpose, or had the effect of defeating

or delaying the trader's general creditors, taking into consideration the circumstances connected with the transfer, and the adequacy of the present advance in proportion to the value of the property. If the jury believe that, upon the faith of an agreement for such transfer, subsequent payments are made to the trader, the transfer afterwards executed should be considered as made as of the date of the original agreement, and such payments are equivalent to a present advance. JAMES, *et al., assignees of* YOUNG *v.* MORIARTY **Q. B. VIII. 177**

5. —— *Beginning to keep house—Intention to delay creditors—Evidence—Denial to creditor—Trader's dwellinghouse closed by act of landlord, distraining for rent—*35 & 36 *Vic., c.* 58, *s.* 21 (3).] On the 9th of November the shop of a trader was closed by his landlord when distraining for rent, but the trader continued to reside on the premises. Subsequently, a person employed by a creditor went to the house, to demand payment of a debt due to his employer by the trader, and saw Byrne, the trader's shop assistant, by whom the trader was denied to him, although then at house. On another occasion, a clerk employed by the creditor's solicitor went for the purpose of serving the trader with particulars of the demand, and the trader was, in like manner, denied to him by Byrne, to whom the particulars were then given, and by whom they were afterwards delivered to the trader. On the 13th of November following, the trader was again denied by Byrne to the person so employed by the creditor, although the trader was then at his dwellinghouse. On the 14th he was denied, in like manner, to the solicitor's clerk, but afterwards, on the same day, went to the creditor's solicitor for the purpose of settling the demand; meanwhile, however, he had been adjudged bankrupt. On cause being shown against the adjudication, disputing the commission of an act of bankruptcy, Byrne was not produced for examination, nor was it established that there had been any physical obstacle to prevent the trader's according a personal interview when sought, or any adequate cause to account for his having been denied:—*Held*, that the trader's acts unexplained, Byrne not having been produced as a witness, necessarily led to the intendment that the trader had begun to keep house with intent to defeat and delay his creditors—the fact of his going to the solicitor's office being insufficient to negative the existence of such intent—and that he had thereby committed an act of bankruptcy, within the Bankruptcy (Ir.) Amendment Act, 1872, s. 21, sub-sec. 3. *Ex parte* WARD; *Re* WARD **B. X. 182**

6. —— *Imprisonment for non-payment of money—Arrest under Debtors Act,* 1872, *s.* 7.] A defendant had been arrested and imprisoned under the Debtors Act, 1872, sec. 7, for two months, unless and until he should deposit in Court a specified sum by way of security, or give a bond, to be executed by himself and two sureties in that amount, that he would not leave Ireland without the leave of the Court:—*Held*, that this was not an act of bankruptcy. *Re* B.; *ex parte* HESTER **[B. VIII. *M.* 109**

7. —— *Mortgage of debtor's whole property—Non-trader—Antecedent debt—Transfer in pursuance of prior agreement—Indefinite agreement—B. A. Act,* 1872, *s.* 21, *sub-s.* 2.] As a general rule, a transfer of all a debtor's property, although by way of mortgage, as a security for an antecedent debt, especially when the debtor is in insolvent circumstances, *ipso facto*, constitutes an act of bankruptcy within the "Bankruptcy (Ir.) Amendment Act, 1872," s. 21, sub-s. 2. That sub-section applies to non-traders equally with traders. In order that a conveyance should be deemed to have relation back, and receive validity from a precedent agreement, it is necessary that the agreement itself should be certain and precise in its nature; and, therefore, an agreement merely to the effect that the bankrupt would not give any security which would have priority over the creditor, would not be sufficiently definite to warrant the giving of a retrospective effect to an

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BANKRUPTCY—ACT OF BANKRUPTCY—*continued.*

assignment to the creditor, subsequently executed, on a demand made by the creditor in consequence of apprehension that legal proceedings were about being taken by another creditor for the purpose of having execution against the debtor's property. *In re* LYNCH - - **B. X. 107**

8. —— *Mortgage of trader's whole property to secure antecedent debt—Land transferred held under a lease, subject to clause against alienation—Trader, what constitutes—Cattle dealer—Proceeds of sale under deed of mortgage*—20 & 21 *Vic., c.* 60, *s.* 92—23 & 24 *Vic., c.* 154.] Where a trader, in embarrassed circumstances, transfers the entire of his property by way of mortgage, to secure an antecedent debt, he thereby commits an act of bankruptcy, notwithstanding that a substantial portion of the property assigned consisted of premises which were held under a lease subject to a condition against alienation, without the lessor's consent, on pain of forfeiture, and though such consent had not been obtained. *In re* PORTER **[B. IX. 149**

9. —— *Notice—Sufficiency.*] The notice of an act of bankruptcy, in order to invalidate a transaction by and with a bankrupt, *bonâ fide* entered into before the filing of the petition in bankruptcy, must be specific and clear. *In re* A. B. WILSON **[B. (Local) XXIV. *M.* 345**

10. —— *Petition for arrangement after service of debtor's summons—Act of bankruptcy grounded on debtor's summons and adjudication thereon—Staying proceedings—B. A. Act*, 1872, *s.* 62.] When a debtor's summons has been duly issued and served previously to an order for protection against process, obtained by the debtor under proceedings in arrangement instituted after service of the debtor's summons, and an act of bankruptcy has been committed by the debtor, in not paying or compounding for the debt within the prescribed period, or when any other act of bankruptcy has been committed by him, a petition for adjudication in bankruptcy may be presented, and the Court cannot stay the further prosecution of the bankruptcy proceedings, but will stay further proceedings in the arrangement matter. *In re* KER - - **B. XII. 9**

11. —— *Presentation and dismissal of petition for arrangement—Title of assignees—Relation back—Reputed ownership—Order for sale—Bills of Sale Act—"Time of such bankruptcy"—Apparent possession—Bailee—Mortgage of future acquired property—Novus actus.*] Where the act of bankruptcy on which a debtor is adjudged bankrupt is that he has filed a petition for arrangement with his creditors, and that such petition has been dismissed, the property of the bankrupt vests in his assignees only from the time of the dismissal of the petition, and their title does not relate back to the time of its presentation. The assignees of a bankrupt are not entitled to avail themselves of the provisions of the reputed ownership clause of the B. and I. Act (Ir.), 1857, without an order by the Court of Bankruptcy for sale of the goods. Where the grantor of an unregistered bill of sale has been adjudged bankrupt, the title of the grantee will be defeated under the Bills of Sale Act if the goods remained in the apparent possession of the grantor at the time of the committal of an act of bankruptcy, though not at the time of the order of adjudication, and the title of the assignees will prevail by reason of the relation back to such act of bankruptcy. The Bills of Sale Act applies to a bill of mortgage of goods to be subsequently acquired. In consideration of past and future advances, on account current, by the Merchant Banking Co. to Spotten & Co (who were linen manufacturers), the latter by deed assigned absolutely to the former, subject to a proviso for defeasance on repayment, certain linens which the mortgagors had placed in the possession of Barklie & Co. for the purpose of being bleached; the latter parties by the same deed covenanting and declaring that they would hold the goods, or other goods to be substituted therefor, from time to time, with the concurrence of the Bank, for the Bank, and that if the Bank

BANKRUPTCY—ACT OF BANKRUPTCY—*continued.*

should at any time sanction their parting with goods, they would retain and hold goods of a certain value, and that they would keep an account of such goods, substituted or otherwise, and that it should at all times be lawful for the Bank to enter on their premises and take the goods subject to the deed; it being provided that on default of payment by Spotten & Co. the Bank should have power to sell the said goods; and Spotten & Co. covenanting with the Bank to do whatever might be expedient or necessary for the purpose of perfecting the title of the Bank to the said goods. The deed was not registered under the Bills of Sale Act. With the consent of the Bank the goods were removed; others were substituted therefor. On 6th December, 1875, an authorised agent on behalf of the Bank demanded from Barklie & Co. a list furnishing particulars of the stock in their possession subject to the lien of the Bank, when they stated that the goods subject to the said lien amounted to a certain value, and that the Bank need not be uneasy for their security, and that a list of the required particulars would be furnished forthwith. On December 8th a partial list was delivered; and on the same day Barklie & Co. wrote to the Bank enclosing same, and specifying the value of all goods held by them, subject to the lien of the Bank; which letter was enclosed in another from Spotten & Co., also acknowledging the goods to be held subject to such lien. On December 22, the goods being on the premises, and in the possession of Barklie & Co., the agent of the Bank demanded possession of the goods from Barklie & Co., who admitted his right thereto; and a portion of them were loaded on waggons accordingly; but, in consequence of an injunction granted by the Court of Bankruptcy, on an arrangement petition by Spotten & Co. having been presented on December 7th, the delivery was stopped. The goods were afterwards seized by the messenger of the Court of Bankruptcy:—*Held*, that the deed created a valid mortgage of the future-acquired goods; that there had been a sufficient *novus actus interveniens* on the part of the Bank to perfect their title; and that, the goods being held and in the possession of Barklie & Co. exclusively, as bailees for the Bank, were not in the apparent possession of Spotten & Co. within the meaning of the Bills of Sale Act. MERCHANT BANKING COMPANY OF LONDON *v.* SPOTTEN - **R. XI. 153**

12. —— *Refusal of sheriff to make an affidavit of a seizure, which constituted the act of bankruptcy.*] A sheriff, who refused to make an affidavit of the seizure of goods which constituted an act of bankruptcy, was directed to be summoned to the Court for examination, and ordered to pay not only his own expenses to town, but the expense of the solicitor in the case and of the shorthand writer for taking the depositions. *Re* R. S. - - - - - **B. X. *M.* 286**

13. —— *Sale of Bankrupt's entire effects—Intention to defeat expected execution—Knowledge of Purchaser—Undervalue*—10 *Car. I., sess.* 2, *c.* 3—35 & 36 *Vic., c.* 58, *s.* 21—*Fraudulent conveyance.*] Where, within a month from the service of a writ of summons and plaint for damages, to which there was no defence, the defendant caused the entire of his estate and effects to be sold by public auction, and it appeared to the Court that the sale was made at an undervalue, and that it was, to the knowledge of the purchaser, a contrivance to defeat and delay the plaintiff of his lawful action and of the damages to be recovered therein:—*Held*, that the sale was fraudulent and void as against the assignees in bankruptcy of the vendor, under both 10 Car. I., sess. 2, c. 3, and 35 & 36 Vic., c. 58, s. 21, sub-s. 2. *In re* M'CUE. WHELAN *v.* M'CUE - - - - **B. XII. 37**

14. —— *Setting aside adjudication—B. A. Act*, 1872, *s.* 21.] A trader in Belfast was indebted to the Provincial Bank in a considerable sum of money, on foot of bills of exchange drawn by the firm of Lowry, Valentine, and Kirk, and accepted by the trader. Lowry, Valentine, and Kirk, who had discounted the bills in the Provincial Bank, were also in em-

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BANKRUPTCY—ACT OF BANKRUPTCY—*continued.*

barrassed circumstances, and about to stop payment, and this to the knowledge of the bank. After some negotiations with the trader the bank handed to John Lowry, head of the firm of Lowry, Valentine, and Kirk, three of the trader's overdue acceptances for £1,000 each, upon which the firm of Lowry, Valentine, and Kirk issued a debtor's summons. Subsequently Lowry's solicitor, in presence of an officer of the bank, offered to withdraw the debtor's summons if the trader executed a trust deed vesting all his estate in trustees for the benefit of all his creditors, which he accordingly did without delay. The bank refused to execute the trust deed, and, relying upon it as an act of bankruptcy, filed a petition against the trader and obtained an adjudication against him:—*Held*, that the bank, having stood by while the trader was forced or induced to execute the deed, must be taken as having acquiesced in its execution, and assented thereto, and could not take advantage of it as an act of bankruptcy. *In re* EASDALE. *Ex parte* THE PROVINCIAL BANK - [B. VIII. 209

15. —— *Transfer of trader's whole property—Consideration—Payment on foot of liability as surety—Fraudulent preference—B. A. Act*, 1872, *ss.* 21, 53.] A trader, in insolvent circumstances, voluntarily and without pressure assigned, by way of mortgage, the entire of his property to a relative in order to secure—firstly, an antecedent debt, in respect of money advanced by the mortgagee to a creditor of the mortgagor; secondly, a sum of money, then paid by the mortgagee to another creditor, for the purpose of releasing property, to be included in the mortgage, from a lien upon it by such creditor; thirdly, a sum which the mortgagee paid to another creditor, for payment of which sum the mortgagee was a surety for the mortgagor, and on foot of which the creditor had previously sued the mortgagor, but had been induced by the mortgagee to suspend proceedings until a date subsequent to that of the execution of the deed. Only one day was allowed for redemption, and the mortgagee assumed possession immediately. The mortgagor had given up carrying on trade shortly before the date of the deed, and immediately afterwards was adjudged bankrupt:—*Held*, that the execution of the deed constituted an act of bankruptcy by the mortgagor, under the Bankruptcy Amendment Act (Ir.), 1872, s. 21, sub-s. 2—the payment made by the mortgagee, as surety for the past debt, not being equivalent to a present advance. *Lomax* v. *Buxton* (L. R. 6 C. P. 107), *Whitmore* v. *Claridge* (33 L. J. Q. B. 87), and *Pennell* v. *Reynolds* (11 C. B. N. S. 709), distinguished. *Quære* whether the execution of the deed constituted a fraudulent preference of a "creditor" within sec. 53? *Ex parte* LAMKIN. *In re* UPPINGTON [B. X. 66

—— Notice—Sheriff—Sale - - VIII. *M.* 449
See LANDLORD AND TENANT—BANKRUPTCY OF TENANT. 2.

BANKRUPTCY—ACTION BY AND AGAINST BANKRUPT.

1. —— *By bankrupt—Effect of, in vesting right of action in assignees.*] In an action against an attorney for negligence in marking judgment against F. in too large a sum, whereby the plaintiff became subject to a law suit, and consequently became bankrupt, the defendant pleaded that the right of action became vested in the plaintiff's assignees:—*Held*, a good plea CRAWFORD *v.* CINNAMEND - B. I. *M.* 404

2. —— *Against bankrupt—Election—Action at law—Application to restrain.*] A creditor, though he proves a debt and is paid a dividend, may, if the bankrupt has not obtained his certificate, proceed with an action to recover the same debt. After the bankrupt has obtained his certificate, this Court will not restrain the creditor from proceeding with the action, but will leave the bankrupt to apply to the Court in which the proceedings are pending. *Re* PURDES AND OUTWAITHE [B. II. *M.* 266

BANKRUPTCY—ADJUDICATION.

1. —— *Amount of debt—Interest on judgment.*] A debt for less than £40, founded on a judgment, when the interest on it brings it up to £40, is sufficient to ground an adjudication. *Re* T. IRWIN - - - - B. VIII. *M.* 54

2. —— *Annulling on equitable grounds—Act of bankruptcy—Previous assent by petitioning creditor to trust deed for benefit of creditors—Estoppel—Petition by trustees to annul adjudication—Concerted act of bankruptcy.*] A creditor who (amongst others) had assented to a deed, whereby a debtor assigned all his estate to trustees for the benefit of his creditors, and who afterwards assented to an agreement for a composition by the debtor, to be secured by sureties on his behalf, and to a resolution of creditors acceding to the agreement, subsequently, in concert with the debtor and his sureties, for the purpose of getting rid of the effect of the deed, agreement, and resolution, procured an act of bankruptcy to be committed by the debtor, and, thereupon, filed a petition against him, upon which he was adjudicated a bankrupt. Upon a petition presented by the trustees:—*Held*, that the adjudication should be annulled. *Ex parte* VANCE AND WILSON. *In re* H. - - B. VIII. 185

3. —— *Composition with creditors—Consent to annul adjudication—Certificate of Chief Clerk.*] B. lodged with the official assignee a sum of money to secure the bankrupt's creditors a composition of 6s. 8d. in the pound. All the creditors assented that the adjudication should be annulled, the composition paid, and the bankrupts replaced in possession of their estate:—*Held*, that the adjudication could not be annulled until the Chief Registrar made his report, and certified that all the creditors had assented. *Re* DOOLEYS [B. II. *M.* 44

4. —— *Debt sufficient for.*] A debt from which the trader has been discharged by the Court in insolvency is a good debt on which to petition in bankruptcy, and an application to annul the adjudication, on the ground of the debt being invalid, will be refused with costs. *In re* HODGENS [B. II. *M.* 689

5. —— *Debtor's summons—Adjudication of bankruptcy—Showing cause on equitable grounds—Procedure—Special application to stay proceedings or annul adjudication.*] Where it is sought to set aside or annul an adjudication of bankruptcy on equitable grounds, the alleged bankrupt must proceed, not by way of motion showing cause against the adjudication, but by a special application to set aside the proceedings or to annul the adjudication. *In re* M'G. B. XI. 93

6. —— *Disputed—Discharge of nominal partner.*] When a man trades under a particular name or style, such as "J. and H.," and merchants give credit on the supposition that two brothers are trading in partnership, and a joint adjudication takes place, the Court, on hearing evidence that one of the brothers has not anything to do with the concern to which the goods were sent, will annul the adjudication as to him, and give him his costs. *Re* J. & H. M'KEON [B. III. *M.* 314

7. —— *Secured debt*—35 & 36 *Vict.*, *c.* 58, *s.* 21.] A petition having been presented against a debtor, on a bill of exchange which formed part of a floating balance of moneys due to the petitioner, for which the creditor had given a security, the Court adjudicated the debtor bankrupt upon the petitioner giving up his security, so far as related to the bill of exchange. *In re* O'NEILL. *Ex parte* THE NATIONAL BANK [B. VII. 70

8. —— *Security—Petitioning creditor's debt—Act of bankruptcy—B. A. Act*, 1872, *s.* 21—*General Orders*, 1872, *Nos.* 43, 85, 86, 87, 88, 89.] Petitioning creditors, in their petition, and the affidavit in support of it, relied upon debts due by a trader, amounting to £2,000, which were stated to be part of his debts to the petitioning creditors. The petition and affidavit stated that the petitioning creditors held a security

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BANKRUPTCY—ADJUDICATION—*continued.*

or lien on goods of the bankrupt in the hands of a New York firm, which security or lien they waived as against the debt on which they relied, but without prejudice to their right to retain it against their other demands:—*Held*, that the petition did not comply with the 21st section of the Bankruptcy Amendment Act, 1872, and could not support an adjudication. The petitioning creditors had as their commission agents in Belfast a firm which admittedly, by one of its members, had been active in procuring the trader to sign the trust deed relied on by the petitioning creditors as an act of bankruptcy; it was proved that the petitioning creditors had no knowledge of the execution of the trust deed, and that their agents were not agents in that behalf:—*Held*, that the petitioning creditors were not precluded from relying on the trust deed as an act of bankruptcy. *Re O'Neill* (VII. 20) over-ruled. *Ex parte* BIRLEY BROS.; *In re* EASDALE **[B. VIII. 212**

9. —— *Showing cause against adjudication—Form of notice —27th G. R.*] The Court will not go behind the 27th General Rule, and permit cause to be shown against an adjudication where the rule is not strictly complied with. *Re* DUKE **[B. IV. M. 5**

10. —— *Time for proceeding on petition—Extension of time—Jurisdiction—B. and I. Act*, 1857, *s.* 121.] The effect of section 121 of the B. and I. Act, 1857, is that for five days, or any extended time allowed by the Court for the purpose within such five days after the petition was filed, the petitioning creditor has an exclusive right to proceed to adjudication; that after the expiration of the five days, or the time so extended, and within the seven days next following, any other creditor duly qualified, in common with the petitioning creditor, has the power of proceeding to adjudication; but, that if neither the petitioner nor any other creditor shall within seven days after the expiration of such five days, or within such extended time as may be granted by the Court within such seven days, proceed to adjudication, the petition will be dismissed. *In re* MURDOCK - - **B. XIV. 105**

11. —— *Time for showing cause against validity of—Laches in applying to annul—Jurisdiction to rehear, vary, or rescind orders—Bankrupt applying, though not having surrendered*—20 & 21 *Vic., c.* 60, *ss.* 29, 129, 358—35 & 36 *Vic., c.* 58, *s.* 6—50 *G. O.*, 1872.] Although a bankrupt does not contest the validity of his adjudication, within the period prescribed by 20 & 21 Vic., c. 60, s. 129, the Court has jurisdiction afterwards to entertain an application to rescind it, under 35 & 36 Vic., c. 48, s. 6. But the Court will not in general, in its discretion, entertain an application for such purpose after the periods limited for showing cause under 20 & 21 Vic., c. 68, s. 129, and for appealing under s. 29 of that Act, have elapsed, unless under special and peculiar circumstances. *In re* DE SERANCOURT **[B. VIII. 60; Ch. A. VIII. 137**

12. —— *Trading continued.*] A linen mill was allowed, after bankruptcy, and at the desire of the creditors, to be kept open and the business carried on for ten days, until the creditors should meet and determine what should be done with regard to the sale of the premises. *Re* LAW & CO. **[B. II. M. 464**

—— After sequestration in Scotland - - **IV. M. 652**
See BANKRUPTCY—JURISDICTION. 1.

—— Annulling—English debts - - - **III. M. 677**
See BANKRUPTCY—JURISDICTION. 4.

BANKRUPTCY—ALLOWANCE.

1. —— *Joint bankrupts—Partners*—20 & 21 *Vic., c.* 60, *ss.* 302, 303.] Where, on a joint bankruptcy of partners, a dividend is paid entitling them to an allowance, a single allowance only will be made out of the joint estate, in proportion to the dividend paid out of the net produce of the joint estate.—*Re Scott* (8 Ir. Jur. N. S. 160), over-ruled. *In the matter of* JAMES HUNTER AND OTHERS - - - **B. VII. 153**

BANKRUPTCY—ALLOWANCE—*continued.*

2. —— *Misconduct of bankrupt.*] Under the 20 & 21 Vic., c. 60, s. 302, even though the bankrupt's estate pays a large dividend, yet the Court may on the ground of his misconduct refuse him any allowance whatever out of his estate. *Re* NOBLE - - - - - **B. III. M. 350**

BANKRUPTCY—APPEAL.

1. —— *Extension of time to appeal.*] The Court refused to allow an extension of time to lodge an appeal, although the delay arose through a mistake. The Court has no jurisdiction to hear such a motion *ex parte*. *Re* MALCOMSON **[B. XI. M. 7**

2. —— *Turning arrangement into bankruptcy—Surrender of bankrupt.*] An arrangement case was turned by the Court into bankruptcy, and the trader appealed against that ruling. The appeal not having yet been heard, the trader did not attend on the day named for surrender and final examination. The Court recorded his non-attendance, and adjourned the case for a month to give time for the appeal to be heard. *Re* M'CLELAND - - - - - **B. II. M. 659**

BANKRUPTCY—ARRANGEMENT.

1. —— *Advertisement of sale—Name published*] An advertisement of the sale of the arranging debtor's premises may be made, although it would result in the publication of his name. *Re* J. N. - - - **B. VIII. M. 64**

2. —— *Apparent assets more than sufficient to pay the composition offered—Security for instalments.*] Although the assets of an arranging trader may appear capable of paying a larger composition than is offered, yet if his stock be of that character that it would require a long time to realise the money, the Court will not, at the suggestion of a creditor who thinks it should pay more, cause the trader to increase his offer. Where the last instalment is secured by the indorsement of a third party, the bills must be lodged before the Court will approve and confirm. *In re* AN ARRANGING TRADER - - - - - **B. II. M. 93**

3. —— *Apprentice—Return of fee*—20 & 21 *Vic., c.* 60, *s.* 250—35 & 36 *Vic., c.* 58, *s.* 66.] The Court has not jurisdiction under 20 & 21 Vic., c. 60, s. 250, and 35 & 36 Vic., c. 58, s. 66, to order that a fee paid, on the binding of an apprentice, to an arranging trader, should be returned, where the arrangement has been concluded, providing for the complete distribution of his assets, without having made any provision for the payment of such apprentice fee. *In re* J. L. **[B. VIII. 160**

4. —— *Arrangement after—Charge and discharge—Disputed debt.*] Where a bankrupt agreed with his creditors for an arrangement, but two of them objected, as the bankrupt did not recognise their claims, the proper course was to have charges and discharges filed so as to ascertain the rights of the parties. *In re* PETTIGREW - - **B. I. M. 634**

5. —— *Assets—Objects of preliminary meetings.*] Applications for the adjournment of the first private sitting before the Court in arrangement cases, grounded upon the resolution of creditors passed at their previous preliminary meeting for receiving explanations from the arranging trader, and for determining as to the acceptance by them of the composition offered by the trader, will not be granted except in exceptional cases. *Re* AN ARRANGING TRADER - - **B. II. M. 446**

6. —— *Certificate of conformity—Consent of creditors—Irish Bankruptcy Act*, 1857, *s.* 352.] The following proposal of an arranging trader was agreed to by his creditors:—Payment of all his debts in two instalments of ten shillings each, payable in six months and twelve months respectively, to be secured by his promissory notes, his property to vest in the official assignees for realisation in default of payment of the said instalments. The petitioner did not pay the first set of

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BANKRUPTCY—ARRANGEMENT—*continued.*

promissory notes, and the assignees sold and distributed his assets. The trader having applied for his certificate, under the 352nd section of the Irish Bankruptcy Act, 1857, and his creditors opposing:—*Held*, that the petitioner was not entitled to his certificate. The consent of the creditors is necessary to enable the Court to grant a certificate under s. 352. *In re* AN ARRANGING TRADER - - - B. V. 125

7. —— *Claim and proof in arrangement—Credits on foot of payments made out of the estate of a third party.*] When the Registrar of the Bankrupt Court makes a memorandum that a bank, with which the trader deals, makes a claim, of which, however, there is not any trace on the file of the proceedings, the claim will, if the trader admits that it was made, be ultimately admitted as a proof. The entry of a claim is for the purpose of making it a debt when evidence can be had to sustain it. A creditor is entitled to retain receipts from a co-surety with the trader, in addition to the amount of the composition on his debt, provided that such creditor does not receive more than twenty shillings in the pound. *Re* SCANLAN - - - - - B. III. *M.* 663

8. —— *Claim for costs in full by creditor against whom an unsuccessful suit was brought by the arranging debtor.*] Previous to filing a petition for arrangement with his creditors a trader had brought a suit in the Court of Admiralty, claiming a cargo of wheat in the defendant's possession; in which suit the defendant succeeded, with costs. At the second composition meeting in the arrangement matter, the defendant, who remained owner and possessed of the wheat, having applied for payment of the costs in full, the Court refused the motion. *In the matter of* AN ARRANGING DEBTOR - B. VIII. 8

9. —— *Committal for unsatisfactory answering—Arrangement matter.*] A person brought before the Court of Bankruptcy as a witness, and surety in an arrangement matter, cannot be committed for "unsatisfactory answering." *Re* O'MALLEY - - - Q. B. D. XXVI. *M.* 450

10. —— *Contingent liability.*] A contingent liability is provable, as such, under the arrangement clauses, as well as in bankruptcy. ANON. - - - B. II. *M.* 337

11. —— *Contract by arranging debtor for the sale of property vested in official assignees—Confirmation of sale—Re-vesting property*—35 & 36 *Vic., c.* 58, *ss.* 64-66.] An arranging debtor having, subsequently to the confirmation of his proposal, entered into an agreement for the sale of a portion of his property, which had been vested in the official assignees pending the payment of his composition not yet due, the Court refused, on the application of the purchaser, to confirm the contract of sale, and to order the assignees to join in the conveyance, or to make an order for re-vesting the debtor's property *pro tanto*. *In the matter of* T. D. [B. VII. 172

12. —— *Costs of English accountants when Irish already appointed—Practice.*] When English traders sent over London accountants to take the stock of Irish traders who had failed, the Court would not allow those accountants to be paid out of the assets, Dublin accountants having been previously appointed. *In the matter of* J. C. [B. III. *M.* 157, 176

13. —— *Creditor withdraws proof of debt—Costs of proof.*] The registrar has power to allow any party to withdraw his claim for credits; and if the withdrawal of it is unsuccessfully opposed, the party opposing must pay the costs. *Re* E. R. - - - - - B. VIII. *M.* 178

14. —— *Debts barred by the Statute of Limitations.*] Debts barred by the Statute of Limitations cannot be proved in arrangement matters any more than in bankruptcy. *Re* J. F. B. - - - - - B. VIII. *M.* 109

BANKRUPTCY—ARRANGEMENT—*continued.*

15. —— *Debtor's summons prior to petition for arrangement—Enlarging time for paying, &c., pending arrangement*—35 & 36 *Vic., c.* 58, *ss.* 21, 30, 62, 68.] When a debtor's summons has been served on a debtor who subsequently files his petition for arrangement, the Court has not jurisdiction under the Bankruptcy Amendment Act (Ir.), 1872, to enlarge the time, until after the time appointed for the first private sitting in the arrangement matter, for paying, securing, or compounding for the debt. *In re* W. AND N. - B. VII. 180

16. —— *Expense of accountant—Practice.*] The Court will not, as a general rule, order a trader to pay the expenses of an accountant appointed by creditors to estimate assets. *In re* AN ARRANGING TRADER - - - B. V. 34

17. —— *Failure in payment of proposed composition—Rights of creditors—Power of Court to restrain suits*—35 & 36 *Vic., c.* 58, *s.* 68.] If a debtor who has carried an arrangement under the arrangement clauses of the Irish Bankruptcy and Insolvency Act, 1857, fail to pay the instalments of the composition which his creditors have agreed to accept, the creditors are remitted to the original rights. The Court of Bankruptcy will not restrain such a creditor from proceeding in a Court of Common Law to recover the entire amount of the debt for which he had agreed to take a composition in the arrangement matter. *Re* J. L. - B. VIII. 106

18. —— *Fraudulently obtaining credit—Turning into bankruptcy.*] The discretionary power of the Court to turn an arrangement case into bankruptcy was exercised when the debtor had obtained credit by false representations as to his solvency. *In re* AN ARRANGING TRADER - B. I. *M.* 263

19. —— *Inability to pay composition—Turning arrangement into bankruptcy.*] Inability to pay the composition offered is not such a difficulty as can be cured by s. 351 of the Bankruptcy and Insolvency Act, but the case will be turned into bankruptcy. *In re* WELPY - B. IV. *M.* 337

20. —— *Irish Bankrupt and Insolvent Act*, 1857, *ss.* 347, 352.] The 20 & 21 Vic., c. 60, ss. 347 and 352, must be construed together, and the certificate given by the latter is valid only against such persons as, being creditors at the date of the petition, received the proper notices. COGAN *v.* GARVEY - - - - - B. III. *M.* 329

21. —— *Judgment against arranging debtor—Payment to creditor of costs in full incurred in legal proceedings—Cheque received prior to judgment.*] Subsequently to the service of a summons and plaint the defendant's attorney wrote, November 11, 1873, to the plaintiff's attorney, asking the latter to take £10 in part payment of the debt, and to give the defendant a week for the payment of the balance, to which a reply was written, November 12th, offering to give the time required if a security was given for payment of the balance. On November 14, judgment by default was marked for the full amount of the debt and costs, the £10 or the security not having been received. On that same day the defendant telegraphed that he would comply with the terms proposed, and wrote, enclosing a cheque for £10, adding that he would send the security; after receipt, and in consequence of which, the plaintiff's attorney wrote, November 15, stating that although judgment had been marked, it would not be entered or execution issued; but the defendant, before the receipt of this letter, consulted his attorney, by whom proceedings were taken, for the purpose of effecting a composition with the defendant's creditors, and, upon a petition for arrangement filed, accordingly, by the debtor, a protection order was made on November 18. The cheque given was dishonoured for want of funds:—*Held*, that the judgment creditor was not entitled to payment in full of the amount of his demand, or of £10 thereof, or of the costs of the proceedings up to and including the marking of the judgment. *In the matter of* AN ARRANGING DEBTOR - - - B. VIII. 27

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BANKRUPTCY—ARRANGEMENT—*continued.*

22. —— *Judgment mortgage—Petition in Landed Estates Court for sale of arranging debtor's estate.*] R. recovered three judgments against L., two on the 28th November, 1866, and the third on the 8th January, 1867, which were respectively registered as judgment mortgages, two on the 1st December, 1866, and the third on the 9th January, 1867. The third judgment was on foot of a bill of exchange accepted by L. on 3rd August, 1866, payable in four months. On 26th November, 1866, L. obtained an order of the Court of Bankruptcy, under arrangement clauses, protecting his person and property from process until 7th December, or further order, of which order R. had notice. On 11th January L.'s proposal was confirmed by the Court. Subsequently R. presented a petition in the Landed Estates Court:—*Held*, that the order for sale should not be made absolute. *In re* LAMBE'S ESTATE
L. E. C. I. *M.* 746

[This was reversed upon appeal.—I. R. 3 Eq. 286.]

23. ——*Married woman—Protection.*] An order was made *ex parte* giving protection under the Bankrupt and Insolvent Act, 1857, to a married woman carrying on business separately from her husband, and who had obtained protection under 28 Vic., c. 43. The latter statute takes away some of the objections raised against a married woman coming in under the Bankruptcy Act. *In the matter of* AN ARRANGING DEBTOR - - - - - - **B. XI. *M.* 41**

24. —— *Minor—Proof of minority—Jurisdiction.*] The statement of the official assignee that an arranging trader is a minor is sufficient evidence for the Court to show that it cannot act without the authority of the Court of Chancery. *In re* ARRANGING TRADER - - - - - **B. V. 125**

25. —— *Misrepresentations as to circumstances—Arrangement changed into bankruptcy.*] An arranging trader made, with regard to his circumstances, untrue representations, whereby he obtained from his creditors an extension of time. A majority of his creditors agreed to accept the composition he offered:—*Held*, that the case should be turned into bankruptcy, and that the carriage of the proceedings should be given to the opposing creditor. *In re* M'CLELAND **B. II. *M.* 688**

26. —— *Mortgaging property—Discretionary power of Court.*] An arranging trader has an overwhelming majority of creditors to sanction the proposal for a composition offered by him, but it turns out that property to a very large amount, in the shape of machinery, which was erected by a particular creditor, had been mortgaged by the trader at the time that such machinery was in process of erection, without any intimation to that creditor. The Court will, notwithstanding that majority, and without speculating whether more or less will be had in bankruptcy, adjudicate the trader bankrupt, and adjourn the proceedings into open Court, and give the creditor opposing his costs. *Re* BECK - - - - - **B. I. *M.* 29**

27. —— *No dividend payable—Certificate.*] The Court may grant a certificate to an arranging debtor although his estate did not pay any dividend to the creditors. *In re* AN ARRANGING DEBTOR - - - - - - **B. X. *M.* 91**

28. —— *Objects of preliminary meetings in arrangement cases.*] The true objects of preliminary meetings in arrangement cases are—to investigate the trader's representations, and the reasonableness of the composition offered upon the basis of such representations. *Re* AN ARRANGING TRADER
[B. II. *M.* 446

29. —— *Opposing arrangement—Creditor who has not proved debt—Claimant returned on schedule.*] The plaintiff in a Chancery suit, in which the arranging debtor had been ordered to lodge a sum of money, and which he had not lodged, appeared to oppose the arrangement; and further stated that he was a claimant for the same sum as surety for the debtor in an administration bond, on which latter ground only he was admitted by the registrar as a claimant:—*Held*, that he could not vote in the arrangement, but could be heard in objection to it. *Re* W. - - - - - - **B. VIII. *M.* 565**

BANKRUPTCY—ARRANGEMENT—*continued.*

30. —— *Opposition by creditor—Proof of debt not filed—35 & 36 Vic., c. 60, s. 347.*] A creditor will not be allowed to oppose an arrangement unless he has previously filed his proof of debt. *Re* C. H. - - - - - **B. VII. 70**

31 —— *Petition by partners—Difficulty in execution of resolution—Death of one partner—Special sitting—Abatement of proceedings*—20 & 21 *Vict., c.* 60, *sec.* 351.] A petition for arrangement under the control of the Court was presented by the several partners of a trading firm; and at the second sitting a resolution was assented to by the requisite majority of their creditors and confirmed by the Court, accepting a composition on the joint unsecured debts of the petitioners, and separate proposals as to their separate liabilities; payment to be secured in respect of their joint debts by their joint promissory notes, and, in respect of their separate liability, by their separate promissory notes; and some of the creditors agreeing to postpone payment of the composition due to them until all the others had been paid. Afterwards, but before the ascertainment of the liabilities or the signing of the promissory notes, one of the arranging debtors died. The survivors having thereupon applied to the Court to cause a special sitting to be held under the Bankrupt and Insolvent Act, 1857, sec. 351:—*Held*, that the motion should be refused: and that the proceedings had so far abated by reason of the death of one of the arranging debtors, that no further steps in the matter could be taken, save the filing of an affidavit authenticating his death, with the view of enabling the survivors to proceed anew, by presenting another petition for arranging with their creditors. *In re* M. BROTHERS
[B. XI. 30

32. —— *Priority—Claim against Treasurer of Friendly Society.*] Under the 18 & 19 Vic., c. 63, s. 23, an arranging or bankrupt treasurer of any Friendly Society is compelled to pay the full amount of any debt he may owe such Society before paying his other creditors a composition or dividend. *In re* AN ARRANGING TRADER - - - **B. V. 34**

33. —— *Proof of debts by creditors under £10—Notice.*] The arrangement clauses provide that if three-fifths in number and value of creditors, who prove debts in an arrangement matter, agree to an arrangement proposed by a trader, it shall bind the other creditors; and that no creditor whose debt is less than £10 shall have the power of voting. Nevertheless:—*Held*, that all creditors, how small soever their debts may be, must be served with notice of the intended arrangement. *In re* AN ARRANGING TRADER **B. III. *M.* 579**

34. —— *Proof of debts—Proof for premiums upon policies of insurance—Money value of contract—B. A. Act* 1872, *s.* 47.] A motion was granted, that a creditor of an arranging debtor should be entitled to prove on the estate, under the Bankruptcy Amendment Act, 1872, Sec. 47, for the money-value of policies of insurance mortgaged by the arranging debtor to the creditor, such value having been ascertained by a valuation made, at the creditor's instance, by a public notary. *In re* L. - - - - - - - **B. VIII. 92**

35. —— *Proof of debts—Bills of exchange—Unsigned by debtor*—20 & 21 *Vict., c.* 60, *s.* 344.] C. H., an arranging trader, had sent to his brokers in London four bills of exchange for £1,000 each, drawn by the brokers and accepted by A. & Sons, in order that the brokers might raise funds to pay for a cargo of corn purchased by them for him, and which was afterwards delivered to him. C. H. did not put his name on the bills. On a previous occasion a bill similar in all respects had not been honoured at maturity, and C. H. made arrangements for meeting it himself. A. & Sons did not pay any of the four bills at maturity, and the brokers sought to prove for the amount of them against C. H. It having been contended by C. H. that the bills not having his name on them must be regarded as bills sold to the brokers, and that they could neither prove for the bills, nor for the consideration of them, the chief registrar admitted the proof, which was made, not on

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BANKRUPTCY—ARRANGEMENT—*continued.*

the bills, but for money paid on account of C. H. at his request:—*Held*, on appeal, that the proof was properly admitted. *In re* C. H. - - - - - **B. VII. 141**

36. —— *Proposal, what is reasonable and proper*—20 & 21 *Vict., c.* 60, *s.* 353.] Where a proposal of composition in arrangement is to be secured by an agreement, the execution of which would involve the commission of a breach of trust, or where, unless in exceptional circumstances, the period over which the arrangement or composition is to extend exceeds twelve months, the Court will hold the proposal not reasonable and proper to be executed under its direction. *In the matter of* W. M. - - - - - **B. VII. 32**

37. —— *Protection from process—Obtaining protection after writ of execution delivered to returning officer—Protection order set aside.*] An execution creditor obtained judgment in the usual way, issued execution, and delivered the writ to the sheriff's officer before the debtor obtained a protection order under the 20 & 21 Vic., c. 60, s. 343:—*Held*, that the protection order should be set aside. *Re* AN ARRANGING TRADER **[B. II. *M.* 453**

38. —— *Protection.*] The protection endorsed on the certificate of the filing of record of the agreement and resolution under the 20 & 21 Vic., c. 60, s. 347, protects the person only, not the property of the debtor. Until the final certificate of conformity under sec. 352 is obtained, a creditor who has not assented to the arrangement may obtain judgment and issue execution against the debtor's goods. MORAN *v.* REYNOLDS **[Q. B. III. *M.* 368**

39. —— *Protection order*—Fieri facias—*Lodging writ without notice of order—B. and I. Act*, 1857, *s.* 343.] A protection order granted to an arranging debtor, under the Irish Bankrupt and Insolvent Act, 1857, sec. 343, takes effect from the time it is pronounced by the Court, so that the goods thereby protected from process will not be bound or affected by a writ of *fieri facias* afterwards lodged with the sheriff by an execution creditor, although he has not had notice of the making of the order. *Ex parte* MONSELL, MITCHELL & CO. *In re* M'C. & G. - - - - - - **B. X. 107**

40. —— *Protection order—Registering judgment as mortgage—Judgment mortgagee not proving, but receiving dividend in arrangement matter—Acquiescence—Onus of proof of election—Effect of certificate*—20 & 21 *Vict., c.* 60, *ss.* 262, 349—35 & 36 *Vict., c.* 58, *ss.* 58, 62, 63.] On February 8th, 1872, a trader presented a petition for arrangement with his creditors, under 20 & 21 Vic., c. 60, and obtained a protection order under sec. 343. At the first sitting, in March, 1872, the majority of his creditors assented to his proposal for a composition, to be secured by promissory notes and by the vesting of his property in the official assignees. The creditors' proposal was subsequently confirmed by the Court. S. was returned in the debtor's schedule as an unsecured creditor whose debt was admitted. He did not prove his debt or vote in the arrangement matter. Pending the arrangement proceedings, he, on February 15, obtained a judgment in an action against the debtor, for a portion of the debt returned on the schedule; and, on February 20, registered the judgment as a statutable mortgage against lands of the debtor. In April the debtor had duly lodged his composition notes, including composition notes on the whole debt due to S. The notes were posted to S., and by him endorsed, and same were paid at maturity. The arrangement having been carried through, the trader received his certificate, pursuant to the statute, on August 12, 1873:—*Held*, (1) that the registration of the judgment as a mortgage was not a "process" within 20 & 21 Vic., c. 60, s. 343; (2) that, as the creditor had not proved in the arrangement matter, it was not competent to him to assent or dissent within the statute, nor was he barred by the statutable operation of the arrangement proceedings from realising his demand under the judgment mortgage; (3) that the mere payment to and acceptance by the creditor of the composition on

BANKRUPTCY—ARRANGEMENT—*continued.*

his whole demand, did not operate as an accord and satisfaction thereof, as it was not shown that he had in fact, or by implication from his acts, concurred in the arrangement, and received the composition notes with the intention of accepting same in full satisfaction of his entire demand. *In re Lamb's Estate* (III. *M.* 224); *In re Ferrall* (I. *M.* 102), followed. *In re* Estate of ROONEY - - - **Ch. A. VIII. 125**

41. —— *Protection order—Registering judgment as a mortgage—"Process"—Effect of final certificate—Irish Bankruptcy and Insolvency Act*, 1857, *secs.* 343, 352.] The filing of a petition for an arrangement does not arrest the action of a dissenting creditor so as to prevent him acquiring an additional security for his debt. The registration of a judgment as a mortgage is not a "process" against the property of an arranging debtor within the meaning of the 20 & 21 Vic., c. 60, s. 343. Until the confirmation of the resolution or agreement of the creditors accepting the debtor's proposal, the property of the debtor remains in him, nor is it then divested out of him and vested in the assignees, unless the resolution contains a clause to that effect; and, therefore, judgment mortgages, registered before the confirmation of the resolution, attach the debtor's lands. The final certificate under sec. 352 has a prospective effect only, and a security legally obtained by a creditor before the grant of that certificate is not affected by it. *In the matter of the* Estate of LAMBE **[C. A. III. *M.* 224**

42. —— *Sequestration for non-payment of money—Petition for arrangement—Vesting of estate in assignee—Discharging writ of sequestration—Bankruptcy and Insolvency Act*, 1857, *secs.* 116, 268, 349—*Bankruptcy Amendment Act*, 1872, *sec.* 68.] A writ of sequestration having been issued against the lands of a suitor in Chancery, for non-payment of money due and ordered to be paid, the sequestrators put the writ into effect by entry and seizure. The debtor, subsequently, presented a petition to the Court of Bankruptcy for arrangement with his creditors; his proposal was confirmed, and all his estate was vested in his trustees. On a motion by the trustees of the debtor, who still continued in default, that the sequestrators should be discharged:—*Held*, that the debtor's estate vested in his trustees subject to the writ of sequestration, and that the sequestrators should not be discharged. *Ex parte* JAMES. *In re* VERNON *v.* WOOD - - - **V. C. X. 3**

43. —— *Service of notices of composition in arrangement—Second sitting.*] When a party posting notices of second sitting in an arrangement has left the country without making the necessary affidavit, the Court, on being satisfied that the notices were served will allow the case to proceed. *In re* A. B. - - - - - - **B. IV. *M.* 216**

44. —— *Specific appropriation—Commission agent—Goods to cover acceptances—Bills discounted at Bank—Insolvency of drawer and acceptor—Right of bill holders—Lien on goods for payment of bills.*] M., trading as a linen merchant and commission agent, was in the habit of receiving goods from H., a linen manufacturer, for sale on commission, and of making advances on such goods to H., which were more or less provided for by means of bills of exchange drawn by ..., and accepted by H., who received the proceeds of the bills when discounted in the Belfast Bank, while, according as the goods were sold, M. retired the bills. H. used also to draw bills which were accepted by M. The bills (none of which were for M.'s accommodation) were not drawn specifically against the goods, nor were the goods deposited specifically against any particular bills, but generally against any demand. It was arranged between them, on the 4th of every month, that ... the sales did not cover the acceptances current, M. would give H. either money or acceptances to cover those of M.'s then current. There was a continuous general debit and credit account between them, in which M. credited H. with the proceeds of the sales, and debited him with the money advanced, and at the end of each month the general balance was struck. In the end H. was largely indebted to M. It was alleged that M.,

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BANKRUPTCY—ARRANGEMENT—*continued.*

who was a customer of the Belfast Bank, and kept his account there, had intimated to the Bank that H.'s acceptances were for advances made to him by M. as a broker selling goods on commission, and that he was secured by the goods; and on the faith of this intimation the Bank had subsequently discounted three acceptances of H's. But on one occasion previously, M., in answer to an inquiry by one of the directors, had stated that he was not then covered by goods. M. presented a petition for arrangement with his creditors under the control of the Court. H. entered into a private arrangement with his creditors outside the Court by a composition deed, on foot of which the Bank accepted a composition in payment of his acceptances:—*Held*, (1) that there was no specific appropriation of the goods to meet the bills discounted by the Bank; (2) that the Bank could have no right to have the goods and their proceeds applied in payment of the bills under the doctrine of *Ex parte Waring* (19 Ves. 344, 2 Rose. 182, 2 Gl. & J. 404), because firstly, the Bank by accepting a composition from H. in payment of the bills, had already disposed of any equity of the party to the deposit of the goods who stood indebted to the other party; and secondly, because the principle of that case is inapplicable where, though the acceptor, as well as the drawer is practically insolvent, his estate is not being administered by a competent tribunal—*In re Yglesias; Ex parte General South American Co.* (L. R. 10 Ch. 635), followed. *In re* J. R. M.; *Ex parte* BELFAST BANK - **B. XI. 51**

45. —— *Sureties—Jurisdiction of Court.*] Where parties entered into an undertaking to pay the instalments of a composition, which undertaking was filed in Court, and they failed to do so:—*Held*, that the Court had no power, either by attachment or otherwise, to compel sureties to pay the amount which they had undertaken to pay, the contract not being between the Court and the sureties, but between them and the arranging trader. *In re* AN ARRANGING TRADER - **B. I. *M.* 716**

46. —— *Turning into bankruptcy—Claim upon note passed to secure payment of instalment in arrangement matter.*] An action for the amount of a joint and several promissory note, passed by the defendant as security for a third instalment upon a composition arrangement entered into between the arranging debtor and his creditors, subsequent to which the arranging debtor was made bankrupt, having failed to pay the first instalment, was dismissed. HERON *v.* GOUGH **[Q. S. X. *M.* 48**

47. —— *Turning into bankruptcy.*] The Court has discretionary powers to adjourn a case into bankruptcy, notwithstanding that there may be a large majority of creditors in favour of an arrangement. *In re* AN ARRANGING TRADER **[B. I. *M.* 262**

48. —— *Turning into bankruptcy—Practice.*] This Court has not power to turn an arrangement into bankruptcy, at the second meeting, on the ground that there is a majority of creditors against the trader's offer of a composition. The practice is to make no rule on the motion. If any order of the Court has not been complied with by the trader, the petition will be dismissed, and that is an act of bankruptcy. *Re* A. B. **[B. III. *M.* 695**

49. —— *Turning into bankruptcy—Unsatisfactory schedule.*] When an arranging trader's schedule bears on its face evidence that it is untrue and contradictory, and does not present an accurate statement of his affairs, the Court will, at the suggestion of dissatisfied creditors, turn the case into bankruptcy, though the statutable majority vote for the trader's proposal. Special grounds of opposition may be opened at the first sitting, although it be intimated that no proof will be made until the second sitting. *Re* MOOREHEAD - - **B. II. *M.* 121**

50. —— *Verification on oath of petitioner's account—Practice.*] It is not necessary that the account to be filed under 20 & 21 Vic., c. 60, s. 345, by a petitioning debtor in arrangement, should, under 135 G. O., 1872, be verified on oath when presented for filing. *In the matter of* AN ARRANGING DEBTOR **[B. VII. 21**

BANKRUPTCY—ARRANGEMENT—*continued.*

51. —— *What is a reasonable and proper proposal—Composition extending over twelve months—Exceptional circumstances.*] Where it appeared that, if the arrangement were turned into bankruptcy, the estate would realise nothing, while the great majority of the creditors were willing to accede to the proposed composition as secured, the debtor promising to aid towards paying them by carrying on his trade, and furnishing returns thereof when required:—*Held*, that though the period over which the composition was to extend exceeded twelve months, exceptional circumstances existed, rendering the proposal reasonable and proper to be executed under the direction of the Court.—*In the matter of* W. M. (VII. 32), discussed and approved. *In the matter of* S. S. A. **B. VII. 71**

52. —— *Trader-debtor summons—Filing petition for arrangement—Practice.*] Filing a petition for arrangement will not stop proceedings under a trader-debtor summons, which was issued before the petition for arrangement was filed. In such cases the trader must, on the return of the summons, say whether he admits or denies the debt. *In re* A TRADER-DEBTOR SUMMONS - - - - **B. III. *M.* 102**

—— Committal for unsatisfactory answering **[XXVII. *M.* 486**

See BANKRUPTCY—JURISDICTION. 2.

BANKRUPTCY—ARREST.

1. —— *Debtor in prison at time of the return of the trader debtor's summons—Bankrupt Act*, 1857, *sec.* 104.] When after service of the summons a trader-debtor is arrested, and he is in prison at the time of the return of the summons, the creditor must proceed under the 104th section of the 20 & 21 Vic., c. 60, the imprisonment being a lawful impediment to the attendance of the trader-debtor. *In re* A TRADER-DEBTOR **[B. III. *M.* 781**

2. —— *Expenses of trying to arrest an absconding bankrupt.*] The Court allowed the expenses of trying to arrest an absconding bankrupt. *Re* PAYNE - - **B. VIII. *M.* 402**

3. —— *In respect of debt proved in bankruptcy—Discharge.*] A judgment debtor who had been adjudicated bankrupt, and whose final examination was adjourned *sine die*, was arrested for a judgment debt which had been proved in bankruptcy by the creditor. The Court, on motion, ordered his discharge out of custody. JOHNSTON *v.* GERMAINE - - **C. C. VI. 121**

4. —— *Of debtor after the service of debtor's summons—Payment of debt—Discharge—B. A. Act*, 1872, *ss.* 20, 21, 30, 78—*Practice—Affidavit to ground motion not filed.*] A debtor, arrested under the Bankruptcy Amendment Act, 1872, sec 78, after a debtor's summons has been granted, will not be detained in custody after payment of the debt, when it does not appear that a petition in bankruptcy, founded on the proceedings under the debtor's summons, can be presented against him. Where a notice of motion is grounded on "an affidavit to be filed, a copy of which will be furnished," the affidavit cannot be opened, if it has not been filed, and the copy furnished on the day of serving the notice. *In re* COCHRANE **B. IX. 192**

5. —— *Release of bankrupt from custody—Debt contracted before passing of* 35 & 36 *Vic., c.* 58—*Renewal of bills of exchange.*] When a bankrupt applies for his release from custody under the Bankruptcy Amendment Act, 1872, sec. 26, it is necessary to show on affidavit that the debt for which he is in custody was contracted before the passing of the Act. A bankrupt was arrested under a writ of *ca. sa.* on foot of a judgment for debt and costs, recovered on a bill of exchange, which was accepted after the passing of the Bankruptcy Amendment Act, 1872. This bill was a renewal of a former one which was accepted before the passing of the Act. On motion for his release from custody:—*Held*, that the terms "debt contracted before the passing of this Act," in Sec. 26 of the Bankruptcy Amendment Act, 1872, were to be construed by the interpretation clause of the Debtors Act, 1872; that the liability in-

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BANKRUPTCY—ARREST—*continued.*

curred by accepting a bill of exchange after the passing of the Act, as a renewal of a former bill accepted before its passing, is "a debt contracted before the passing of this Act," and that the debtor should be released from custody. *Re* O'CONNELL [B. VII. 51

6. —— *Warrant to bring up for examination a bankrupt who is in prison.*] An order for a warrant to bring up to the Court for examination a bankrupt who had been committed to gaol as having been about to leave the country was granted, the petitioning creditor's solicitor undertaking to pay the expenses of bringing him up. *Re* BEAHAN B. VIII. *M.* 486

7. —— *Warrant for arrest of bankrupt who was keeping out of the way.*] The Court refused to grant a warrant for arrest of the bankrupt, who was charged with keeping out of the way, where the act of bankruptcy was absconding, as there was no statement made of any specific attempt to serve the summons having proved fruitless. ANON. - - B. X. *M.* 103

BANKRUPTCY—ASSIGNEE.

1. —— *Application to remove—Mortgagee in possession calling for an account.*] Where an application is made to remove an assignee who is perfectly solvent, and against whom no complaint exists, except that he refused to take proceedings to make an alleged mortgagee in possession account, and where that mortgagee is brought into Court upon notice, the application will be refused with costs. *Re* WILSON AND BEERE [B. I. *M.* 210

2. —— *Appointment of trade assignee—No creditor in the jurisdiction.*] In a case where there were only English creditors, the Court refused to appoint a Dublin merchant as trade assignee, but directed the estate to be administered by the official assignee, the solicitor for the petitioning creditor to have the carriage of the proceedings. *Re* BROMFIELD [B. VIII. *M.* 137

3. —— *Sale of bankrupt's property—Appointment of auctioneer by official assignee—Right of creditors' assignee—Vesting bankrupt's property.*] An official assignee has a right to appoint auctioneers to sell the property of a bankrupt, and is not bound to consult the creditor's assignee upon the selection he makes. *Quære*, whether the creditor's assignee ought not to be consulted under the 144th G. O. of 1872, as to whether particular property of the bankrupt should be sold by auction or by private tender, the Order providing that he is to be conferred with as to the time and manner of the sale of a bankrupt's estate and effects? *In re* HARRIS - B. VII. 82

—— Duty - - - - - - I. *M.* 193

See COMPANY. 7.

BANKRUPTCY—CARRIAGE OF PROCEEDINGS.

—— *Turning arrangement into Bankruptcy.*] When an arrangement case is turned into bankruptcy, the creditor whose proceedings have brought the matter into Court will be given the carriage of the proceedings. *Re* CALLAGHAN [B. II. *M.* 720

BANKRUPTCY—CERTIFICATE.

1. —— *Application for certificate of conformity before audit meeting.*] The Court refused to grant a certificate of conformity to a bankrupt who had failed to pay ten shillings in the pound before the audit meeting was held, on the ground that sufficiently substantial grounds were not shown. *Re* PARKER - - - - - B. VIII. *M.* 109

2. —— *Failure to pay ten shillings in the pound—Circumstances for which bankrupt cannot justly be held responsible—B. A. Act*, 1872, *s.* 56—*Debtors Act*, 1872.] Where a bankrupt has passed his final examination, but a dividend of not less than ten shillings in the pound has not been paid out of his property, the Court—although the provisions of the Debtors (Ir.) Act, 1872, with respect to prosecutions for misdemeanours, are intended to be in substitution for the

BANKRUPTCY—CERTIFICATE—*continued.*

wide discretionary power of dealing with the moral conduct of bankrupts, previously vested in the Court—is still invested with a discretionary power to refuse the granting of a certificate of conformity, under the Bankruptcy (Ir.) Amendment Act, 1872, Sec. 56, where it appears that the failure to pay ten shillings in the pound arose from circumstances or acts outside the offences enumerated in the Debtors Act, for which the bankrupt ought justly to be held responsible. Intentional ignorance of the circumstances of a trading firm, or as to how its affairs were situated, or wilful inaction in relation to the business carried on, furnishes no exculpation for a member of the firm, seeking a certificate of conformity, where a failure to pay a dividend of not less than ten shillings in the pound has arisen from circumstances for which in other respects the bankrupt ought justly to be held responsible.—*In re Mew and Thorne* (31 L. J. Ba. 87); *Ex parte Glass and Elliott*; *In re Boswell* (*ib.* 76), distinguished. *Ex parte* BARKLIE; *In re* SPOTTEN & CO. - - B. XII. 15

3. —— *Misrepresentation—Suspension of certificate.*] Where bankrupts make an untrue representation as to their position and circumstances, and where goods are offered to be returned when a part of them was sold at the time, although no credit was given on the faith of the representations made, and although no particular stipulations were made as to the mode of payment when the goods were sold, the Court, in order to uphold commercial integrity and truth, will suspend the certificate for twelve months. *Re* FLEMING AND HENNESSY [B. I. *M.* 568

4. —— *Non-payment of ten shillings in pound—Circumstances for which bankrupt is not responsible—Conduct—Irregularly kept books*—215 *G.O.* 1872.] On an application by a bankrupt, whose estate did not realise ten shillings in the pound, in a bankruptcy heard before the Court, for a certificate of conformity, under 35 & 36 Vic., c. 58, sec. 56, sub-sec. 1, the official assignee reported under 215 G. O. 1872, "That the books of the bankrupt had been imperfectly kept, and that such fact might be attributed to his late irregular habits, and that since he had passed his final examination he had given assistance to realise his estate," and further, "That there had not come to his knowledge, during the realisation of the property, or otherwise, any matter to show that the bankruptcy, or the failure to pay ten shillings in the pound, had arisen from circumstances for which the bankrupt could be held responsible, except as follow—1st, the irregular habits previously referred to; 2nd, the circumstances that such irregularity may (though such has not been specifically shown to have had that consequence) have led the bankrupt to part with his property on credit to debtors who have not paid for it, and from whom it would appear the assignees have little prospects of recovering their debts. That, however, he has no reason to believe that the debts are fictitious, or have been fraudulently created, or otherwise than in the ordinary way of trade, though some of the debts returned in his statement of affairs as due were afterwards shown to have been already paid to the bankrupt. And that the goods, taken at cost price, and all his debts actually due to the estate, so far as known, had they been all good and fully realised, would appear to amount to a sum sufficient to pay ten shillings in the pound, although the result of the realisation falls so far short of that rate of dividend":—*Held*, that although the irregularity firstly imputed to the bankrupt would have been a ground for withholding his certificate, had it been shown that, as a result, property of the creditors entrusted to the bankrupt had been improperly dealt with, yet that, such not being shown, the bankrupt was, upon the facts stated in the report of the official assignee, entitled to an immediate certificate of conformity. *Re* HARRIS - - - B. VIII. 121

5. —— *Opposing certificate of bankrupt on the ground of vexatious litigation—Final examination.*] The Court will permit a creditor at the certificate meeting to apply to have a stay put on the certificate, on the ground of vexatious litigation,

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BANKRUPTCY—CERTIFICATE—*continued.*

though the creditor did not appear on the final examination, The client is liable for what his attorney does when the former has means of knowing it. *In re* WALL **B. IV. *M.* 305**

6. —— *Reckless trading—Marriage settlement—Priority.*] The Court will not refuse a certificate to a trader who, although he has been reckless in trading, and has acted improperly in making a settlement upon his wife on marriage, does not appear on the whole to have concealed anything from the creditors, but to have acted on a mistaken view of his own affairs. *In re* BRADLEY - - - **B. I. *M.* 47**

7. —— *Reckless trading—Suspension of certificate.*] When a trader without having capital or means to carry on the trade into which he enters, embarks in business and incurs debts, his certificate will, if he becomes a bankrupt, be suspended for six months, although there is not any charge of dishonesty or concealment of property. *In re* M'NEILLAGE **B. III. *M.* 588**

8. —— *Reckless trading—Making away with property—Suspension of certificate.*] The certificate of a bankrupt was suspended for twelve months in the case of reckless trading, alleged making away with property, and inability to account. *In re* MORRISSEY - - - - - **B. I. *M.* 338**

9. —— *Suspension—Reckless trading.*] The Court suspended certificate of a bankrupt on the ground of reckless trading and obtaining credit by false representations. *Re* BELL **[B. I. *M.* 281**

10. —— *Suspension—Conduct as trader—Pledging goods—Giving a full account.*] The certificate of a bankrupt who pledged goods from wholesale merchants to a usurer at an exorbitant rate of interest, and traded with the capital thus made, was suspended for two years, although he gave a full account. *In re* JAMES BYRNE - - - **B. I. *M.* 490**

11. —— *Suspension—Reckless trading.*] A young man who had entered into trade before he was of age, and had spent large sums in trying to extend his business, was refused his certificate for three months. *In re* DOOLE **B. IV. *M.* 291**

—— Suspension - - - - **I. *M.* 229**

See BANKRUPTCY—FRAUDULENT PREFERENCE. 7.

BANKRUPTCY—CHARGE.

1. —— *Policy of insurance—Charge of mortgagees of—Notice to company.*] A charge filed by mortgagees of policies of assurance effected on the bankrupt's life, must state the notice to the Assurance Company of such assignment to the mortgagees. *In re* HEWETSON - - - **B. V. 35**

2. —— *Title deed—Equitable and legal mortgage on letter of deposit—Description of the premises—Jurisdiction of the Court.*] On a case coming before the Court upon a charge and discharge, a bank claimed a certain field, as included in a letter of deposit and a deed of contemporaneous mortgage:—*Held*, that the language of the mortgage deed did not include it, and the Court had no jurisdiction to reform the deed by including the field in it. *In re* LUNHAM - **B. I. *M.* 691**

BANKRUPTCY—COMPOSITION AFTER.

1. —— *Fraudulent conduct—Witnesses not attending for examination—Composition outside the Court.*] In a case of fraudulent bankruptcy, where some of the witnesses to the fraud have been kept out of the way, the Court will not entertain a composition outside the Court till they are brought up to be examined. *In re* WEEKES - - **B. I. *M.* 649**

2. —— *Omission of creditor from schedule.*] When a bankrupt made a compositon after bankruptcy which was accepted by the requisite three-fifths of his creditors, and paid the first instalment of it, and a creditor on whom no notice was served came in and claimed to have the estate realised, the Judge held he could not refuse the application. *In re* CARROLL **[B. I. *M.* 514**

BANKRUPTCY—COMPOSITION AFTER—*continued.*

3. —— *Promise to pay previous debt—New consideration—Bankruptcy (England) Act, 1869, s. 49.*] In 1869 the defendant effected a policy of insurance on his life, as a security for a debt of £700 due to the plaintiff. In 1870 the defendant was adjudged a bankrupt in England, a composition on his debts (including the £700) being accepted and approved by the Court. In 1872 the defendant agreed to effect a new policy of insurance with another company as a security to the plaintiff for the £700 and £70 paid by the plaintiff to keep the former policy alive, and undertook and guaranteed to pay the plaintiff the amount of any premiums to be paid by him on the new policy, with interest. The new policy was effected, and the plaintiff paid certain premiums thereon to keep same alive. In an action to recover the amount thereon as money paid at the defendant's request, the defendant pleaded his bankruptcy, and that there was no consideration for the undertaking and guarantee of 1872. On demurrer to the defence:—*Held*, that the plaintiff was entitled to recover, there having been a wholly new contract entered into subsequent to the bankruptcy, for which reason the Bankruptcy (England) Act, 1869, s. 49, did not apply. JOHNSTONE *v.* O'DONOGHUE **C. P. D. XV. 52**

4. —— *Title—Annulment of bankruptcy on composition—Legal estate—Conveyance—B. & I. Act, 1857, ss. 149, 268.*] Where a bankrupt's offer of composition is accepted, and his bankruptcy annulled under sec. 149 of the B. & I. Act, 1857, his property does not thereupon revert to him, but remains vested in the assignees, who are necessary parties to a conveyance by the bankrupt. *In re* FIRTH AND HUGHES **[R. XIV. 100**

5. —— *Unsecured composition after bankruptcy.*] An assignee should not take a composition after bankruptcy unsecured. *In re* GALLAGHER - - - **B. X. *M.* 585**

BANKRUPTCY—CONTEMPT.

1. —— *Application by prisoner committed for unsatisfactory answering to be brought up to be examined—Contents of affidavit.*] When a prisoner, who has been committed to prison for unsatisfactory answering regarding the description of the bankrupt's property, applies to be brought up for examination, the affidavit must state fully the nature of the evidence he could and would give in relation to it. *Re* CUMMINS **[B. IV. *M.* 769**

2. —— *Committal—Discharge—Postponement of examination.*] A., a bankrupt, was committed to prison for unsatisfactory answering with respect to the removal of property by himself and his shop assistants, and failing to discover or disclose a portion of such property:—*Held*, that the bankrupt's final examination should be postponed, and the bankrupt discharged from custody to enable him to make such inquiries as might lead to the discovery of the missing property. Remarks of the Court on the limited jurisdiction of the penal clauses in, and power conferred by, the Irish Bankrupt Act. *In re* CUMMINS - - - - - **B. V. 85**

BANKRUPTCY—COSTS.

1. —— *Application for return of goods to creditors when no declaration of ownership had been made.*] A creditor moved that goods which had not already reached the bankrupt before his bankruptcy should be restored to him, and that he should be allowed the costs of the application. It was admitted that the creditor was entitled to get back the goods, but a declaration of ownership had not been made by the creditor:—*Held*, that the costs should not be allowed, the motion being unnecessary, since the judge, had a declaration been made, would have ordered the restoration. *Re* M'TEAR **B. II. *M.* 44**

2. —— *Bringing up bankrupt from the country—Discharge.*] When a bankrupt is brought up in custody from the country and discharged under the 133rd section of the Bankrupt Act, the petitioning creditor must pay the costs of bringing him up from the country, which he will be repaid when funds come in to the estate. *Re* HUMPHREY - - **B. I. *M.* 177**

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BANKRUPTCY—COSTS—*continued.*

3.—*Defendant's costs where first trial resulted in disagreement and second in verdict for the plaintiff, which was set aside.*] In an action by assignees to recover effects, the first trial was abortive by reason of disagreement of the jury, and the second trial resulted in a verdict for the plaintiffs, which was set aside on a new trial motion by defendants, and plaintiffs did not proceed further. The defendants were declared entitled to the costs of the first trial, but not of the second trial. *Re* TAYLOR - - - - - - - - **B. V. 11**

4.—*Liability of petitioning creditor for costs—No assets.*] When a creditor, making the filing of a petition in insolvency the act of bankruptcy, presents a petition in bankruptcy, and the insolvent is declared a bankrupt, it is not necessary for the Court to direct the petitioning creditor to lodge a sum for costs. *In re* CRAIG - - - - - **B. II. *M.* 689**

5.—*Of mortgagee who purchased, by tender, premises of the bankrupt.*] A mortgagee was permitted by the Court to purchase, by tender, premises of the bankrupt. The Court confirmed the sale, but refused to allow the mortgagee his costs. *In re* MURPHY - - - **B. III. *M.* 727**

6.—*Of assignees relative to sale of mortgaged property which brought nothing to the estate.*] A., a mortgagee, presented a petition to the Landed Estates' Court for sale of B.'s property; B. soon after became bankrupt, and his estate realised nothing. A. obtained an order from the Court of Bankruptcy to sell the mortgaged property therein on discontinuing proceedings in the Landed Estates' Court. The property was sold for a sum less than the amount of the mortgage:—*Held*, following *Appleby* v. *Duke* (1 Hare 303), that the assignees of the bankrupt were not entitled to the costs incurred by them in and about the said sale out of the produce thereof. There is no practice of the Court as to allowing assignees' fees for counsel to advise filing discharges to charges of mortgagees. *In re* BRADFORD - - **B. V. 27**

BANKRUPTCY—DEBTOR'S SUMMONS.

1.—*Alleged partnership—35 & 36 Vic., c. 58, s. 30—Costs.*] A summons issued against two persons alleged to be co-debtors and co-partners was dismissed against one of them, it appearing that no partnership existed in point of fact, although the name of the alleged debtor had, with his own consent, been used to obtain contracts for the actual debtor. Costs will not be given where the alleged debtor's own conduct has led to the issuing of the summons. CAMPBELL *v.* DIGAN **B. VII. 17**

2.—*Bankruptcy A. Act*, 1872, *ss.* 20, 30—*Bankrupt and Insolvent Act*, 1857, *s.* 28—3 *G. O.*] An additional form was sanctioned, whereby two or more creditors may join in issuing a joint debtor's summons, though the separate debts may be under £20, if their joint debts are sufficient to support an adjudication. *In re* D. - - - **B. XI. 22**

3.—*Mortgagor and Mortgagee—Intricate questions of account—Jurisdiction of Local Bankruptcy Court.*] The Court of Bankruptcy is not the Court for deciding intricate questions of account between a mortgagor and a mortgagee in possession, and a debtor's summons in which the question arose was dismissed with costs and witnesses expenses. *In re* M.
[B. (Local) XXIII. *M.* 566

4.—*Motion to dismiss—Debt contracted before August 6th*, 1872—35 & 36 *Vic., c.* 58, *ss.* 22, 30, 80—18, 19 *G. O.*, 1872.] Upon a motion by a debtor to dismiss a debtor's summons, the onus lies on him in the first instance to open and establish a case sufficient to displace the debtor's summons. If it be alleged by the debtor that the debt on which the debtor's summons was issued had been contracted prior to the Bankruptcy (Ireland) Amendment Act, 1872, he cannot insist upon that circumstance by way of objection to the debtor's summons as a ground for dismissal on motion, the inquiry thereon being restricted to the sole question whether the

BANKRUPTCY—DEBTOR'S SUMMONS—*continued.*

debtor is indebted to the summoning creditor in more or less than £20; but, such circumstance, by reason of which a petition for an order of adjudication in bankruptcy could not be founded on the debt, may be relied on by the debtor as cause against such order if obtained, or else he may take advantage of it either by his serving a cautionary notice, in which case the summoning creditor would thenceforth proceed at the peril of costs, or by moving to dismiss the debtor's summons, whereupon the summoning creditor, if not prepared to sustain the debt, can withdraw from any further prosecution of the proceedings on terms. *In re* DRUMGOOLE; *Ex parte* DRUMGOOLE - - - - - **B. XXI. 32**

5.—*Petitioning creditor's debt—Unliquidated demand—Damages on re-sale of goods purchased at auction—B. A. Act*, 1872, *s.* 30—*Contract—Statute of Frauds.*] The debt due to a petitioning creditor, upon which a debtor's summons may be granted, under the B. A. Act, 1872, sec. 30, must be a liquidated sum. Where goods have been sold by auction, without express stipulation for re-sale on default by the vendee, and upon such default the vendor, electing to treat the sale as annulled, has re-sold the goods, the amount of the loss upon such re-sale does not constitute a "debt," upon which a debtor's summons will be granted. *In re* H.; *Ex parte* H. - - - - - **B. XI. 112**

6.—*Service of notice to dismiss—Local Bankruptcy Rules* (1888), 18, 19.] Where the creditor appears by a solicitor, notice to dismiss a debtor's summons must be served at the address given by such solicitor, in the way directed by Local Bankruptcy Rules (1888), 18, 19, and personal service upon the creditor is not sufficient in such a case. *Re* CAMERON
[B. (Local) XXVI. 108

7.—*Service on lunatic.*] The service of a debtor's summons on a lunatic is a nullity. RITCHIE *v.* FITZPATRICK
[B. (Local) XXVI. *M.* 521

8.—*Staying proceedings on a debtor's summons pending suit in Court of Chancery—Promissory note passed on agreement not carried out—Disputed liability—B. A. Act*, 1870, *sec.* 30.] On foot of a negociation for the purchase by C. from M. D. of certain premises, C. advanced to M. D. £2,000, in respect of £1,000 whereof a promissory note was passed by M. D. to C. as follows:—"I promise to pay you, on demand, £1,000 value received. This promissory note is to represent £1,000 portion of the premises, as *per* our agreement." The agreement not having been carried out, M. D. filed a bill in the Court of Chancery against C. for specific performance. Subsequently, and during the pendancy of that suit, C. issued a debtor's summons against M. D. in respect of the £2,000 and interest:—*Held*, that all proceedings on the debtor's summons should be stayed until the determination of the Chancery suit, and that the alleged debtor should not be required to give security in respect of the alleged debt. *In re* M. D. - - - - - - - - **B. IX. 63**

BANKRUPTCY—DEED OF ARRANGEMENT.

—*Extension of time for filing—Deeds of Arrangement Act*, 1887, *s.* 9—*Deeds of Arrangement Amendment Act*, 1890, *s.* 2 (1), (2).] The time for filing a deed of arrangement was extended, on an affidavit being made by the town agent of the solicitor that search had been made, and no other petition or deed of arrangement had been filed by the debtor. *Re* A. - - - - - **Q. B. D. XXVI. *M.* 403**

BANKRUPTCY—DISCHARGE OF BANKRUPT.

1.—*B. A. Act*, 1872, *s.* 25—12 *G. O.* 1872—*Pauper prisoner for debt.*] Where a petition of bankruptcy is not presented against a pauper prisoner for debt, who has made a declaration of poverty, the Court will not, on a creditor's application, stay the debtor from being released from custody, nor impose terms as to his obtaining his discharge even though

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BANKRUPTCY—DISCHARGE OF BANKRUPT—*con.*

it be shown that he has been guilty of fraudulent conduct towards the creditor, or though it be alleged that his declaration of poverty is untrue. *In re* ANON., **B. VII. 169**; *In re* E. J., **B. VII. 170**; *In re* W. B. **B. 170**

2. —— *B. A. Act*, 1872, *s.* 26—60 *G. O.* 1872.] The bankrupt being a prisoner for debt, and having surrendered, the Court ordered that he should be released from custody, it appearing that he was possessed of no chattels movable, or other property, and that, if he were detained, he would lose his situation. *Re* CREGAN - - - **B. VII. 11**

3. —— *B. A. Act*, 1872, *s.* 26—*Attachment for non-payment of money under Order of Court of Chancery—Jurisdiction.*] A bankrupt having been arrested under an attachment for non-payment of money, pursuant to a decree of the Court of Chancery, and being so in custody in a distant gaol at the time of obtaining his protection, applied to be released from custody. It appearing that obtaining all the assistance and information required from him would be impeded by remitting him back to gaol, and that additional expense to the petitioning creditors would be thereby entailed without a counter-balancing advantage:—*Held*, that the bankrupt should be released from custody. *Re Walker* (VII. 61) distinguished. *In re* CORMICK - - - **B. VII. 71**

4. —— *B. A. Act*, 1872, *s.* 26—*Offer to give security—Allegations of fraud.*] The detaining creditor of a bankrupt in custody for a debt contracted before the passing of the Bankruptcy (Ir.) Amendment Act, 1872, made several allegations of fraud against him, and in his affidavit pledged his belief that the bankrupt would abscond from Ireland. In his answering affidavit the bankrupt, besides denying the allegations of fraud, declared that he had not, and never had, any intention of leaving Ireland, and he offered to enter into bail with two solvent sureties in the full amount of his liabilities to remain in Ireland and abide the orders of the Court:—*Held*, that the Court would not, upon general allegations of fraud, refuse to exercise its jurisdiction, and release a bankrupt in custody for debt contracted before the passing of the Act, but as there were some circumstances of suspicion in the case, and the bankrupt had offered to give security for remaining in Ireland and abiding the orders of the Court, he should be released on finding two sureties to enter into a bond to the official assignee in an adequate amount, conditioned to remain in Ireland, to attend the Court, and to abide its orders. The Court has now no power to keep a debtor in custody for the mere purpose of punishment. *In the matter of* MALLON **[B. VII. 73**

5. —— *B. A. Act*, 1872, *s.* 26—*Non-compliance with Order of Court of Chancery—Jurisdiction.*] An attachment for non-payment of money under an order of the Court of Chancery is an attachment for non-payment of a *debt* within the meaning of 35 & 36 Vic., c. 58, s. 26; and the Court of Bankruptcy is invested with jurisdiction, which, in its discretion, it will exercise in fitting cases, to discharge bankrupts from custody under such attachments. Where a bankrupt had, under such process, been arrested and was in custody thereunder at the time of obtaining his protection, and it appeared that the attachment was issued in a suit wherein the bankrupt was a defendant, charged by the bill with commission of fraud, and therein a decree *pro confesso* was had against him, but no application had been made to the Court of Chancery on his behalf in respect of said matters, and the bankrupt stated only in general terms that he had a meritorious defence to said bill:—*Held*, that, before entertaining an application for his discharge, the Court would require his accounting statement to be filed and vouched by him, and reported upon by the officer. On this being done the bankrupt was discharged. *In the matter of* WALKER - - - - **B. VII. 61 and 73 (n.).**

BANKRUPTCY—DISCLAIMER.

1. —— *Of lease—By assignees.*] Where the assignees of a bankrupt have elected under the B. and I. Act, 1857, sec. 271, not to accept the bankrupt's interest in a lease, a disclaimer under the B. A. Act, 1872, sec. 97, is unnecessary. *Re* CONNOR **[B. VIII. 71**

2. —— *Of lease—Extension of time.*] Leave was given to the assignees for an extension of time to disclaim a lease, upon the terms of their paying the rent up to the extended date in case they disclaimed. *In re* BOYLE **B. VIII. *M.* 88**

3. —— *Of lease—Right of landlord to rent of premises leased to bankrupt till disclaimer by Official Assignee—Election of assignee to take premises*—20 & 21 *Vic., c.* 60, *ss.* 267, 268, 271 *—Bankruptcy Amendment Act*, 1872, *s.* 97—*G. O.* 114—*Apportionment Act*, 1870, *s.* 2.] The landlord of premises of which the bankrupt was lessee, and which the assignee in bankruptcy has elected to take, and subsequently disclaimed, is not entitled as of right to the rent accruing between adjudication and disclaimer, or to any compensation for the assignee's occupation, unless he can establish a case of special circumstances under the 97th Section of the Bankruptcy Amendment Act, 1872. On disclaimer by the assignee under this section the landlord becomes a creditor for the proportion of the current gale up to adjudication. *In re Thompson. In re* LOW **[B. (Local) XXVI. 15**

BANKRUPTCY—ESTATE.

1. —— *Action by bankrupt—Right of action vested in assignees.*] In an action brought to recover damages the plaintiff complained that the defendant, after the plaintiff had paid a debt to him, marked judgment and issued execution in respect of it, in consequence whereof the plaintiff lost credit, and had to obtain the protection of the Court of Bankruptcy. The second count alleged that the judgment was maliciously marked. The third count alleged that the defendant broke and entered a shop belonging to the plaintiff, and disturbed him and his family in the possession thereof, and seized his goods, which he was obliged to pay money to recover back, thereby suffering in credit. The defendant pleaded as a defence to all the causes of action (save as to the injury to the plaintiff's credit, and his being obliged to obtain the protection of the Bankruptcy Court, and the disturbance to him and his family), that the right of action vested in the assignees:—*Held*, on demurrer, that the defence was good as far as it related to the first and second counts, but bad as regarded the third count, which was for trespass to real estate, with matters of aggravation. BYRNE *v.* LABREY **Q. B. D. XII. *M.* 46**

2. —— *Assignment of property—Validity of deed.*] The majority of a bankrupt's creditors agreed to take a composition payable in three instalments. Three creditors refused to agree to this unless payment of the last instalment was secured. A., another creditor, refused to agree to it. In consideration of A. securing payment of the last instalment to the three creditors, the bankrupt by deed conveyed premises to A., to secure to A. payment in full of his own debt and against loss from his having secured payment of the instalment; but the deed left unaffected a large residue of the bankrupt's property:—*Held*, reversing the order of the Court below, that the deed was valid. *In re* GASS **[Ch. A. II. *M.* 40**

3. —— *Dismissing conditional order for sale of policy of insurance—Adjournment pending decision of Court of law.*] The Court dismissed a conditional order for sale of a policy of insurance which had been obtained by the assignees, on the ground that it had been adjourned pending the decision of a Court of law, which decision had been given in favour of B., who obtained the money thereunder. BRADLEY *v.* JAMES **[B. XI. 74 (n.)**

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BANKRUPTCY—ESTATE—*continued.*

4. —— *Execution levied against trader by seizure and sale of goods for not less than £20—Trader adjudicated bankrupt—Claim by execution debtor to proceeds of levy—Notice to sheriff of petition—Time within which to be served—Service on Returning Officer*—35 & 36 *Vic., c.* 57, *ss.* 21, 54—3 & 4 *Vic., c.* 105, *s.* 45.] The fourteen days prescribed by the Bankruptcy (Ireland) Amendment Act, 1872, sec. 54, within which notice should be served on the sheriff of a bankruptcy petition having been presented by or against a trader whose goods have been taken in execution, in order to entitle the trader's assignees to the proceeds of the sale, commence to run, not from the date of the actual receipt of such proceeds, but from the date of the sale under the execution. The service on the sheriff's returning officer of notice of such petition having been presented is not a sufficient service upon the sheriff within that section, in order to entitle the assignees to the proceeds of the seizure and sale. *Re* O'CALLAGHAN - - - **B. IX. 96**

5. —— *Goods obtained by fraud—Return to vendor.*] Goods obtained under circumstances which lead the Court to believe that they were purchased with a preconceived design of never paying for them will not, upon the purchaser's bankruptcy, pass to his assignee, but will be returned to the vendor. *Re* GAFFNEY - - - - - **B. II. *M.* 317**

6. —— *Money paid to sheriff in part discharge of debt—Consent of execution creditor.*] Money paid to a sheriff's officer, in part discharge of a judgment debt, as an inducement to delay sale, is not relieved from the operation of the Bankrupt and Insolvent Act, 1872, s. 54, unless the payment has been made with the consent of the execution creditor. If paid with such consent, the sheriff is entitled to deduct his expenses under 3 G. O., 1885. *Re* BEST - - **B. (Local) XXVII. 15**

7. —— *Will—Construction—Direction to carry on trade—Bequest subject to legacies and annuity—Annuity payable out of trade profits—Liability of assets to trade debts.*] A testator bequeathed to F. the premises in which he carried on his trade, together with the stock, &c., subject to certain legacies, and an annuity to his wife to be paid by F. "out of the profits of the business to be carried on by F." in the testator's house; and should F. at any time "wish to discontinue carrying on said business," the annuity to the testator's wife should cease, and she was to be paid £1,000 in full for all claims. F. was appointed residuary legatee and executor. He continued to carry on the trade with the assets, contracted trade debts to an amount larger than he had assets to meet, and was adjudged bankrupt:—*Held*, that the will contained such a direction to carry on the trade that on F.'s bankruptcy the trade assets existing at the time of the testator's death, and those substituted therefor, were affected, and rendered liable to be administered by the Court of Bankruptcy. HALL *v.* FENNELL **[Ch. A. X. 1**

—— Gift to wife without trustee. **XXIV. *M.* 345**
See HUSBAND AND WIFE. 11.

—— Tenant-right interest in tenancy—Leave to sell. **[XVI. *M.* 106**
See LAND LAW (IRELAND) ACT, 1881. 30.

BANKRUPTCY—FINAL EXAMINATION.

1. —— *Absconding bankrupt—Adjournment* sine die.] When a bankrupt has absconded and never surrendered, the practice is to adjourn the hearing *sine die*, when the case comes on for final examination. *Re* STEPHENS - **B. III. *M.* 449**

2. —— *Adjournment.*] The final examination of a bankrupt, whose case presented a disastrous course of trading, was adjourned *sine die*. *In re* O'DWYER **B. VIII. *M.* 401**

3. —— *Adjournment.*] The final examination of the bankrupt was adjourned on his application, it being stated that the debts in respect of which the adjudication took place had been contracted when the bankrupt was an infant. *In re* DOHERTY **[B. XI. *M.* 41**

BANKRUPTCY—FINAL EXAMINATION—*continued.*

4. —— *Adjournment.*] When there is a deficiency unaccounted for, the examination will be adjourned *sine die*. *Re* CLEARY - - - - - **B. III. *M.* 253**

5. —— *Assignee's duty—Adjournment.*] There is necessity for the most rigid enquiry where books are not accurately kept, and where two schedules have been filed contradictory of each other. An adjournment *sine die* under the 140th Section ought to be confined to the purpose of compelling discovery as to the property of the bankrupt, and ample time will be given for that purpose. *Re* BECK - - **B. I. *M.* 543**

6. —— *Conduct of bankrupts.*] The final examination was allowed to be passed upon a distinct undertaking by the bankrupts that they would assist the assignees in every way in winding up the matter and realising the outstanding state. *In re* SPOTTEN & CO. - - - **B. X. *M.* 402**

7. —— *Improper claim by bankrupt—Absence of books.*] Where a bankrupt put forward an unfounded and impudent imputation of forgery, and kept no books, the passing of his final examination was suspended for four months. *Re* DEVLIN **[B. I. *M.* 634**

8. —— *Removing property—Keeping no books—Collusion.*] The Court refused to pass the final examination of a bankrupt who had removed his property, produced no books or accounts, and failed to make a true and full discovery of his estate and effects. *Re* STEWART - - - **B. I. *M.* 281**

BANKRUPTCY—FRAUDULENT PREFERENCE.

1. —— *Costs of creditor taking evidence to ascertain facts.*] To make an assignment of goods or payment of money a fraudulent preference, the delivery or payment must be made in immediate contemplation of bankruptcy, and must be altogether voluntary on the part of the bankrupt. Where the creditors get an opportunity of impeaching transactions as a voluntary preference by filing a charge, and decline to do so, the Court will decide in favour of the bankrupt; but if the case was one that ought to have been inquired into, the creditor taking evidence to ascertain facts will get costs. *In re* BEVERLEY AND GIBSON - - - **B. IV. *M.* 229**

2. —— The existing Irish bankruptcy law is not sufficient to prevent fraudulent preference. *Re* ORR **B. I. *M.* 84**

3. —— *Inability to pay debts as they become due—Pressure by preferred creditor—Title of assignees—Relation back—Act of Bankruptcy—Creditors' petition—B. & I. Act*, 1857, *ss.* 267, 268, 328—*B. A. Act*, 1872, *s.* 53.] The effect of sec. 53 of the Bankruptcy (Ir.) Amendment Act, 1872 (35 & 36 Vic., c. 58), is that, as far as relates to the question of preferring a creditor, the old law, requiring the act of preference to be the voluntary and spontaneous act of the debtor, still applies, and accordingly, if the sole motive actuating the debtor is not any pressure or demand by the creditor, but to give the creditor a preference over others, the transaction will be void against the assignees, if the debtor at the date of it was unable to pay his debts, as they became due, from his own moneys (which he would be if he could have paid them, merely had time been afforded to him for the investigation of usurious and exorbitant demands against him), should the debtor be adjudged bankrupt within three months afterwards, provided that the creditor was not a purchaser, payee, or incumbrancer in good faith and for a valuable consideration; but, the latter clause could not be relied on by a creditor who was himself a party to a former act of bankruptcy committed by the bankrupt, and who was aware of the latter's embarrassment, and presumably aware of his intention to leave the country on the day after the transaction, such leaving the country (alleged to have been with intent to defeat or delay

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BANKRUPTCY—FRAUDULENT PREFERENCE—*con.*

his creditors) being the act of bankruptcy on which he was adjudged bankrupt. When a debtor is adjudged bankrupt, not on his own petition, but on that of a creditor whose debt was due at the date of the commission of an act of bankruptcy committed earlier than that on which the petition is founded, the title of the assignees to the bankrupt's property relates back to such earlier act of bankruptcy, if it could have been made available by the petitioning creditor for the purpose of supporting the order of adjudication. *The Merchant Banking Co. of London* v. *Spotten and others* (XI. 153), distinguished. DEERING *v.* ROBERTS; *In re* DOMVILE [B. XII. 118

4. —— *Motion to enter verdict for defendants.*] T. was an under-agent of the defendants, and about the 4th of each month he settled with the defendants. In the end of December, 1869, the defendants' representative, L., told T. that he should keep the defendants safe. On the four days before his bankruptcy on the 5th of January T. sent sums of money to the defendants. Large sums were due to T. from customers of the defendants, a great part of which the plaintiffs collected. The jury found for the plaintiffs, on the ground that the payments before bankruptcy were fraudulent preferences. The Court directed a verdict to be entered for the defendants. TAYLOR'S ASSIGNEES *v.* KILLALEAGH FLAX COMPANY [C. P. IV. *M.* 272

5. —— *Mortgage for antecedent debt and future advances—Machinery—Registry of mortgage deed.*] A mortgage to secure an antecedent debt and future advances was held to include fixed machinery, but not machinery which was kept steady by its own weight: and as the mortgage had not been kept secret, or been fraudulently contracted, the mortgagees were allowed to claim under it. *In re* TATE & Co. [B. I. *M.* 779

6. —— *New trial.*] A traveller, who was agent for an insurance company, being in embarrassed circumstances, transmitted without any application of the company the balance in his hands on the 2nd of January. On the 3rd of January he suspended payment. In an action by his assignees against the company for the balance the trader stated that he considered the money trust-money, and feared the prosecution for embezzlement if he retained it. There was a verdict for the plaintiffs, but the Court granted a new trial. ASSIGNEES OF TAYLOR *v.* THOMPSON - C. P. IV. *M.* 272

7. —— *Reckless trading—Debt fraudulently contracted.*] Where reckless trading and fraudulent preference by a bankrupt were shown the Court adjourned granting his certificate for nine months. *Re* DOYLE - - - B. I. *M.* 229

8. —— *Voluntary act of bankruptcy—Contemplation of bankruptcy.*] In order that an act, which would cause a distribution of assets different from what would be made in bankruptcy, may be constituted a fraudulent preference, it must be an act done in contemplation of immediate bankruptcy and on the mere motion of the bankrupt. C. having purchased, through M., a cargo of maize, and being able to pay a portion only of the purchase money, M., in order to aid C. in paying the residue, procured certain mercantile firms to accept bills of exchange amounting to £6,000, drawn by C., the acceptors being guaranteed by M. against all liability. C. discounted the bills with the Provincial Bank. At the instance of the manager of the bank (who was aware that C. was in pecuniary difficulties, but who did not apprehend bankruptcy), C., in January, 1873, deposited with him certain trade bills as a security to the bank for the bills for £6,000 previously discounted. On February 3rd, 1873, the manager of the bank, at the instance of M., applied to C. in reference to M.'s liability on his guarantee, and it was arranged that, after satisfying the obligations to the bank, the proceeds of the trade bills should be held by the bank as a security for M. The bills guaranteed by M. came to

BANKRUPTCY—FRAUDULENT PREFERENCE—*con.*

maturity on February 7, 1873, and were taken up by the acceptors, to whom M. had become liable; and on March 14th, 1873, C. was adjudicated bankrupt:—*Held*, that the dealing with the trade bills did not amount to a fraudulent preference. *Re* CAREW - - - - B. VIII. 90

BANKRUPTCY—JURISDICTION.

1. —— *Adjudication in Ireland the day after sequestration in Scotland.*] A man was adjudicated a bankrupt in Ireland on the day after the date of the confirmation of the Scotch sequestration over his property and effects:—*Held*, that the adjudication in Ireland should be annulled, and if any creditor objected, he should apply to the sheriff who had confirmed the sequestration to recall it, on showing the balance of convenience. *Re* HECTOR - - - B. IV. *M.* 652

2. —— *Committal.*] The Court of Bankruptcy has no jurisdiction to commit for "unsatisfactory answering" (under s. 385 of the Bankruptcy Act, 1857) a person brought before it as a witness and surety merely in an arrangement matter. *Re* J. O'MALLEY - - Q. B. D. XXVII. *M.* 486

3. —— *Conflict of—Agent of company liquidating in England—Agent adjudicated bankrupt in Ireland—Proof of debt by liquidator—Submission to jurisdiction—Substitution of other liquidator—Power of attorney—Revocation by bankruptcy of agent—Default of agent—Accounts—Where to be taken.*] H. & Co., while carrying on business in London, employed S. as their agent for disposal of their merchandise in Ireland; and by a deed executed between them on June 15, 1875, it was provided that S. should collect all debts due to H. & Co., contracted through his agency, and should accept the drafts of H. & Co. to a certain amount, as being the average amount of such debts; and that he should lodge in bank all moneys received, on account of and in discharge of such acceptances. The deed contained a power of attorney appointing S. irrevocably so long, and no longer, as he should carry out the provisions of the deed: and it was further provided that when H. & Co. should have indemnified S. from all liability and loss, as therein mentioned, the deed should, at the pleasure of either party, cease to be binding. In July, 1875, H. & Co. went into a voluntary liquidation in England. S. was adjudicated bankrupt in Ireland in December following. In March, 1876, C., as liquidator of H. & Co., exhibited a proof of debt in respect of S.'s acceptances, in the matter of S.'s bankruptcy, and afterwards, under the order of the Court, furnished an account respecting the same. On May 6th an order was pronounced, directing that the liquidation of H. & Co. should be carried out thenceforth under the supervision of the Court in England; and on May 11th C. was discharged as the liquidator of H. & Co., and M. was appointed in substitution. It was alleged that a portion of the proceeds of the debts collected by S. were not lodged by him in bank, as provided for by the deed; and no proof was entered on foot of any of his acceptances. On his assignees moving that both M. and C. should pay to them the amount of debts collected by them due to H. & Co., and that M. and C. should be restrained by injunction from collecting or receiving such debts:—*Held*, that the motion should be refused. *In re* SHERIDAN - - - - - B. XI. 23

4. —— *Debts contracted in England—Limited trading in Ireland—Petition to annul adjudication on ground of no bona fide trading in Ireland.*] When an English trader contracts in England large debts, and then comes to Ireland and trades here to a very limited extent as a commission agent, and has only one Irish trade debt; and English creditors petition to annul the bankruptcy on the ground that there has not been any trading in Ireland; this Court will annul it, in order that he may be remitted back to the jurisdiction within which the debts were contracted. *In the matter of* HORNER [B. III. *M.* 677

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BANKRUPTCY—JURISDICTION—*continued.*

5.—*Guardian* ad litem—*Jurisdiction of Court of Bankruptcy to appoint—Minor's interest affected.*] The Court has jurisdiction to appoint a guardian *ad litem* to a minor, whose interests are affected by proceedings in Bankruptcy, for the purpose of representing and protecting the interests of such minor and binding his rights, where such appointment is necessary for the purpose of doing complete justice or making a complete distribution of property in the case. *Re Flynn* (VIII. 112) overruled. *In re* D'Arcy; *Ex parte* The National Bank - - - - - - - - **B. XI. 6**

6.—*Habeas corpus ad testificandum—Trial of issues in Court of Bankruptcy—Witness in prison.*] The Court of Bankruptcy has no jurisdiction to compel the attendance at a trial before it of a material witness who is in gaol under a sentence of imprisonment. *Re* Smith - - **C.C. VIII. *M.* 564**

7.—*Mutual debts and credits—Creditor receiving undue proportion of dividend—Attorney's lien.*] G. brought several actions against M., two of which went to trial. In one G. succeeded, and in another he failed. In the remaining actions rules were entered under the C. L. P. (Ir.) Act, 1853 (16 & 17 Vic., c. 113, s. 106), and orders for costs having the effect of judgments of non-suit were obtained. M. afterwards became bankrupt, and G. was returned on his schedule as a creditor for the debt of costs recovered by him in the action in which he succeeded, and received his dividend on the amount without any deduction in respect of the other actions. The attorney of M., long after the bankrupt's estate had been wound up, brought an action in the bankrupt's name, in the Queen's Bench, in England, for the amount of the costs due by G. to M. To this action G. pleaded a set-off on the judgment recovered by him; and a replication, on equitable grounds, having failed on demurrer, the action terminated in favour of G. The attorney for M. having applied for an order that G. should bring into Court the amount of dividend overpaid to him; or that the solicitor should be permitted to bring an action for the amount in the name of the assignees:—*Held*, that upon a proper indemnity being given by the solicitor, he should be at liberty to bring an action against G. in the name of the assignees for the amount of the dividend overpaid to G. *In the matter of* Mercer - **B. VII. 32**

8.—*Setting aside agreement as fraudulent—Declaration of trust by bankrupt in favour of infant children—Appointment of guardian—Binding rights of minors.*] The Court of Bankruptcy will not set aside a fraudulent agreement executed by a bankrupt where same comprises a valid declaration of trust in favour of infant children, the Court not having jurisdiction to appoint guardians for the infants, or to bind their rights by an order setting aside the instrument. *Re* Flynn - - - - **B. VIII. 112**

9.—*Setting aside lease at undervalue made shortly before adjudication—Lessee refusing to submit to jurisdiction—Action by lessee against messenger of Court for trespass on premises demised—B. A. Act*, 1872, *secs.* 6, 66, 68—*B. & I. Act*, 1857, *ss.* 19, 241.] Where D., a tenant for life, had made a lease, very shortly before being adjudged a bankrupt, of the whole of his estate in his mansion house and demesne to his confidential servant, at what appeared to the Court to be a gross undervalue; and the lessee had instituted an action of trespass against a messenger of the Court of Bankruptcy, in respect of an entry on the demised premises under the warrant of the Court:—*Held* (affirming the decision of Harrison, J.), that although the lessee refused to appear and submit to its jurisdiction, the Court of Bankruptcy had power to set aside the lease, and to grant an injunction restraining the lessee from prosecuting the action—it being expedient and necessary for the Court to decide the questions involved, for the purpose of doing complete justice, and making a complete distribution of property, in the matter of the lessor's bankruptcy. *Re Flynn* (VIII., 112), discussed. *In re* Domvile

[B. VIII. 196; Ch. A. IX. 21

——Setting aside deed - - - - - **X. 123**

See Bankruptcy—Order and Disposition. 3.

BANKRUPTCY—ORDER AND DISPOSITION.

1.—*Goods in order and disposition of bankrupt—Sale by assignees without an order made by the Court—Subsequent ratification by the Court—B. & I. (Ir.) Act*, 1857, *sec.* 313.] Where the Court of Bankruptcy has not made an order under the reputed ownership clause of the Bankrupt and Insolvent Act, 1857, for the sale of goods in the bankrupt's possession, but, subsequently to a sale of the goods, has ordered the proceeds to be paid into Court for distribution to the creditors and has accepted such proceeds thereupon, this adoption of the sale may be deemed equivalent, as a ratification and confirmation thereof, to a precedent order directing the sale. The Blake and Goodyear Boot and Shoe Machinery Co. *v.* Moore and Harrison - - - **Q. B. D. XV. 60**

2.—*Policy of insurance—Assignment of policy—Notice of assignment—Absence of order of Court of Bankruptcy to sell—Interpleader—Equitable interest—Outstanding estate in third person—20 & 21 Vic., c.* 60, *ss.* 267, 313—30 & 31 *Vic., c.* 144—32 & 33 *Vic., c.* 71, *s.* 13.] M'B. assigned a policy of insurance, effected on his own life, to two trustees, by a deed of settlement, dated March 17th, 1866, with power to receive and recover the moneys, and give effectual discharges therefor. He was adjudged bankrupt on August 14th, 1874, and died in the following year. Upon his death the sum assured was claimed by B., as alleged surviving trustee of the settlement, and by the assignees in bankruptcy respectively. B. then brought an action against the Insurance Company, and they obtained an order, directing him and the assignees to interplead. Prior to the trial of the issue, the Court of Bankruptcy had made an order to sell the goods as having been in the reputed ownership of M'B., under the order and disposition clause of the Bankrupt and Insolvent Act, 1857; but an order was made giving the assignees liberty to intervene in the action instituted by B. against the Insurance Company. At the trial, the attorney who had prepared the settlement deposed that he believed he had given notice of it to the Insurance Company, but there was no other evidence that notice had been given before the bankruptcy. After the bankruptcy notice was given. There was some evidence, but not very satisfactory, that B.'s co-trustee who had not been joined as a co-plaintiff, was dead:—*Held*, that there was no evidence to go to the jury of notice to the Company, so as to take the policy out of the operation of the order and disposition clause; but that the assignees could not avail themselves of their alleged right, under that clause, without an order from the Court of Bankruptcy to sell—the permission to intervene in the action not being sufficient for that purpose:—*Held*, further, that under 30 & 31 Vic., c. 144, the plaintiff's interest was legal, and not merely equitable, as notice had been given to the Insurance Company after the bankruptcy; and that the non-joinder of his co-trustee, if alive, should not be permitted to defeat the plaintiff's right to recover in the interpleader issue. Bradley v. James - - - **E. X. 180**

3.—*Policy of insurance—Consent and permission of assignee—Notice of assignment—Transmission through post—Parol notice—30 & 31 Vic., c.* 144, *s.* 3—*Official and particular assignees—Priority—Setting aside assignment as fraudulent—Jurisdiction of Court of Bankruptcy—Procedure.*] M. H. effected a policy of life insurance with an assurance company having a branch office in Dublin, and their principal office in London, which latter office was specified on the policy, under 30 & 31 Vic., c. 144, s. 4, as being the place of business at which notices of assignment might be given. He subsequently agreed to assign the policy for value to W. H., who, on the same day, assigned it to D. as a security by way of equitable mortgage. All the parties resided in Dublin, where the policy had been effected. D., at the request of W. H., prepared a written notice of assignment to him, which he addressed to the company's secretary at the London office, and posted in Dublin, but, according to the secretary, the notice did not reach the London office. M. H. was afterwards adjudged bankrupt, and died, and after his death his assignees in bankruptcy claimed

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BANKRUPTCY—ORDER AND DISPOSITION—con.

the proceeds of the policy under the reputed ownership clause of the Bankrupt and Insolvent Act, 1857:—*Held*, that the true owner had done all that, in the ordinary course of business, would reasonably be done by one having a *bona fide* intent to give notice of the assignment, and, therefore, that the policy no longer remained with his "consent and permission" in the order or disposition of the bankrupt. (Per Ball, C.)—Actual receipt of the notice should be presumed, the letter containing it having been properly directed and posted. (Per Christian, L. J.)—The mere posting of the notice, irrespective of the question whether it was in fact received, was sufficient to prevent the policy from remaining "with the consent and permission" of the true owner in the bankrupt's order or disposition—*Semble*, that the actual receipt of the notice would be necessary as between particular assignees claiming adversely. Observations as to the jurisdiction of Court of Bankruptcy to set aside deeds, and as to the procedure to be pursued. *In re* HICKEY - - - - - - **Ch. A. X. 123**

4. —— *Reputed ownership—Goods bought when purchaser insolvent.*] An application was made by the vendor of goods, which were sold to the bankrupt on September 29th, and delivered on October 3rd, for their return. At the time of the order of sale an execution had issued, or was about to issue, against the bankrupt's goods, as he was aware, but of which the vendor was ignorant till after delivery. The application was refused, as there was no evidence that the bankrupt was insolvent when he entered into the transaction. *Re* O'CONNOR **[B. VIII. *M.* 64**

5. —— *Reputed ownership—Billiard table hired on "three years' system"—Custom of trade—B. & I. Act*, 1857, *sec.* 313.] A billiard table was lent on hire to an hotel-keeper, on an agreement that, upon payment of certain instalments, it was to become his absolute property, but until such payment it should continue the property of the other party to the agreement, who, on default of payment of any instalment, might resume the possession. The hotel-keeper paid one instalment, and before any other accrued due was adjudged bankrupt, while the billiard table still remained in his possession at the hotel; and no general trade custom with respect to such hirings having been established in evidence:—*Held*, that the billiard table passed to the bankrupt's assignees, under the order and disposition clause of the B. & I. Act, 1857, sec. 313. *Quære*, whether a general trade custom, if proved, for the hire of such goods under the "three years' system" would, in such case, suffice to prevent the operation of that clause? *In re* SHAW - - - - - - - **B. XI. 167**

6. —— *Reputed ownership—Custom of trade—Hiring of sewing machine—Deferred payment system—Laches of owner in not resuming possession on breach of condition—B. & I. Act*, 1857, *sec.* 313—*Costs.*] Where a custom of trade is relied on to take goods out of the operation of the order and disposition clause of the Bankrupt and Insolvent Act, 1857 (20 & 21 Vic., c. 60, s. 313), it is not enough to show the custom has prevailed in the dealings of the particular trader, amongst certain others, who seeks to rely on it, but it must be shown that it is a well-recognised custom existing in the trade generally, and so long and extensively acted upon that the ordinary creditors of a bankrupt who has had a dealing of that nature, and in whose possession goods have been left accordingly, must have known, if they chose to make any inquiry, in the legitimate exercise of their reason and judgment, of the existence of such custom. *Quære*, whether such a custom must be a reasonable one? A sewing machine was let on hire to a trader by a company of manufacturers, on an agreement which provided that the trader shall pay a certain monthly rent, and keep the machine in good order, and in his own custody, and that, if the agreement were not performed and observed, the owners might (without prejudice to their right to recover arrears of rent) terminate the letting and resume possession of the machine; that the hirer might terminate the hiring by delivering up the machine; that within one year after the date of the agreement the hirer should have an option to purchase the machine upon certain terms, and after that time a like option upon certain other terms; that in no case should credit be claimable for premium or rent except on purchase of the machine, and that until purchase the hirer should be only the bailee of the machine. The trader paid two months' hire, and became in arrears for nine months' hire, and the owners took no steps to resume possession of the machine under the powers given to them by the agreement. While the machine remained in the possession of the trader, he was adjudged bankrupt. The company thereupon moved that his assignees should deliver it up, and for leave to prove for the balance of the hire; but the applicants having failed to establish by the affidavits in support of their motion that such agreements were customary in the trade generally, an issue was taken by consent (not providing for costs), and tried by a jury, who found that there was a general well-recognised custom or usage on the sale in Ireland of sewing machines by manufacturers, that such machines should not become the property of the purchaser until the instalments as agreed upon had been paid. No grounds were shown to the satisfaction of the Court for holding that, under the particular circumstances of the case, the custom was unreasonable:—*Held*, that the custom took the machine out of the reputed ownership of the bankrupt; and that the laches of the Company in allowing the instalments to remain overdue, without resuming possession of the machine, did not disentitle them to reclaim it from the assignees:—*Held*, further, that, having regard to the circumstances by reason of which the motion would have failed but for the taking of the issue, which was thereby occasioned, the applicants, though ultimately successful, should not be allowed costs. *Swanzy* v. *Southwell* (XII., 25) applied. *Ex parte* THE SINGER SEWING MACHINE CO. *Re* BLACKWELL - - **B. XII. 57**

7. —— *Reputed ownership—Custom of trade—Hiring of printing machine—Deferred payment system—Laches of owner in not resuming possession on breach of condition—Provision that, on resumption, the owner should be entitled to prove against the estate of a bankrupt hirer for loss, as liquidated damages—B. & I. Act*, 1857, *sec.* 313.] A printing machine was let by a firm on hire to a trader for the purpose of his carrying on business as an operative printer, on an agreement, which provided *(inter alia)* that the trader was to pay, as rent, £10 on delivery, and five other sums of £10 each at consecutive intervals of three months, amounting in all to £60; that until said sums should be fully paid, the machine was to remain the sole and absolute property of the firm; and that in case of non-payment of any of the instalments, or of the trader becoming bankrupt, the full balance should, at the election of the firm, at once become payable, or they might resume possession of the machine and sell same. From the date of delivery in February, 1890, to April, 1891, when the trader was adjudged a bankrupt, he paid only £10. On a claim by the firm to have the machine restored to their possession, it was established that there existed in the printing trade a general and well-recognised custom of letting such machines on hire, with power to resume possession on the bankruptcy of the hirer:—*Held*, that the custom took the machine out of the reputed ownership of the bankrupt, and that the true owners were entitled to an order for possession.—*Ex parte Singer Sewing Machine Co.; In re Blackwell* (XII., 57), considered and applied. *Ex parte* PALLESTER AND SON: *In re* DUNNE - - **B. XXV. 85**

8. —— *Reputed ownership—Consent of true owner—Furniture hired on "three years' system"—Demand of possession by owner—Bankruptcy of hirer—20 & 21 Vic., c. 60, sec.* 313.] The furniture of a hotel was lent on hire by A. to B., on the agreement that, upon payment of certain instalments it was to belong to B., but until such payment it should continue the absolute property of A., who, on default of payment of any instalment, might resume the possession. A. demanded possession of the goods on October 1st, B. having made default in payment of an instalment, which became due on September 9th, and having taken steps to file a petition of arrangement. B. filed a peti-

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tion for arrangement on October 2nd. A. again demanded possession on October 22nd, but was refused. The arrangement proceedings were turned into bankruptcy on October 28th, up to which time the goods remained in the possession of B., as reputed owner:—*Held*, that the goods did not pass to B.'s assignees under 20 & 21 Vic., c. 60, sec. 313, as, A. having previously demanded possession, it was not with his consent and permission that they remained in B.'s possession, at the time of the arrangement proceedings being turned into bankruptcy. *Ex parte* HARPUR. *Re* SMITH **B. IX. 52**

9. —— *Reputed ownership—Scrip certificate of shares.*] The lodgment of the scrip certificate of shares in a joint-stock company will not take them out of the order and disposition of the owner whilst they still remain registered in his name in the books of the company, and in case of his bankruptcy they will pass to his assignees. *Re* GREHAN - - **B. I.** *M.* **66**

10. —— *Shares in a bank—Equitable mortgage.*] D., registered proprietor of shares in a bank, wrote to the directors a letter, authorising them to hold his shares as collateral security for advances to be made to him on bills discounted for him, and to sell the shares to pay such debt with interest. He never executed any deed of transfer, and D. continued to be the *reputed* owner of the shares and became a bankrupt. The deed of settlement of the bank directed the board of management to pay to the bankrupt's assignees the price of such shares when sold, after first deducting all debts due to the bank by the bankrupt. D.'s assignees filed a cause petition praying a declaration that they were entitled to the whole price of the shares:—*Held*, that the letter of deposit constituted a valid equitable mortgage, and that the bank was entitled, under the deed of settlement, to a lien on the shares. ASSIGNEES OF DUNNE *v.* THE HIBERNIAN JOINT STOCK CO. **[V. C. II.** *M.* **5**

See BILL OF SALE. 1, 3—5.

BANKRUPTCY—PETITION.

1. —— *Adjudication—Limited company—Petitioner.*] A limited company can maintain a petition for adjudication under sec. 116 of the Bankruptcy Act, 1857. In such cases it will be sufficient for the petition to be sealed with the corporate seal, and signed by two directors and the secretary; and a manager of the company, duly authorised, can make the necessary oath. NORTHERN BANKING CO. *v.* PORTER **[B. VII. 18**

2. —— *B. A. Act*, 1872, *s.* 22—*Debtors' Act*, 1872, *s.* 4—*Petitioning creditor—Debt of non-trader, contracted after passing of B. A. Act*, 1872—*Rent accruing after, on lease executed before, passing of Act—Construction of statutes.*] The interpretation clause of the Debtors' Act (Ireland), 1872, is not to be construed as incorporated with the Bankruptcy Amendment Act (Ireland), 1872. Rent accruing due and payable after the passing of the Bankruptcy (Ireland) Amendment Act, 1872, by a lessee or assignee of a lease executed or assigned before the passing of the Act, will be held to be a debt contracted by the lessee or assignee before the passing of the Act, and, therefore, not to constitute a good petitioning creditor's debt witihin sec. 22. *In re* M. **[B. VIII. 34; Ch. A. VIII. 77**

3. —— *By traders against themselves—Arrangements—Hurried procedure.*] The Court will not grant either adjudication upon a trader's own petition or protection in arrangement cases, unless the solicitor takes out the meeting in the usual way, has it listed, and has attested copies of documents ready. ANON - - - - - **B. I.** *M.* **648**

4. —— *By trader after execution of trust deed.*] A petition was filed for adjudication by a bankrupt against himself after he had executed a trust deed, under which the trustees did not take possession of his property, but allowed it to remain

BANKRUPTCY—PETITION—*continued.*

in the order and disposition of the trader; the Court allowed the adjudication, but subsequently annulled it, allowing a new petition by a creditor, who was not a party to the trust deed to be filed. *Re* SHAW & CO. - **B. I.** *M.* **716, 747**

5. —— *One member of firm petitioning for adjudication—Practice.*] The Court will not adjudicate upon the separate petition of a member of a firm, but will adjourn it in order to give to the other member or members of the firm an opportunity of joining in the petition for adjudication. *In re* PELAN **[B. II.** *M.* **637**

BANKRUPTCY—PRACTICE.

1. —— *Attorney's apprentices and conducting agents.*] Attorney's apprentices and conducting clerks (even if the latter are themselves attorneys) cannot act as advocates in the Court of Bankruptcy. *Re* A. B. - - - **B. I.** *M.* **460**

2. —— *Duty—On joint and several estates.*] The Court confirmed the ruling of the Chief Clerk that duty should be paid on the joint estate of M. Brothers, and on each of their separate estates. *In re* MALCOMSON'S ARRANGEMENT **[B. XI.** *M.* **318**

3. —— *Non-production of deed under which claim is made—Newspaper reports.*] A newspaper report of a case was not allowed to be read in Court, and a case, which turned on a deed of submission to enter into arbitration with reference to a chancery suit, was adjourned owing to the non-production of the deed in Court. *In re* SAVAGE - - **B. X.** *M.* **367**

4. —— *Objection to report of Chief Registrar.*] Objections to the report of the Chief Registrar should be made by motion on notice to vary the report. *Re* NOLAN **B. VIII.** *M.* **472**

—— Setting aside sale - - - - **IV.** *M.* **138**

See WAY. 10.

BANKRUPTCY—PROOF OF DEBTS.

1. —— *Applications to have proof of debts reconsidered, and to lodge proof of debts after the sitting for it.*] Applications being made to have proofs of debt reconsidered, and to lodge proofs of debt after sitting for proofs of debt:—*Held*, in both cases the applicants must issue a summons and take out a sitting to effect the objects of such applications. *Re* CORMACK **[B. V. 67**

2. —— *Conflicting claims on different firms—Creditor proving a charge and assisting bankrupt to abscond.*] The whole case will be sent before the Chief Registrar for investigation when the claims and rights of different firms composed of the same parties conflict. A creditor who gave the bankrupt the means of leaving the country will not, although his charge be taken as proved, be allowed his costs. *Re* TATE & CO. **[B. II.** *M.* **284**

3. —— *Debtors to estate—Consent of parties to the settlement of claims by the Court.*] Where parties returned as debtors to a bankrupt's estate are summoned with a view of having an admission of the debts, and where some are denied, the Court will, with the consent of the assignees and alleged debtors, appoint a day to try such disputed claims. *In re* M'PARLAND **[B. I.** *M.* **369**

4. —— *Double proof—B. & I. Act*, 1857, *sec.* 248—*Outstanding Bills of Exchange—Bills passed in payment of goods sold—Accommodation acceptances.*] Where a bill of exchange has been accepted by a bankrupt for a debt due by him, only the actual holder of the bill can prove as against the bankrupt's estate. The bankrupt had accepted bills of exchange to the amount of £26,265 9s. 8d. for L. V. and K., which had been endorsed over by them, and discounted for cash with third parties. Of those bills, a portion to the amount of £12,329 4s. 8d. was so accepted in payment of goods sold by L. V. and K. to the bankrupt—the remainder being accommodation acceptances. The bills were not taken up at maturity by L. V. and K., and remained outstanding in the hands of the persons who had discounted them. L. V. and K. presented a petition for arrangement under the Court, and their trustees

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BANKRUPTCY—PROOF OF DEBTS—*continued.*

having claimed to prove for the said sum of £12,329 4s. 8d. as against the estate of the bankrupt:—*Held* (affirming the ruling of the Chief Clerk), that the proof should be rejected. *Ex parte Macredie; in re Charles* (L. R. 8 Ch. 535) followed. *In re* WOODS; *Ex parte* JAMES - - **B. IX. 65**

5. —— *Executor and trustee—Legatee permitted to prove against the bankrupt's estate for trust money invested by him in his business.*] S., the sole surviving executor of the will of M., used a large amount of the assets of the testator in his business, without the knowledge or assent of the two legatees entitled thereto, one of whom was a minor:—*Held*, that the legatee, who was of age, might be permitted to prove against the bankrupt's estate for the amount of assets so applied in his business, the dividend to be retained in Court for the persons interested. *In re* SHEPHERD; *Ex parte* MOORE **B. X. 95**

6. —— *Notice of public sittings for proof of debts—Certifying dates of posting notices—Furnishing Chief Registrar with list of debts*—73, 148, *G.O.*, 1872—*Creditor not receiving notice—Debt not returned as undisputed—Liability of assignee—Laches of creditor.*] Where a creditor, whose debt has been returned on a bankrupt's schedule of affairs, seeks to render the official assignee personally responsible for payment of a dividend due on foot of the debt—upon the grounds that, notwithstanding the direction of the 73rd and 148th G. O., 1872, no notice that the debt was disputed, or of any sitting for proof of debts was given by the official assignee; and that the debt was not returned by him to the registrar as an undisputed debt; and that he did not, in distributing the bankrupt's estate, allocate or pay any portion thereof in respect of said debt—the creditor will be disentitled to such relief, if he has been guilty of laches while he has had, by himself or by his agents, actual knowledge of proceedings in the bankruptcy matter, as contributing to the circumstances which have occasioned the mistake or miscarriage of which he complains. *In re* WOODS; *Ex parte* THE BRAIDWATER SPINNING CO. **B. X. 24**

7. —— *Proof sworn before Commissioner for English Court of Chancery.*] A proof of debt sworn in England before a Commissioner for taking affidavits for the English Court of Chancery in his district is valid, and may be used in a case in the Irish Court of Bankruptcy. *In re* M'DONALD **[B. IX. 175**

8. —— *Right to prove for value of covenant to pay premiums on policy of assurance—"Secured creditor"—Nature of security—Double proof—Bankruptcy Amendment Act*, 1872, *ss.* 4, 37.] Upon the bankruptcy of a debtor who has, previously to his bankruptcy, mortgaged to a creditor a policy of assurance upon his own life, and entered into a contemporary covenant with the creditor to pay premiums on such policy during his life, the creditor is not entitled to prove in the bankruptcy for the estimated value of the covenant, under section 47 of the Bankruptcy (Ireland) Amendment Act, 1872, in addition to proving for the unsecured balance of the amount due to him by the bankrupt after deducting the estimated value of the security. K., in 1880, assigned, by way of mortgage, to the Bank of Ireland, a policy on his life for £1,000, to secure a sum in which he was indebted to the bank. The mortgage deed contained a covenant by K. for the payment of the premiums upon the policy during the continuance of the mortgage. In 1884 K. was adjudged bankrupt, being then indebted to the bank to the extent of nearly £1,000. The bank valued their security at £350, and proved against the bankrupt's estate for the balance. They then sought, under section 47 of the Bankruptcy (Ireland) Amendment Act, 1872, to prove for an additional sum, representing the actuarially estimated value of the bankrupt's covenant for payment of dividends:—*Held*, that the latter proof could not be admitted, inasmuch as, upon proof by the bank of the balance of the debt due, the debt was extinguished with all its incidents—one of which incidents was the covenant to keep up the security. *Semble* (per Lord Watson), the 47th section only applies to a covenant to pay

BANKRUPTCY—PROOF OF DEBTS—*continued.*

periodical sums on account of a third party, and not to a personal obligation by a person giving a security to make that security effectual. The scheme established by the Bankruptcy Act is that any security held by the creditor and deducted by him from the amount due to him is dealt with as having been realised and paid to the creditor, and his debt to the extent of its valuation or actual proceeds (in the event of a sale) is extinguished, the balance unpaid being then treated as unsecured and therefore admitted to proof. *Re L.* (VIII. 92) and *Re Law* (X. 11) overruled. *Warburg* v. *Tucker* (E. B. & E. 914), and *Mitcalf* v. *Hanson* (L. R. 1 E. & I. Ap. 242), distinguished. DEERING *v.* BANK OF IRELAND (GOVERNOR AND COMPANY OF) **[C. A. and H. L. XXI. 1**

BANKRUPTCY—SECURED CREDITOR.

1. —— *Creditor's proof of debt—Appropriation of securities—Right to prove and vote for balance—Participation in dividends.*] A creditor, holding securities generally for debts due to him, is entitled to appropriate such securities in discharge of a portion of such debts, and to realise the securities so appropriated, on the debtor being adjudged a bankrupt or presenting a petition for arrangement; but under B. A. Act, 1872, s. 63 and 83 G. O. 1872 such creditor can prove or vote in the matter of an arrangement or composition after bankruptcy by the debtor only in respect of the balance, if any, of said portion of the debts remaining due after the realisation of the securities, or after having deducted the value of the latter, determined as prescribed by the General Order, and cannot, meantime, on foot of the said balance, participate in any intermediate dividend payable out of the debtor's estate. The other portion of the demand uncovered and excluded from the securities, may be treated as an independent, unsecured debt, and the creditor may prove therefor, and vote in respect thereof accordingly. *In re* GREER; *Ex parte* PROVINCIAL BANK - - - - - **B. XI. 109**

2. —— *Dividend—Acquiescence.*] Where a trader petitions the Court, under the arrangement clauses, and returns a creditor having a mortgage as an unsecured creditor, but that creditor apprises the solicitor for the arranging trader that he has a mortgage and will rely upon it; and, although he takes no part in the arrangement proceedings, the assignees send him a dividend warrant for his composition, which he receives and puts to the credit of his mortgage debt, this will not be held to be such an acquiescence in the arrangement proceedings as to level his security to the same position as ordinary creditors, and he will be allowed to put the dividend to the credit of his mortgage debt and to prove on the estate for the difference, on the trader afterwards becoming bankrupt. *Re* FERRALL - - - - **B. I. *M.* 103**

3. —— *Mortgage creditor—Proof of debts on foot of special security, where the creditor at first refused to come in under the bankruptcy.*] A mortgagee, relying on his mortgage, refused to take the dividend, which was paid, under a composition, to the other creditors and the bankruptcy was annulled. Afterwards the mortgage was held invalid by the L. E. Court, which sold the premises, and directed the price to be brought into the bankruptcy. The bankrupt claimed it. The mortgagee moved for leave to prove, so as to be placed in the same position as those creditors who had obtained their dividends. On consent by the bankrupt:—*Held*, that the motion should be granted. *Re* LANGAN - - **B. II. *M.* 25**

4. —— *Policy of Insurance—Covenant to pay premiums—B. A. Act*, 1872, *s.* 47.] L., before his bankruptcy, mortgaged a policy of insurance for £3,000, to the Bank of Ireland, to secure a debt of £1,000, and covenanted to pay the premiums on the policy and to keep it alive. Upon the bankruptcy of L., the bank claimed the right to surrender the policy to the insurance company, and appropriate the surrender value *pro tanto* in payment of the secured debt; and, in addition, to prove under the 47th section of the Bankruptcy Amendment Act, 1872, for the value of their interest in the covenant to

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BANKRUPTCY—SECURED CREDITOR—*continued.*

keep the policy alive:—*Held*, that they were entitled to have the value of their interest in the covenant ascertained, and to prove for and receive a dividend upon the value, as well as to retain the surrender value of the policy, but not to receive in all more than twenty shillings in the pound on the secured debt. *In re* LAW; *Ex parte* BANK OF IRELAND **[B. X. 11**

5. —— *Retracting proof of debt by creditor—Attachment of specific debt paid to assignees by a debtor of the bankrupts.*] F. G., a secured creditor, had proved for the balance of a mortgage debt after sale of the lands mortgaged, and without stating the fact of his having any other security therefor. He had not voted in choice of a trade assignee, nor had he been paid any dividend. In the meantime after proof, but before dividend declared, a sum of £22 was realised in respect of the collateral security held by F. G.:—*Held*, that F. G. was entitled to retract his proof, and to be paid the £22. *In re* HOLMES; *Ex parte* GOOLD - - - - - **B. IX. 67**

6. —— *Trustee's percentage on sale—Absence of special contract.*] A secured creditor, who had valued his security, was held not to be liable to pay commission to the trustee on the sale and in the absence of special contract. *Ex parte* MITCHELL **[B. XVII. *M.* 439**

—— Failing to value security—Default in payment—Committal **[XVII. 12**

See DEBTORS' ACT (IRELAND). 16.

—— Proof of debts—Election - - - **VI. 172**

See ELECTION. 2.

BANKRUPTCY—SECURITY FOR COSTS—*Creditor residing out of the jurisdiction.*] A creditor on an Irish bankrupt's estate, who resides out of the jurisdiction, and comes in to establish a special claim, cannot be compelled to give security for costs. *Re* RING - - - - **B. III. *M.* 350**

BANKRUPTCY—SETTING ASIDE LEASE.

1. —— *Arranging debtor—Composition on secured as well as unsecured debts—Estate vested in assignees—Composition unpaid on secured debts—Deficiency unless lease declared invalid—B. A. Act*, 1872, *sec.* 66.] A debtor, filing a petition for arrangement with his creditors, proposed to pay a composition on his unsecured debts, and on such portion of his secured debts as were not fully secured, and that his estate should vest in his official assignees, which proposal was confirmed by the Court. He had previously mortgaged certain premises, which, after the confirmation of his proposal, he demised to a lessee. If these premises were sold, under the order of the Court, subject to that lease, they would not realise sufficient, after payment of prior incumbrances, to pay the amount due on foot of the mortgage, which amount had not been realised, and no composition had been paid in respect of such deficiency:—*Held*, that the Court had jurisdiction to declare the lease invalid as against the mortgagee, and to sell the premises discharged therefrom.—*Ex parte Manchester and Liverpool District Banking Co., In re Littler* (L. R. 1 Ch. D. 573), and *Ex parte Burrell, In re Robinson* (L. R. 1 Ch. D. 537), distinguished. *In re* R.; RUTTLE *v.* O'FLAHERTY - - - **B. XI. 133**

2. —— *Lease defeating or delaying creditors*—10 *Car. I. sess.* 2, *c.* 3—*Act of Bankruptcy—Fraudulent conveyance—B. A. Act*, 1872, *ss.* 21, 66—*Evidence*—67 *G. O.* 1872—*Affidavit of witness not attending for cross examination.*] On May 23, 1874, D., who was then largely indebted, executed a lease demising to R., his steward, his mansion house and demesne, of which D. was tenant for life. The demise was for the life of D., and made at an undervalue. On July 14th, 1874, D. was adjudged bankrupt, the act of bankruptcy being his alleged departure from Ireland with intent to delay and defeat his creditors, which adjudication was afterwards confirmed by the Court. It appearing to the Court that the lease was executed with intent to defeat and delay the creditors of the bankrupt, that it was not executed *bonâ fide* or with intent that same should be acted upon, and that the execution thereof was an act of bankruptcy, the Court declared the lease fraudulent and void against the bankrupt's assignees and creditors, and ordered that it should be delivered up to be cancelled and the registry thereof vacated, and that the lessee should deliver up possession of the premises purported to be demised. *In re* DOMVILE **[B. IX. 199; Ch A. IX. 204**

BANKRUPTCY—SETTING ASIDE LEASE—*continued.*

3. —— *Lease executed in contemplation of verdict against lessor—Bankruptcy.*] The defendant in a pending action for damages, in contemplation of a verdict being had against him, and with the primary motive of preventing the plaintiff from realising the fruits of same, executed, while in solvent circumstances, a lease of premises, at a rent of an undervalue on February 22, 1873. On March 11, 1873, a verdict was had against him in the action. He remained in possession of the premises until March 14, on which day the lease was registered; the lessor committing upon the same day a voluntary act of bankruptcy, whereon he was subsequently adjudicated bankrupt. It was of advantage to the general creditors of the bankrupt that the lease should be set aside, and that the premises should be sold discharged therefrom. On motion for this purpose:—*Held*, that the lease should be set aside as fraudulent and void as against the assignees in bankruptcy of the lessor, and that the premises should be sold discharged therefrom. *In the matter of* O'NEILL - **B. VII. 199**

—— Jurisdiction - - - **VIII. 196; IX. 21**

See BANKRUPTCY—JURISDICTION. 9.

BANKRUPTCY—STAYING PROCEEDINGS.

1. —— *Action against arranging debtor as administratrix—Injunction—Jurisdiction.*] An arranging debtor having been sued in her representative capacity, as administratrix of the personal estate and effects of her husband, deceased, pleaded to the action, and afterwards obtained an order for protection under the 143rd section of the Act of 1857. Notice of trial having been served and issues returned, she applied to the Court to restrain the plaintiff from proceeding with the action. The Court ordered that the plaintiff should be at liberty to mark an interlocutory judgment; that his rights should be ascertained in the Court, and the judgment filled up for the amount of his actual debt when duly proved; that no execution should issue, and that he should be paid his costs of the action and of the motion. *Quære*, whether the Court has any jurisdiction to restrain an action against an executor or administrator in their representative capacity? HAYDEN *v.* GOFF - - - - **B. VII. 152**

2. —— *Action against arranging debtor—Notice—Suppression of facts.*] An arranging debtor was served with a summons and plaint after the first and second sittings had been carried, and his proposal for arrangement was duly confirmed by the Court. The plaintiff in the action had not received notice of the arrangement proceedings. The arranging debtor applied for and obtained *ex parte* a conditional order to restrain the plaintiff from marking judgment or taking further proceedings in the action. The affidavit on which the order was obtained suppressed the fact that the attorney for the arranging debtor had requested the service of the writ to be delayed upon a promise of payment, and stated that the arranging debtor did not know up to the date of the service of the writ that the plaintiff had any claim against him. In some other particulars the facts were erroneously stated in the affidavit:—*Held*, that the conditional order must be discharged, as it had been obtained by a suppression and distortion of facts, and would not have been granted had all the circumstances been before the Court. *Semble*, a conditional order for an injunction will not in future be granted by the Court. *Quære*, whether an injunction should be granted in an arrangement case, after the second sitting, to restrain an action by a creditor who has not had notice of the arrangement proceedings. BRITISH LINEN CO. *v.* DONOVAN **[B. VII. 81**

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BANKRUPTCY—STAYING PROCEEDINGS—*con.*

3. —— *Action against arranging debtor.*] An action against an arranging debtor in England was commenced by a creditor:—*Held*, that the fact of arrangement prevented the creditor taking proceedings to recover his debt, and that the action should be restrained. MALONE *v.* KEOGH
[Q. B. VII. *M.* 355

4. —— *Action before certificate of conformity.*] The defendant having been adjudicated, and the plaintiff having proved for the amount of bills of exchange, he commenced an action on the bills. In November, 1867, a defence was filed, and in January, 1868, the defendant obtained a certificate of conformity. On the 6th of May the plaintiff demurred, and on the 8th of May the Court of Bankruptcy refused to stay the proceedings in this action:—*Held*, on motion, that the proceedings should be stayed. LEESON *v.* OUTHWAITE
[E. II. *M.* 353

5. —— *B. A. Act*, 1872, *sec.* 68.] The Court of Bankruptcy will not stay proceedings brought to recover a debt provable in arrangement proceedings, if the debt is set out in Schedule F. of the arrangement proceedings as one payable in full, and the arrangement had been carried. *In re* H., AN ARRANGING DEBTOR - - - - B. XXV. 19

6. —— *Debtor's summons in England against arranging debtor in Ireland—Injunction—B. A. Act*, 1872, *secs.* 62, 66, 68, 70.] After a debtor, who had presented an arrangement petition in this country, had obtained a protection order, a creditor issued against him a debtor's summons in England. The arranging debtor having moved to restrain further proceedings under the debtor's summons:—*Held*, that an injunction should not be granted. *In re* W. A. R. B. IX. 149

7. —— *Bankruptcy—Staying proceedings—Distress.*] The Court will not enjoin a distress for municipal rates where the distress is made after the certificate, and there is no other available remedy. *Re* T. FRY - - B. XXVII. *M.* 658

8. —— *Execution against goods of arranging debtor.*] A petition for arrangement having been presented after judgment had been marked in three several actions, and after execution had been issued on foot of two of the judgments, a protection order was granted under the 20 & 21 Vic., c. 60, s. 343. The sheriff seized the debtor's goods notwithstanding the protection of the Court, on the ground that it was not granted till after the sale of two of the writs of execution. The Court made an absolute order restraining the judgment creditors by name from further proceedings upon the several judgments. *In the matter of* AN ARRANGING DEBTOR - - - B. VII. 17

9. —— *Onerous property—Arrangement—Disclaimer—B. & I. Act*, 1857, *sec.* 349—*B. A. Act*, 1872, *sec.* 97.] On the application of an arranging debtor to have an action for rent against him stayed, on the ground that the property was onerous and not worth the rent:—*Held*, that such a course could only be adopted by the arranging debtor going into bankruptcy. *In re* AN ARRANGING DEBTOR - C. A. XXIV. *M.* 585

10. —— *Pending proceedings in Chancery.*] Proceedings in bankruptcy will be stayed pending proceedings in Chancery. *Re* KENNEDY - - - - - B. I. *M.* 649

11. —— *Restraining execution.*] In bankruptcy the proper order to make is an order absolute in the first instance, restraining proceedings under executions, upon which the facts should be fully before the Court; the order will be set aside if made improvidently or upon supression or mis-statement of facts. *Re* ARRANGING DEBTOR - - B. VII. *M.* 56

12. —— *Sale of ship of arranging debtor under warrant of the Court of Admiralty—Protection from process—Lien on ship for wages—Jurisdiction—B. A. Act*, 1872, *sec.* 66—*B. & I. Act*, 1857, *sec.* 343.] A warrant of the High Court of Admiralty to arrest a ship, the property of an arranging debtor, issued at the suit of a master mariner in a cause of wages and disbursements, is a "process" within the meaning of the Bankrupt and Insolvent Act, 1857, sec. 343; and, when seizure is effected under such a warrant, issued after the granting of a protection order to the arranging debtor, the Court of Bankruptcy has jurisdiction, under the B. A. Act, 1872, sec. 66, to restrain by injunction the Marshal of the High Court of Admiralty and such master mariner, from selling or disposing of the ship, where it is expedient or necessary with a view to doing complete justice, or making a complete distribution of the arranging debtor's property. But, before exercising the power, the Court will require adequate provision to be made for the full discharge of all claims, covered by the master mariner's specific lien, that may be ascertained to be due on account taken before its own officer, and to meet the costs incurred. *In re* C.
[B. XI. 39

—— Against assignees - - - XI. 149
See PRACTICE—CHANCERY—INJUNCTION. 7.

BANKRUPTCY—SUPPRESSION OF PROPERTY

—Committal for trial of bankrupt for fraud.] A bankrupt was committed for trial on the ground of fraud in the wilful suppression of property. *Re* BERKELEY
[M. P. C. VIII. *M.* 464

BANKRUPTCY—VOID SETTLEMENT.

1. —— *Rules which regulate Court in acting under sec.* 66 *of B. A. Act*, 1872—*Evidence.*] Before exercising jurisdiction under the B. A. Act, 1872, sec. 66, to decide whether a deed was executed in order to defeat creditors, and to declare same fraudulent and void as against the assignees in bankruptcy, the Court will require to be satisfied, as far as possible, that the application is made, not capriciously, but for the purpose of benefiting the general creditors, and that the result of acceding to it would be advantageous to them on the whole, and would not onerate the assignees with a *damnosa hæreditas*. *In the matter of* O'NEILL - - - B. VII. 170

2. —— *Setting aside deed—Voluntary—As fraudulent*—10 *Car. I., sess.* 2, *c.* 3—*Jurisdiction*—35 & 36 *Vic., c.* 57, *s.* 66—20 & 21 *Vic., c.* 60, *ss.* 24, 26—*Evidence.*] Where a deed disposing of all the grantor's property was executed without valuable consideration by the grantor while indebted, and he, still owing some of the debts then due, became bankrupt shortly afterwards:—*Held* (affirming the order of Miller, J.), that the deed was void as against the assignees in bankruptcy of the grantor, and that the lands thereby conveyed should be delivered up to the assignee. *In re* NOLAN
[B. VIII. 55; Ch. A. VIII. 199

3. —— *Voluntary Deed—Absence of ante-nuptial agreement—Bankruptcy of settlor—Evidence of ability to pay debts without aid of property in settlement—Onus of proof—B. A. Act*, 1872, *sec.* 52.] By a post-nuptial settlement, not executed in pursuance of an ante-nuptial agreement, property was put in settlement for the benefit of the settlor's wife and children. The settlor was afterwards adjudged bankrupt, apparently within two years after the date of the settlement; and on his assignees seeking to avoid the settlement it was proved that the settlor was indebted at the time of its execution, and no evidence was given by the parties claiming under it that he was able to pay all his debts without the aid of the property put in settlement:—*Held*, that the settlement was void as against the assignees under the Bankruptcy Amendment Act (Ireland), 1872, sec. 52. JAMES *v.* MASON; *Re* CAMPBELL
[B. XII. 163

4 —— *Voluntary deed—Second marriage—Settlement on children of first marriage—Consideration—Subsequent purchaser for value*—10 *Car. I., sess.* 2, *c.* 3, *s.* 10—*Onerous covenants in lease.*] The liabilities incurred by the assignee of a lessee's interest in a lease for years in respect of onerous covenants thereunder, such as for the payment of a substantial rent, and for keeping the demised premises in good order, repair, and condition, amount to a valuable consideration for the assign-

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BANKRUPTCY—VOID SETTLEMENT—*continued.*

ment of it, so as to prevent such assignment from being a voluntary conveyance within the meaning of the 10 Car. I., sess. 2, c. 3, s. 10. A widower, by a settlement executed on his second marriage, assigned a leasehold to trustees, subject to the lessee's covenants for payment of the rent reserved, and for keeping the premises in good repair, upon trust, for the maintenance and education of his four children by a former marriage during their minority in consideration of love and affection. The deed was registered and the settlor afterwards mortgaged the lease, by way of equitable deposit, for valuable consideration:—*Held*, that the consideration of a second marriage did not extend so as to prevent the settlement from being voluntary, but that by reason of the onerous covenants under which the assignee had become liable, the assignment was not voluntary as against the subsequent purchasers for value, whether with or without notice. *Prior* v. *Jenkins* (37 L. T., N. S. 51) followed. *In re* GREER; *Ex parte* PROVINCIAL BANK [B. XI. 109

—— Sale at under-value to defeat execution XII. 37

See BANKRUPTCY—ACT OF BANKRUPTCY. 13.

BANKRUPTCY—VOTING.

1. —— *Authority to vote at composition meeting after bankruptcy.*] An authority to a solicitor to vote, annexed at the foot of the proof of debt, entitled in the cause to which matter it plainly had reference, and in these words—"We appoint Mr. Clay our proxy in the above matter," is sufficient. *Re* TUOHY - - - - - - B. IV. *M.* 769

2. —— *Composition after bankruptcy—First meeting—Mode of voting—Creditors for under £20 not entitled to vote*—20 & 21 *Vict.*, *c.* 60, *ss.* 149, 150—*Form* 64.] Creditors whose debts do not amount to £20 are not entitled to vote at the first meeting in a composition after bankruptcy, and are not to be computed in number as agreeing to or opposing the offer of composition. *In re* BUCKLEY - - - - - - B. XIV. 113

BANKRUPTCY—WINDING-UP—*By trustee and committee of inspection—Bankrupt absconding without filing statement of affairs—Summoning meeting to sanction winding-up*—155 *G. O.*, 1872—*Special circumstances.*] An order, under 155 G. O., 1872, to summon a meeting of creditors for the purpose of obtaining their sanction to the winding-up of the bankrupt's estate by a trustee and committee of inspection will not be made, except under very special circumstances of a very exceptional character, where the bankrupt has absconded without filing his statement of affairs. That it was in consequence of the bankrupt having absconded that his statement of affairs had not been filed is not, within 155 G. O., 1872, a special circumstance upon which the Court would permit an application for such an order to be made before the filing of the statement. Notwithstanding any resolution by the local creditors of a bankrupt in favour of such an application, the Court will not give permission to make the application after the appointment of a creditor's assignee, when the whole of the creditors of the bankrupt have not been and cannot be accurately ascertained, unless it is made plainly to appear that the feeling of every creditor could, upon a reliable basis, be fairly ascertained in the manner as provided by the Court. *In the matter of* SEMPLE - - - - - - B. VII. 30

BANKRUPTCY—WITNESS.

1. —— *Expenses of witnesses who assisted at removal of goods.*] When a witness examined in the Bankruptcy Court had anything to do with the removal of the goods of a bankrupt, the Court will not give him his expenses. *In re* HEALLY [B. I. *M.* 505

2. —— *Witness residing in London—Order for examination before English Court—B. A. Act*, 1872, *sec.* 71.] An order for the examination of witnesses in London before the English Court was made. *Re* DYMOKE - B. VIII. *M.* 565

—— Committal - - - - - XXVI. *M.* 450

See BANKRUPTCY—ARRANGEMENT. 9.

BANKRUPTCY—Action for damages for improper adjudication—Pleading - - - VI. 28

See PRACTICE—COMMON LAW—PLEADING. 13.

—— Claim of assignees to proceeds of seizure, and sale by, and payment to sheriff - - XXIV. *M.* 373

See SHERIFF. 28.

—— Company—Winding-up - - - I. *M.* 227

See COMPANY. 8.

—— Tenant - - - - - -

See Cases under LANDLORD AND TENANT—BANKRUPTCY OF TENANT.

BAPTISM—Roman Catholic register—Evidence XII. 32

See EVIDENCE. 10.

BARBED WIRE—*Alteration of fence*—14 *&* 15 *Vic. c.* 92, *ss.* 9 (3), 13 (3).] Under a summons containing two charges—one under 14 & 15 Vic., c. 92, s. 9 (3), for altering the fence of a public highroad without the consent of the County Surveyor or the authority of a presentment, and the other under the same Act, s. 13 (3), for wilfully or negligently preventing and interrupting the free passage of the said public road by erecting thereon a barbed wire fence:—*Held*, that the question for the justices was whether the defendant had altered the fence of the road; that the question whether the bank on which the fence was erected belonged to the defendant was irrelevant, and that their jurisdiction in no way depended upon it:—*Held*, also (by Murphy, J.) that a fence of barbed wire placed alongside a public highroad or footpath is a public nuisance. COLLEN *v.* ELLIS [E. D. XXVII. *M.* 566

—— Injury to sheep - - - - XXVI. 15

See NEGLIGENCE. 4.

BENEFIT BUILDING SOCIETY—Fines VIII. 29

See BUILDING SOCIETY.

BEQUEST FOR MASSES—Perpetuity

See CHARITY—GIFT TO. 1, 7, 8.

—— Will - - - - - - II. *M.* 352

See WILL—LEGACY. 5.

BEQUEST OF SHARES—Misdescription XI. 165

See WILL—LEGACY. 7.

BETTING CONTRACT—*Consideration—Money had and received—Non-joinder of parties—Amendment.*] An action for money received for the use of the plaintiff, to recover money paid to his agent, the defendant, on foot of a bet in which several parties are interested, is not an action to enforce the original contract, which is illegal, and the party who has been dealt with as substantially entitled to the amount may maintain the action. Where, after an agent has been instrumental in making a bet for several parties, one of them (the plaintiff) placed an embargo on the payment of the amount of it to the agent, and afterwards withdrew the embargo on a promise by the agent to pay over the amount to him, the plaintiff, in consequence of which the money was paid to the agent, there is sufficient consideration to support such a promise, and an action for money received for the plaintiff's use may be maintained. M'CLOSKEY *v.* TAYLOR [C. P. XI. 46

BICYCLE—*Riding on footpath—Obstruction—Evidence*—14 *&* 15 *Vic., c.* 92, *s.* 13 (3).] A bicyclist riding at a moderate pace on the footpath of a country road, outside municipal or township districts, may be summarily convicted under 14 & 15 Vic., c. 92, s. 13 (3), although there is no evidence of actual obstruction of any passengers being on the footpath caused thereby, or of any foot-passenger being at the time in

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BICYCLE—*continued.*

sight on the footpath, if the magistrates are of opinion on those facts that so riding on the footpath is calculated to prevent or interrupt the free passage of foot-passengers. M'KEE *v.* M'GRATH - - - **E. D. XXVI. 40**

BIGAMY—Presumption as to religion - - **II. *M.* 637**

See CRIMINAL LAW—BIGAMY.

BILL—Chancery.

See PRACTICE—CHANCERY—BILL.

BILL OF COSTS.

See Cases under SOLICITOR—BILL OF COSTS.

BILL OF EXCEPTIONS.

See PRACTICE—COMMON LAW—BILL OF EXCEPTIONS.

BILL OF EXCHANGE.

1. —— *Acceptance*—19 & 20 *Vict., c. 97, s.* 6—*Acceptance in writing.*] Actions on bills of exchange, accepted by the defendant, were dismissed on the ground that they were not properly accepted, the word "accepted" not appearing on the face of them before the name of the acceptor. PEARSON *v.* CRAWFORD, **Q. S. XII.** *M.* **162**; SHAW *v.* M'KELVEY **E. D. XII.** *M.* **185**

2. —— *Civil Bill against one of several joint acceptors—Dismissal for non-joinder of the other acceptors.*] Where several parties accepting a bill of exchange make themselves jointly but not severally liable, the drawer cannot select any one of them to be sued for the amount by civil bill, and if he does not make the others defendants the civil bill will be dismissed without prejudice. MEEK *v.* MAGENNIS - **Q. S. XV. 102**

3. —— *Practice—Necessity of affidavit upon which to obtain extension of time to defend.*] In an action under the Summary Bills of Exchange Act, the Court will not,, without an affidavit, extend the time within which the defendant may apply for leave to defend the action. HEWAT *v.* FITZSIMONS - **[E. II.** *M.* **42**

4. —— *Practice—Liberty to plead traverse, denial of consideration and* plene administravit—*Jurisdiction.*] In an action by payee of promissory note against the administratrix of the maker, under the summary procedure on Bills of Exchange Act, a motion by the defendant for liberty to plead a traverse of the making of the note, a denial of consideration, and a plea of *plene administravit* was granted. *Quære,* whether an action against executors or administrators is maintainable under 24 & 25 Vic., c. 43? O'CONNOR *v.* LEE - - **C. P. V. 135**

5. —— *Practice—Leave to sign final judgment—Specially indorsed writ—Leave to defend—O. I., r.* 2—*O. II., r.* 3—*O. XIII., r.* 1.] Where a defendant has obtained leave to appear and defend under the Summary Procedure on Bills of Exchange Act, the plaintiff cannot proceed under O. X—., r. 1, in order to obtain leave to sign final judgment as if the writ were a writ specially indorsed under O. II., r. 3. KIRWAN *v.* ROCHE - - - - - - **E. D. XII. 54**

6. —— *Practice—Leave to plead double.*] Leave was given to plead double where it was alleged that the note was signed by the defendant as security for a friend, and that it was discounted for only a small sum. FLOOD *v.* CAVANAGH **[C. C. VII.** *M.* **479**

7. —— *Practice—Leave to defend—Non-delivery of goods—Two bills.*] Leave was given to defend on the ground of the non-delivery of the goods for which the bill was given, and that there were two bills out for the debt really due, on both of which the defendant was liable to be sued. KIRBY *v.* BANNERETH - - - - - **C. C. VII.** *M.* **508**

8. —— *Practice—Leave to defend—Lodgment of money in Court—Interest.*] Leave to defend was given in an action under the Summary Procedure on Bills of Exchange Act, the defendant lodging the amount in Court, but without the interest which he stipulated to pay—60 per cent. LEWIS *v.* JOHNSTON - - - - **C. C. VII.** *M.* **439**

9. —— *Practice—Leave to defend—Fraud and misrepresentation.*] Leave was given to defend an action brought under the Summary Procedure on Bills of Exchange Act, where fraud and misrepresentation were charged by the defendant. LEWIS *v.* JOHNSTON - - - - **C. C. VII.** *M.* **448**

10. —— *Practice—Leave to defend—Forged signature.*] Leave to defend was given on the ground of the forgery to the signature to the bill. NATIONAL DISCOUNT CO. *v.* REILLY **[C. C. VII.** *M.* **526**

11. —— *Practice—Leave to defend*—19 & 20 *Vic., c.* 97, *s.* 6—*Acceptance in writing.*] Leave to defend an action on a bill of exchange was given, where it was alleged that the claim was discharged by the acceptance by the plaintiff of a sum of money, he giving a receipt in full; and that the bill was not endorsed "accepted." *Hindhaugh* v. *Blakey* (XII. M. 145) doubted. ABRAHAM *v.* KENNY **Q. B. D. XII.** *M.* **202**

12. —— *Practice—Leave to defend—Defective copy of affidavit served.*] A motion for leave to defend can be made *ex parte,* and if made on motion, will not be refused because the affidavit served is defective. MORROW *v.* MADINE **[C. C. VIII.** *M.* **554**

13. —— *Practice—Leave to defend—Copy affidavit not served.*] A motion for leave to defend need not be on notice; but a motion was adjourned till the affidavit supporting it was served on the opposite party. DILLON *v.* EASTWOOD **[C. C. VIII.** *M.* **448**

14. —— *Practice—Extension of time to plead—Forgery.*] The Court extended the time to plead where the defendant charged that the bills were forged. WATSON *v.* TORNEY **[C. C. VII.** *M.* **449**

15. —— *Practice—Leave to defend—Equitable grounds.*] Leave to defend on equitable grounds was granted, although an affidavit in reply disclosed matter of equitable replication. ROWAN *v.* WHITE - - - **C. C. VIII.** *M.* **54**

16. —— *Practice—Leave to defend—Application to remit.*] A motion for leave to defend an action under the Summary Procedure on Bills of Exchange Act was granted, and the action was remitted. GORDON *v.* HOOD, **C. P. VII.** *M.* **420**; BRADSHAW *v.* M'CARTNEY - - **C. C. VII.** *M.* **479**

17. —— *Practice—Leave to defend—Inspection of notes sued on—Summons—Motion—O. LIII., rr.* 2 (36), 6.] A motion for leave to defend was granted on motion of course, the defendant denying that he had signed any notes for the plaintiff or had any dealings with him. DWYER *v.* MURPHY **[E. D. XII.** *M.* **23**

18. —— *Practice—Leave to defend.*] Leave to defend an action on a bill of exchange was given, the bill having been given, the defendant stated, for no consideration, having been signed by him without knowing what he was doing. O'HANLON *v.* HOEY - - - - - **C. C. VII.** *M.* **399**

19. —— *Practice—Judgment by default—Computation of time for signing—Sunday—C. L. P. Act,* 1853, *s.* 232—*O. I., r.* 2—*O. LVII., r.* 2.] A judgment in an action on a bill of exchange, which was marked twelve days after the writ was served, was set aside, as Sunday was included in the computation of the twelve days. ULSTER BANKING CO. *v.* M'KENNEY **[Q. B. D. XIII.** *M.* **90**

20. —— *Practice—Entry of appearance—Judicature Act,* 1877—*Writ of summons specially indorsed.*] Since the Judicature Act, 1877, the procedure for the defendant to adopt is to apply for liberty to appear. ANON. **E. D. XII.** *M.* **36**

21. —— *Practice—Amendment of writ.*] The Court gave the plaintiff liberty to amend a writ already served, by striking out the notice endorsed on it, when it appeared that the bill was over six months due. HARRIS *v.* BROWNE **[Q. B. VII.** *M.* **489**

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BILL OF EXCHANGE—*continued.*

22. —— *Practice—Action on alleged promissory note not brought within six months—Amendment of writ.*] Where it appeared that an action brought on a promissory note was not brought within six months, and an allegation was made that the note did not come within the meaning of the Act, leave to amend the writ by striking out the notice under the 24 & 25 Vic., c. 43, was given. QUALEY *v.* DWYER [E. D. XVI. *M.* 106

23. —— *Practice—Action against personal representative.*] An action lies under the Summary Procedure on Bills of Exchange Act against an executor on administration. HEWAT *v.* DAVENPORT - - - - - - E. VI. 170

24. —— *Promissory note—Consideration—Contemporaneous agreement—Fraud—Pleading—Construction.*] In an action on foot of a promissory note the defendant pleaded, (1) that the note was given in consideration of goods to be sold and delivered, and that they were not sold and delivered; and (2) that it was given in consideration that the payee would cause to be delivered to the defendant a cargo of coals, and that he did not cause them to be delivered. A demurrer to the first plea was allowed, and to the second plea was overruled. KER *v.* M'KER - - - - - E. D. XII. *M.* 297

25. —— *Promissory note—Made by executors—Equitable plea.*] Upon the trial of an action upon a promissory note made by executors, leave was asked to file an equitable defence, that the defendants had made themselves personally liable by mistake, and that they had intended to charge the assets only. Leave was refused:—*Held*, that the plea would be bad, as a Court of Equity would not give the defendants, if their intention was as alleged, relief unconditionally. M'GILLICUDDY *v.* GALWAY - - - - - - C. P. II. *M.* 196

26. —— *Promissory note—Equitable plea—Demurrer.*] In an action on a promissory note a plea on equitable grounds was put forward stating a collateral agreement to accept payment out of the rents of certain lands, and that the defendant had offered to execute a deed for the purpose, and had tendered it to the plaintiff, but he refused, was held bad on demurrer. M'DONNELL *v.* FEENY - - - - E. I. *M.* 648

27. —— *Promissory note—Husband and wife—Note payable to wife, endorsed without husband's authority—Action by endorsee with notice—Estoppel.*] In an action against two defendants, M'L. and D., on a promissory note, made by them payable to S. M'L. or order, and by S. M'L. endorsed to the plaintiff, the defendant pleaded that S. M'L. was at the time of making the note, and still, the wife of the defendant, M'L., who signed the note as principal, and that D. signed as surety; that the note was made without value or consideration; and that S. M'L. then, being the wife of M'L., without his knowledge or authority, endorsed the note to the plaintiff, who had full knowledge of the premises. On demurrer to the defence, relying on estoppel:—*Held* (Fitzgerald, B., diss.), that the defence was good. M'CARTHY *v.* M'LAUGHLIN E. XI. 4

28. —— *Promissory note—New note—Action against co-surety.*] One of two joint makers (co-sureties for a third party) of a promissory note gave a new note, in which his brother joined him, got up the original note, and sued his co-surety in the original note for one half of the amount:—*Held*, that since no money had been in fact paid by the plaintiff for the defendant's use, the action could not be maintained. (By Deasy B.) WHELAN *v.* CROTTY - - Cir. Cas. II. *M.* 285

29. —— *Trust deed under English Bankruptcy Act*, 1861.] The Court refused a new trial of an action by the indorsee against the drawer of a bill of exchange drawn by S. The defence was on equitable grounds that by a deed of August, 1865, made under the English Bankruptcy Act, 1861, all the property of S. was conveyed upon trust to distribute among his creditors, and the creditors were to be at liberty to sue sureties. The bill was not due till September, 1865, and current at the

BILL OF EXCHANGE—*continued.*

date of the deed. The plaintiff had realised nothing upon it and the verdict had been found for him. HIBBERT *v.* CUNNINGHAM - - - - - - Q. B. I. *M.* 442

—— Acceptance by adult of, for debt contracted during infancy—Liability of *bonâ-fide* indorsee XIII. 40

See INFANT—CONTRACT.

—— Action on, remitting.

See REMITTING ACTION TO CIVIL BILL COURT. 2, 7-9, 12, 36.

—— Consideration - - - - - XIII. 52

See CONTRACT. 6.

—— Motion for final judgment—Specially indorsed writ.

See PRACTICE—JUDGMENT. 26, 31.

—— Pleading.

See PRACTICE—COMMON LAW—PLEADING. 18, 19, 35, 62.

—— Practice—Omission of indorsement on writ as to costs—Waiver - - - - - - XII. 46

See PRACTICE—WRIT OF SUMMONS. 6.

—— Practice—Extension of time to appear XII. *M.* 88

See PRACTICE—TIME. 3.

—— Unsigned by debtor—Money paid on account of debtor [VII. 141

See BANKRUPTCY—ARRANGEMENT. 35.

BILL OF PEACE—Claim to sea-shore - XIV. 70

See SEA-SHORE. 1.

BILL OF SALE.

1. —— *Bankruptcy—Reputed ownership—Bills of Sale Act*, 1879, *s.* 20—*Bills of Sale Act Amendment Act*, 1883, *s.* 7.] J. D., within three months of his being adjudged a bankrupt, gave a bill of sale of the chattels in his dwelling house to F. H., in order to induce him to withdraw an execution thereon. By the bill of sale it was provided that the chattels should not be liable to seizure or to be taken possession of by F. H. for any cause other than those specified in section 7 of the Bills of Sale Act Amendment Act, 1883. After the day stipulated for payment the grantee failed to take possession in default of payment:—*Held*, that the chattels being, with the grantee's consent, in the bankrupt's possession at the time of his bankruptcy, the bill of sale was void against the assignee in bankruptcy. *Re Stanley* (17 L. R., Ir. 487) discussed. *Re* JAMES DUNLOP - - - - B. (Local) XXIV. 68

2. —— *Mortgage by lessee of trade fixtures—Non-registration under* 17 & 18 *Vict., c.* 55—*Power of sale—Interpleader—Misdescription of claimant—Costs.*] C., the lessee of premises on which a cloth mill was erected, demised, by way of mortgage, the premises, including the mill and all the fixtures, erections, and appurtenances, to mortgagees, for all the residue of the term, with power to the mortgagees, in case of default, "absolutely to sell the premises or any part thereof, either altogether or in parcels." The mortgage was not registered under the Bills of Sale Act (17 & 18 Vict., c. 55), and the mortgagor remained in the apparent possession of the premises. A writ of *fi. fa.* having been issued by a judgment creditor, the following articles of machinery were seized on the premises by the sheriff: 1, a carding machine; 2, a billy; 3, a mule; 4, a tucking machine; 5, a steam engine and fly-wheel; 6, a steam winch. The first five of the articles were actually affixed to the mill building as part of the machinery for working the mill, for the proper working of which the use of them was necessary, but they could be unfastened and removed without injury to the building; and the first four of them had not been affixed to the building at the time of the mortgage, but had been afterwards substituted by the mortgagor for others

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BILL OF SALE—*continued.*

which had been there previously. The sixth article was bolted by six bolts to a stone of one ton weight, which lay upon the floor, and could be removed from or together with the stone. These articles were claimed by the mortgagees, and an interpleader issue was directed. In their claim and in the issue the mortgagees were described as "The Irish Civil Service Building Society," instead of as "The Irish Civil Service and General (Permanent Benefit) Building Society," which was their description at the time of and in the mortgage, or instead of as the trustees (naming them) of that society, which would have been the more proper description of the claimants:—*Held*, (1) That the technical objection created by the misdescription of the claimants could not be sustained when raised only at the trial after the substantial issue had been tried; (2) That the articles attached by the mortgagor to the mill building after the date of the mortgage passed thereby, as well as all the other articles; (3) That the first five articles were not personal chattels but fixtures; but, *semble*, that the sixth was a personal chattel and not a fixture; (4) That the mortgage deed gave no power to sever and sell the fixtures separately from the mill buildings, and that therefore, so far as it operated as a mortgage of the fixtures, as the building was included in the demise, the deed did not require registration under the Bills of Sale Act, but that the deed, so far as it operated as an assignment of the steam winch, required registration, and so far, being unregistered, was void as against the execution creditor. *Meux* v. *Jacobs* (L. R. 7, H. L. 481), and *ex parte Barclay, re Joyce* (L. R. 9 Ch. 576) followed. *Hawtrey* v. *Butlin* (L. R. 8 Q. B. 290), and *ex parte Daglish* (L. R. 8 Ch. 1072) distinguished. THE IRISH CIVIL SERVICE BUILDING SOCIETY *v.* MAHONY - - - - **Q. B. X. 153**

3. —— *Order and disposition—Consent of true owner—Demand of possession—Order for sale—Secured creditor—Salvage claim*—20 & 21 *Vic.*, *c.* 60, *s.* 313.] B., the holder of a registered bill of sale on the furniture in W.'s hotel, demanded possession on February 2nd from W., who said that his affairs were in the hands of his solicitors, without whose consent he could do nothing in the matter, and it was then arranged that they should meet at the solicitors' office on February 5th. Meantime on February 3rd W. left the country, and on attending at the office of the solicitors, as had been arranged, B. was advised by them to take possession, which he did forthwith. Meetings of W.'s creditors were subsequently held, at which his solicitors treated in terms B.'s bill of sale as a valid security. On March 9th W. was adjudged bankrupt on the act of bankruptcy committed in leaving the country on February 3rd, and the Court, by the order of adjudication, on the petitioner's application, sanctioned the making of arrangements with B. by the official assignees for carrying on the hotel business. Accordingly B. continued in possession, believing, and being so informed by the petitioning creditor's solicitors, that his bill of sale was valid, and that he would be paid out of the proceeds of the sale. Under that impression he made payments for gas and rent, in respect of which the Court declared him a salvage creditor on the proceeds to be received out of the premises. In the same way he was induced to bid for the hotel himself, on the understanding with the solicitors for the assignees that he would have to advance only a certain sum over the amount due to him, and for which he would get credit as against the purchase money: but creditors having objected that the amount so bid was insufficient, the hotel and furniture were, with his consent, sold to another person, under an order of the Court directing "the hotel premises" to be put up for sale by auction as a "going concern," and B. was treated as a necessary party to the deed of conveyance and giving up of possession to the purchaser. B. having claimed to be declared entitled to payment, out of the purchase money, of the amount due on foot of the bill of sale, which was resisted by the assignees, relying on the order and disposition clause of the B. and I. Act, 1857:—*Held*, that the demand of possession of the goods made by B. was, under the accompanying circumstances, insufficient to negative his consent to their remaining in the order and disposition of W.; that the order for sale was not sufficient, within the order and disposition clause, as it did not specify the goods, and having regard to the circumstances under which it was made; that the assignees were estopped by what had taken place from disputing B.'s right to rank as a secured creditor; and that, even independently of the doctrine of *estoppel in pais*, the assignees were equally precluded from so objecting, as the evidence established what was equivalent to a consent on their part, ratified, through their intervention or concurrence, by the Court, that the bill of sale should be declared a valid security, and that B. should be paid the amount out of the proceeds of the sale. *Ex parte* BRUNKER. *In re* WALSHE - - - - - - **B. XII. 87**

4. —— *Registration—Act of bankruptcy—Order and disposition—Reputed ownership—Evidence—Description of attesting witness.*] More than six months before his bankruptcy a trader executed a bill of sale to plaintiff. The goods were subsequently seized formally by plaintiff, but left in the custody of the trader's caretaker and on his premises. They were then seized by the sheriff under a *fi. fa.*, and were claimed by plaintiff, but refused. While they remained in the sheriff's possession the trader was adjudicated bankrupt on a subsequent act of bankruptcy. The jury found the bill of sale *bonâ fide*. On motion to change the verdict into one for defendants:—*Held*, that the goods were not in the bankrupt's order and disposition with the true owner's consent; that the seizure and demand by the true owner, though actuated by a mixed motive partly for the trader's benefit, prevented the operation of the reputed ownership clause. Whether the lapse of six months, before the fiat issued prevented the deed being an act of bankruptcy, for the purpose of invalidating it as fraudulent under 10 Car. I., sess. 2, ch. 3, *quære?* *Semble*, that in such case the assignees should show a debt still existed, which was due at the time of the execution of the deed. "Law Clerk of Carlow, in the county of Carlow":—*Held*, a sufficient description of the residence and occupation of an attesting witness to a bill of sale. M'CUE *v.* JAMES - - - - - **C. P. V. 77**

5. —— *Registration—Descriptions in bill of sale, how far to be taken in aid of defects in affidavit—"Trader"—"County" instead of "City" of Dublin—Reputed ownership—Goods in possession of trader at the time he becomes bankrupt—B. & I. Act*, 1857, *s.* 313—17 & 18 *Vict. c.* 55.] A bill of sale was executed by "John Campbell of Nos. 9 and 9½ Trinity Street, in the County of the City of Dublin, spirit retailer" and the witness thereto was described as "John Lahiff, 28, Fishamble Street, City of Dublin, law clerk," both descriptions being correct; but the affidavit filed on registration, under the Bills of Sale Act, stated that "the said John Campbell resides at Nos. 9 and 9½ Trinity Street, *in the County of Dublin, and is a trader.*" and that the residence of the witness was at "No. 28, Fishamble Street, *in the County of Dublin,*" there being no such places in the County of Dublin, as distinguished from the City or County of the City. The grantor was adjudged bankrupt on January 11th, on a creditor's petition, having committed an act of bankruptcy, on November 5th previous. After the act of bankruptcy, and with notice thereof, but before the order of adjudication, the grantee took possession of the goods, which till then continued in the bankrupt's order and disposition:—*Held*, that the description of the grantor, a spirit retailer or publican, as "trader" was too general, but might be supplemented by reference to the description in the bill of sale; that it was doubtful whether the bill of sale might be referred to in order to supplement the descriptions of the residences given in the affidavit as they contradicted those given in the bill of sale; and that the goods were in the bankrupt's order and disposition "at the time he became bankrupt" because they were so at the time of his committing the act of bankruptcy, and that they should be sold for the benefit of his creditors accordingly, under the reputed ownership clause of the B. & I. Act, 1857. JAMES *v.* MACKEN. *In re* CAMPBELL **[B. XII. 161**

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BILL OF SALE—*continued.*

6. —— *Registration of—Residence of grantor—Prior unsatisfied bill of sale—Interpleader.*] In an interpleader issue between grantee of bill of sale and execution creditor, the affidavit for registration stated that the grantor "is a gentleman, lately soda-water manufacturer," and that he "resides at No. 39, Clarinda Mount, in the County of Dublin." The bill of sale was absolute in form, but by a parol agreement was intended to take effect as a conditional security, collateral with a mortgage of the grantor's lands: the grantee was, under the same agreement, to hold the bill of sale in trust for a third person, who had advanced the loan and was to hold the goods for the benefit of the grantor if the loan was repaid by sale in the first place of the lands. The trust did not appear by the bill of sale as registered. The grantor had given a prior registered bill of sale to another grantee, which had been paid off, but no memorandum of satisfaction had been entered:—*Held*, 1st, on motion for a new trial, that the outstanding bill of sale could not be set up as against the claimant; 2ndly, that the affidavit for registration of the claimant's bill was sufficient; 3rdly, that registration was unnecessary, if possession was taken by the claimant before the seizure in execution, though after the expiration of the time for registration. Whether, if possession not taken, the trusts should have appeared in registration, *quære*? Whether technical objections not urged on the hearing of an interpleader summons can be relied on at the trial, *quære*? *Per* Whiteside, C. J.—Interpleader issues that may involve points of nicety regarding rights of property were not intended to be tried in the Consolidated Court. SMITH *v.* WHITE **[Q. B. V. 74**

7. —— *Registration—Share of ship—Owner.*] The mortgagor of a ship, or shares in it, is not to be deemed to cease to be the owner.—Merchant Shipping Act, 1854, sec. 70. Although a bill of sale of a ship or shares in it be absolute in its terms, the Court is entitled to ascertain by evidence if it be only a mortgage. Registration of a bill of sale four years after its execution will not convert the party registering it into an owner, if he was not such before. "THE JANE" - - - **Adm. V. 31; Ch. A. V. 188**

8. —— *Statement of consideration "truly set forth"—Bills of Sale Act, 1883, s. 8—Form.*] A bill of sale "in consideration of the sum of £50, now paid to the said B. W. by the said M. W.," assigned with M. W. certain goods and chattels therein specifically described, by way of security for the payment of the sum of £50 and interest thereon. No sum of £50 was at the execution of the bill of sale paid to B. W.; the only money which passed was a sum of £10 solicitors' costs, but there had been previous money transactions between the parties, in which B. W. was indebted to M. W. for over £50. B. W. having made default in payment of the sum secured, M. W. seized the goods and chattels under the bill of sale. B. W. brought an action against M. W. claiming £50 damages for trespass and trover:—*Held*, that the bill of sale was entirely void, as the consideration was not "truly set forth," within the meaning of sec. 8 of the Bills of Sale Act, 1883, and that the seizure being therefore a trespass, the plaintiff was entitled to a decree for £50 and costs. WHELAN *v.* WALSH **E. D. XXIV. 75**

9. —— *Statement of consideration—Modification of, by verbal agreement—42 & 43 Vict., c. 50, s. 8.*] A bill of sale reciting that £4 3s. 7½d. was then due from the grantor to the grantee, and that the grantor had requested the grantee to join in securing him to certain banks for £86 and £29, and such further or other sums as the grantee might advance to or for the grantor, or the grantee might be obliged to pay in consequence of his having become, or being about to become, or hereafter becoming surety for the grantor, stated that the consideration was £4 3s. 7½d. then due, and the agreement of the grantee "to undertake or join in certain liabilities" and such further or other sums in which the grantor might become indebted to the grantee: and it was further provided "that the sums to be secured hereby shall not exceed

BILL OF SALE—*continued.*

£300, nor shall it be obligatory on the grantee to advance any sum or undertake any liability beyond those already verbally agreed upon and at present existing." On the trial of an interpleader issue the grantee deposed: "The arrangement was I would secure or assist my brother (the grantor) to the extent of £300. It was agreed that I would secure and make advances to my brother; the limit to be £300." It was objected that the agreement so proved was that the grantee was bound to advance £300 while the bill of sale only stated that this was the limit of the advance; but, on a new trial motion it was *Held* (Dowse, B., *diss.*) that the substance of the consideration was truly stated, within the meaning of the Bills of Sale (Ir.) Act 1879 (42 & 43 *Vic., c.* 50, *sec.* 8.) QUANE *v.* QUANE **[E. D. XV. 98**

—— Apparent possession - - - **XI. 153**
See BANKRUPTCY—ACT OF BANKRUPTCY. 11.

—— By way of mortgage—Evidence to contradict **VII. *M.* 56**
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BISHOP—Sequestration by—Priority of - **II. *M.* 225**
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BLACK LIST—Libel.
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DEFAMATION—PRIVILEGE. 2.
PRACTICE—COMMON LAW—PLEADING. 30.

BOARD OF WORKS LOAN—Instalments—Presentment **[XX. 47.**
See GRAND JURY—PRESENTMENT—BOARD OF WORKS LOAN.

BOND.

1. —— *Action on penal—Claim for principal and interest exceeding penal sum—Slip in decree—Power of correction.*] The House of Lords decided against a claim for principal and interest on a penal bond which together amounted to a larger sum than the penal sum; and corrected an order which had been made relative thereto in which it was not stated that no more than the penal sum could be recovered. HALTON *v.* HARRIS - - - - **H. L. XXVI. *M.* 379**

2. —— *Construction—Joint or several obligation.*] An action was brought to recover £200 upon a bond in the following form: "We, A, B, C, & D, are held and firmly bound to E in the sum of £50 each, to be paid to E, his executors, administrators and assigns, to which payment, well and duly to be made, we hereby bind us and each of us, our and each of our heirs, executors and administrators, and every one of them by these presents":—*Held*, affirming the Common Pleas Division, that the bond was a separate bond of each obligor, binding each to pay £50, and that the payment of £50 by A, after breach, was no answer to the action against B. ARMSTRONG *v.* KELLY - - **C. A. XV. *M.* 138**

3. —— *Penalty—Liquidated damages.*] Defendant, a builder, was liable under a bond to a penalty of £10 per week for every week during which, after a day fixed, any materials remained upon the premises, or the work remained incomplete:—*Held*, that these were liquidated damages. BONSALL *v.* BYRNE **[E. H. *M.* 6**

4. —— *Voluntary—Promise in consideration of marriage—Assignment of policy of insurance.*] Before the marriage, in 1850, of J. to H., niece by marriage of M., who had a policy of insurance for £300, M. verbally promised J. and H. that he would make a suitable provision for her. In 1854 M. executed to J. a bond conditioned to pay him, his executors, &c., £200 on the day of M.'s decease, and in 1860 assigned the policy in trust for persons, amongst whom H. and J. were not named. M.'s assets were £67. On a bill praying that the assignment might be declared fraudulent:—*Held*, that

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BOND—*continued.*
the bond given to J. was voluntary, the promise to make suitable provision for H. being too vague to form a consideration for it. M'Askie *v.* M'Kay - - **R. II.** *M.* **411**
—— Action on—Principal and Surety—Pleading **III.** *M.* **22**
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—— Judgment on—Amendment of entry of **XXIII. 8, 54**
See Practice—Amendment. 6.
—— Judgment on—Rate of interest - - - **X. 18**
See Interest. 5.
—— Shares—Bequest - - - - **XI. 165**
See Will—Legacy. 7.

BOROUGH FUNDS—Surplus - - **VIII. 131**
See Municipal Corporation—Property. 1.

BOTTOMRY BOND.
See Ship—Bottomry Bond.

BREACH OF PROMISE OF MARRIAGE.
—— Pleading.
See Husband and Wife. 6.
Practice—Common Law—Pleading. 48, 49.
—— Remitting action.
See Remitting Action to Civil Bill Court. 48, 83-85.

BREACH OF TRUST.
See Cases under Trustee—Breach of Trust.

BRIDGES—Repair of—Justices' order **III.** *M.* **352**
See Grand Jury—Presentment—Bridges.

BUILDING CONTRACT.
——*Fixed time for completion—Power to extend time—Power to take up works—Satisfaction of company's estate agent—Forfeiture of plant and materials.*] A building contract provided that the work should be finished by a day named, with power to the company's estate agent to extend the time in certain events, and also that if the contractor should not progress in the execution of the works in all respects to the satisfaction of the said estate agent it should be lawful for the company, without giving any notice, to take the works out of the contractor's hands. The estate agent, under the said power, extended the time and gave the contractor a reasonable time after the day named. On a demurrer by the plaintiff to a statement of defence, relying on the above-mentioned power of entry:—*Held*, that as the defence admitted the allegation in the statement of claim that the acts complained of were done before the extension of time so given had expired, the defendants could not exercise the power relied on simply on the ground of delay up to a time within such extended period, although they might have exercised it on the proper grounds, even before the extension of time given had expired; and, accordingly, that the defence was bad. *Walker* v. *London and N.-W. Railway Co.* (L. R. 1 C. P. D. 518), distinguished. Mohan *v.* Dundalk, Newry, and Greenore Railway Co.
[E. D. XV. 11
—— Arbitration clause - - - - **IV.** *M.* **591**
See Arbitration. 2.

BUILDING COVENANT—Lease - **V. 3**
See Landlord and Tenant—Lease. 1.

BUILDING SOCIETY—*Benefit Building Society—Reasonable fines*—6 & 7 *Wm.* IV. *c.* 32. *s.* 1.—*Laches.*] A Building Society, under one of its rules, charged fines against a borrower for non-payment of monthly instalments of loans in such a manner that they were cumulative and increased in arithmetical progression. The rule was ambiguous in its terms and admitted of several constructions:—*Held*, that the rule being ambiguous, must be construed strictly against

BUILDING SOCIETY—*continued.*
the Society which sought to enforce it. A puisne incumbrancer had notice of all the proceedings in the matter. Some months after the schedule of incumbrances had been ruled, he sought to re-open the accounts of the petitioner, a Building Society, on the ground that they were inequitable, unwarranted by the rules, and illegal. A portion of the funds sufficient to meet his claims remained in Court:—*Held*, that notwithstanding his laches, the accounts might be re-opened on payment of costs by the puisne incumbrancer, it appearing that part of the proceeds of the sale remained in Court, and that the account itself could not be sustained. *Re* Tierney's Estate - - - - - **L. E. C. VIII. 29**

BURIAL GROUND.
1. —— *Fee to incumbent for permission to erect headstone—Prescription—Irish Church Act*, 1869, *ss.* 19, 26.] The incumbent of a parish has still a right to charge a reasonable fee for permission to erect a tombstone in the burial ground attached to the parish church, and also to determine on the suitableness of any inscription thereon, notwithstanding that prior to the passing of the Irish Church Act, 1869, no such fee may have been exacted in point of fact. (By Lawson, J.) Representative Church Body *v.* Warnock
[Cir. Cas. XX. 28

2. —— *Right of burial—Right to demand fees—Climbing over gate and digging grave—Trespass—Irish Church Act*, 1869, *s.* 26.] Where no burial fees were chargeable before the passing of the Irish Church Act, no fees are now chargeable; but though a person may have a right of burial in a graveyard, he cannot assert his right by climbing over the gate and digging a grave in the early morning without asking the permission of the clergyman. Morgan *v.* Semple **Q. S. XXVII.** *M.* **543**

3. —— *Right of burial—Churchyard vested in incumbent and churchwardens—Irish Church Act*, 1869—*Notice to incumbent—Trespass.*] An incumbent has no power to allocate to any particular family, or to the persons for the time being resident in a parish, the whole of a churchyard vested in the Representative Church Body since the passing of the Irish Church Act; and no right of burial exists in such a churchyard except in the case of a parishoner, or, perhaps, a stranger dying in the parish. The incumbent is entitled to reasonable notice of an intention to bury in the churchyard. Irish Church Representative Body *v.* Lowry - - **Q. S. XXVII. 24**

4. —— *Right of incumbent to charge a fee on an interment—Irish Church Act*, 1869, *ss.* 19, 26.] The incumbent of a parish has the right to charge a fee on an interment in the burial ground attached to the parish church, notwithstanding that prior to the passing of the Irish Church Act, 1869, no such fee may have been exacted in point of fact. (By Dowse B.). Representative Body of Church of Ireland *v.* Langan - - - - - **Cir. Cas. XXIV. 11**

5. —— *Right to erect railing around grave—Fees to rector—Irish Church Act*, 1869, *ss.* 12, 25, 26—*Irish Church statute*, 1889, *c.* 12, *s.* 9.] "A right of and in respect of burial" (Irish Church Act, 1869, s. 26) does not include a right to place a railing around a grave without procuring the proper sanction and paying the prescribed fee. (By Gibson, J.). Morgan *v.* Smith **Q. S. XXVI.** *M.* **334; Cir. Cas. XXVI. 130**

6. —— *Trespass—Right of rector to burial fees—Irish Church Act*, 1869, *ss.* 11, 12, 19, 22, 26.] The rector of a parish has no right to charge fees for the burial of a parishioner in the graveyard vested in the Church Representative Body by the Irish Church Act, 1869, in the absence of immemorial usage, though such fees were approved of by the Select Vestry and Diocesan Council. (By Holmes, J.) Church Representative Body *v.* Neill
[Q. S. XXVI. *M.* **335; Cir. Cas. XXVI.** *M.* **419**

BYE-LAW—Railway Company.
See Cases under Railway—Bye-Law.

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CALLS—Company—Enforcing - - XII. 2
See COMPANY. 1.

CAMPBELL'S ACT.

1. —— *Liability of Poor Law Guardians—Negligence—Fever Hospital—Insufficient attendants to watch over patients*—6 & 7 *Vic., c.* 92, *s.* 16—25 & 26 *Vic., c.* 83, *ss.* 3, 4—*Pleading—Orders of Poor Law Commissioners not averred—Cognizance of, on demurrer.*] No action lies against Guardians of the Poor for not providing proper attendants to watch over a fever patient in an hospital attached to the union workhouse, their duty being, not to provide such attendants for the patient, but to select and appoint such staff of paid attendants as the Poor Law Commissioners should by their order warrant and direct. *Livingstone* v. *Guardians of Lurgan Union* (2 M. 210) distinguished. *Semble* (*per* Fitzgerald, J.), that no action lies against Guardians of the Poor in their corporate capacity for negligent omission in carrying out their administrative duties. On demurrer to a summons and plaint against Poor Law Guardians for omitting to provide sufficient attendants to watch over a patient in a fever hospital, the Court will not take cognizance of orders, made by the Poor Law Commissioners under statutory powers, where such orders have not been averred on the pleading. BRENNAN *v.* LIMERICK UNION GUARDIANS - - - - Q. B. D. XII. 33

2. —— *Liability of Poor Law Guardians for servants' neglect—Care of patients in fever hospital—Provision for attendance*—6 & 7 *Vic., c.* 92, *s.* 16—25 & 26 *Vic., c.* 83, *ss.* 3, 4—*Pleading—Sufficiency of averment of breach of duty.*] In an action under Lord Campbell's Act, and the Act amending the same, the first paragraph of the summons and plaint averred that the defendants, as Guardians of the Poor of Limerick Union, had the care or management of a hospital for fever patients, which hospital was attached to the union workhouse, and that the plaintiff's son was received by them as a fever patient in the hospital for reward to the defendants; yet that the defendants conducted themselves so negligently, carelessly, and improperly towards him while he was an hospital patient, that he left his bed, fell out of a window at the hospital and was killed. The second paragraph, after averring in like manner that the defendants had the care or management of the hospital, alleged that the defendants, as such Guardians, were bound to provide proper attendance for, and to have a person continually to look after such patients as should be admitted to the hospital, that the plaintiff's son, being then suffering from fever, was received by them as a hospital patient; yet, that the defendants did not provide proper attendance for, or have a person constantly to look after him while he was a patient, but, on the contrary, conducted themselves so negligently, carelessly, and improperly towards him, that he fell out of a window belonging to the hospital and was killed:—*Held*, on demurrer, that both paragraphs were bad. BRENNAN *v.* LIMERICK UNION GUARDIANS - - - - Q. B. XI. 134

3. —— *Measure of damages—Present profit—Reasonable expectation of future advantage—Evidence—Practice—New trial motion—Judgment—O. XXXIX., r.* 8.] In an action under Lord Campbell's Act (9 & 10 Vict., c. 93, as amended by 27 & 28 Vict., c. 95), in which the plaintiff claimed damages for the death of his son B., caused by injuries sustained through the defendant's negligence, it appeared that B., at the date of his death, was aged fourteen years and two months, and had been for about three years attending school, where he was specially trained for commercial pursuits, and where it was expected he would have remained a couple of years more; but during his three vacations (one month, one week, and three weeks) the plaintiff used to send him to his second shop to look after the shop assistants, and to assist the plaintiff generally in his business, which was that of a spirit grocer and general merchant, and the plaintiff being also the manager of a post and telegraph office, B. was sometimes employed in riding out with telegrams; and the plaintiff also stated that he himself was frequently absent from home, and that his son, who was very good and dutiful, was useful at plaintiff's farm. B. was not in receipt of any wages, but he was intended for the mercantile business of the plaintiff, and, though then too young, he would have been fit to be put into the shop had he lived till seventeen, at which age, in the plaintiff's opinion, his services would have been worth to plaintiff £20 per annum, which would have increased to £100 at the age of twenty. The plaintiff (aged fifty) admitted that he "turned" about £7,000 per annum on his business, and that his income was sufficient for him to live and enable him to provide for his family. At the close of the plaintiff's case the defendants applied for a direction, on the ground that there was no evidence of pecuniary loss within the statute; but the judge declined to withdraw the case from the jury, who found for the plaintiff £150 damages. Upon a motion for a new trial, on the ground of misdirection, and of the verdict being against the weight of evidence, and on the motion by the defendants for judgment under O. XXXIX., r. 8:—*Held*, that there was no evidence of damage to the plaintiff within the statute proper to be submitted to the jury; and that judgment should be entered for the defendants under O. XXXIX., r. 8. *Condon* v. *Great S. and W. Railway Co.*, (16 Ir. C. L. R. 415) discussed. BURKE *v.* CORK AND MACROOM RAILWAY CO. - - - - - E. D. XIII. 171

4. —— *Negligence—Damages—Pecuniary loss occasioned by death—Evidence—Onus of proof.*] In an action under Lord Campbell's Act, by a daughter, who was a laundress, for injury resulting from the death of her mother, it appeared that the deceased had resided with the plaintiff, by whom she was boarded and lodged, and that she assisted in the laundry and in looking after the house. There was no evidence that the pecuniary value of the cost of the support of the deceased or of the services rendered by her exceeded the cost of her support:—*Held*, that there was no evidence from which the jury could reasonably come to the conclusion that the value of the services rendered by the deceased was greater than the cost of her support, the plaintiff had not proved pecuniary loss, and that the verdict should be set aside. In order to entitle a plaintiff to succeed in an action under the Act, the existence of pecuniary loss must be affirmatively established, and it is not sufficient to prove a state of facts which is as consistent with the absence as with the existence of such loss. *Duckworth* v. *Johnston* (4 H. & N. 653), disapproved. HULL *v.* GREAT NORTHERN OF IRELAND RAILWAY CO. - E. D. XXIV. 101

5. —— *Negligence—Master and servant—Fellow-servant in common employment—Direction.*] A. was employed to assist in removing the cargo of a ship in port, and was under the direction of one who was only described as the "officer." This person, who acted as superintendent at the removal of the cargo, took down the names of the employees, but whether by the authority of the captain or not did not appear; nor did it appear even whether or not the captain was on board. After having been directed to go below, A. on his return, while passing along the deck, which was obstructed and badly lighted, fell down an open hatchway and was killed. In an action under Lord Campbell's Act the judge directed a verdict for the defendants, the shipowners:—*Held*, that the judge was right in directing that there was no evidence of negligence on the part of the defendants, either through their agent, the captain, or in selecting the servants through whose negligence the accident occurred, for that negligence on the part of a servant is not necessarily evidence of incompetence, so as to throw on his employers the onus of showing that they had exhibited due care in selecting him:—*Held*, further, that though a captain may be presumed to be in command of a ship when on a voyage, this presumption cannot, in the absence of direct evidence, be extended to the case of a ship in port. M'CARTHY *v.* BRITISH SHIPOWNERS' CO. - - - - E. D. XVII. 21

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CAMPBELL'S ACT—*continued.*

6. —— *Pleading — Setting aside pleas as embarrassing — Traversing that negligence was cause of injury—Contributory negligence.*] In an action under Lord Campbell's Act, against the defendant for having by his negligence caused the death of A. B., the defendant pleaded that, admitting the negligence, it was not by reason thereof that the said A. B. was injured; and also a plea of contributory negligence, which contained an averment that, by reason of his want of ordinary care, A. B. directly contributed to the misfortune alleged. On a motion to set aside the pleas as embarrassing:—*Held*, that the traverse that the negligence was the cause of the injury would be set aside; but that the plea of contributory negligence should be amended, by substituting the terms "occurrence of the injuries" for the term "misfortune." WESTON *v.* HUNT.
[C. P. VIII. 115

7. —— *Pleading — Duplicity — Mixing tort and contract — Two causes of action in one count.*] The first count of the summons and plaint averred that Robert Parsons was employed by the defendant, on the terms that the defendant should take due and ordinary care not to expose him to extraordinary danger, yet the defendant did not take due and ordinary care not to expose the said Parsons to extraordinary danger; and through the negligence of the defendant in not having a proper apparatus for securely lighting the room of the defendant, in which the said Parsons was engaged, said Parsons was injured, and died. The second count averred that said Parsons became servant to the defendant on the terms that the defendant should provide proper materials and apparatus for lighting the room in which said Parsons should be engaged; yet the defendant negligently provided improper materials &c., for lighting the room in which said Parsons was working, the dangerous nature of which improper materials was well known to the defendant and not to the said Parsons; and in consequence of such negligence said Parsons was injured and died:—*Held*, that both counts were double and embarrassing; and that they should be amended by striking out of both the averments of negligence, and by striking out of the second the averment of defendant's knowledge of the dangerous nature of the materials. PARSONS *v.* O'TOOLE
[Q. B. VIII. 72

8. —— *Pleading—Servant's knowledge of dangerous nature of employment.*] In an action against employers for negligence resulting in the death of a servant, knowledge and acquiescence on the part of the servant regarding the dangerous nature of his employment is a defence which ought to be pleaded as such, and not merely evidence of a defence of contributory negligence; and a plea on the ground that for a reasonable time before the injuries the deceased was aware of the dangerous nature of the employment (the facts creating the danger being set out), and the defendant was ignorant thereof, will not be set aside as embarrassing. *Scott* v. *Dublin, Wicklow and Wexford Railway Co.* (11 I. C. L. R. 377) and *Tuff* v. *Warman* (5 C. B. N. S. 573), followed. *Hoey* v. *Dublin and Belfast Junction Railway Co.* (I. R. 5 C. L. 206), discussed. RATTRAY *v.* CORK AND MACROOM RAILWAY CO.
[E. D. XIII. 121

9. —— *Traverse of pecuniary loss by family—Amendment.*] To an action under Lord Campbell's Act the defendant pleaded that "no pecuniary loss was sustained by the family of the said Thomas Whitty, by the death of the said Thomas Whitty," *nor was any pecuniary damage sustained by the family of the said Thomas Whitty, by reason of the loss of the said Thomas Whitty's actual or possible earnings*:—*Held*, that the plea should be amended by inserting the names of the relatives and stating that no loss was sustained by them or any of them; and by omitting the words in italics. WHITTY *v.* JACKSON - - - C. P. III. *M.* 425

—— Death of intoxicated railway passenger - XXVI. 17
See RAILWAY—PASSENGER. 4.

CANAL COMPANY—*Flooding.*] In an action for damages for flooding lands by reason of the canal company not keeping up the banks of the canal, the chairman decided that the company should put the place in repair. CASEY & COX *v.* MIDLAND G. W. RAILWAY CO., - - Q. S. I. *M.* 632

CAPACITY—Testamentary.
See Cases under LUNATIC—CONTRACTS AND DISPOSITIONS.

—— To execute deed - - - - XIV. 1
See DISENTAILING DEED.

CAR-DRIVER—Refusal to stop to take up passenger—Fine
[X. *M.* 48
See JUSTICES—OFFENCES. 16.

CARRIAGE OF PROCEEDINGS—Bankruptcy.
See BANKRUPTCY—CARRIAGE OF PROCEEDINGS.

—— Landed Estates Court.
See Cases under PRACTICE—LANDED ESTATES COURT—CARRIAGE OF PROCEEDINGS.

CARRIERS.

1. —— *Agent—Evidence of contract.*] The plaintiff brought cattle to the agent (H.) of a steam packet company, at the North Wall, Dublin, and said that he wanted to book them to Leicester. H. said it was all right, and that they were in time for the boat. The cattle were put on board and some were injured. H. at the trial admitted that he used to book for the defendants, but stated that he derived his authority from his own company and that he intended to contract for them, not for the defendants:—*Held* (affirming the Court of Queen's Bench), that there was evidence to go to the jury that H. had authority to, and did, contract for the defendants. M'COURT *v.* L. & N. W. RY. CO.
[Q. B. III. *M.* 156; E. C. III. *M.* 539

2. —— *By sea—Carriage of goods—Special contract—Agent—Wharfinger—Notice.*] A plaint alleged the delivery to the defendant of the plaintiff's goods to be safely carried on board the "Ceres" from L. to D. for freight, and averred that the defendants did not safely carry, &c. The first plea traversed the contract. The others alleged that the defendants were not responsible for loss arising from the negligence or misconduct of their officers or crew, and averred that the goods were lost by those means. It was conceded that the ship and cargo were lost by the neglect of the captain and crew. The plaintiff purchased the goods of K. who forwarded them to their wharfingers, who gave to K's carters a receipt on the face of which were printed conditions and (amongst others) one that the defendants would not be responsible for any damage arising from any default or negligence of any of their officers or crews. The plaintiff proved that he knew nothing of any alleged special contract or of the wharfingers' receipt:—*Held*, that the contract was not unreasonable, and that it was sufficient if notice of the condition was brought home to the party, even a servant, who delivered the goods. ALEXANDER *v.* MALCOLMSON - - C. P. II. *M.* 299
[This was affirmed on appeal. I. R. 3 C. L. 578.]

3. —— *Carriers' Act—Non-delivery within a reasonable time—Temporary loss of goods—Non-declaration of value—Non-payment of increased rate—Delay.*] Where goods exceeding £10 in value, and of the description specified in the 1st section of the Carriers' Act (1 W. IV. c. 68), are delivered to a common carrier, without declaring their nature and value, and paying an increased rate for carriage, as notified and required, the carrier is exempted by the statute from liability for delay in the carriage caused by his having temporarily lost the goods. WALLACE *v.* DUBLIN AND BELFAST JUNCTION RAILWAY COMPANY - - - C. P. VIII. 163

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CARRIERS—*continued.*

4. —— *Conditions limiting carriers' liability—Railway and Canal Traffic Act*, 1854, *sec.* 7—*Regulation of Railways Act* 1868—*Regulation of Railways Amendment Act*, 1871, *sec.* 12—*Reasonable conditions—When to be decided—Demurrer—Pleading—Statute.*] In an action for loss of and injury to goods booked at "through" rates for conveyance by land and by sea, the railway company with whom the contract was made pleaded conditions in the contract exempting them from liability—firstly, where the loss and injury occurred while shipping, during its voyage, or the landing; and secondly where it occurred through the default of the master and crew of the vessel by which the goods had been conveyed during a part of the transit. Upon demurrer to the pleas:—*Held*, that the conditions were null and void under the 7th section of the 17 & 18 Vict., c. 31, as limiting the liability of the defendants for the default of them or their servants, no facts appearing on the pleadings to show that the conditions were "just and reasonable within the concluding proviso of the section." MOORE v. THE MIDLAND RAILWAY CO. C. P. VIII. 165

5. —— *Contract—Impossibilty of performance—Delay in carriage occasioned by operation of statute—Contagious Diseases (Animals) Act*, 1878—*Declaration of owner—Licence by local authority—Duties of consignor and carrier—Delivery within a reasonable time—Construction of pleading.*] In an action against a railway company by a consignor of cattle delivered in Ireland to be forwarded to March and Lynn in England, the statement of claim alleged (par. 4) that the defendants did not deliver 20 of said cattle at Lynn within a reasonable time, but delayed and detained them in trucks and waggons after their arrival at Lynn for a long and unreasonable time, whereby the cattle were injured; and (par. 5) that the defendants did not deliver 25 of the said cattle at March within a reasonable time, but on the contrary delayed them for a long time in trucks and waggons on the journey between Liverpool and March, whereby they were injured. The defendants, by their statement of defence, pleaded (par. 14) to the 4th paragraph of the statement of claim that the defendants were always ready and willing to deliver the 20 head of cattle at Lynn within a reasonable time, but were prevented from so doing by the causes thereinafter mentioned. They then referred to the Contagious Diseases (Animals) Act, 1878, and stated that by an order of the Privy Council made in pursuance of that Act the county of Norfolk, in which Lynn is situate, was declared to be an area infected with foot and mouth disease, and that under the 4th schedule of the said Act and the orders of the Privy Council of January 3, 26, 1881, it became unsafe to move the cattle from the trucks in which the same had arrived at Lynn except by a licence of the local authority granted on conditions prescribed by the Orders in Council; and they averred that no such licence was forthcoming when the cattle arrived at Lynn. The local authority of and for the county of Norfolk refused to allow the cattle to be, and prevented the same from being, moved out of the said trucks unless and until such licence was obtained and produced to their proper officer; and the defendants averred that such licence was afterwards obtained and produced to the officer, whereupon the local authority permitted the cattle to be remove from the trucks, and the defendants thereupon forthwith removed the same and delivered them to the plaintiff. They further pleaded (par. 15) to the 5th paragraph of the statement of claim, referring to the same Sanitary Act and Orders in Council, and stating that the defendants carried the cattle with due and reasonable speed as far as the town of Peterborough, on the borders of the county of Norfolk, and that it was unlawful to move or carry the cattle from Peterborough to March without a licence of the local authority of the county of Norfolk, and that previous to the arrival of the cattle at Peterborough the plaintiff had not obtained such licence, nor was any such licence given; and by reason of the premises it became unlawful to carry the cattle further on the journey, and the cattle were prevented from being so carried for a time, and did remain at Peterborough for a time. To the 14th paragraph of the defence the plaintiff replied that one of the conditions prescribed by the Privy Council upon which the said licence would be granted was, that the owner of the cattle would make and sign a declaration, as in the schedule to the order set forth, and the plaintiff as owner of the cattle made and signed the said declaration, and at the request of the defendants, and before the cattle were dispatched from Liverpool on the way to Lynn, delivered the declaration to the defendants, but the defendants did not forward the declaration to Lynn with the cattle, so as to have the same forthcoming when the cattle arrived at Lynn or March, but, on the contrary, negligently made default in so doing; that the local authority at Lynn was always ready and willing to grant the licence upon the production by the defendants of the declaration, and the refusal of the local authority to allow the cattle to be removed from the waggons was occasioned by the neglect and default of the defendants in not producing the declaration to the said local authority. To the 15th par. of the defence the plaintiff replied to the effect that the licence there referred to was obtainable from the proper local authority on the arrival of the cattle at Peterborough by the production to the local authority of a declaraion in writing made by the plaintiff and delivered by him to the defendants before the departure of the cattle from Liverpool, and which declaration the defendants negligently and improperly omitted to produce to the said local authority, by reason whereof a licence for the removal of the cattle from Peterborough could not for a long time be obtained, and the delay in the 15th par. mentioned was occasioned thereby. The defendants having demurred to those replications on the ground that they did not disclose any contract or obligation upon the part of the defendants to forward the declaration to the local authority:—*Held*, allowing the demurrer, that the defendants were under no obligation, by any express or implied contract, or by reason of any duty otherwise imposed on them, to procure the licences, nor was any duty imposed on them to forward the declaration; but that, the contract being to carry and deliver within a reasonable time, and not at any specified time, the case did not fall within the doctrine that if a person contracts absolutely to do a certain act he is not discharged from his obligation by the supervention of circumstances rendering performance difficult or impossible; while for delay in carriage within such reasonable time, occasioned by the regulations of the Act and Order in Council, they would not be responsible under the circumstances appearing. LYNCH v. THE MIDLAND RAILWAY CO. [Q. B. D. XVI. 115

6. —— *Contract—Condition exempting from liability for loss of goods—Carriage partly by canal and partly by sea*—17 & 18 *Vic., c.* 31—26 & 27 *Vic., c.* 92—31 & 32 *Vic., c.* 119—34 & 35 *Vic., c.* 78.] The provisions of the Railway and Canal Traffic Act, 1854 (17 & 18 Vic., c. 31), declaring null and void any conditions made to exempt railway and canal companies from liability for losses on their railways or canals, arising from neglect or default of their servants, are not extended by the subsequent Acts, 26 & 27 Vic., c. 92; 31 & 32 Vic., c. 119; and 34 & 35 Vic., c. 78, so as to include the case of a "through" contract entered into with a steamship company, not being the owners or lessees of a railway or canal, nor contractors working such for the carriage of animals, which, after being shipped at a canal, are lost or injured during their subsequent carriage by sea. *Doolan* v. *Midland Railway Co.* (L. R. 2 H. L. 792) distinguished. MURPHY v. DUNDALK AND NEWRY STEAM PACKET CO. - - - - - - Q. S. XIII. 183

7. —— *Duty.*] Common carriers of cattle by rail are bound to carry only when they can reasonably be expected to have waggons at the station from which the cattle are to be carried, and they are only bound to forward them with reasonable diligence. (By Fitzgerald, J.) M'NAMARA v. GREAT SOUTHERN AND WESTERN RAILWAY CO. - Cir. Cas. I. *M.* 120

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CARRIERS—*continued.*

8. —— *Fruit—Transhipment—Refusal of consignee to accept goods—Damages.*] When an action was brought for damages for the non-delivery of grapes in Dublin which had been brought to Glasgow by one steamer, and were to have been sent on to Dublin by another, and the consignee refused to take them as the transhipment would deteriorate them, damages were given at the value of the grapes at the time they would have been sold by the consignee, and not at the time they should have been received by him. CONNOLLY *v.* WOTHERSPOON - - - - - - **M. III.** *M.* **240**

9. —— *Notice—Carriers' Act.*] The notice prescribed by the 2nd section of the Carriers' Act (1 Wm. IV., c. 68) must be affixed in a part of the office so public and conspicuous that its contents shall be legible to persons resorting to the office for business, and transacting that business in the ordinary way while standing outside the counter. (By Pigot, C. B.) COLLIS *v.* MIDLAND G. W. RAILWAY CO. **Cir. Cas. II.** *M.* **542**

10. —— *Sea—Liability of shipowner—Charter party—Meaning of "perils of the sea"—New trial motion—Setting aside verdict against weight of evidence.*] The Court will set aside a verdict and grant a new trial where the weight of evidence greatly preponderates against the finding of the jury, but will not interfere when it becomes a question of balancing the weight of evidence on each side. When a shipowner enters into a contract to stow, carry, and deliver goods he is bound to deliver them in the same condition as he received them, and, in order to escape liability for loss or damage, he must bring himself within the terms of the exceptions mentioned in the charter party. The exception "perils of the sea" does not cover every accident or casualty which may happen; something must happen which could not have been forseen and guarded against. FITZMAURICE *v.* JORDAN & SONS **[C. A. XXVI. 53**

11. —— *Stoppage in transitu—Part delivery of goods after arrival—Transitus completed—Storing goods for convenience of consignees.*] In an action by the plaintiffs, the consignees of goods sent to them according to order from the consignors in Glasgow, against the defendants, the public carriers of the goods, for damages for non-delivery of a portion of the goods, all of which had arrived, and a portion of which had been delivered:—*Held,* that the transitus was complete, and that the consignors could not exercise their right of stoppage in transitu. KEARSE, COWLEY & Co. *v.* DUBLIN AND GLASGOW STEAM PACKET COMPANY - **C. P. D. XVII. 26**

—— Damages—Remoteness - - - **XII. 145**
See DAMAGES. 4.

—— Railway Company.
See Cases under RAILWAY—CARRIAGE OF GOODS.
RAILWAY—PASSENGER.
RAILWAY—PASSENGER'S LUGGAGE.

—— Railway Company—Injury to pigs by lime-wash in pens under order of Privy Council - - **XV.** *M.* **115**
See CONTAGIOUS DISEASES (ANIMALS) ACT, 1878. 2.

CASE STATED.
See PRACTICE—CASE STATED.

—— Justices.
See JUSTICES—APPEAL FROM. 1, 2.

CAVEAT.
See Cases under PROBATE—PRACTICE.

CERTIFICATE—Bankruptcy.
See Cases under BANKRUPTCY—CERTIFICATE.

—— Shares—Lodgment in Bank—Order and disposition **[I.** *M.* **66**
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CHANCERY LETTING—*Letting before Receiver Master—Occupying tenant.*] The Court, though it has jurisdiction to set aside a letting by a Master, will not, except in a very clear case, interfere with the exercise of his discretion. An occupying tenant, though it may in general be right to select him, has not any absolute claim to preference. FORTESCUE *v.* ARMSTRONG - - - - - - **B. II.** *M.* **281**

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CHARITY—GIFT TO.

1. —— *Bequests for Masses for ever—Construction of will —"Thenceforth" to accrue—"Each Sunday in the year"—Perpetuity.*] A testator directed a sum to be invested in stock, and the dividends "thenceforth" to accrue due thereon to be applied in having three Masses offered up in a certain Catholic Church named "on each Sunday in the year" for the benefit of her soul and the souls of relatives, the bequests to be entered in the records attached to such church, so as to ensure the fulfilment at all times of the objects of the said bequests:—*Held*, that the bequests were void. *Attorney-General* v. *Delany* (X. 34), and *Beresford* v. *Jervis* (XI. 128), followed. M'COURT *v.* BURNETT - - - **R. XI. 130**

2. —— *Clergymen officiating in K. for time being—Perpetuity—Transfer of fund to executors' private account—Controlling power of Court—Power of Commissioners of Charitable Donations—Costs—Appeal—Laches—Explanation of delay.*] A testator bequeathed legacies to his wife for life, and then to B.; and in the event of B. dying and not leaving any legitimate issue, or not leaving a wife after him, then in such event he bequeathed all principal lodged at interest as aforesaid and bequeathed to his wife and B. "to the Roman Catholic clergymen officiating in the parish of Kells for the time being to be disposed of in charitable and pious uses as they might think fit." B. died without leaving any wife or child. After their deaths no steps were taken towards the formation of a scheme for the charity, the three clergymen officiating at Kells at the testator's death having ceased to have any connection with the parish. The executor withdrew some of the interest from the bank, and lodged it to his private account, on a ground which the circumstances did not justify:—*Held*, that he should lodge the money in Court, and that the survivors of the clergymen should bring in a scheme; the executor to forfeit some of his costs for this action. Leave to appeal, after time expired for, refused, no sufficient ground being shown. ATTORNEY-GENERAL *v.* KELLY - - **R. XI. 131 note**

3. —— *Convent.*] A bequest in trust "for the use of the Franciscan Convent of W." is bad. WALSH *v.* WALSH **[V. C. III. *M.* 446**

4. —— *Devise for charitable purposes to Bishop and his successor—7 & 8 Vic., c. 97, s. 16—10 Car. I., sess. 3, c. 15.*] A testatrix by her will devised a freehold interest and all her other property, real and personal, "to the Right Rev. Dr. Dorrian, Roman Catholic Bishop of Down and Connor, and his successor in said bishopric," subject to payment thereout of a terminable annuity; and then added, "I also leave to the Right Rev. P. Dorrian, R. C. Bishop, and his successor, the sum of £2 annually, chargeable upon said property, for the purpose of having masses said for the happy repose of my soul, and those of all the other members of my family." The testatrix died within three months after the making of her will:—*Held*, that the devise of the freehold interest was not a devise for charitable uses within the 16th section of 7 & 8 Vic., c. 97. ROBB *v.* DORRIAN - - - - **C. P. X. 4**

[Affirmed on appeal, I. R. 11 C. L. 292.]

5. —— *Devise of land in trust for—7 & 8 Vic., c. 97, sec. 15.*] 7 & 8 Vic., c. 97, does not vest lands in the Commissioners if

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the trusts declared by the gift or devise are different from those mentioned in section 15 of that Act. CULLEN *v.* COMMISSIONERS OF CHARITABLE DONATIONS **R. IV. *M.* 779**

6. —— *Grant of land for purposes of—Parties—Attorney-General—Trustees of the charity.*] The Court will not consider a suit to set aside a grant of lands for charitable purposes properly constituted, even though the trustees of the charity are parties, unless the Attorney-General be made a party or has received notice of the action, so as to enable him to determine whether he will interfere or not for the protection of the charity. FAGAN *v.* HOWLEY - - - **R. XXII. 7**

7. —— *Perpetuity—Bequest for masses for ever—Bequest for maintenance of grave and monument.*] A testatrix bequeathed the dividends thenceforth to accrue on certain stock to be paid for the celebration of masses, upon every Sunday and other days stated in every year, in a certain Catholic chapel named, for the benefit of her soul and the souls of her parents and other relatives; also for the purpose of keeping in order the tombs of certain relatives; and the remainder of the interest to be paid to her daughters for life, and after their death to be appropriated, while the world lasts, for the celebration of masses for the benefit of her soul and the souls of her relatives:—*Held*, that the bequests were void. *Attorney-General* v. *Delany* (X. 34); *Ricard* v. *Robson* (31 Beav., 244); *Fowler* v. *Fowler* (33 Beav., 616), followed. *Dillon* v. *Reilly*, as reported, I. R. 10 Eq., 152, explained. BERESFORD *v.* JERVIS **[R. XI. 128**

8. —— "*Works of charity such as masses for repose of soul*"—*Uncertainty—Charitable Donations Act*, 1844, *s.* 16—"*Pious or charitable uses*" *in Ireland—Death of testator within three months after execution of will.*] A testator, who died within three months after the execution of his will, directed by it that "my executors are to take to themselves a discretionary sum to pay them for their trouble, and to apply the residue to works of charity, such as masses for the eternal repose of my soul, and whatever else they may judge most charitable":—*Held* void, for uncertainty, and because testator died within the three months. BOYLE *v.* BOYLE **[V. C. XI. 130 note**

—— Administration action—Parties - - **IV. *M.* 472**

See PRACTICE—CHANCERY—PARTIES. 1.

—— Bequest for masses—Legacy duty - - **X. 34**

See REVENUE—LEGACY DUTY. 1.

—— Legacy duty - - - - **II. *M.* 353**

See REVENUE—LEGACY DUTY. 2.

CHARITY—MANAGEMENT—Cy près—*Trust for maintenance of choir—Purchase of organ out of accumulations.*] King Charles II. granted to the Bishop of Cork and his successors a rectory, with all its tithes, &c., on trust to apply them in maintaining a suitable choir and daily choral service in the cathedral. A surplus had arisen out of the specified funds. The cathedral having been recently taken down, the organ was sold; and the new cathedral having been nearly completed, a petition was presented for leave to employ part of the surplus in buying and erecting a new organ suitable to the enlarged cathedral:—*Held*, that part of the surplus not required for the *literal* fulfilment of the donor's intention might be applied in purchasing an organ which was essential for carrying that intention into effect. TRUSTS OF THE RECTORY OF ST. JOHN **[V. C. III. *M.* 175**

CHARITY—SCHEME.

1. —— Cy près — *Statute of limitations — Express trust — Purchaser for value.*] A decree directing a scheme for a charity, *cy près*, under a trust deed of 1726, was made against a purchaser under a deed of 1809, with notice of the trusts of the deed of 1726, on the grounds that the purchaser was an express trustee of the land, and that time was no bar. ATTORNEY-GENERAL *v.* DAVIS - - **V. C. IV. *M.* 738**

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CHARITY—SCHEME—*continued.*

2. —— *Eleemosynary foundation—Selection of objects of charity according to religion—Towns Improvement Act.*] By letters patent dated 1577 a hospital was incorporated in N. R., and it was provided that the master and his successors, and the heirs of G., the founder, with the consent and advice of the sovereign and four seniors of the Council of the town, should have the power of selecting a secular priest to celebrate divine service—and the poor; and that the heirs of G. should with the like advice and consent elect the master. In 1861 a scheme was prepared, and the Lord Chancellor held that it was an eleemosynary institution; that its benefits were not confined to members of the Established Church; that it was not necessary to have a secular priest as part of the governing body; and that the entire body of the Town Commissioners represented the sovereign and four seniors of the Council (see 11 Ir. Jur. N. S. 107). A person was appointed to represent the heirs of G:—*Held*, by the Vice-Chancellor, that he was concluded by the judgment of the Lord Chancellor so far as it went; that it was an eleemosynary charity; that no secular priest was necessary, and that the poor might be of any religion; that the scheme was not warranted in making the Protestant and Roman Catholic clergymen members of the governing body; or in providing for members of those religions to be elected alternately:—*Held*, also, that the Town Commissioners should only approve and consent to the elections of the poor, by the master and the representatives of G, and to the election of the master by the representatives of G. ATTORNEY-GENERAL *v.* TOTTENHAM - **V. C. IV.** *M.* **689**

CHARITY—TRUSTEE.

1. —— *Appointment of—Provision for appointment of future trustees.*] On a petition to appoint a new trustee of a charity, praying that a scheme should be settled whereby persons filling certain offices should, by virtue thereof, be trustees of the charity:—*Held*, that the Court had no power to settle a scheme whereby such persons should ex officio be trustees; and that, at most, particular persons might be empowered to appoint future trustees. *Re* CALDBECK'S TRUSTS **[V. C. VIII. 119**

2. —— *Permanently resident abroad—Appointment of new trustee—Jurisdiction—13 & 14 Vic. c. 60, s. 32.*] Under sec. 32 of the Trustee Act 1850 (13 & 14 Vic. c. 60), a new trustee of a charity may be appointed in substitution for a trustee permanently resident out of the country. *Re* LEPER HOUSE TRUSTS - - - - - - **V. C. XVIII. 1**

CHARTER—University - - **I.** *M.* **213**
See UNIVERSITY.

—— Party.
See SHIP—CHARTERPARTY.

CHEQUE—Payment by.
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—— Stopping of - - - **XXVI.** *M.* **659**
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CHURCHWARDEN—Vestry Act—Pews in parish churches **[I.** *M.* **47**
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—— Against estate of deceased.
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MORTGAGE—EQUITABLE MORTGAGE. 6.

CLERK—Solicitor's.
See Cases under SOLICITOR—CLERK.

COLLECTOR-GENERAL OF TAXES—*Vacancy in office—Opposition to insolvent's discharge—Municipal Act, 12 & 13 Vic., c. 91, sec. 70.*] The Court cannot entertain an opposition to the discharge of an insolvent on behalf of the Collector-General of Taxes pending a vacancy in the office. *Re* BUSHE - - - - - **In. IV.** *M.* **200**

COLLISION.
See Cases under SHIP—COLLISION.

COMMISSIONER FOR TAKING AFFIDAVITS.

1. —— *English for Irish Courts.*] A special order is necessary to appoint a gentleman resident in England, who already is a Commissioner for the English Court of Chancery, to be a Commissioner to the Irish Court of Chancery. *Re* KNOCKER **[C. XI.** *M.* **217**

2. —— *Petty Sessions Clerk.*] A Clerk of Petty Sessions is the most eligible candidate for appointment as a Commissioner for taking affidavits. *Re* GRAHAM **[Q. B. I.** *M.* **101**

3. —— *London—Practice—Affidavits.*] On an application for appointment as a Commissioner for taking affidavits and examining witnesses in London and the adjoining country:—*Held*, that no additional Commissioner will be appointed without proof of inconvenience existing, and of actual necessity for the additional appointment. *Held*, also, that the petition and certificate in support thereof must be verified by affidavit. *Re* PULLING - - - - - - - **C. V. 132**

COMMISSIONERS OF NATIONAL EDUCATION IN IRELAND—Report of Inspector—Application for production of - - - - **VII. 160**
See PRACTICE—COMMON LAW—SUBPŒNA. 4.

COMMON LODGING HOUSE—*Sanitary Acts—Non-residence of landlord—Unfurnished apartments.*] The landlord of a house in the City of Dublin, all the rooms of which are let out in tenements by the week at rents less than three shillings per week, although he does not reside on the premises, is the keeper of a common lodging house within the meaning of the Dublin Improvement Acts Amendment Act, 1864, sec. 24. HALLIGAN *v.* GANLY - - **C. P. II.** *M.* **603**

COMPANY.

1. —— *Enforcing of calls—Practice—25 & 26 Vic., c. 89, sec. 138-51 G. O., 1862.*] When it was necessary to have a question determined by the Court, respecting the enforcing of calls against a contributory to a company in voluntary liquidation, the Court directed that the matter should be brought forward on motion grounded on an affidavit as to the facts and question involved. *Ex parte* HAMMERSMITH SKATING RINK CO. - - - - - **R. XII. 2**

2. —— *Paid-up shareholder—Contributories.*] Paid-up shareholders in a limited company are, as members of the company, contributories under the Companies' Act, 1862, though the company be insolvent. *In re* THE HOLLYFORD MINING COMPANY - - - - - **R. I.** *M.* **25**

3. —— *Reduction of capital—Use of the words "and reduced"—Companies Acts, 1867, 1877.*] In proceedings for the reduction of capital under the Companies Acts, the words

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COMPANY—*continued.*

"and reduced" were dispensed with during the interval between the presentation of the petition and the hearing. *In re* CORK STEAM SHIP COMPANY, LIMITED - **R. XIX. 48**

4. —— *Winding-up—Liberty to distrain.*] The Court has power under sec. 87 of the Companies' Act, 1862, to give liberty to distrain for rent after an order for winding-up of the company has been made. *Re* ROYAL MARINE HOTEL COMPANY - - - - - - - **R. I. *M.* 337**

5. —— *Winding-up — Injunction — Sale of chattels real — Execution—Rights of creditors—Sheriff's expenses and costs.*] It was resolved on the 13th of December, 1867, that the company should be wound up voluntarily, and a liquidator was then appointed. He closed the buildings. On the 16th of January, 1868, execution creditors lodged with the sheriff a *fi. fa.* marked for £745 0s. 8d. He was not able to seize any movable goods and advertised for sale by auction the Company's chattel interests in the lands. Next day it was ordered that the voluntary winding-up should be continued under the supervision of the Court. The aggregate debts of the Company amounted to £44,366 19s., and the capital, except a small irrecoverable amount, was paid up. On the motion for an injunction to restrain the execution creditors from levying under the execution, or seizing or selling any of the Company's goods or chattels, and particularly their chattels real:—*Held*, that the injunction should issue, but without prejudice to the execution creditors' priority created by lodging the *fi. fa.* with the sheriff. *Re* DUBLIN EXHIBITION PALACE AND WINTER GARDEN CO. - - - **V. C. II. *M.* 22**

6. —— *Winding-up.*] A company was ordered to be wound up when the petitioner had applied for shares in it, and lodged the deposit with the Company's bankers, but had never received any allotment, and so marked judgment against it. *Re* THE OULA MINING CO. *Ex parte* WHITECROFT **[R. I. *M.* 688**

7. —— *Winding-up—Duties of official liquidator and official assignee—Dividends.*] In the winding-up of a joint stock company in bankruptcy, a considerable sum of money is declared to be due to a former solicitor of the Company as a dividend on foot of his claim, and he gives to several creditors to whom he is himself indebted orders on the official liquidator in whose hands the fund is, for payment of those creditors; the Court will consider that having such a duty cast upon either the official assignee or official liquidator will be foreign to the legitimate purposes for which they were appointed; and as one of the parties to whom such orders were given filed a cause petition in Chancery to compel the official liquidator to pay it, the Court will refuse the application, and direct the official liquidator to retain the funds until further order. *Re* DUBLIN CATTLE MARKET COMPANY **[B. I. *M.* 193**

8. —— *Winding up—Bankruptcy.*] Upon an application for the winding-up of a company the Master of the Rolls intimated that he saw no advantage in sending the case to the Court of Bankruptcy, under sec. 73 of the Companies' Act, 1862, but would keep the case in his own Court. *Re* KINGSTOWN MARINE HOTEL COMPANY. - - **R. I. *M.* 227**

—— Companies' Act, 1862—Extension of time to appeal **[VII. 143**

See PRACTICE—CHANCERY—APPEAL. 1.

—— Interrogatories—Practice - - - **XII. 171**

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—— Liquidator—Security for costs by - **XII. *M.* 161**

See PRACTICE—SECURITY FOR COSTS. 2.

—— Money lodged by—Petition for payment out **IV. *M.* 472**

See PRACTICE—CHANCERY—PAYMENT OUT OF COURT. 2.

—— Petition—Adjudication—Bankruptcy - **VII. 18**

See BANKRUPTCY—PETITION. 1.

COMPANY—*continued.*

—— Petition—Verifying affidavits - - **I. *M.* 246**

See PRACTICE—CHANCERY—AFFIDAVIT. 10.

—— Winding-up—Restraining proceedings in other Court **[XIII. 74**

See PRACTICE—INJUNCTION. 6.

COMPENSATION.

1. —— *Negligently keeping dangerous animal—Award by magistrate.*] A plea of payment of compensation awarded by a police magistrate against the defendant's servant, and acceptance thereof, is a good defence to an action for negligently keeping a dangerous animal. M'NULTY *v.* HOPE **[E. IV. *M.* 739**

2. —— *Summary Jurisdiction Act—Negligent driving—Award by magistrate*—14 & 15 *Vic., c.* 92, *sec.* 14—*Pleading.*] Action for injuries done to the female plaintiff by the neligent driving of the servant of the defendant. Plea (in substance) that the servant of the defendant had, in pursuance of an order by a magistrate, paid in respect of the injuries 30s. to the proper officer of the police court:—*Held*, that the defence was bad, since under the 14 & 15 Vic., c. 92, an award by a magistrate of compensation is not a bar to an action. M'GARRY *v.* FAIRBAIRN - - - - **E. III. *M.* 779**

—— For Disturbance.

See LANDLORD AND TENANT (IRELAND) ACT, 1870. 5, 45-52, 80-138, 163-168.

—— For Improvements.

See LANDLORD AND TENANT (IRELAND) ACT, 1870. 1, 2, 47-50, 53, 54, 98-127, 139-156.

—— Landed Estates and Land Judges' Court

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COMPULSORY PILOTAGE.

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CONCEALMENT—Birth.
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—— Material fact—Life policy - - - **II. *M.* 369**
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CONSOLIDATION—Actions.
See Cases under PRACTICE—COMMON LAW—CONSOLIDATION OF ACTIONS.

—— Petitions—Landed Estates Court - - **I. *M.* 337**
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CONSTRUCTION—Statute.
See Cases under STATUTE.

CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.

1. —— *Conclusiveness of Veterinary Inspector's Certificate as to existence of disease—"Lawful excuse"—Absence of knowledge.*] Where a person is charged before the magistrates under this Act, evidence is not admissible for the purpose of contradicting the fact certified, viz., that the animal was diseased; but is admissible for the purpose of showing that the person charged had no knowledge of the existence of the disease, and could not with reasonable diligence have obtained that knowledge. Such absence of knowledge is a good defence. LEONARD *v.* RICHARDS - - - - **E. D. XXV. 58**

2. —— *Carrier—Negligence—Pigs injured by lime-wash in cattle-pens—Order of Privy Council requiring use of lime-wash—Pleading.*] To a statement of claim in an action for the loss of pigs which had been penned by the defendants in a pen at the station negligently covered with lime-wash, by reason of which the pigs were damaged, and averring the duty of the defendants to have fit and proper places provided for the pigs till they were placed in the train or carried to their destination, the defendants by their defence averred that they were bound by the provisions of the Act; that an order of the Privy Council had been made and published requiring loading pens to be disinfected with lime-wash, and that it was necessary for the defendants to pen all pigs; that the disinfecting with lime-wash was pursuant to the order, and that it was the lime-wash that injured the pigs. To this defence the plaintiffs demurred, and the Court of Exchequer Division and the Court of Appeal allowed the demurrer on the ground that the defence afforded no *primâ facie* answer to the charge of negligence alleged, and that it was consistent with the defence that the pigs might have placed in a pen while still wet from the application of the lime or chloride of lime wash, or that there were some means whereby the defendants could have prevented the injury caused by the lime. SHAW *v.* GREAT S. AND W. RAILWAY CO.
[**C. A. XV. *M.* 115**

—— Contract—Carrier - - - **XVI. 115**
See CARRIERS. 5.

CONTEMPT OF COURT.

1. —— *Affidavit by person charged.*] The Court has jurisdiction to originate proceedings for a contempt which has been committed in the presence of the Court. A person alleged to be guilty of contempt should not be required to make an affidavit respecting the language constituting the alleged offence, which offence might be made the subject of indictment. *Re* BARRY.
[**C. P. III. *M.* 295, 313**

2. —— *Attachment—Debtors Act (Ir.), 1872, ss. 5, 6, 27—Detention by gaoler of prisoner attached for contempt of Court—Duty of gaoler to keep prisoner in custody until the Court orders his discharge—Pleading—Demurrer.*] The Debtors Act (35 and 36 Vic., c. 57) does not apply to attachments for contempt of Court in not lodging money to the credit of a cause pending. The duty of a gaoler is to keep a prisoner, committed to his custody for contempt by reason of the non-payment of a sum of money which the Court has ordered him to pay, until the Court has made an order for his discharge. A plaintiff averred in his statement of claim that he had been arrested and committed to prison, to the custody of the defendant, as governor of the prison, under a writ of attachment issued against the plaintiff by the Court for his disobedience of its order, directing him to lodge a sum of money to the credit of a cause pending therein. At the expiration of one year from the date of his arrest and imprisonment he (the plaintiff) required the defendant, as such governor, to discharge him from custody; that the defendant refused to do so, and illegally kept the plaintiff in prison for five weeks after the expiration of the period of one year. To this the defendant pleaded that no order for the discharge of the plaintiff had been made by the High Court of Justice, nor any other Court; nor had any writ of *habeas corpus* been issued out of any Court to bring up the body of plaintiff. The plaintiff demurred to this defence on the ground that the detention of the plaintiff in prison by the defendant after the expiration of one year from the date of his committal was illegal, and contrary to the statute in that behalf (the Debtors Act), and that there was no obligation on the plaintiff to obtain an order for his discharge from any Court, or to sue

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CONTEMPT OF COURT—*continued.*

out a writ of *habeas corpus* to bring up his body:—*Held*, that the plea was good, because the Debtors Act does not refer to attachments for contempt of Court, such as that committed by the plantiff. *Held*, further, that where a person is arrested for contempt of Court, even where the contempt consists in the non-payment of a debt, the duty of a gaoler is to keep the prisoner until the Court has made an order for his discharge. *Moone* v. *Rose* (L. R. 4 Q. B. D. 486) distinguished. *Graves* v. *Keane* (L. R. 4 Ex. D. 73) applied and followed. M'COMBE *v.* GRAY - - - - - - **E. D. XIII. 118**

3. —— *Attachment—Discharge from custody.*] An old lady, who had been attached for contempt of Court, was not put in prison owing to her age, but was under surveillance. The money, for the non-payment of which she was attached, was paid, but a deed which she had been directed to lodge was not lodged, and her solicitor stated to the solicitor for the opposite party that he would search for it. The Court ordered her discharge. GALLAGHER *v.* GALLAGHER. - **V. C. VIII.** *M.* **400**

4. —— *Attachment—Discharge from custody.*] A solicitor had been committed for contempt in not lodging certain books and documents in the cause, and subsequently another attachment order was made against him for the non-payment of a sum of money. An affidavit which expunged the contempt by non-production of the documents, and stated that the books were no longer wanted—the suit having been concluded—having been made, a motion for his discharge under the first order was granted without prejudice to the second order. MURRAY v. TRACEY - - - - - **V. C. VIII.** *M.* **400**

5. —— *Habeas corpus—Solicitor—Warrant of committal—Offence committed in open Court—Warrant not stating that opportunity to show cause was given before sentence*—14 & 15 *Vic. c.* 93 *s.* 9.] A solicitor was adjudged guilty of contempt of Court of Petty Session, and was committed to gaol; the warrant stated that he had been offered an opportunity of showing cause why he should not be committed to gaol. A motion for a *habeas corpus*, grounded on affidavits which were stated to contain averments that he was not, in fact, afforded the opportunity of showing cause, was refused, the warrant being correct on the face of it, and the contempt being admitted. *Semble*, it was not necessary in such a case to give him an opportunity of showing cause. *Re Pollard* (L. R. 2. P. C. C. 106) considered. *In the matter of* REA - - **Q. B. D. XIII.** *M.* **120**

6. —— *Interference with auction ordered by assignees—Jurisdiction.*] An auctioneer employed by the assignees of a bankrupt, for the purpose of auctioning his goods, is an officer of the Court of Bankruptcy; and interference with him in such auction, for the purpose of preventing bidders, or depreciating the goods, constitutes contempt of Court. Where an appeal is brought on the ground that the order appealed from was against the weight of evidence, the order will not be reversed unless the Appellate Court are satisfied that some obvious and signal mistake has been made. *Re* MURPHY **[B. XI. 40; Ch. A. XI. 43**

7. —— *Letter and pamphlet sent to Judges about to try a case.*] The defendant was ordered to show cause why he should not be attached for contempt of Court in sending to the Judges of the Exchequer Chamber a letter and pamphlet discussing the decision of the case in the Court below, and on apologising, was excused. CORCORAN *v.* PROSSER. **[E. C. VII.** *M.* **557, 558**

8. —— *Lis pendens—Newspaper comment—Statement as to division of jury on former trial—Liability of printer or compositor.*] The publication by a newspaper—pending the second trial of the action—of the proportion in which the jury at the first trial were divided, especially if accompanied by a comment on the conduct of a dissentient juror, is contempt of Court, as being calculated to affect the verdict in the second trial and to interfere with the course of justice. *Semble*, a person employed as one of several printers or compositors, who takes no part

CONTEMPT OF COURT—*continued.*

either in the direction or composition of the libel, cannot be made responsible for it. SHEEHY *v.* THE "FREEMAN'S JOURNAL" CO., LIMITED - - **E. D. XXVI. 47**

9. —— *Motion to discharge attachment.*] A defendant had been attached immediately on his return from England for not answering interrogatories which had been served on him when he had to go to England on pressing business. He had since answered them. A motion for the discharge of the attachment was granted. SEAVER *v.* HENRY - **E. VII.** *M.* **219**

10. —— *Sale by order of Court—Interference by the solicitor of a third party—Attachment.*] An accepted proposal for a lease for 31 years contained this term:—That the tenant should not sublet the house without the landlord's permission in writing. An auctioneer put up the house for sale under a decretal order. The landlord's solicitor M. attended the sale and objected aloud to its being proceeded with; cautioned the auctioneer against proceeding with it, as the landlord's consent had not been obtained; and read aloud the passage against subletting, but did not otherwise interfere with the sale. The property was sold for £10, and the auctioneer stated his belief that it ought to have produced from £20 to £30 more. The Master granted an attachment for contempt against M.:—*Held*, on appeal, that an attachment for contempt could not be granted under such circumstances, and that the Master's order should be reversed, but without costs. DORAN *v.* KENNY. **[R. II.** *M.* **242**

11. —— *Solicitor—Warrant of Committal—Title—Statement of offence charged—Time of imprisonment—Offence not stated and opportunity of showing cause not given before committal—Scandalous affidavits—Habeas corpus*—9 & 10 *Vic. c.* 95. *s.* 113—14 & 15 *Vic. c.* 93. *s.* 9.] A solicitor was committed for contempt of Court in a Petty Sessions Court. On a motion for *habeas corpus*:—*Held*, (1) that the provisions of the Petty Sessions Act, 1851, sec. 9, apply to professional persons engaged in case at hearing as well as to the public; (2) that it was not necessary to entitle the warrant in the case pending when the contempt was committed; (3) that the warrant showed that a contempt of Court had been committed; (4) that it was not necessary to state that there were one or more justices sitting with the presiding justice who signed the warrant; and (5) that the applicant's name, the gaol, and the length of term of imprisonment were fully set out. *Held*, further (*hesitante*) that the applicant should be discharged from custody, as it did not appear that he had an opportunity of answering the offence charged. *Re Pollard* (L. R. 2, P. C. C. 106), considered. *Re* REA **[Q. B. D. XII. 126**

12. —— *Verbal order to arrest—Petty Sessions (Ir.) Act*, 1851 (14 & 15 *Vic., c.* 93), *s.* 9.] Where a verbal order is made by a justice sitting in Petty Sessions to arrest a person for a contempt committed in Court, under the provisions of 14 & 15 Vic., c. 93, s. 9, the justice is not to be made responsible for any irregularities that may occur subsequently in the carrying out of the order, when the order and arrest are practically contemporaneous, though the arrest is effected outside the court-house. MITCHELL *v.* SMYTH **[Q. B. D. XXVII. 133**

—— Election Petition.
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—— Bankruptcy.
See Cases under BANKRUPTCY—CONTEMPT.

—— Counsel.
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—— Inducing intending purchaser to withdraw **IX. 80**
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—— Insolvency - - - - - - **I.** *M.* **691**
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See WILL—LEGACY. 3.

CONTINUING PROCEEDINGS.

See PRACTICE—CONTINUING PROCEEDINGS.

CONTRACT.

1. —— *Completion of.*] Articles of agreement for the purchase of an estate were executed in pursuance of an arrangement made three days before:—*Held*, that the contract was not complete till the signing of those articles. WATERFORD *v.* MALCOMSON - - - - - - **C. II. *M.* 716**

2. —— *Completion—Sale—Difference of price.*] A contract for the purchase of goods may be complete although there is a difference about the price of them. *In re* BEHAN **[B. III. *M.* 239**

3. —— *Consideration—Furnishing bill of costs—Promise by third party to pay.*] The furnishing by A. to B., at his request, of a bill of costs for business done for a third person is not a sufficient consideration to support a promise by B. tc pay the amount of such bill of costs to A. GARDINER *v.* M'CULLY - - - - - - - **C. P. XI. 74**

4. —— *Consideration—Not moving from the plaintiff.*] A plaint, in an action on a contract, was demurred to because it did not show that any consideration moved from the plaintiff:—*Held*, that the demurrer should be allowed, the plaintiff not having intervened in the consideration as well as in the contract. M'COUBRAY *v.* THOMPSON **C. P. II. *M.* 60**

5. —— *Illegality—Public policy, agreement against—Sheriff's sale, under execution, of equity of redemption—Sale by sheriff subject to conditions—Prior mortgage—Consent of parties interested, how far valid—Promise to procure breach of duty by public officer.*] A., the owner of a chattel interest had mortgaged it to the plaintiff. A judgment was subsequently recovered against A. by B., who placed his execution in the hands of the sheriff. While this execution was in the hands of the sheriff, but before sale, the plaintiffs entered into an agreement with the defendant, the solicitor of B., that in consideration of the plaintiffs as mortgagees consenting to the sale by the sheriff of A.'s interest, the defendant would take care to have the same sold, guarded by proper conditions of sale, so that the sale should be completed, and the plaintiffs' mortgage debt should, in the first instance, be paid out of the proceeds of the sale. The sale was carried out by the sheriff without the interest of A. being guarded by the conditions agreed upon, and the present action was brought against the defendant for such alleged breach of agreement. On demurrer to the statement of claim:—*Held*, that the demurrer should be allowed, inasmuch as the sale by the sheriff was the act of an officer of a Court of Justice, in discharge of his duty, and that such sale would be a violation of that duty on two grounds: (*a*) That a sale of the judgment debtor's interest, being an equity of redemption only, was not authorised by the writ of *fieri facias* under which the sheriff acted; and (*b*) that the application of the proceeds of the sale was to be to a person other than to the execution creditor. *Held*, further, that while the writ of *fieri facias* was in the sheriff's hands unexecuted, the mortgagees, the execution creditor, and the mortgagor might together have made an effectual sale of the term, through an agent of their own, and might have applied the proceeds of such sale as agreed between them. MOHER *v.* O'GRADY. **[E. D. XIII. 146**

6. —— *Illegality—Public policy, agreement against—Bill of exchange—Illegal consideration—Agreement not to institute proceedings for forgery—Duress.*] To an action by drawer against acceptor, to recover the amount of a bill of exchange, the defendant pleaded that the consideration for the bill was tainted with illegality, inasmuch as a portion of that consideration was an agreement by the drawer not to institute criminal proceedings for an alleged forgery against B. S., a relative of the acceptor. On demurrer to this defence:—*Held*, that the defence could not be sustained because, the agreement not being one to stifle criminal proceedings already commenced, but to forbear from instituting criminal proceedings, that portion of the consideration for the bill was nugatory but not illegal, inasmuch as, although there is a public interest that a prosecution already instituted, even without a probable cause, should be brought to a conclusion in due course of law, there is no such interest in a prosecution being commenced. *Held*, further, that the giving of evidence by the plaintiff in a prosecution for forgery instituted by other parties would not be a breach of the defendant's agreement not to prosecute. The doctrine considered that, where a debt arises out of a felonious act by the debtor, the civil remedy is suspended until the debtor has been prosecuted. ROURKE *v.* MEALY - - **E. D. XIII. 52**

7. —— *Pleading—Contract depending on contingency—Defendant disabling himself from completing contract.*] Action on an agreement that plaintiff would accept a lease of a part of premises if defendant tendered for them a certain sum, and if that tender was accepted. Averment that defendant tendered that sum, but, before it was accepted or rejected, increased the tender without plaintiff's assent and became the purchaser, but did not execute the lease to the plaintiff. Plea: That defendant did tender the sum agreed on, but that it was never accepted:—*Held* a bad plea, because it might be that the reason why the tender was not accepted was that the defendant increased it before there was time to accept it. MALONE *v.* DOCKRILL - **Q. B. III. *M.* 447, 677**

8. —— *Special—Work and labour—Count for—Traverse—Pleading Common Law.*] Action brought by a builder to recover sums of money from defendant for alleged work and labour in construction of certain buildings. Agreement that plaintiff should, under direction of defendant's architect, carry on the work in conformity with plans and specifications, under superintendence of said architect. At the trial, Whiteside, C.J., directed the jury to find for the defendant, on the ground that the architect's certificate was "a condition precedent" to a demand for payment, and that plaintiff had not fulfilled his special contract. On motion for a new trial:—*Held* (by O'Brien, Fitzgerald, and George, JJ.), that the defendant should have produced evidence to show that he paid the plaintiff the full value of the work done, that the defendant could not, on a general traverse of the common counts, rely upon a special contract, and that he should have shown he had not himself prevented the completion of the works, therefore plaintiff was entitled to a new trial. (Whiteside, C.J., *diss.*) CALLAN *v.* MARUM - - - - - - **Q. B. V. 48**

9. —— *Substitution of term—Waiver.*] A term introduced into a contract for the benefit of one of the contracting parties may be waived by the substitution of a different term, at any rate if the substituted term is regarded by him as more favourable than that originally inserted in the contract, without invalidating the agreement concluded between the parties. MACONCHY *v.* TROWER - - **H. L. XXVII. *M.* 623**

—— Cause of action—Costs - - - - **I. *M.* 675**
See PRACTICE—COMMON LAW—COSTS. 3.

—— Contractor—Nuisance—Liability - - **IV. *M.* 506**
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—— Of service—Commission agent - - - **II. *M.* 150**
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—— Pleading - - - - - - **VII. *M.* 313**
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—— Sale of share in ship—Non-liability of intending purchaser—Ship's husband - - - - - I. *M.* 317

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—— To pay differences on sale and purchase of shares [I. *M.* 714

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—— To supply news—Transmission - - XXI. 62, 73

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CONVENT—Bequest in trust for - - III. *M.* 446

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CONVERSION—Pleading - - - VII. *M.* 218

See PRACTICE—COMMON LAW—PLEADING. 44.

—— Will.

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CONVICT—*Civil bill brought by—Forfeiture Abolition Act.*] A convicted felon, who has not served out his sentence, cannot bring a civil bill process. KEARNEY *v.* HAYES. [Q. S. XI. 146

COPYRIGHT—*Piracy—Injunction—Gazette, compiling lists of bankrupts, arranging debtors, and their creditors—Animus furandi—Innocent reliance on wrongful acts of agents or their informants—Registration of copyright—5 and 6 Vic., c. 45, ss. 18, 19.*] A Gazette, consisting of a compilation of lists of bankrupts and arranging debtors, and their creditors, with amount of debts, and lists of bonds, judgments, and bills of sale, and the parties, etc., thereto, may form the subject of copyright within the statue 5 and 6 Vic., c. 45; which copyright would belong not to the persons paid for the information so compiled, but to the owners of the compilation as an entirety. Before registration under the Act, an interlocutory injunction would not be granted to restrain piracy from such publication. The offence of piracy from such publication may be committed *bonâ fide*, and an innocent intention is no defence. The proprietors of a periodical publishing information pirated from such source are responsible, whether the information was copied, in point of fact, by canvassers or agents in their employment, or by some person to whom such employers applied for information. (By Holmes, J.). TRADE AUXILIARY CO., LIMITED *v.* IRISH TRADE PROTECTION AGENCY, LIMITED. [Vac. J. XXI. 37

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INQUEST - - - - - - - 93

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CORONER—INQUEST.

1. —— *Disclosure of no criminal offence—Uncertainty—Certiorari.*] At an inquest held to inquire into the cause of the death of J. D., who died from shock and exposure to cold caused by his removal from premises on the execution of decrees for possession, the coroner's jury returned a verdict finding that the land agents of the person in whose favour the decrees had been granted, who were present at the eviction, "did feloniously and unlawfully kill and slay the said J. D., by subjecting him to this shock and exposure":—*Held*, that the inquisition disclosed no criminal offence, and was insufficient in not having the certainty of an indictment. *In re* ARDEE INQUISITION - - - Q. B. D. XXV. 11

2. —— *Jurors absenting during—Presence of Coroner and Clerk during deliberations of Jury—Quashing inquisition.*] When it appeared that, during the holding of a coroner's inquest, some of the jurors absented themselves unnecessarily, going out into the public streets, and that during the time when the jury were in deliberation, the coroner and his clerk remained present:—*Held*, that the inquisition should be quashed. R. *v.* O'BRIEN - Q. B. D. XVII. 34

3. —— *Place of holding.*] The inquest on a body should be held in the district where the body is found. (By Fitzgerald, J.). ANON. - - Cir. Cas. X. *M.* 143

—— *Habeas corpus* to bring prisoner before

See HABEAS CORPUS. 4-7.

CORONER—MEDICAL WITNESS.

1. —— *Death of inmate of workhouse—Fee to medical officer—Presentment.*] An inquest was held in the court-house on the exhumed body of a person who had died in the workhouse:—*Held*, that the medical officer was not entitled to any fee for evidence given at the inquest. (By Palles, C.B.) ANON. - - - - - Cir. Cas. VIII. *M.* 375

2. —— *Liability.*] The coroner is not personally liable for the fees of a medical witness attending at an inquest. (By Fitzgerald, J.) ANON. - - Cir. Cas. III. *M.* 352

CORONER—REMOVAL—*Coroner who has become of unsound mind—Practice.*] When it appeared that the only coroner had become of unsound mind and was confined in a lunatic asylum, the Court made an order for writs of *de coronatore exonerando* and *de coronatore eligendo* at the same time. *In re* ELLIS - - - - - C. IV. *M.* 436

CORONER—REMUNERATION.

1. —— *Absent on vacation—Inquest held by coroner of adjoining district—9 & 10 Vic., c. 37—44 & 45 Vic., c. 35. s. 3.*] A coroner is not entitled to remuneration for inquests held by him in another district than his own during the absence on vacation of the coroner of such district. (By Andrews, J.) In the matter of JONES' PRESENTMENT Cir. Cas. XX. 15

2. —— *Duty of holding inquest—Grand jury.*] If the grand jury are of opinion that a coroner *bonâ fide* believed that it was necessary to hold an inquest, they must present for it. (By O'Brien, J.) *Re* M'DONOUGH - Cir. Cas. I. *M.* 505

3. —— *Examination by grand jury as to inquests—9 & 10 Vic., c. 37, sec. 24.*] The 9 & 10 Vic., c. 37, s. 24, empowers the grand jury to examine the coroner as to his belief on the necessity of holding inquests for which he charged; but does not make it imperative on them to examine him. (By Monahan, C.J.) *Re* CORONER'S INQUESTS [Cir. Cas. III. *M.* 351

4. —— *Holding inquest on man whose death was not suspicious or sudden.*] The grand jury rightly disallowed a fee to a coroner for holding an inquest on a man who met with an accident at a drag meet, and lived for four days after, there being nothing suspicious about the death. (By Whiteside, C.J.) ANON. - - - Cir. Cas. VIII. *M.* 545

5. —— *Inquest—Duty of grand jury.*] If an inquest is *bonâ fide* held by the coroner, on proper information, he ought to get his presentment; but if the grand jury are satisfied that he ought to have deemed no inquiry necessary, they ought not to present. (By Monahan, C.J.) *Re* PEYTON [Cir. Cas. III. *M.* 351

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CORONER—REMUNERATION—*continued.*

6. —— *Inquest.*] If a coroner *bonâ fide* holds inquests, believing in the necessity of holding them, the grand jury are bound to present for his fees. (By O'Brien, J.) *Re* PEYTON [Cir. Cas. X. *M.* 187

7. —— *Inquests—Grand jury.*] The fees to a coroner for holding an inquest are within the discretion of the grand jury, and the fact that he paid a surgeon for making a *post mortem* examination is not a test that he should be allowed them. (By Hughes, B.) *Re* M'DONOUGH - Cir. Cas. I. *M.* 177

8. —— 44 & 45 *Vic., c.* 35—9 & 10 *Vic., c.* 37.] In calculating the average salary of a coroner for five years, only inquests held by him in his own district should be considered. (By Ormsby, J.) *In re* MOSTYN'S PRESENTMENT [Cir. Cas. XVI. *M.* 132

—— Presentment - - - - XVI. *M.* 132
See GRAND JURY—PRESENTMENT—CORONER.

CORPORATION — *Aggregate—Contract—Writing—Seal—Signature*—Ultra vires—*Statute of Frauds—Blackrock Township Act*, 1863, *s.* 28—*Local Government Board Provisional Order*, 1874—37 & 38 *Vic., c. clxxxvi.—Towns Commissioner Clauses Act, s.* 56—*Dublin Waterworks Act*, 1861.] By the 28th sec. of the Blackrock Township Act, 1863, it is provided that the Corporation of Dublin "shall supply and thenceforth continue to supply a quantity of water equivalent to 20 gallons per head per day for the population from time to time of the township." By a Provisional Order of the Local Government Board, in 1874 (confirmed by 37 & 38 Vic., c. clxxxvi.), it was ordered "that it shall be lawful for the Corporation, should they deem it expedient, and in the event of their having a quantity of water in excess of the quantity required for the use of the City of Dublin, and for the supplies provided for the said several townships by the said statutes and contract, to give to the Commissioners respectively of the said several townships permission to draw quantities of water respectively in excess of the quantities provided by the said statutes and contracts respectively from the pipes or mains of the corporation on receiving notice from the Commissioners of the said several townships respectively, of their desire to take such supply in excess of the statutable or contract allowance, at a rate or rates to be agreed upon between the Corporation and such Commissioners respectively, not exceeding in any case the rate of fourpence per 1,000 gallons; and it shall be lawful for the Commissioners of the said several townships respectively to pay out of the rates levied in their respective townships the rents, rates, or charges respectively made by the Corporation, for such supply in excess as hereinbefore defined." Accordingly Sir John Grey, acting for the Corporation of Dublin, and Mr. Vance, acting for the Blackrock Township Commissioners, entered into a written arrangement, not under seal, nor signed by two Commissioners (under the Towns Commissioners Clauses Act, s. 56), by which it was agreed that the statutable allowance of water which the Corporation were to supply should be calculated upon a population of 10,000, until the publication of their next Government census, and that all water supplied in excess of the statutory allowance of twenty gallons per head per diem to such a population should be paid for by the defendants, at a price to be subsequently fixed; and by a subsequent written arrangement it was agreed that the price should be fixed at 3½d. per 1,000 gals. The Corporation supplied the water accordingly. In an action brought by them to recover on foot of the stipulated price :—*Held*, on demurrer to the statement of defence, (1) that the Corporation were entitled to sue as plaintiffs, although the contract was not under seal, same having been wholly performed on their part (applying *Fishmongers' Co. v. Robertson*, 5 M. & Gr. 192) ; (2) that upon the true construction of the contract it was in effect revocable at the pleasure of the parties at any moment, and therefore did not come within the Statute of Frauds, requiring agreements not to be performed within one year to be in writing (applying *Knowlman* v. *Eluett*, L. R. 9 Ex. 1, 307 ; *Elcy* v. *Positive Assurance Co.*, 1 E. D. 24) ; and so, under the 56th sec. of the Towns Commissioners Clauses Act, was not required to be signed by two Commissioners; (3) that, the contract was not rendered illegal or *ultra vires* by reason of the reference in it to the fixing of the population of Blackrock, for the purposes in question, as 10,000 until the next census. (*Per* Fitzgibbon, L.J.) The meterage rate under the Provincial Order of 1874 is a rate within the 61st sec. of the Dublin Waterworks Act of 1861, and the provisions of that sec. are incorporated in the Provisional Order as effectually as if they were in terms repeated therein. CORPORATION OF DUBLIN *v.* COMMISSIONERS OF BLACKROCK - - - - C. A. XVI. 111

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—— Admiralty—Damage by wrongful act - XX. 58
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—— Attorney-General's given against Relators. II. *M.* 119
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—— Trustee Relief Act—Lodgment of money - **I. M. 731**
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—— Witnesses' expenses—Lodgment of—Appeal—Objection **[I. M. 104**
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COSTS AGAINST THE CROWN—*Question of legitimacy.*] The Court has no jurisdiction to give costs against the Crown in legitimacy cases. GOOD *v.* JOYNT. **[P. VIII. M. 415**

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COUNSEL—CLIENT—*Contract between barrister and solicitor—Agreement of imperfect obligation—Hiring and service concerning advocacy in litigation—Express contract in consideration of special fee—Action by client for breach by advocate—Non-attendance on trial of criminal charge against client—Absence of remedy.*] The doctrine that the relation of counsel and client renders the parties mutually incapable of making any binding contract of hiring and service, concerning advocacy in litigation, applies equally whether the contract be expressed and specific or merely implied; whether the fee be special and named by the counsel; and whether his duties are to be discharged in reference to a criminal proceeding against the client. ROBERTSON *v.* MACDONOGH **[Q. B. D. XIV. 108**

COUNSEL—CONTEMPT OF COURT.

1. —— *Privilege.*] The privilege of counsel appearing for prisoners insisted on, though considered guilty of contempt of Court. R. *v.* SHERIDAN. - - - **Rec. C. XI. M. 31**

2. —— *Threat of removal from Court—Apology by Judge.*] A judge who threatened to remove a counsel from Court for interrupting him in his explanation of the law to a jury, who could not agree, subsequently apologised to him. ARNOTT *v.* HUMPHREYS - - - **Cir. Cas. XI. M. 386**

COUNSEL—CONVENIENCE—*Postponement of case.*] The V. C. will not postpone any case for the convenience of counsel who are leaving town on professional business. MOTTE *v.* BOXWELL - - - - - **V. C. III. M. 99**

COUNSEL—FEE.

1. —— *Giving receipt for fees before they were paid—Bringing civil bill to recover them.*] The conduct of a barrister who receipted fees before they were paid, and then brought a civil bill against the solicitor for them, under which he got a decree and had him arrested, considered and disapproved of. *In re* HICKIE - - - - - - - **B. I. M. 795**

2. —— *Settling minutes of decree on further consideration.*] A fee is allowed to junior counsel for settling the minutes of a decree on further consideration. AMIT *v.* PAGET **B. VI. 158**

—— Advising proofs.
See SOLICITOR—BILL OF COSTS. 1-3, 9, 16, 29.

COUNSEL—FEE—*continued.*

—— Amount.
See SOLICITOR—BILL OF COSTS. 22, 29.

—— Appeal from order of County Court Judge under Debtors' Act, 1872 - - - - - - **XV. 58**
See DEBTORS' ACT (IR.), 1872. 19.

—— Appearing on cross-summons - - **XIII. 60**
See PRACTICE—COSTS. 8.

—— Consultation—Fee.
See SOLICITOR—BILL OF COSTS. 15, 29, 34, 38.

—— Election petition.
See PARLIAMENT—ELECTION PETITION. 40, 41.

—— Motion for leave to amend indorsement on writ **[XII. M. 50**
See PRACTICE—AMENDMENT. 3.

—— On motion for decree—Refresher fees—Number of counsel in Court of Appeal - - - - **IX. 115**
See SOLICITOR—BILL OF COSTS. 22.

—— Refresher.
See SOLICITOR—BILL OF COSTS. 17, 28.

—— Retainer - - - - - - **IX. M. 598**
See SOLICITOR—BILL OF COSTS. 19.

—— Unable through illness to attend - **XXVI. 125**
See SOLICITOR—BILL OF COSTS. 17.

COUNSEL—JUNIOR.

1. —— *Argument of case under* 20 & 21 *Vic., c.* 43, *sec.* 2.—*Privilege of junior Bar—Practice.*] In the argument of cases for the opinion of the Court under 20 & 21 Vic., c. 43, s. 2, it is necessary that the appellant and respondent should each retain a junior counsel. KEARNS *v.* M'CAMISH **E. VII. 74**

2. —— *Motion ex parte to obtain letters of administration with will annexed—Privilege.*] A motion *ex parte* to obtain letters of administration, with the will annexed, for the purpose of which documents have been filed, is not a motion movable only by junior counsel. *In the Goods of* SADLIER **[P. VII. 53**

3. —— *Right to open case stated.*] *Quære*, whether upon the argument of a special case stated for the opinion of the Court under the C. L. P. Act, 1853, s. 92, it is a matter of right that junior counsel should open the case? DOYLE *v.* DUBLIN, WICKLOW & WEXFORD RAILWAY CO. **[Q. B. D. XII. 28**

4. —— *Signature of junior counsel to pleadings.*] The Court was not prepared to say that a petition of appeal was a pleading so as to necessitate its being signed by junior counsel, or to consider the time at which the brief is sent to junior counsel. CONNOLLY *v.* CONNOLLY **[Ch. A. I. M. 279**

5. —— *Signature of junior counsel to petition—Practice.*] The counsel who prepares a petition is expected to move it, and such a motion cannot be made by senior counsel without a junior; and so upon a petition signed only by a senior counsel being moved by a junior counsel, the case was struck out. BOYD *v.* KELLY. KELLY *v.* CAMPION **[C. I. M. 246**

6. —— *To open pleadings—Junior called within the Bar.*] After briefs had been given out, the junior counsel for both parties to the suit were called within the Bar. On the cause being called on:—*Held*, that it should stand over in order that junior counsel might be instructed to open the pleadings. M'ASKIE *v.* M'KAY - - - **B. II. M. 264**

—— Duty of entering proofs - - - **II. M. 125**
See PRACTICE—CHANCERY—EVIDENCE. 11.

COUNSEL—NUMBER.

1. —— *Application for certificate for three—Order.*] A motion for an injunction having been refused, the defendant applied for a certificate that the costs of the three counsel should be allowed:—*Held*, that the certificate should not be

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COUNSEL—NUMBER—*continued.*

granted, but that the order refusing the motion should be drawn so as to leave the matter in the discretion of the Taxing Master. KINGSTON *v.* YOUNG - **R. III. *M.* 40**

2. —— *Consultation between two junior counsel—Difference between English and Irish practice—Taxation of costs.*] The Court will not interfere with the discretion of the taxing officer unless a question of principle is involved or in an extreme case. Circumstances under which fees for consultation between two junior counsel were allowed; while the Court differed as to whether the case warranted the employment of three counsel. THOMPSON *v.* BOLTON **E. D. XXII. 96**

3. —— *Counsel allowed on hearing of cause petitions.*] The Court refused to certify for three counsel in a suit to set aside a deed and judgment (when the deed was set aside, but not the judgment) on the grounds that it was not a case of sufficient importance, and the petitioner had failed in material part of cause petition. BUTLER *v.* BRACKEN **C. I. *M.* 192**

4. —— *Special jury action.*] Three counsel were allowed on the trial of a special jury action, but only two on the hearing of a law argument before the Divisional Court. CRAWFORD *v.* WRIGHT AND BUTLER - - **E. D. XXVII. 75**

——

See SOLICITOR—BILL OF COSTS. 19, 22, 38.

—— Two—Equity Civil Bill Appeal—Question of difficulty **[XII. 154**

See GRAFT. 2.

COUNSEL—PRIVILEGE—*Conduct of trial by solicitor.*] The Judge of Assize refused to allow a solicitor to act as advocate in an action of ejectment where his client was a very poor man. (By O'Brien, J.) REYNOLDS *v.* COSTELLO **[Cir. Cas. I. *M.* 505**

—— Exclusive right of audience in County Court. **XII. 86**

See PRACTICE—CIVIL BILL COURT—SOLICITOR. 3.

—— Motion for amendment of writ. - **XXIV. *M.* 37**

See PRACTICE—AMENDMENT. 16.

COUNTERCLAIM.

See PRACTICE—COUNTERCLAIM.
PRACTICE—CIVIL BILL COURT—COUNTERCLAIM.

COUNTY COURT-HOUSE — *Custody.*] The custody of the County Court-House is vested in the High Sheriff of the County, and not in the Grand Jury. (By Hughes, B.) *Re* COUNTY MAYO COURT-HOUSE **Cir. Cas. I. *M.* 177**

—— Presentment for

See CASES UNDER GRAND JURY — PRESENTMENT — COURT-HOUSE.

COUNTY INFIRMARY—*Election of surgeon—Qualification to vote—Casting vote—Qualification of candidate.*] The 54 *Geo.* III., *c.* 52, enacts that no annual governor or governors of an infirmary or hospital shall be permitted to vote at the election of a surgeon on a vacancy unless they shall have respectively paid the subscription by which they claim a right to vote at such elections two years at the least before the vacancy shall have occurred. An election for surgeon to an infirmary was held on the 20th July, 1871:—*Held*, that governors who had paid their subscriptions in advance for the year current at the time of the election, and for the preceding year, were qualified to vote at such election. At an election of a surgeon to a county infirmary where the votes are equal, the chairman is not entitled to a casting vote. A Member of the Royal College of Surgeons, London, admitted without examination as a Fellow of the Royal College of Surgeons, Ireland, is not, under the statutes regulating the election of surgeons for county infirmaries in Ireland, qualified to be elected. LAWLOR *v.* ALTON - - **Q. B. VI. 174**

—— Presentment for.

See Cases under GRAND JURY—PRESENTMENT—COUNTY INFIRMARY.

COUNTY PRINTING—Presentment for

See Cases under GRAND JURY—PRESENTMENT—COUNTY PRINTING.

COUNTY SURVEYOR—*Liability for accident through non-repair of bridge.*] A County Surveyor is not liable for injury to a horse through the non-repair of a bridge. (By Fitzgerald, B.). SMITH *v.* MILLING **Cir. Cas. X. *M.* 296**

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See Cases under GRAND JURY—PRESENTMENT—COUNTY SURVEYOR.

COUNTY TREASURER—Election—*Quo Warranto* **[I. *M.* 156**

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See GRAND JURY—TREASURER.

COVENANT—Action on—Pleading - - **VIII. 115**

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See LANDLORD AND TENANT—LEASE. 5.

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—— To renew—Sub-lease of College lands - **III. *M.* 569**

See LANDLORD AND TENANT—LEASE. 16.

—— To repair.

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—— To settle after acquired property—Infant's settlement **[XII. 2**

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CREDITOR—Administration to - - **I. *M.* 299**

See PROBATE—GRANT OF ADMINISTRATION. 2.

—— Meaning of, in Bankers' Act - - **I. *M.* 442**

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CRIM. CON.—Action for—Motion to remit **[XXVII. *M.* 486**

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CRIMINAL LAW. Col.

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CRIMINAL LAW—ARSON—*Consequence of felonious act—Intention—Malice—Probable result of criminal operation—Question for jury*—24 & 25 *Vic., c. 97, sec.* 42.] On an indictment under 24 & 25 Vic., c. 97, sec. 42, for arson of a ship, it appeared that the prisoner, who was a seaman on board, went into the hold for the purpose of stealing rum there stored. Having tapped a barrel the rum ran out, and when he was trying to put a spile in the hole, out of which the rum was escaping, the rum caught fire from a lighted match in his hand, in consequence of which the ship took fire and was consumed. It was conceded that the prisoner did not in fact intend to burn the ship; and no question was left to the jury as to whether he knew the probable consequences of his act, or as to his reckless conduct. The jury were directed to find the prisoner guilty if, although he had no actual intention of burning the ship, they should find that he was engaged in stealing the rum, and that the fire took place as above stated. He was convicted. On a case reserved:—*Held* (Keogh, J., *diss.*), that the direction was erroneous, and that the conviction should be quashed. *R.* v. *Pembliton* (L. R. 2, C. C. R. 119), discussed. R. *v.* FAULKNER
[C. C. R. XI. 13

CRIMINAL LAW—BAIL.

1. —— *Health.*] Upon an application to admit a prisoner to bail, the motion was refused on the ground that the Crown had not been in default, and that no sufficient cause of danger to the prisoner's health from confinement had been shown. R. *v.* NAGLE - - - - - - Q. B. I. *M.* 712

2. —— *Postponement of trial.*] When a bill had been found by the grand jury, and the trial was postponed at the instance of the prisoner, an application for bail was refused chiefly upon that ground. R. *v.* TINNEY - - Q. B. I. *M.* 246

3. —— *Riotous assembly for purpose of intimidation—Members of organised league—Whiteboy Acts.*] Where members of the "Irish National Land League" organisation had been committed to prison on a charge that they had formed part of a tumultous and riotous assemblage, who made an affray, and forcibly entered on certain land, it being alleged that the offence had been committed for the purpose of intimidation, and in pursuance of the objects of the league:—*Held* (O'Brien, J., *diss.*), that they should not be admitted to bail. At the trial the jury disagreed, and O'Brien J. subsequently admitted them to bail, the case laid before the jury not having been so strong as that anticipated in the former motion. R. *v.* BUTLER.
[Q. B. D. XV. 29; XV. *M.* 194

CRIMINAL LAW—BIGAMY—*Presumption as to religion.*] The Law presumes all persons within the realm to be members of the Established Church until the contrary is shown. Proof that a woman (who was indicted for bigamy) and her husband were in the habit of attending Roman Catholic houses of worship previous to their marriage is sufficient to rebut the presumption that they belonged to the Established Church. (Before Monahan, C. J.) R. *v.* WHYTE Cir. Cas. II. *M.* 637

CRIMINAL LAW—CERTIORARI.

1. —— *Indictment of felony removed from Quarter Sessions—Recognizance to appear and plead in person—Liberty to appear and plead by attorney.*] Where an indictment for felony had been removed from Quarter Sessions to the Court of Queen's Bench, the Court of Queen's Bench, on the application of the defendant, allowed them to appear and plead by attorney, notwithstanding that they were under recognizances to do so in person, the defendants consenting that they should be restrained from assigning error on the ground of such appearance and pleas not being entered by them in person. R. *v.* MORAN - - - - - - - Q. B. IX. 6

2. —— *New trial—In case of a misdemeanour.*] On an application being made on behalf of a prisoner, who was tried for a misdemeanour and convicted, that the judge who presided at the trial should send in a copy of his notes of evidence, with a view to a new trial (which application was not made upon affidavit), the Court held they had no materials upon which to make such an order, as there were no records in Court, and nothing to show that such a case existed. R. *v.* SMITH
[Q. B. I. *M.* 209

3. —— *New trial.*] An application was made on behalf of a prisoner for a *certiorari* to bring up the proceedings with a view of a new trial; he had been found guilty of an assault and sentenced, and it was alleged that the judge misdirected the jury. The Court held that after judgment and sentence pronounced, and in due course of execution, a *certiorari* could not be granted. R. *v.* SMITH. - - - Q. B. I. *M.* 272

4. —— *Practice—Case stated at Quarter Sessions.*] Where a case has been stated at Quarter Sessions by the Chairman of Justices, after the hearing of an appeal from an order in Petty Sessions, application must be made *ex parte* to the Court for a writ of *certiorari* to bring up the orders and proceedings at Quarter Sessions and the case stated. *In re* DELANEY
[Q. B. D. XIX. 67

CRIMINAL LAW—CONCEALMENT OF BIRTH—*Secret disposition of dead body—Evidence—Corpus delicti*—24 & 25 *Vic., c.* 100, *sec.* 60—*Variance—Amendment of indictment*—14 & 15 *Vic., c.* 100, *sec.* 1.] On an indictment under 24 & 25 Vic., c. 100, s. 60, charging a woman with endeavouring to conceal the birth of her child by a secret disposition of the dead body thereof, it is of the essence of the crime that there should be an act done of secret disposal of the body of the child after death, and it is necessary, in order to support the charge, that the death of the child should be proved. R. *v.* BELL - - - - C. C. R. IX. 18

CRIMINAL LAW—CONCEALMENT OF TREASURE-TROVE—*Indictment—Inquisition.*] An indictment for concealing treasure-trove, averring that the Queen is entitled to the treasure, is good without any averment of any inquisition before the Coroner, or office found as to the title of the Queen; and a conviction upon such an indictment is good without any evidence as to these matters. R. *v.* TOOLE
[C. C. R. I. *M.* 732

CRIMINAL LAW—CONSPIRACY.

1. —— *Indictment—Adjournment of assizes—Jury panel—Juror's age—Writ of error.*] A prisoner indicted for treason at a Commission which opened in November, 1866, and continued till February, 1867, demurred to indictment on the ground that an allegation of a bare conspiracy without an allegation of acts done in pursuance of it was not sufficient to support indictment for treason, or treason felony:—*Held*, that the overt acts objected to were sufficient. He demurred also to the panel being made out of the jurors' book for 1866, that for 1867 being in existence:—*Held*, a bad demurrer. A juror was challenged on the ground of over-age:—*Held* (*diss.* O'Brien), that over-age was not a good ground for challenge. This was affirmed on appeal by the House of Lords. R. *v.* MULCAHY Q. B. I. *M.* 45; H. L. II. *M.* 399

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CRIMINAL LAW—CONSPIRACY— *continued.*

2. —— *Insurance company—Privity of accused.*] O., C., and D., three employees of an insurance company, admittedly conspired to defraud the company by insuring a bad life on false representation. S., the medical referee of the company, made a report on the case which the jury found to be wilfully false:—*Held*, that the question of S.'s privity with the three other conspirators was a question proper to be left to the jury at the trial, and that under the circumstances of the case they were justified in finding that S. was privy to the conspiracy. R. *v.* SMYTH - - **C. C. R. XXIII. 14**

3. —— *Legality of evidence—Result of not objecting to illegal evidence when it is given—Criminal Law & Procedure Act*, 1887.] When the existence of a criminal conspiracy is proved, and it is shown that at a certain date the defendant joined the conspiracy, evidence of acts committed by the conspirators in pursuance of the conspiracy prior to that date is admissible in evidence against such defendant, not for the purpose of holding him criminally responsible for those acts, but for the purpose of showing the character of the conspiracy which he joined. The admission by magistrates of illegal evidence, not objected to at the time of trial, is no ground for quashing the decision if there were other evidence sufficient to sustain it. R. (SHAW) *v.* DWYER AND KELLY

[E. D. XXIV. 111

CRIMINAL LAW—CRIMINAL INFORMATION— *Newspaper article against a director of a company as such and not as an individual.*] An action having been brought on a life policy, and the chairman of the Assurance Society having filed a defence, which was set aside as evasive and embarrassing, an article commenting on the society's conduct in filing such a defence was published in a newspaper. The chairman moved for leave to file a criminal information against the printer and publisher:—*Held*, that liberty should not be granted, because the article was not directed against him personally, but only animadverted generally on the conduct of persons in his position allowing their names to appear as directors of companies over whose affairs they did not exercise any supervision. R. (SMITH) *v.* O'MARA

[Q. B. II. *M.* 298

CRIMINAL LAW—CRIMINAL LAW AND PROCEDURE (Ir.) ACT, 1882, s. 4— *Special jury—Second trial after disagreement of former jury—New notice for special jury.*] Where, on a criminal indictment, notice requiring that the trial be had before a special jury has been served, under sec. 4 of the Crimes Act (Ir.), 1882, and on such trial the jury has disagreed, a second trial before a special jury may be had, without serving another notice for such jury. THE QUEEN AT THE PROSECUTION OF POOLE - **Q. B. D. XVII. 107**

CRIMINAL LAW—CRUELTY TO ANIMALS.

1. —— *Dishorning cattle—Justification*—12 & 13 *Vic.*, *c.* 92, *s.* 2.] Dishorning cattle, if the operation is performed with reasonable care and skill, and the cattle are thereby rendered less dangerous to each other and to men, and less liable to accidents in transit, while they are thereby rendered more saleable, is not cruelty to animals within 12 & 13 Vic., *c.* 92, *s.* 2. R. *v.* M'DONAGH - - **P. S. XXIV.** *M.* **374**

[This was affirmed on appeal. 28 L. R. (Ir.), 204.]

2. —— 12 & 13 *Vic.*, *c.* 92, *s.* 18—*Appeal.*] An appeal to quarter sessions can be taken from a conviction under 12 & 13 Vic., *c.* 92, *s.* 18. A summons against the rider of a horse for cruelty in leaving him in a field to be slaughtered, in consequence of his having broken his leg, and a conviction thereon, was reversed, it appearing that he had left the field in the honest belief that he had done enough to ensure it being slaughtered. BRADY *v.* MARTIN **Q. S. XII.** *M.* **339**

CRIMINAL LAW—EVIDENCE.

1. —— *Admissions—Publication of proceedings at a meeting of prohibited association*—50 & 51 *Vic.*, *c.* 20, *s.* 7.] An extra-judicial confession, by a person accused of a crime, of a material part of the *corpus delicti*, if satisfactorily proved, is sufficient to sustain a conviction for the crime, although uncorroborated, but whether as a matter of judicial practice, or as a caution, or as a doctrine of the law of evidence, a confession of the accused on an indictment for murder or manslaughter is not to be acted upon without proof, *aliunde*, of the act done, or of the body being found dead, and under circumstances such as to raise a presumption that death was caused by unlawful means. On a prosecution of the owner and publisher of a newspaper under the Criminal Law and Procedure Act, 1887, s. 7, for publishing, with a view to promoting the objects of a prohibited dangerous association, a notice of the proceedings at a meeting of such association, it being assumed that but for the statements in the newspaper there would not be sufficient evidence of the crime, and that the nature and character of the meeting should be deemed part of the *corpus delicti*, statements in such newspaper, which are to be deemed the statements of its owner and publisher, affirming that a meeting of such association was in fact held, constitute evidence against the defendant that such a meeting was in fact held, which, if believed and acted upon, would be sufficient to sustain a conviction, as admissions by the accused of a material part of the *corpus delicti*, although *dehors* the statements appearing in the newspaper itself no corroborative evidence is offered as to the objects of the meeting, the proceedings at it, and as to its having been a meeting of such association. *R.* v. *Unkles* (VIII. 38, 8 Ir. R. C. L. 50,) approved and followed. R. (REDDY) *v.* SULLIVAN

[E. D. XXI. 50

2. —— *Indictment—Forged note—Secondary evidence.*] On an indictment for uttering a forged note, secondary evidence of it is not admissible without notice to produce it. R. *v.* FITZSIMONS - - - - **C. C. R. IV.** *M.* **46**

3. —— *Inducement to confess by constable—Admission made after inducement.*] Where a prisoner had been told by a constable, at ten o'clock a.m., that it would be better for him to tell the truth and not put people to the extremities he was doing, an admission by the prisoner to another constable after six o'clock in the evening of the same day was not allowed to be given in evidence, although the second constable had previously cautioned the prisoner. (By Whiteside, C.J., & Fitzgerald, B.) R. *v.* DOHERTY - **Cir. Cas. VIII. 192**

4. —— *Receiving goods knowing them to have been stolen—Possession—Guilty knowledge.*] Indictment against mother and son for receiving goods knowing them to have been stolen. It appeared that on the 29th October, 1868, a box containing jewellery was posted to W., living at D., and a letter to W. was posted at the same time by the same person. W. received the letter only. The male prisoner was a letter-carrier at D., but it was not his duty to deliver the letter and parcel. He or others might have taken them from the bag. On the 30th October the female prisoner tried to pawn part of the jewellery, her son remaining outside the office. When she came out he followed her, and joined her at some distance. A few days later a girl, who knew the son, received by post, directed in his handwriting, a box containing part of the jewellery:—*Held*, that the jury were warranted in finding both the prisoners guilty of receiving the goods, knowing them to have been stolen. R. *v.* BYRNE **C. C. R. III.** *M.* **348**

—— Conspiracy.
See CRIMINAL LAW—HIGH TREASON.
CRIMINAL LAW—TREASON FELONY.

—— Reception of illegal evidence without protest **[XXIV. 111**
See CRIMINAL LAW—CONSPIRACY. 3.

—— Summons for attendance of officer of Court **[XII.** *M.* **22**
See PRACTICE—EVIDENCE. 2.

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CRIMINAL LAW—FALSE PRETENCES.

1. —— *Indictment—Verdict.*] An indictment charged that the defendant did falsely pretend to E. J., cashier in the Cork Savings Bank, that he (the defendant) was one J. G. who had money deposited in the said savings bank, and who had a book of the said bank with a statement of his account in it, which book he presented to the said E. J., by means of which false pretence he (the defendant) did then and there unlawfully obtain from said E. J. the sum of £10, "whereas, in truth and in fact the defendant was not the person so named in the said savings bank book, nor had he authority then or at any other time, from the said J. G., to present the said book at the savings bank for the purpose of drawing out money ; neither had he any authority from the said J. G. to draw money from the said bank":—*Held*, that in the absence of a special averment negativing the truth of the statement which the defendant was alleged to have made—*i.e.*, that he was one J. G. who had money deposited and so forth—the indictment was bad, and that the defect was not cured by the verdict. R. *v.* KELLEHER [C. C. R. XII. 19

2. —— *What constitutes.*] A pretence of present ability, accompanied by a promise to do a certain act, is evidence to support an indictment under the 24th and 25th Vic., c. 50, sec. 90. What constitutes evidence of the falsity of the pretence considered. R. *v.* CLORAN - - C. C. T. IV. *M.* 690

CRIMINAL LAW—HIGH TREASON—*Evidence—Conspiracy—Levying war.*] An alien was indicted for high treason ; he had been arrested endeavouring to land from a ship in the county Dublin; while he was in custody an insurrection connected with the Fenian movement broke out, and he was proved to be a member of the directory which planned and directed the movement. The first point reserved was whether evidence could be given of acts done in the course of the movement while he was in custody:—*Held*, it could. The second question reserved was whether the rule that there should be two witnesses in cases of high treason has been complied with; only one witness directly connected him with the conspiracy, but several deposed to his presence and suspicious conduct at Chester, when an attempt was made to seize the castle and arsenal, and to his attempted landing near Dublin under suspicious circumstances, and to his having a ring with an inscription connected with the conspiracy:—*Held* (*diss.* O'Brien, J.), that the Crown had complied with the rule. R. *v.* M'AFFERTY - - - - C. C. A. I. *M.* 337

CRIMINAL LAW—HOMICIDE—*Negligent driving—Onus of proof.*] When a prisoner is charged with homicide by driving over the deceased, the onus of proof lies upon him to disprove the *primâ facie* case against him of having caused the death. R. *v.* CAVENDISH - - C. C. R. VIII. *M.* 415

CRIMINAL LAW — INCITING TO COMMIT FELONY—*Knowledge of incited person that act is felonious.*] *Quære*, whether a person can be convicted of inciting another to commit a felony where the latter is ignorant that the act to which he was incited was a felony? (By Dowse, B.) R. *v.* BRIEN - - - - Cir. Cas. XVI. 106

CRIMINAL LAW—INDICTMENT.

1. —— *Affray—Amendment—Sentence—Writ of error.*] An indictment for an affray which does not state the offence to have been committed in a "public street and highway" is bad, and cannot be amended after verdict. A sentence awarding hard labour for an affray is illegal, but, *semble*, where inadvertently introduced into the judgment, the Court, on writ of error, will pronounce the proper judgment, or remit it to the Court below to be corrected. R. *v.* GALLAGHER - - Q. B. V. 134

2. —— *Ambiguity in—Caption*—24 & 25 *Vic., c.* 97. *sec.* 17—*Malicious injury to property*—"*Cock*" *of hay.*] The caption of an indictment averred that "at a General Quarter Sessions of the Peace, holden before A. B., Deputy Chairman of Quarter Sessions, and others, his associate justices, assigned to keep the peace in the said county, &c.":—*Held* good, "deputy chairman" being a sufficient description of a "locum tenens" appointed by the Lord Lieutenant. An indictment under the 24th & 25th Vic., c. 97, s. 17, for setting fire to a "cock" of hay, is bad. R. *v.* M'KEEVER - - - Q. B. V. 41

3. —— *Form—Previous Conviction.*] The count in an indictment for a previous conviction should be after that for the subsequent crime. R. *v.* O'BRIEN Q. B. I. *M.* 64

4. —— *Grand jury—Finding—Arrest of judgment.*] The fact that on a grand jury composed of only twenty-two members the foreman signed a true bill "for self and fellows" is not a ground for an arrest of judgment. (By Monahan, C. J.) R. *v.* GLEESON - - - - Cir. Cas. I. *M.* 120

5. —— *Refusing to deliver up goods to sheriff*—14 & 15 *Vic., c.* 57, *s.* 150—*Lodgment of money—Declaration—Affidavit.*] In an indictment under the 150th section of the 14 & 15 Vic., c. 57. for a misdemeanour in refusing to deliver up goods after production of the order of the sheriff, it lies on the prosecutor to show that the order was valid and that the preliminaries required before the issuing of such an order were fully complied with. Where the sheriff issued such an order without lodgment of the amount of the decree and of an affidavit of the ownership of the goods, on a statutable declaration of such ownership having been made:—*Held*, that the conviction should be quashed. and that the lodgment of a declaration was not a compliance with the terms of the section. R. *v.* SHANLEY AND ROGERS - - - - C. C. R. XIV. 88

6 —— *Previous conviction for felony with count for misdemeanour—Amendment.*] A previous conviction for felony cannot be charged in an indictment for the misdemeanour of obtaining money under false pretences, and the indictment cannot be amended by striking out the charge of the previous conviction. R. *v.* GARLAND - C. C. R. III. *M.* 348

—— Amendment - - - - IX. 18
See CRIMINAL LAW—CONCEALMENT OF BIRTH.

—— False Pretences - - - - XII. 19
See CRIMINAL LAW—FALSE PRETENCES. 1.

—— Treasure-trove, concealment of - - I. *M.* 732
See CRIMINAL LAW—CONCEALMENT OF TREASURE-TROVE.

CRIMINAL LAW—JURISDICTON—*Power of Chairman of Quarter Sessions to re-commit prisoners for trial at Assizes, in absence of fresh information—Jurisdiction before bills are sent to the grand jury.*] Where a prisoner was committed for trial at Quarter Sessions, for forcible entry into a dwelling-house, but was let out on bail, and before bills were sent up to the grand jury, the Crown applied to have the prisoner re-committed for trial at the Assizes :—*Held*, that the Court at Quarter Sessions had power so to re-commit the prisoner without any fresh informations, on an affidavit of the Crown Solicitor stating that the trial would take place more satisfactorily at the Assizes. R. *v.* DOWNES Q. S. X. 172

CRIMINAL LAW—LARCENY.

1. —— *Bailee—Evidence—Diver employed on salvage of wreck.*] A professional diver, employed by the owners of a wrecked vessel to save the cargo, sold part of what he saved and appropriated the price to his own use. There was not any evidence as to who owned the cargo. The owners of the ship indicted him for larceny, the indictment laying the property in them :—*Held*, that there was no evidence of his being the bailee of the goods, and that the owners of the ship had sufficient property in the cargo to support the indictment. R. *v.* CLEGG - - - C. C. R. III. *M.* 117

2. —— *Finder of money.*] A child found money and gave it to her mother, who believed at the time that the true owner could be found, and appropriated the money to her own use,

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CRIMINAL LAW—LARCENY—*continued.*

though shortly afterwards told that E. C. (the true owner) was going about lamenting the loss of her money:—*Held*, not guilty of larceny. R. *v.* DEAVES C. C. R. III. *M.* 156

3. —— *Seaweed.*] An indictment for larceny of seaweed washed on the shore before it has been reduced into possession does not lie. (Morris, J., *diss.*). R. *v.* CLINTON [C. C. R. IV. *M.* 105

4. —— *Workmen—Goods of master—Trade guarantees—Procedure.*] Proceedings against workmen for the larceny of goods of their masters under the value of £5 should be taken under 25 and 26 Vic., c. 50 s. 7, and not for simple larceny. WINSTANLEY *v.* CARAVAN M. P. C. VIII. *M.* 639

CRIMINAL LAW—PERJURY—*Statutable declaration.*] The prisoner having made inquiries from the agent of a shipping company, and being told that the fare was six guineas, immediately made a statutory declaration before a magistrate that a reduction of 7s. 6d. was offered for each passenger:—*Held*, that this was not within sec. 18 of 5 & 6 Wm. IV., c. 62, and that the conviction of the prisoner should be quashed. R. *v.* O'HARE. - C. C. R. VIII. *M.* 220

CRIMINAL LAW—POSSESSION OF STOLEN GOODS—*Charge of being in possession of goods suspected of being stolen—Reasonable and probable cause—Malicious prosecution—5 Vic., sess.* 2, *c.* 24, *sec.* 53.] By sec. 53 of the Dublin Metropolitan Police Act (5 Vic., sess. 2, c. 24) it is enacted that any person who shall be brought before a justice, charged with having in his possession anything which may be reasonably supected of being stolen or unlawfully obtained, and who shall not give an account, to the satisfaction of the justice, how he came by the same, shall be deemed guilty of a misdemeanour. A summons under that section would be sufficient if it alleged merely the possession, by the person charged, of a thing reasonably suspected to have been stolen; and the account of how the person charged came by the possession is a matter of defence. In order to establish a *primâ facie* case of reasonable and probable cause for such a prosecution, it must be shown that the property was reasonably suspected of being stolen; but this may be rebutted by showing that the person charged had, to the knowledge of the prosecutor, given an account which showed, according to the fact, that the possession of the property had been lawfully acquired. Such a *primâ facie* case of reasonable and probable cause would not, however, be rebutted by its appearing that the party charged had stated, according to the fact, that the property was received from another person if, upon being asked the person's name and address, the person so charged refused to give same. ANDREWS *v.* LUCAS - - - - - - - E. X. 146

—— Criminal law—Possession of stolen goods—Guilty knowledge - - - - - - III. *M.* 348
See CRIMINAL LAW—EVIDENCE. 4.

CRIMINAL LAW—POSTPONEMENT OF TRIAL.

1. —— *Affidavit.*] An application, on behalf of the Crown, for the postponement of the trial of prisoners charged in 1876 with a murder committed in 1865, on the ground of the absence out of the jurisdiction of material witnesses, was granted. (By Dowse, B.) R. *v.* SHIELDS [Cir. Cas. X. *M.* 468

2. —— *Bail.*] A Judge of Assize has power on the application of the Crown, and notwithstanding the prisoner's demand for an immediate trial, to postpone such trial a second time after bill found by the grand jury, without ordering the prisoner's release on bail, if satisfied that such postponement is necessary in order to secure the ends of justice. *Semble*, the second clause of the 21 & 22 Geo. III., c. 11, s. 6 (Ir.) applies only to cases where the prisoner had neither been indicted nor tried at the first assizes after his committal. (By Fitzgerald, B.) R. *v.* DRIPPS. Cir. Cas. VIII. 193

CRIMINAL LAW—PRACTICE.

1. —— *Challenge of jurors—Misdemeanour—39 & 40 Vic., c.* 78 *sec.* 10—*Several persons tried together.*] Where several persons are indicted and tried together for misdemeanour, their right of challenge of jurors without cause assigned is in all cases limited to six, and they have no right to sever their challenges. (By Armstrong, Sergt., Judge of Assize.) R. *v.* M'GINLEY - - - - - Cir. Cas. XI. 58

2. —— *Challenge of jurors—Array—Panel.*] Where a sheriff struck a panel of 48 jurors and subsequently another of 200 jurors for the same assizes, for civil and criminal cases respectively, and the latter was quashed and the assizes adjourned, the first jurors summoned in the panel for the trial of criminal cases at the adjourned assizes were the 48 above mentioned:—*Held*, that they were rightly summoned. (By O'Brien, J.). R. *v.* CAHILL - Cir. Cas. XXII. *M.* 529

3. —— *Challenge of jurors—Array—Special jurors for trial of civil actions—Special jurors for trial of criminal cases from jury book from which former were excluded.*] The Court set aside a panel for trial of criminal cases which had been struck after that for the trial of civil actions had been struck, those returned in the latter not being included in the list from which those in the former were taken. (By O'Brien, J.). R. *v.* SWEENEY - - - - Cir. Cas. XXII. *M.* 386

4. —— *Solicitor as advocate.*] A solicitor has no right to address the jury on the trial of a prisoner at the assizes. (By Battersby, Q.C., Judge of Assize.) R. *v.* KEEGAN [Cir. Cas. X. *M.* 200

5. —— *Witness—Medical—Allowance for attendance at assizes.*] A fee of £3 3s. a day and expenses, notwithstanding the Treasury scale only sanctioning £2 2s. per day, was allowed to medical witness when not residing in the assize town. (By O'Brien, J.). R. *v.* NESBITT Cir. Cas. XX. 56

—— Challenge of Juror - - - I. *M.* 45; II. *M.* 399
See CRIMINAL LAW—CONSPIRACY. 1.

—— Judgment—Arrest—Signature by foreman I. *M.* 120
See CRIMINAL LAW—INDICTMENT. 4.

—— One Juror sworn by mistake for another XVI. *M.* 133
See JUROR. 1.

CRIMINAL LAW—RAPE—*Consent obtained by fraud—Carnal knowledge of married woman by means of personating her husband.*] Rape is the act of having carnal knowledge of a woman without her will, and with that description of force which must be exercised in order to accomplish the act: but if her submission or consent to the act is procured by a fraud, which induced her to suppose that she is having sexual intercourse with her husband, such submission or consent does not deprive the act of the character of rape. The prosecutrix, a married woman, in the absence of her husband, lay down upon a bed when it was dark. The prisoner came into the room, and lay upon her. Thinking that it was her husband, she said to him, "You came in very soon," to which he made no reply. He then had sexual connection with her, to which she did not resist until, during the act, she discovered that he was not her husband. On a case stated:—*Held*, that the prisoner was guilty of rape. *R.* v. *Barrow* (L. R. I. C. C. R. 158), overruled. *R.* v. *Flattery* (L. R. II. Q. B. 410), approved. R. *v.* DEE - - - C. C. R. XVIII. 103

CRIMINAL LAW—RESCUE—*Special bailiff.*] The question as to whether a person can be indicted for rescue from a bailiff, appointed at the peril of the party taking out the decree, was reserved for the Court of Criminal Appeal. R. *v.* CARROLL - - - - Q. S. XI. *M.* 319

CRIMINAL LAW—SEDITIOUS LIBEL—*Evidence of truth, or of publication being for public benefit—Mandamus*—44 & 45 *Vic., c.* 60, *s.* 4.] The Newspaper Libel and Regu-

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CRIMINAL LAW—SEDITIOUS LIBEL—*continued.*

tration Act, 1881 (44 and 45 Vic. c. 60, sec. 4), does not extend to proceedings for seditious libel, so as to enable the defendant therein to offer in evidence testimony of the truth of the libel, or of the publication being for the public benefit. *Ex parte* O'Brien. R. *v.* O'Brien - - **Q. B. D. XVII. 19**

CRIMINAL LAW—TREASON FELONY—*Conspiracy—Venue.*] A prisoner was indicted for compassing, within the county of the city of Dublin, to depose the Queen. A variety of overt acts were laid, amongst them conspiracies to levy war, and to incite foreigners to invade the realm; it was also shown that the prisoner was a member of the Fenian organisation. No acts of the prisoner in Ireland were proved against him, but acts of co-operation in Dublin were given in evidence. The prisoner was convicted, and the judge reserved the question of the propriety of admitting evidence of the acts of the prisoner's co-conspirators within the venue. The Court held that the evidence was rightly received, and affirmed the conviction. R. *v.* Meaney - - - **C. C. A. I. *M.* 316**

CRIMINAL LAW—UNSEAWORTHY SHIP—*Sending to sea—Immaterial averments in indictment—Evidence—6 Geo. IV. c. 51, ss. 3, 13—Venue—Recognizance—Merchant Shipping Act, 1871, s. 11.*] In an indictment under the "Merchant Shipping Act, 1871," 34 and 35 Vic., c. 110, s. 11, for sending to sea a ship in an unseaworthy state, it is unnecessary to aver the defendant's knowledge of the state of the ship, and his omission to use reasonable means to make and keep her seaworthy. In considering the question of seaworthiness, the jury are entitled to take into account the circumstances under which the ship was sent to sea, the nature of the voyage, the trade in which she is engaged, and the season of the year. If the shipowner, himself not a shipbuilder or practical seaman, authorised the captain to do everything necessary to make and keep the ship seaworthy, it is evidence that should be submitted to the jury on the question whether the shipowner had used all reasonable means to make and keep the ship seaworthy. In an indictment under the "Merchant Shipping Act, 1871," the venue was stated in the margin as "County of the City of Waterford," to wit, county of Waterford. The assizes for both the county and the city of Waterford are held in the same court-house, which is situated within the city, and the county of Waterford is the county next adjoining the city. The offence was committed within the county of the city of Waterford, and the indictment was tried by a jury of the county of Waterford. It was not alleged in the indictment that a recognizance had been entered into on behalf of the prosecution, under 6 Geo. IV. c. 51, s. 13, nor was it proved on behalf of the Crown that such recognizance had been entered into. The traverser pleaded "not guilty," on which issue was joined. On behalf of the traverser, an application was made, before plea, to quash the indictment upon the allegation that no recognizance had been entered into, but the application was refused. The question having been reserved, under 11 and 12 Vic., c. 78, whether the case was properly tried by a jury of the county of Waterford? and whether it was necessary for the Crown to prove any recognizance under 6 Geo. IV. c. 51? *Held*, that the case was properly tried by a jury of the county of Waterford, and that the indictment ought not to have been quashed on the ground that the Crown did not prove any recognizance under 6 Geo. IV. c. 51. R. *v* Freeman - - - **C. C. R. IX. 122**

CRIMINAL LAW—VENUE.

1.—*Application to change—Intimidation of Jurors and witness.*] Where a prisoner had been tried for murder three times without the juries agreeing, and there had been several adjournments on the application of the Crown, the Court refused to direct the venue to be changed on allegations that a fair trial could not be had by reason of intimidation of jurors and witnesses. R. *v.* Fay - - **Q. B. VI. 164**

CRIMINAL LAW—VENUE—*continued.*

2.—*Change of venue under Criminal Law Procedure (Ir.) Act, 1887, s. 4—"Trial"—"Committal for trial"—"Crime"—Jurisdiction of grand jury of foreign venue to find true bill, after indictment found in original venue—Jurisdiction of Queen's Bench on venue motion under the Act—Statutory jurisdiction—Error on record—Jurisdiction of assize judge to arrest judgment—Construction of order—Jurisdiction to construe—Order inconsistent with Attorney-General's certificate*—50 & 51 *Vic., c.* 20, *ss.* 3, 4, 9, 10.] *Held* (Palles, C.B., *diss.*), that on a motion for change of venue under the Crimes Act of 1887, the Court has only power to order the change. The fact that the order is not apparently consistent with the certificate of the Attorney-General will not invalidate it. The order does not limit the trial to those offences specified on its face. The omission of any one offence, of several mentioned in the certificate, will not invalidate the order. The judge of assize has no jurisdiction to regard the order, whether right or wrong, as a nullity. "Trial" includes inquiry by the grand jury; "crime" means such offences as the informations disclose. The grand jury of a foreign venue has jurisdiction to send up any true bill they please, although the indictment had been found in the original venue. *Per* Palles, C.B.:—Where an order is made by the Court under statutory powers, jurisdiction must be shown on the face of the order. Any error on the record will enable the judge of assize to arrest judgment. He may arrest judgment where the indictment is bad. R. *v.* Cotton **[C. C. R. XXVI. 141**

3.—*Winter Assizes Act, 1876—Change of venue in felony—Fair and impartial trial—Prisoner three times tried—View jury—39 & 40 Vic., c. 78, s. 11—Certiorari—Validity of Order in Council uniting counties for purposes of winter assizes—Jurisdiction of winter assize judge to order view jury.*] A prisoner, accused of murder which took place in January, 1878, in the county of Clare, was put on his trial at the then ensuing Spring Assizes, when the jury disagreed. The defendant insisted on a second trial, but it could not be had by reason of an insufficient attendance of jurors. At the Clare Summer Assizes he was again put on his trial, and the jury again disagreed; and on the next day he was again put on his trial, and an order was made, under 39 & 40 Vic., c. 78, s. 11, that the jury should view and examine the place and vicinity of the alleged homicide. The view was had, and the trial resulted in the jury disagreeing. The further trial of the prisoner was postponed to the Clare Spring Assizes, 1879. Meanwhile, notice was given to the prisoner that it was intended to put him on trial for the fourth time at the Winter Assizes, 1878, and before a jury of the City of Cork, which city had been united with the County of Clare for the purpose of the Winter Assizes by an Order in Council in that behalf. With the object of preventing the trial taking place at Cork at the Winter Assizes, and retaining the county of Clare as the place of trial, a motion was thereupon made on behalf of the prisoner for a writ of *certiorari* to remove the proceedings into the Queen's Bench. There was no impeachment of the jurors of Clare, and it was admitted on both sides as necessary, and insisted upon by the defendant, that the jury on the fourth trial should view the locality of the alleged murder; but it appeared that, if the jury were sent from Cork to the locality in question, about one hundred miles distant, the journey would be attended with delay and difficulty, and not free from peril to health:—*Held*, that upon the application for a writ of *certiorari*, the validity of the Order in Council, uniting the County of Clare with the City of Cork for the purposes of the Winter Assizes, could not be impeached as not being within the scope of the Winter Assizes Act, 1876 (40 & 41 Vic., c. 57), and that it should be assumed that the Judge of Assize would have full jurisdiction to make an order for the jury to view the locality of the alleged homicide. *Held*, further (O Brien, J., *diss.*), that in the exercise of its discretion the Court should refuse the writ, leaving the defendant to apply to the Judge at the trial for an order that the jury should view the locality, the considerations of con-

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CRIMINAL LAW—VENUE—*continued.*

venience and expediency affecting the question being more fit to be left to his decision, and not affording ground for removing the indictment. R. *v.* M'NAMARA - **Q. B. D. XIII. 44**

—— Sending to sea unseaworthy ship - - **IX. 122**

See CRIMINAL LAW—UNSEAWORTHY SHIP.

CRIMINAL LAW—WHITEBOY ACTS—*Boycotting notice — Evidence — Disturbed state of county — Indictment.*] The traverser was indicted under the Whiteboy Act (1 & 2 Wm. IV., c. 44), sec. 3, for causing to be printed and published a notice to the following effect:—"Loughrea Branch, Irish National League. At a meeting of the members of the Loughrea Branch of the Irish National League, held on Sunday, Oct. 4th, 1885, the following resolutions were unanimously adopted: Proposed by Mr. N. J. Barrett (the traverser), seconded by Mr. Thos. Mulkern, 'That we strongly condemn the action of the traders of Loughrea in supplying goods of all kinds to the Boherduff Emergency Men, and that we will in future take such steps as we deem advisable to boycott any trader who supplies them with such goods.' Proposed by Mr. J. Dillon, seconded by Mr. W. Duffy, 'That fifty copies of the foregoing resolution be printed and sent to the traders of the town.'" The indictment charged that the notice (1) excited and tended to excite an unlawful confederacy amongst the traders of Loughrea to refuse to supply goods of all kinds to certain persons, then being caretakers of the lands of Boherduff, with intent to injure such persons; (2) that it threatened injury and damage to the traders of Loughrea and their property if they should supply goods to said caretakers; (3) that it directed and required the traders of Loughrea not to do a certain act—to wit, not to supply goods to said caretakers. The county had been proclaimed under the Peace Preservation (Ir.) Act, 1881. The Judge at the trial left it to the jury to determine whether the notice in fact bore the meanings assigned, and ruled that if so, each count disclosed an offence within the statute. The jury were of opinion that the notice bore those meanings, and found the traverser guilty. On a Case Reserved for the opinion of the Judges as to whether the notice was capable of bearing the meanings assigned, and as to whether the indictment disclosed any indictable offence within the statute:—*Held* (*diss.* Palles, C.B., and O'Brien, J.), that the conviction should be sustained on the three counts (*per* May, C.J., and Murphy, J.); on the first and third counts only (*per* Harrison, J.); on the third count only (*per* Andrews, J.):—*Held*, further (*per* Andrews, J., *et semble*, *per* May, C.J., *diss.* Palles, C.B.), that it was unnecessary for the Crown to have adduced evidence that the county was in a disturbed condition; but (*per* May, C. J.), if it were necessary, that had been sufficiently evidenced. R. *v.* BARRETT - - **C. C. R. XX. 32**

—— Venue **XIII. 44**

See Criminal Law—Venue. 3.

CRIMINAL LAW—WRIT OF ERROR.

1. —— *Fee to Attorney-General.*] It has been the invariable practice to lodge a fee of £15 15s. with every memorial to the Attorney-General praying him to grant his *fiat* for a writ of error. On a motion that the Attorney-General should be directed to determine, without requiring any fee, whether a *fiat* should be granted:—*Held*, that the demand of the fee was illegal, as it could not be supported by immemorial custom. *Re* COSTELLO - **Q. B. II.** *M.* **59**

2. —— *Misdemeanour—Lord Chancellor's jurisdiction.*] The Lord Chancellor, in sealing writs of error in criminal cases, acts only ministerially. The granting of such a writ is part of the prerogative of the Sovereign, and is, in Ireland, entrusted to the Lord-Lieutenant. On a motion that the Lord Chancellor should direct the proper officer to issue a writ of error under the great seal of Ireland:—*Held*, that there should be no rule. *Re* PIGOTT - - - **C. II.** *M.* **334**

CRIMINAL LAW—WRIT OF ERROR—*continued.*

3. —— *Transcript of record—Fees.*] The Court remitted the fees payable by the defendant to the Clerk of the Crown for a transcript of the record, when a writ of error from the judgment of the Queen's Bench Court had been obtained and the case was going to the House of Lords. The application was grounded on poverty and inability to pay. R. *v.* MULCAHY - - - - - **Q. B. I.** *M.* **316**

CRIMINAL LAW.

—— Assault—Occasioning actual bodily harm **XXIV. 20**

See JUSTICES—DISQUALIFICATION. 1.

—— Forcible entry—What constitutes - **XV. 103**

See MANDAMUS. 2.

—— Malicious injury to property - - **V. 41**

See CRIMINAL LAW—INDICTMENT. 2.

—— Prosecution of debtor for fraudulently making away with property - - - - - **XXVII.** *M.* **402**

See DEBTORS ACT (IR.), 1872. 40.

CRIMINATING QUESTIONS—Evidence **XVIII. 2**

See EVIDENCE. 17.

CROWN—Costs against the—Question of legitimacy [**VIII.** *M.* **415**

See COSTS AGAINST THE CROWN

CRUELTY TO ANIMALS

See Cases under CRIMINAL LAW—CRUELTY TO ANIMALS.

CUMULATIVE GIFTS—Will - - **III.** *M.* **446**

See WILL—CUMULATIVE GIFTS.

CURRENCY—British or Irish—Rent reserved in lease [**II.** *M.* **58**

See RENEWABLE LEASEHOLD CONVERSION ACT. 11.

CUSTODY—Infant.

See Cases under INFANT—CUSTODY.

CUSTOM OF STOCK EXCHANGE—*Purchase of shares—Specific performance—Indemnity against calls.*] On the 21st of April, 1866, L. & Co., stockbrokers, bought on the Stock Exchange one hundred shares in the Bank of O. G. & Co., from K., who was a dealer in shares, the settling day being the 27th. On the 25th of April the shares were, by arrangement between L. & Co. and K., continued till the 15th of May. The bank stopped payment on the 10th of May. On the 24th of May S. sold on the Exchange 34 shares in O. G. & Co., and the name of M. was then "passed" to him as the transferee. S. thereupon executed to M. transfer deeds of the shares, handed the deeds with the scrip certificates to L. & Co., and was paid. M. refused to receive or execute the deed of transfer. S.'s name appeared on the register as the legal owner of the shares, and he had been obliged to pay the call; and he instituted a suit against M. for specific performance, and for an indemnity against future calls. The Vice-Chancellor dismissed the petition, there being no privity of contract between S. and M. when the contract of the 21st April was made, K. being a principal therein, and not an agent. SHEPPARD *v.* MURPHY - - - - **V. C. I.** *M.* **712**

[This was reversed on appeal. I. R. 2 Eq. 544.]

CY PRES—Charity

See CHARITY—MANAGEMENT.
CHARITY—SCHEME. 1.

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DAMAGES.

1.—*Negligence—Pleading.*] A count for damages caused by two kinds of negligence, delay and injury, is not sustainable, and will be set aside. CALLAGHAN *v.* CITY OF DUBLIN STEAM PACKET CO. - - - - **E. I. *M.* 247**

2.—*Nominal—Husband and wife—Breach of contract with husband.*] Where a railway company contracted to carry the wife of the plaintiff, but neglected to perform their contract, and she was in consequence detained for the night at the defendants' station, it was held that he could not recover more than nominal damages, he not having been at home, and in consequence not having been deprived of his wife's society and companionship, and there being no evidence of injury to her depriving him of her services afterwards. COLLIER *v.* DUBLIN W. & W. RAILWAY CO. - - **C. P. VIII. 24**

3.—*Remoteness—Injury to trade.*] A canal company, to cleanse the canal, made a cut in the bank above the mill premises demised by them to the plaintiff (who was entitled under his lease to the superfluous water (if any) flowing through a conduit and overfall from the canal) and let off the water, so that he had to hire a steam engine to supply the place of the water power, and had his business stopped while the engine was being erected. There was evidence of subsisting contracts and of his inability to execute them, and also of general loss of business. The jury gave £146 17s. for his loss of money, for hire of engine, &c., and £100 for loss of business. The defendants, on a motion for a verdict for them, contended that the £100 was given in respect of too remote damages, no distinction having been made between existing contracts and general loss of business. The Court refused to disturb the verdict. ATHOL *v.* MIDLAND G. W. RAILWAY CO.
[Q. B. III. *M.* 210

4.—*Remoteness—Breach of contract by carrier for carriage of horses—Injury to horses in consequence of having to travel by road.*] The plaintiff, proposing to sell certain horses by auction at Dublin, on the 26th of April, agreed with the defendants, a railway company, that the horses should be carried by rail to Dublin on the 24th of April, as the horses should be on view the day before the auction. The defendants failed to provide the necessary means of carriage for the horses on the 24th, whereupon the plaintiff took them by road to Dublin, having no other alternative if he wished to sell them at the auction as contemplated. In consequence of the journey some of the horses were deteriorated in appearance, one of them was lamed, and those which were sold fetched lower prices than would otherwise have been realised. But for some time previous the horses had been fed on soft food, and had they been in hard hunting condition they would not have been the worse for the journey:—*Held*, that the injury to the horses was attributable to the default of the defendants, and not to the condition in which the horses were; and that damages awarded in consequence of the deterioration in the selling value of the horses were not too remote. *Hobbs* v. *London and S.-W. Railway Co.* (L. R. 10 Q. B. 111), applied. WALLER *v.* MIDLAND G. W. RAILWAY CO. - - **Q. B. D. XII. 145**

[This was reversed on appeal. 4 L. R. (Ir.), 376]

5.—*Remoteness—Steamer—Collision—Possible loss of profits by a bar-keeper, a licensee on board injured ship—Party to sue—Estoppel.*] In cases of tort a third party not having an interest in, but being physically upon, or having goods upon a ship injured in collision, by the negligent ship, has no right to recover more than the immediate damage done to his person or goods. *Sed quære*, Could not the owner of the ship recover same from the negligent ship? (By Holmes, J.) MAGRANE *v.* THE CITY OF DUBLIN STEAM PACKET CO.
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DAMAGES—*continued.*

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DEBTORS' ACT (Ir.), 1872.

1. —— **Ss. 4, 5**—*Debt contracted before the passing of the Act—Rent accruing after, in lease executed before it—Default in payment—Arrest on* capias ad satisfaciendum.] Rent accruing due and payable after the passing of the Debtors' Act (Ir.), 1872 (35 & 36 Vic., c. 57) by the lessee of a lease executed before the passing of the Act, constitutes a debt contracted before the passing of the Act, as defined by section 4, for making default in payment whereof the debtor may still be arrested on a writ of *capias ad satisfaciendum*. (*Per* O'Brien, J.) In construing the clauses of section 4 of the Debtors' Act (Ir.), 1872, the several meanings thereby assigned to the terms "debt contracted before" and "debt contracted after" the passing of the Act should be interpreted separately and distributively, as each referring to something different from the other, and so the words "cause of action or suit arising" should be considered as referring in both clauses to a description of debt different from that which is therein described as "a sum of money, due or payable under or in respect of any contract or obligation made or entered into." *Quære*, whether rent accruing due after the passing of the Debtors' Act (Ir.), 1872, under a tenancy from year to year, which had commenced before the passing of the Act, constitutes a debt contracted after the passing of the Act, for making default in payment whereof the debtor would not be liable to arrest on a writ of *capias ad satisfaciendum*? *In re Marquess* (VIII. 77, I. R. 9 C. L. 96), followed. PARKER *v.* M'HUGO **Q. B. IX. 81**

2. —— **Ss. 4, 5**—*Judgment on writ of revivor—Costs.*] The plaintiff is entitled at his own risk to a writ of *ca. sa.* for the

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DEBTORS' ACT (Ir.), 1872—*continued.*

amount of a debt and costs of revivor after the passing of the Debtors' Act in respect of a judgment marked before it. WOGAN *v.* CHAMNEY. - - - **C. C. VIII. *M.* 220**

3. — Ss. 4, 5—*Principal sum due before passing of the Act—Interest accruing after it—Judgment—Arrest.*] Where, after the passing of the Debtors' Act (Ir.), 1872, an agreement is concluded between a debtor and creditor, by virtue of which a principal debt due before the passing of the Act and interest computed thereon up to the date of the agreement are constituted one integral debt, and made a new starting point as such in the dealings between the parties, bearing interest on the gross amount, it is not competent to the creditor to arrest the debtor under a *ca. sa.* on foot of a judgment in respect of the liability so incurred. ARKINS *v.* MAGRATH - **C. P. VIII. 21**

4. — S. 5—*Arrest on civil bill decree for debt contracted after passing of Act—Mis-statement of date—Alteration of decree—Habeas corpus—Discharge of prisoner.*] A civil bill process was brought against defendant, not specifying the date when the debt accrued, for a debt which in fact accrued after the passing of the Debtors' Act (Ir.), 1872, and the defendant not appearing, a decree was granted for the amount. The entry of the decree in the book of the clerk of the peace did not specify the date when the debt accrued, or whether execution was to be against the person or goods of the defendant. The decree was filled up by the clerk of the plaintiff's attorney with an award of execution against the goods; but afterwards the attorney, without any fraudulent intention, inserted in the decree the words "in the year 1871," as being the date when the debt accrued, and induced the clerk of the peace to alter the award of execution, making same against the body. The chairman, misled by the decree as altered, signed same; and the defendant was arrested on foot of the decree after the coming into operation of the Debtors' Act:—*Held*, that the debtor was entitled to be discharged from custody, on a writ of *habeas corpus*. *Re* KEARSE - - - - **Q. B. VII. *M.* 541; VIII. 14**

5. — S. 5—*Attachment—Rent due by tenant under the Court*—35 & 36 *Vic., c.* 57—*Jurisdiction.*] A tenant, under the Court of Chancery, held under a lease executed before the passing of the Debtors' Act (Ir.), 1872. Rent accrued due after the passing of the Act, but before it came into operation. A conditional order for an attachment of the tenant for non-payment of this rent was granted by the Receiver Master, but the Registrars refused to issue it. Upon an application to the Court, the Lord Chancellor declined to direct the Registrars to issue the conditional order. *Re* GALLS, MINORS - **C. VII. 29**

6. — S. 5—*Debt contracted after passing of Act—Balance of running account—Interest on debt—Discharge of debtor—Setting aside* ca. sa.—*Indorsement of particulars.*] Where a running account opened before the passing of the Debtors' Act (Ir.), 1872, is continued subsequently, and the various debtor and creditor dealings between the parties have been treated as one integral transaction, and the final balance accruing upon the whole account is not ripe for action or recovery until after the passing of the Act, it is not competent to the creditor to arrest the debtor under a *ca. sa.* issued on foot of a judgment recovered for the balance of the account. Where a principal debt has been contracted before the passing of the Debtors' Act (Ir.), 1872, for which judgment has been recovered after the passing of the Act, it is not competent to the judgment creditor to arrest the debtor for interest upon the judgment debt accruing after the passing of the Act. Where a debtor had been arrested under a writ of *ca. sa.* issued after the commencement of the Debtors' Act (Ir.), 1872, for a debt contracted after the passing of the Act, the writ will be set aside. *Re Byrne* (VII. 60), distinguished. M'CARTHY *v.* M'CARTHY - - **C. C. VII. 177**

7. — S. 5—*Debt contracted after passing of the Act—Discharge of debtor.*] A verdict having been had for the plaintiff on the trial of an interpleader issue, to ascertain the ownership of a chattel which had been seized by the defendant on August 29, 1872, under a writ of *fi. fa.*, the plaintiff, after the passing and before the commencement of the Debtors' Act (Ir.), 1872, issued a writ of *ca. sa.* for the costs of the trial, and thereupon, after the commencement of the Act, arrested and imprisoned the defendant. On motion it was ordered that the debtor be discharged from custody, but the Court refused to set aside the writ of *ca. sa.* *Re* BYRNE **[C. C. VII. 60**

8. — S. 5—*Debt accruing before passing of Act—Rent accruing after, under an agreement of tenancy executed prior to* 1872—*Direction to officer to issue writ of* ca. sa.] A motion for the officer to issue a writ of *ca. sa.* was directed to be on notice where the judgment was for half a year's rent which did not commence to accrue until after the passing of the Act, and subsequent thereto had fallen due, under a contract of tenancy executed prior thereto. KING *v.* KENNAN **[C. C. VIII. *M.* 574**

9. — S. 5—*Default by solicitor in payment of money ordered by the Court to be paid.*] A solicitor, acting under a power of attorney, received money of a client; on a petition being presented against him he was ordered to pay £100 within 10 days, and he paid £40 on foot thereof. A motion for attachment having been made, he claimed certain credits, and was directed to pay the balance within a month. The balance not having been paid, on a motion for attachment it was granted unless one half the money were paid within a month and the other half within two months. *Re* WOGAN **[R. VIII. *M.* 136**

10. — S. 5—*Judgment for debts accrued before and after passing of Act—Amendment.*] Where judgment was recovered against a defendant for two gales of rent, one of which accrued due before and the other after the passing of the Debtors' Act (Ir.), 1872, the Court allowed the plaintiff to amend the judgment by striking out the cause of action accruing subsequently to the passing of the Act SHAW *v.* DUNLOP **C. C. VIII. 76**

11. — S. 5—*Motion to discharge defendant, and set aside writ of* ca. sa.] A motion to discharge a defendant who had been arrested after the passing of the Debtors' Act (Ir.), 1872, was granted, but the Court refused to set aside the writ of *ca. sa.* GLASCOTT *v.* BYRNE - - - - **E. VII. *M.* 161**

12. — S. 5 (4)—*Attachment—Non-payment by attorney of money ordered to be paid by him as an officer of the Court—Adjudication of bankruptcy subsequent to order—B. A. Act,* 1872, *sec.* 26.] Where default has been made by an attorney in payment of a sum of money, when ordered to pay the same in his character of an officer of the Court making the order, within section 5, sub-section 4 of the Debtors' Act, 1872, a writ of attachment for the non-payment is a matter of right, and the Court has no jurisdiction to refuse it, notwithstanding that subsequent to the order for payment, the defaulter has been adjudicated a bankrupt, and has obtained a protection order from the Court of Bankruptcy, and passed his final examination, not however having obtained his certificate of conformity. *Evans* v. *Bear* (L. R. 10, Ch. 76), followed. *Re* A. B. **[Q. B. XI. 90**

13. — S. 5 (4)—*Non-payment of money due by a solicitor to a client—Attachment.*] A solicitor who, acting under a power of attorney, receives money for a client and neglects to pay it over when ordered by the Court to pay the same in his character of solicitor, is guilty of misconduct in respect of which an attachment may be issued against him within the 35 & 36 Vic., c. 65, sec. 5, sub-sec. 4, although his default may be occasioned by inability to pay. *Re* W. **R. VIII. 51**

14. — Ss. 5, 6—*Committal—Disobedience of order to lodge money in Court—Committal not showing in what capacity party was liable—Indefinite term of imprisonment.*] Where an order was made by a County Court Judge, stating that a civil bill had been brought by an administrator for administration of assets, against the defendant, alleging that she had possessed herself of the assets; that she had been ordered to pay

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DEBTORS' ACT (Ir.), 1872—*continued.*

into Court £25, part of the property of which she had possessed herself, but that she had not complied; and after declaring that she had been adjudged guilty of contempt for disobedience of said order, ordered her to be committed to prison until she should comply therewith, or until she should be sooner discharged by competent authority, and in due course of law:—*Held*, that the order was invalid, on the ground that it should have shown that the case came within the exceptions to the fifth section, and on the further ground (May, C.J., *diss.*), that it should have appeared thereby that the imprisonment was not to extend beyond the period of one year, limited by the sixth section. *Re* BYRNE - - **Q. B. D. XIV. 115**

15. —— **S. 6**—*Application for committal for non-payment of debt—Decree out of date.*] A decree on which an application for an order for committal was made had become out of date through not being renewed:—*Held*, that it should be renewed before the application should be made. CHAMP *v.* CHAMP **[Q. S. XI. *M.* 346**

16. —— **S. 6**—*Commitment to prison—Payment by instalments—Default—Arrangement with creditors—Composition to be paid through official assignee—Secured creditor failing to value his security—Obligation of debtor to tender the composition to such creditor—G. O.*, 1872, 85, 89.] A defendant who had been ordered to pay the plaintiffs their debt by instalments, and made default in so doing, compounded with his creditors, who agreed to accept a composition, to be paid to them through the official assignee, as trustee. The plaintiffs, who had been returned by the defendant as fully secured, were not tendered or paid any part of the composition, as they had not valued their security and proved for the balance. The plaintiffs having moved to commit the defendant to prison for default in paying the instalments ordered by the Court:—*Held*, that the default, if any, committed by the trustee in not tendering the composition to the plaintiffs was not default by the debtor, and that the plaintiffs should first have valued their security; and, therefore, that the plaintiffs were not remitted to their original rights. *Edwards* v. *Coombe* (L. R. 7, C. P. 519), and *Tea Co., Limited* v. *Jones* (43 L. T. N. S., 255), distinguished. NATIONAL BUILDING AND LAND INVESTMENT CO. *v.* ANON. **[E. D. XVII. 12**

17. —— **S. 6**—*Conditional order for committal—Non-service within time for showing cause—Evading service—Making order absolute.*] A conditional order for attachment was not able to be served for some time after the date for making it absolute expired, as the defendant evaded service. A service being made, a notice of motion to make the order absolute was served, and on its coming on the defendant applied for an adjournment, which was granted; on it coming on again on the day to which it was adjourned the defendant did not appear. The order was made absolute. WILSON *v.* DONNELL **[C. C. VIII. *M.* 554**

18. —— **S. 6**—*Costs of non-suit—Order for payment—Discretion as to granting—Jurisdiction in Consolidated Chamber.*] A plaintiff not having proceeded to trial, the defendant, after the lapse of three terms, obtained an order directing him to proceed, or that, in default, the action be dismissed with costs. The plaintiff neglecting to proceed, the action was, by subsequent order, dismissed with costs. On motion by the defendant, the Court, holding that the costs constituted a debt within the Debtors' Act (Ir.), 1872, sec. 6, ordered that the costs as taxed, together with the costs of the motion, be paid by monthly instalments. *Quære*, whether a judge has jurisdiction, in Consolidated Chamber, to make an order for payment under the Debtors' Act (Ir.), 1872, s. 6? HOLLAND *v.* READ **[C. C. VIII. 168**

19. —— **S. 6**—*County Courts Act*, 1877, *s.* 55—*Committal order—Right of appeal—Costs—Counsel's fee.*] An appeal lies from a committal order made by a County Court Judge under the Debtors' Act, 1872. In such a case the Court has power to certify for counsel's fee. (By Sherlock, Serjeant, Judge of Assize.) BRODERICK *v.* WILKINSON **[Cir. Cas. XV. 58**

DEBTORS' ACT (Ir.), 1872—*continued.*

20. —— **S. 6**—*Debt incurred after passing of Act—Costs—Payment by instalments—Proof of means.*] Costs by the final order in a cause having been awarded to be paid by the plaintiff to the defendant, and default in payment having been made, the defendant applied, under 35 & 36 Vic., c. 57, s. 6, for an order for payment by instalments, but without grounding the application on any proof of the plaintiff's means of payment. The Court refused the motion. STURGEON *v.* ROBINSON **[R. VIII. 13**

21. —— **S. 6**—*Examination as to means—Notice of application—G. O. Hil. Term*, 1873, *r.* 3.] A motion for a *viva voce* examination of a debtor under the 3 G. O. Hilary Term 1873, for the purpose of proving his means of paying, before the hearing of an application for payment or committal under the Debtors' Act, 1872, s. 6, was refused. WILLIAMS *v.* FEE **[Vac. J. XII. 138**

22. —— **S. 6**—*Instalment order—Constable in Royal Irish Constabulary.*] An instalment order was made against a constable in the Royal Irish Constabulary, FITZMAURICE *v.* LYONS - - - - **E. D. XXVI. *M.* 348**

23. —— **S. 6**—*Jurisdiction of judge in Consolidated Chamber.*] A judge has jurisdiction in Consolidated Chamber to make an order under the Debtors' Act, 1872, s. 6, 1 G. O., 1873, against a defendant for payment of a debt due. *O'Donnell* v. *Smith* (VIII. 32), not followed. REARDON *v.* HAYES **[C. C. VIII. 116**

24. —— **S. 6**—*Motion for committal.*] A motion for committal under sec. 6 was refused when it appeared that the payment of the sum would absorb the defendant's means of living for the time being. SOMMET *v.* DORNEY **[Q. B. VII. *M.* 584**

25. —— **S. 6**—*Motion to compel sheriff to return committal order.*] The Court granted a motion to compel a sheriff to return a committal order made under the Debtors' Act (Ir.), 1872. O'DONNELL *v.* GRIMSHAW - **Q. B. VII. *M.* 584**

26. —— **S. 6**—*Notice to defendant of motion for arrest.*] The Court refused to order the arrest of a defendant for non-compliance with an order for payment of a debt by instalments, when no notice of the motion had been served on him. JOHNSTON *v.* ACKLAM - - **C. C. X. *M.* 575**

27. —— **S. 6**—*Order for payment—Means to pay—Bill of sale given by judgment debtor—Disputed validity.*] Where, on a motion for an order for payment of a judgment debt under the Debtors' Act 1872, sec. 6, the question whether the defendant was possessed of means to pay depended on whether or not a bill of sale which he had given, and which had been set up as against an execution, was fraudulent and void, the motion was refused, the plaintiff being left to his remedy by an interpleader issue. SWEENY *v.* GOULDING **[C. P. D. XV. 47**

28. —— **S. 6**—1 *G. O.* 1873—*Order for payment—Proof of means—Jurisdiction—Practice.*] A motion for an order for payment under the Debtors' Act 1872, s. 6, 1 G.O. 1873, should be made to a Judge in Chamber and not to the Court *in banco*. Where an order for payment is applied for, under the Debtors' Act, 1872, s. 6, it must be shown that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default. ANON. - - **E. VIII. 206**

29. —— **S. 6**—*Order for payment—Costs of motion.*] A motion that the plaintiff should pay £56 18s. 8d., the costs of a judgment of non-suit and the costs of the motion, was granted, such payment to be made within a month where it appeared that the plaintiff had a pension of £75 from Government and a salary of £30, and he did not appear on the motion. WHITE *v.* POWER - - - - - **C. P. VIII. *M.* 375**

30. —— **S. 6**—*Order for payment—Motion at Chambers—Judicature Act*, 1877, *s.* 44—*O. LIII.*] A motion for payment under sec. 6 is moveable at Chambers. EGMONT *v.* O'RIORDAN **[E. D. XII. *M.* 59**

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DEBTORS' ACT (Ir), 1872—*continued.*

31. —— **S. 6**—*Order for payment—Proof of means.*] An order for payment or committal under sec. 6 will not be granted where the Court is satisfied that the defendant has no means; but the defendant will not be given the costs of the motion. M'LAUGHLAN *v.* BROWN - - **E. D. XII. *M.* 89**

32. —— **S. 6**—*Order for payment by instalments without alternative committal.*] A motion for an order, under the Debtors' Act (Ir.), 1872, s. 6, 1 G. O., 1873, against a defendant, for payment, should be made to a judge sitting in *camerâ*. O'DONNELL *v.* SMITH - - - **C. C. VIII. 32**

33. —— **S. 6**—*Order for payment—Proof of means.*] It must be shown that the defendant could or ought to pay the debt; and no order will be made where it is shown that the defendant has not any means. FOSTER *v.* STACKPOOLE **[C. P. D. XII. *M.* 35**

34. —— **S. 6**—*Order for payment by instalments—Committal order for non-payment.*] Where an order to pay a debt by instalments has been made under the Debtors' Act (Ir.), 1872, a committal order cannot be made for non-payment of several instalments. LANGFORD *v.* LARACY **E. D. XVIII. 39**

35. —— **S. 6**—*Order for committal before order for instalments—County Court Rules, O. XXI. r.* 156—*Amendment.*] There is no jurisdiction to grant an order for committal before an instalment order is granted, or to amend a process for committal to one for payment by instalments. MACPHERSON'S EXECUTORS *v.* WALKER - - **Q. S. XII. *M.* 59**

36. —— **S. 6**—*Payment by instalments.*] The Court ordered the amount of the defendants' taxed and certified bill of costs to be paid by instalments of £5 annually. MOORE *v.* GAUSSEN - - - - **Q. B. VIII. *M.* 108**

37. —— **S. 6**—*Payment by instalments—Costs.*] Where an action might have been commenced in the Civil Bill Court only one guinea was allowed for the costs of a motion for payment by instalments. BURTON *v.* CARTON **[Q. B. D. XXIV. *M.* 316**

38. —— **S. 6**—*Proofs in application under.*] It must be shown that the defendant was able to pay the amount of the decree, and refused to pay it. O'BRIEN *v.* CARMODY **[Q. S. VIII. 207, note**

39. —— **S. 6**—*Whole debt in one instalment.*] An application under the Act for an order that a whole debt be paid in one instalment should be either on notice, or a garnishee order applied for. FEELY *v.* FLYNN - **E. D. XXVI. *M.* 625**

40. —— **S. 6**—*Instalment process—Writ of execution—Judgment six years old—Leave to renew—Decree—O. XLII., rr.* 1, 8, 25.] An instalment order under the Debtors' Act is a writ of execution under O. XLII. r. 8. Where a judgment of the Superior Court has been in force for six years, after that time leave to issue an instalment order must be first obtained, and unless it has been obtained a process thereon under the Debtors' Act for payment by instalments, or for committal, will be dismissed. An instalment order will not be made when the decree of the County Court Judge has not been renewed at the end of the year. SEXTON *v.* DUNBAR - - **Rec. C. XXVII. 140**

41. —— **S. 7**—*Application for discharge of married woman.*] A married woman, a defendant with her husband, was arrested under the Debtors' Act, upon an affidavit stating that she intended to leave Ireland. An application for her discharge was granted, it not being shown that she had any such intention, and on her undertaking not to bring an action. WILLIS *v.* DOWDALL - - - - - **C. C. X. *M.* 564**

42. —— **S. 7**—*Committal order.*] A committal order against a defendant about to leave Ireland can only be obtained where the plaintiff might have occasion to use the defendant's evidence at the trial. ANON. - - **C. P. VII. *M.* 569**

DEBTORS' ACT (Ir.), 1872—*continued.*

43. —— **S. 7**—*Defendant about quitting Ireland—Arrest—Discharge on judgment being signed.*] When judgment has been marked, a defendant who has been arrested as being about to leave the country must be discharged. ULSTER BANK *v.* STEWART - - - - - - - **C. P. D. XV. *M.* 195**

44. —— **S. 7**—*Defendant about to quit Ireland—Prejudice to plaintiff in prosecution of action—Arrest of defendant.*] An order will not be made under 35 and 36 Vic., c. 57, sec. 7, to arrest a defendant about to quit Ireland, unless it is shown that his absence would materially prejudice the plaintiff in relation to the steps necessary to be taken in the prosecution of his action before final judgment. M'BLAIN *v.* WEIR - - - - - - - - - **Q. B. VIII. 31**

45. —— **S. 7**—*Defendant about quitting Ireland—Prejudice to plaintiff in prosecution of action—Arrest—Delay in making judgment—Varying order.*] Where a defendant had removed all his effects, and was about quitting Ireland, and it was sworn, on behalf of the plaintiff, that efforts made to discover the place to which the effects were removed had failed, but that, if the defendant were arrested, it could be discovered, and that, if he were permitted to leave Ireland, there would be no use in proceeding with the action:—*Held*, that it was sufficiently shown that the absence of the defendant would materially prejudice the plaintiff in the prosecution of his action, for the purpose of an order under 35 and 36 Vic., c. 57, s. 7, to have the defendant arrested. Where, after the defendant had been arrested under 35 and 36 Vic., c. 57, s. 7, the plaintiff delayed marking judgment beyond the time when he could, and reasonably ought to, have marked it, admitting that nothing was to be obtained by marking it, and avowing that he would not mark it, and required the defendant to be detained in custody merely for the purpose of putting pressure on him:—*Held*, that the order for the defendant's imprisonment should be varied, under 6 G. R., 1873, by reducing the period within which he was to be imprisoned. The object of the 7th sec. of the Debtors' Act (Ir.), 1872, is to secure the presence of the defendant within the jurisdiction, so that the proceedings of the plaintiff in prosecuting his action may be rendered of avail up to the marking of final judgment. Upon final judgment being marked, the order for the defendant's arrest would be annulled. And it would be expedient that orders under that section should provide that upon the marking of final judgment the defendant should be discharged from custody. HESTER *v.* BYRNE **[C. C. VIII. 53**

46. —— **S. 7**—*Requisites of affidavit to obtain commitment order—Concealment of facts from judge—6 G.O.*, 1872.] An order to arrest a defendant under the Debtors' Act (Ir.), 1872, sec. 7, should not be made except on affidavits which show in what way the absence of the defendant from Ireland will materially prejudice the plaintiffs in the prosecution of their action. A defendant, arrested and committed to prison upon an order, founded on an affidavit, merely stating that the plaintiffs will be materially prejudiced in the prosecution of their action by the absence from Ireland of the defendant, but not showing how, will be discharged from custody without terms. Upon a motion to discharge from custody a prisoner arrested pursuant to an order under sec. 7 of the Debtors' Act, the plaintiff will not be permitted to supplement the affidavit on which the order was obtained:—*Semble*, that the concealment by the plaintiffs of material facts from the judge who makes the order is ground for discharging it, if the facts concealed would have been calculated to influence him to refuse the order in the first instance. LINDSAY *v.* HUGHES **[C. C. X. 63**

47. —— **S. 12**—*Debtor absconding with property four months before being adjudicated bankrupt—Arrest for felony—Subsequent adjudication—Felony, when complete—Justification of arrest.*] A justice of the peace is not warranted in causing a trader to be arrested for felony under the 12th sec. of the Debtors' Act (Ir.), 1872, upon an information that such

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DEBTORS' ACT (Ir.), 1872—*continued.*

trader was leaving Ireland, and taking with him part of his property to the amount of £20 or upwards, which ought by law to be divided among his creditors, unless it appear that, at the time of the arrest, the debtor had been adjudged bankrupt or presented a petition for arrangement, even though within four months afterwards he be adjudged bankrupt, or presents such petition for arrangement, as until that takes place the debtor does not become guilty of the felony in such case created by the statute. SCOTT *v.* COATES - - **Q. B. X. 165**

48.—**S. 12**—*Debtor absconding with property four months before being adjudicated bankrupt—Arrest for felony—Subsequent adjudication—Felony, when complete—Justification of arrest—Pleading.*] A justice of the peace is not warranted in causing a trader to be arrested for felony under the 12th sec. of the Debtors' Act (Ir.), 1872 (32 & 33 Vic., c. 62), upon an information that such trader was leaving Ireland and taking with him part of his property to the amount of £20 or upwards, which ought by law to be divided among his creditors, unless it appear that at the time of the arrest the debtor had been adjudged bankrupt or had presented a petition for arrangement, even though within four months afterwards he be adjudged bankrupt or presents such petition for arrangement, as until that takes place he does not become guilty of the felony in such case created by the statute. SCOTT *v.* M'VICKERS - - - - - - - **E. X. 137**

49.—**S. 13**—*Criminal prosecution—Debtor fraudulently making away with property.*] A criminal prosecution was instituted against a debtor for making away with his property after a decree of the County Court had been obtained against him:—*Held*, that the Crown should not interfere with matters of the kind where the alleged transaction was in the course of business in the open market, and without attempt at concealment or disguise. (By Palles, C.B.) R. (HUNTER) *v.* COSTELLO - - **Cir. Cas. XXVII. *M.* 402**

—Detention of prisoner attached for contempt of Court **[XIII. 118**

See CONTEMPT OF COURT. 2.

—Sheriff's fee for execution of committal order **XXV. 87**

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DEBTOR'S SUMMONS.

See Cases under BANKRUPTCY—DEBTOR'S SUMMONS.

DECEIT. Principal and agent—Liability of principal. **[I. *M.* 760**

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DECLARATION

—of Churchwardens—Pews in Parish Church **I. *M.* 47**

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DECLARATION OF TITLE.

1.—*Construction of—Supplying words.*] Words were supplied in construing a declaration of title by the Landed Estates Court which without them would be unintelligible, having regard to the object and intention of the declaration as apparent from the recitals and context of it. BILLING *v.* WELCH. **[Q. B. VI. 64**

2.—*Effect of.*] A declaration of title by the Landed Estates Court has the same validity and conclusive effect as a conveyance by that Court of the fee-simple to a purchaser. BILLING *v.* WELCH - - - - **Q. B. VI. 64**

See Cases under PRACTICE—LANDED ESTATES COURT—DECLARATION OF TITLE.

DECREE.

See PRACTICE—CHANCERY—DECREE.
PRACTICE—CIVIL BILL COURT—DECREE.

DEED.

—of Arrangement

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—of Separation—Trustee - - - **XXVI. 146**

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—Setting aside—Undue influence - - **IV. *M.* 181**

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DEFAMATION. Col.

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DEFAMATION—LIBEL.

1.—*Black List—Privilege.*] The Court is not to be considered as pronouncing an abstract opinion that the "Black List" is privileged. JONES *v.* M'GOVERN **Q. B. I. *M.* 33**

2.—*Black List—Embarrassing summons and plaint—Uncertainty—Malice.*] In an action for damages for a publication in the Black List, three counts of the summons and plaint were for libel, and two for false representation. The jury found for the plaintiff upon all the issues, and gave damages generally. The Court held that he was entitled to have the verdict upon the libel counts. Whiteside, C. J., considered there was evidence of express malice. O'Brien, J., did not think so, but agreed with Fitzgerald, J., that the counts for false representation should not have been introduced. JONES *v.* M'GOVERN - - - - **Q. B. I. *M.* 369**

3.—*Cartoon—General or special damages—Malice.*] When a libel is contained partly in a picture and partly in words, evidence as to the general effect of the libel is rightly receivable; evidence as to individual words is only admissible when it can be shown they have a special meaning. KENNY *v.* THE FREEMAN'S JOURNAL CO. **E. D. XXVII. 8**

4.—*Evidence—Pleading—Fair comment.*] The plaintiff in an action of libel having deposed, on his examination before the "Parnell Commission," that the defendant was a land-grabber, the defendant published letters denying the plaintiff's statement and accusing him of perjury. In an action of libel brought by the plaintiff, to recover damages for this accusation, the defendant pleaded a defence of fair comment, and did not justify. At the trial, evidence having been given, on behalf of the defendant, not that the plaintiff had committed perjury, but that what the plaintiff stated was in fact untrue:—*Held* that such evidence was admissible under the defence of fair comment, while in the absence of a plea of justification, evidence that the plaintiff had committed wilful perjury would not have been admissible. JOYCE *v.* MONAGHAN **[E. D. XXIV. 100**

5.—*Fair comment—Pleading—Matter of public interest—Reasonable inference.*] In an action of libel it is a question of law whether the publication complained of can be a fair comment upon the matters of fact averred in the defence; if it might be so, it is for the jury to say whether in fact it was so, and an averment of the defendant's belief of its truth is not a good defence. When a matter of fact set forth in an alleged libel is to be excused as a fair comment upon other facts, that fact alleged and sought to be excused must be a reasonable inference from the facts alleged, and upon which it is a comment, and whether the fact alleged be capable of being reasonably inferred from such other facts is a matter of law. Reports of Inspectors of Irish Fisheries, and of Committees of the House of Commons are matters of public interest. L. was the manager of the Queen's Printing Office in Ireland, and was also on the literary staff of a newspaper, published in Dublin, called the "Freeman's Journal," and in the habit of contributing articles to it. In the latter capacity he wrote two articles giving publicity, the one to a report of the Inspectors of Irish Fisheries, and the other to

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DEFAMATION—LIBEL—*continued.*

a report of a Committee of the House of Commons upon the Board of Public Works in Ireland. Both these articles were published before the reports had been sent to any of the public journals. B. was the proprietor of a newspaper, also published in Dublin, called "Saunders' Irish Daily News." In this journal, subsequent to the publishing of the article written by L., an article appeared stating that copies of the official reports in question had been obtained by some surreptitious means from the office of the Government printer, and that recently the office could be got at, and, owing to the laxity of administration, one particular newspaper could be accommodated with an advance copy of forthcoming public documents. In an action of libel in which L. was plaintiff, and B. defendant, the plaintiff complained of this article as a libel referring to himself, and after setting it out in full in his statement of claim, averred that it attributed to him dishonesty, corruption, and fraud. The defendant pleaded a special defence, which alleged that before the publication complained of publicity was given by the plaintiff through an article written by him in "The Freeman's Journal," to the reports mentioned, before they had been forwarded to the Press, or were procurable by the public; that these facts were matters of public interest, and that the publication complained of was only a fair and *bonâ fide* comment on these facts. The defence also averred as matters of fact that when publicity was so given to each of the reports mentioned, the Queen's Printing Office had them for the purpose of being printed, and that the day before the article of the plaintiff in reference to the House of Commons report was published, the plaintiff had stated that it could not be procured by the Press, and would not be ready for some time. There was a further statement in the defence of the belief of the defendant that the information enabling the articles of the plaintiff to be written could only have been procured from the Queen's Printing Office. On demurrer, *Held*, that the statement of defence was bad, because the facts therein alleged did not afford ground for a reasonable inference that the plaintiff did supply the information by reason of which the articles in question were written. LEFROY *v.* BURNSIDE - - - - - - [E. D. XIII. 108

6 —— *Injunction.*] Although the Court has now power in actions for libel or slander to grant interlocutory injunctions, restraining the defendant pending the trial from repeating the alleged libels or slanders, yet this injunction will not be extended generally so as to restrain the defendant from publishing defamatory statements of the plaintiff further and other than those complained of in the writ of summons. SMITH *v.* M'HUGH - - - Q. B. D. XXVII. *M.* 388

7. —— *Justification—Libellous matter contained in a municipal election petition, prepared but not presented and adjudicated upon—Publication in a newspaper—Truth of statement in petition not alleged.*] To an action of libel, charging that the defendant published in a newspaper a statement that a petition against the election of the plaintiff to the office of Mayor, on the grounds of intimidation and undue influence, was about to be lodged by the defeated candidate for the Mayoralty, it is not a justification to plead that the defeated candidate had in fact, and being duly qualified, caused a petition on those grounds to be prepared, which he was about to lodge and present to the proper legal tribunal for the purpose of having the validity of the plaintiff's election investigated and determined; but not averring that the matters imputed by the petition were in fact true, or that the petition had been made in fact the subject of judicial inquiry and adjudication. CLEARY *v.* LENIHAN - - - - - Q. B. VIII. 146

8. —— *Payment into Court—Plea of apology—Plaintiff's right to draw out money in part discharge and proceed with action—6 & 7 Vic., c. 96, s. 2—C. L. P. Act, 1853, s. 76—Judicature Act, sched. r. 30—O. XXX. rr. 1-4.*] In an action for libel, where the defendants, the printer and proprietor of a daily newspaper, pleaded apology under 6 & 7 Vic., c. 96, s. 2, and paid money into Court in full satisfaction

DEFAMATION—LIBEL—*continued.*

of the plaintiff's claim and said money was drawn out of Court by the plaintiff before trial, without the defendants' knowledge or consent, in part discharge of the plaintiff's claim:—*Held*, that sec. 2 of Lord Campbell's Act is still unrepealed; that the plaintiff was not entitled to draw out the money so lodged in part discharge of his claim and proceed with his action; and that it must re-lodge the money in Court. *O'Connell* v. *Arnott*, (XV. M. 311,) approved. HARRIS *v.* ARNOTT [E. D XXIII. 77

9. —— *Picture—Words—Evidence.*] When a libel is contained partly in a picture and partly in words, evidence as to the general effect of the libel is rightly receivable; evidence as to individual words is only admissible when it can be shown that they have a special meaning. KENNY *v.* FREEMAN'S JOURNAL Co. - - E. D. XXVI. *M.* 674

10. —— *Plea of apology with other pleas—Payment into Court.*] In an action of libel the defendant cannot plead an apology and payment of money into Court, under Lord Campbell's Act, along with a traverse of the defamatory sense. BARRY *v.* M'GRATH - - - C. P. II. *M.* 688

11. —— *Pleading—Leave to file a further defence.*] To an action for libel the defendant pleaded a denial of the publication, a traverse of the innuendo, and a plea of no libel. He now moved for liberty to plead a further defence of justification, averring the truth of the statements set forth in the preceding portion of the libellous article, and averring the truth of the libel as a commentary on the acts previously stated:—*Held*, that leave to file this defence should be given, the plaintiff's case not being prejudiced thereby. HOGAN *v.* SUTTON [Q. B. II. *M.* 24

12. —— *Pleading—Innuendo—C. L. P. Act, 1853, s. 65—Demurrer—Amendment.*] Where libellous words are complained of, without any innuendo, the plaint is sustainable if the words are capable of a defamatory meaning. But if the words are pleaded with an innuendo imputing a meaning which they are capable of bearing, that meaning must be a defamatory one, and the innuendo must be incapable of any meaning not defamatory. If an innuendo be capable of a meaning not defamatory, the count will be held bad on demurrer. In such a case it is unsafe for the defendant either to justify or traverse—his proper course is to demur. HEWSON *v.* SHEEHY [E. X. 173

13 —— *Pleading double.*] The Court granted a motion to traverse the publication of a libel on a post-card, and the defamatory sense charged, together with a plea of "no libel." ALEXANDER *v.* DE BURGH - - Q. B. VII. *M.* 542

14. —— *Publication tending to injure property—Injunction—Jurisdiction, Court of Chancery.*] Although a publication is calculated to injure property, the Court has no jurisdiction to restrain it by injunction merely on that ground, whether such publication be libellous or not. Where the defendants, in *bonâ fide* belief that skates about to be introduced by the plaintiffs were an infringement of the defendants' rights under a patent, published warnings to the public, intimating that proceedings would be instituted to prevent such infringement, the Court refused to grant an injunction to restrain the defendants from continuing to publish such statements, and further refused to compel the defendants to proceed to assert their alleged legal rights. *Semble*, that the Court, in such case, would have no jurisdiction to compel a party to assert his legal rights. *Rollins* v. *Hinks* (L. R. 13 Eq. 355), and *Axmann* v. *Lund* (L. R. 18 Eq. 330) are overruled, though not in terms, by the *Prudential Assurance Co.* v. *Knott* (L. R. 10 Ch. 142). *Dixon* v. *Holden* (L. R. 7 Eq. 488) discussed. HAMMERSMITH SKATING RINK Co. *v.* DUBLIN SKATING RINK Co. - - - - - V. C. X. 134

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—— "Black List"—Pleading - - - **I. M. 25**
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—— Injunction—Service out of the jurisdiction **[XXVII. M. 623**
See PRACTICE—SERVICE. 28.

—— Interrogatories.
See PRACTICE—DISCOVERY—INTERROGATORIES. 10, 11.

—— Papal Rescript - - - - **VII. 100**
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—— Plea of apology and payment into Court **XV. M. 311**
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—— Printer or Compositor—Liability of - **XXVI. 47**
See CONTEMPT OF COURT. 8.

—— Privilege.
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DEFAMATION—PRIVILEGE.

1. —— A letter written in reply to another, though *primâ facie* libellous, will be privileged if the writer and receiver occupy confidential positions with the libelled party. (By Holmes, J.) HOPKINS *v.* SADLIER **[Cy. Ct. A. XXVII. M. 597**

2. —— *Publication of extracts from Register of Judgments—Error—Ignorance—Absence of express malice—Trade newspaper publishing information in the interest of subscribers—7 & 8 Vic., c. 90, ss. 2, 5, 11—11 & 12 Vic., c. 120, s. 2—13 & 14 Vic., c. 69—31 & 32 Vic., c. 54—B & I Act*, 1857, s. 336.] A judgment had been recovered in England against the plaintiff, as executor of his father, and a certificate thereof had been registered in Ireland under the Judgments Extension Act, 1868. For the purpose of registering it under 7 & 8 Vic., c. 90, a memorandum pursuant thereto, certified by the proper officer, was presented to the Registrar of Judgments, purporting to specify the prescribed particulars, but while inserting the plaintiff's name and the amount of the judgment against him, the memorandum omitted to state that the judgment had been obtained against him in his character as executor. The judgment was thereupon registered erroneously, as if it had been recovered against him in his personal capacity. The defendants were proprietors of a trade newspaper, entitled "Stubbs' Weekly Gazette." In the column headed "Bonds and Judgments," the particulars as recorded in the registered memorandum, having been transcribed from the register, were published verbatim, without actual malice, and in ignorance of the inaccuracy of such particulars. The plaintiff brought an action for libel, alleging by innuendo that the statement implied that the judgment was an existing liability against the plaintiff's estate and effects, that the judgment creditors were creditors of the plaintiff, and that he was unable to discharge his obligations; and the jury, finding that the publication was libellous, awarded damages accordingly:—*Held* (affirming the decision of the Exchequer Division—Barry, J., *dub.*), that the defendants were entitled to have a verdict entered for them, on the ground that the Register of Judgments being by the statute made public for the purposes of the public generally, as distinct from the object of giving effect to the right of judgment creditors, the publication, for the benefit of the public, was on a privileged occasion, whether or not registration was necessary to protect the judgment creditors' right, and that such privilege was unaffected by the error, as it was transcribed from the register without notice, negligence, or express malice. *Fleming* v. *Newton* (1 H. L. C., 363) applied. Observations of Palles, C.B., in the Court below (XXIV. 33) on *M'Nally* v. *Oldham* (16 Ir. C. L. R., 298), and *Williams* v. *Smith* (22 Q. B. D., 134), approved by O'Brien, C.J. ANNALY *v.* TRADE AUXILIARY COMPANY - **E. D. XXIV. 29; C. A. XXIV. 57**

DEFAMATION—PRIVILEGE—*continued.*

3. —— *Libel—Post-card—Publication.*] The defendant was a trader, and the plaintiff one of his customers, and, as such, owed the defendant a sum of money, for the payment of which the defendant applied to him. The plaintiff being unwell, directed his wife to write to the defendant, sending him at the same time money in part payment for the sum due. The defendant, in reply to this letter, wrote in reference to the balance, on a post-card (which was transmitted to the plaintiff through the Post Office) the libellous matter complained of. On demurrer to a plea of privileged communication:—*Held*, that the Court should take judicial notice of the nature of a post-card, and that the publication could not be taken as necessarily limited to the plaintiff. *Held*, further, that, assuming the defendant to have an interest in writing the alleged libel, a communication transmitted by means of a post-card is not privileged. ROBINSON *v.* JONES - **E. D. XIII. 107**

4. —— *Libel—Board of Guardians—Advertisement for solicitor "other than the late solicitors"—Innuendo.*] In an action by a former solicitor of the defendants' for damages for libel contained in an advertisement by a Board of Guardians for a solicitor "other than the late solicitors":—*Held*, that the words complained of were not in themselves libellous, and that the occasion was a privileged one. O'HEA *v.* CORK BOARD OF GUARDIANS

[N. P. XXVI. M. 336; Q. B. D. XXVI. M. 611

5. —— *Libel—Letter to a newspaper—Pleading.*] In an action by a member of a Board of Guardians against a dispensary doctor claiming damages for a libellous letter published by the defendant in a newspaper, charging the plaintiff with being insolvent and unable to pay his debts, and not being an independent Guardian, the defendant pleaded a defence relying on a speech made by the plaintiff at a meeting of the Board, in which he opposed the payment of costs incurred in a sanitary prosecution ordered by the defendant, which speech was published in the newspaper, and the defendant averred that he was privileged therefore to publish the statement in order to show that the public ought not to credit the plaintiff in what he said in relation to the defendant. A demurrer to this defence was allowed. MURPHY *v.* HALPIN. **E. VIII. M. 511**

6. —— *Libel—Reply to solicitor's letter threatening action—Excess—Demurrer.*] The plaintiff complained of a libel written in a letter to his solicitor by the defendant, in reply to a letter from the solicitor demanding an apology for language alleged to have been used by the defendant respecting the plaintiff. The principal portion of the alleged libel objected to was the concluding paragraph in the letter, in which the defendant advised the plaintiff's solicitor to be careful, before proceeding to litigation, to look after his costs, inasmuch as a man who had acted towards the defendant as the plaintiff had done in respect of a loan which the defendant had made to the plaintiff, and which the latter refused to repay, was not likely to fulfil his pecuniary obligations to the plaintiff's solicitor, in case he embarked in litigation. The defendant pleaded that the occasion was privileged, and that, inasmuch as the letter was written in reply to a threat of legal proceedings, he was justified in using the language he did:—*Held*, on demurrer, that the occasion being privileged, any excess appearing on the pleading was evidence of malice for the jury, and could not be taken advantage of on demurrer. JACOB *v.* LAWRENCE

[Q. B. D. XIII. M. 374

7. —— *Slander—Justification—Alleged false charge of robbery—Bonâ-fide belief and suspicion of theft.*] In an action for slander, imputing that the plaintiff had stolen the defendant's turf, the defendant pleaded that, in consequence of certain circumstances specified, he *bonâ-fide* believed that his turf had been stolen by the plaintiff, whereupon he sent for the police constable in charge of the district, who came, accompanied by a sub-constable under his orders, who were informed of the facts by the defendant, in doing which the words were spoken *bonâ-fide*, in the belief that they were true, and without

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DEFAMATION—PRIVILEGE—*continued.*

malice, merely for the purpose of getting back the turf, and informing the police of the theft so supposed. On demurrer:—*Held*, that the defence was good, as showing that the words were spoken on a privileged occasion, notwithstanding the presence of the sub-constable. M'FADDEN *v.* LYNCH [Q. B. D. XVII. 93

8. —— *Slander—Criminatory language spoken in sermon to congregation—Rebuking parishioner for matter of evil repute.*] A criminatory oral communication respecting a parishioner referred to by name or manifest indication, spoken in the course of a sermon by a Roman Catholic priest to his congregation, for the purpose of rebuking the alleged public and scandalous conduct of such parishioner, and of preventing the evil example thereof, is not privileged by the occasion of publication. MAGRATH *v.* FINN - - - - C. P. XI. 103

9. —— *Slander—Pleading.*] In an action for slander a plea by the defendant that the words were spoken on a privileged occasion *bonâ fide*, believing them to be true and without malice, was held to be embarrassing, and was set aside, the defendant not setting out the facts on which he founded his privilege. TOOMEY *v.* CRONIN - - - - Q. B. I. *M.* 138

DEFAMATION—SLANDER.

1. —— *Defamatory words spoken of goods—Imputation of fraud to seller of goods.*] In an action for slander the words proved to have been used by the defendants were—"That persons in the neighbourhood had been robbed by the sale of bad guano," which words were spoken in the presence of the plaintiff while he was engaged in the sale of guano; and afterwards, when the plaintiff had given his guano to be analysed by the defendant, the defendant returned it, saying "It was clay and sand":—*Held*, that the verdict had for the plaintiff was good, the words spoken implying a wrongful act done by the defendant. FOSTER *v.* HOOD [C. P. VII. 92

2. —— *Pleading.*] A plaint averred certain words used by the defendant which meant that the plaintiff was unfit for a post in the constabulary, to which the defendant pleaded that the words were not used in the defamatory sense imputed:—*Held*, on demurrer, that the defence should be amended by striking out the word "defamatory." M'GEE *v.* MAYERS [E. IV. *M.* 199

3. —— *Pleading—Innuendo—Indictable offence—Demurrer—C. L. P. Act*, 1853, *sec.* 65.] To a count for slander, setting out the words *simpliciter*, without attaching an innuendo, a demurrer cannot be sustained if, upon a fair construction, the words are susceptible of implying that the plaintiff had committed an indictable offence. An innuendo in a count for slander "that the plaintiff had committed an indictable offence" is good on demurrer, although not specifying what particular offence is implied. KINAHAN *v.* M'CULLOGH [C. P. XI. 45

4. —— *Words spoken by Clerk of the Markets in execution of his duty—Notice of action—Demurrer.*] The defendant in an action for slander pleaded that the defamatory words were spoken by him, as and being Clerk of the Markets, and while acting in that capacity under and in pursuance of 3 & 4 Vic., c. 108, and 12 & 13 Vic., c. 97, and not otherwise, and that no notice of action had been given one calendar month before the commencement of the action:—*Held*, that the plea was good on demurrer. MURRAY *v.* M'SWINEY C. P. X. 62

5. —— *Words actionable* per se—*General terms of abuse—"Swindler and rogue"—Imputation of indictable offence.*] The words "you are a swindler and a rogue" are not actionable *per se*, when the publication is merely verbal. *Kinahan* v. *M'Cullogh* (XI. 45), distinguished. BLACK *v.* HUNT - - - - - Q. B. D. XII. 24

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—— Costs—Deprival of by judge at trial - XVI. 55
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See PRACTICE—DEFENCE.

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LAND LAW (IR.) ACTS, 1881, 1887. 48, 50.
REDEMPTION OF RENT (IR.) ACT, 1891. 5, 10, 11.

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PRACTICE—CHANCERY—DEMURRER.
PRACTICE—COMMON LAW—DEMURRER.

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DIGNITY OF COURT—Suit beneath - XVII. 62
See PRACTICE—WRIT OF SUMMONS. 12.

—— Value of subject—Matter of suit - I. *M.* 260
See PRACTICE—CHANCERY—PETITION. 2

DIRECTION TO SELL REAL ESTATE—Will—Conversion - - - - - XI. *M.* 18
See WILL—CONVERSION.

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DISCHARGE.

—— of bankrupt.
See Cases under BANKRUPTCY—DISCHARGE OF BANKRUPT.

—— of Insolvent.
See Cases under INSOLVENCY—DISCHARGE OF INSOLVENT.

—— of purchaser—Landed Estates and Land Judges Court.
See Cases under PRACTICE—LANDED ESTATES COURT—DISCHARGE OF PURCHASER.

DISCLAIMER.

—— Bankruptcy.
See Cases under BANKRUPTCY—DISCLAIMER.

—— of tenancy by assignees in bankruptcy **XIII. 161, 165**
See LANDLORD AND TENANT—SURRENDER. 1.

DISCONTINUANCE.

See PRACTICE—DISCONTINUANCE.

DISCOVERY.

See PRACTICE—DISCOVERY.
PRACTICE—CHANCERY—DISCOVERY.
PRACTICE—COMMON LAW—DISCOVERY.

DISCRETIONARY POWER—Letter accompanying will —Secret trust - - - - **I. *M.* 442**
See WILL—PRECATORY TRUST. 5.

DISCRETIONARY TRUSTS—Will - - **XV. 36**
See WILL—DISCRETIONARY TRUST.

DISEASED MEAT—*Seizure—Inspector of Nuisances*—26 & 27 *Vic., c.* 117.] A cart on which unsound meat is placed for sale, or preparation for sale, is a "place" within the meaning of the 26 & 27 Vic., c. 117. Although said meat was not in the immediate possession of said owner, and although it was not exposed for sale, it was held that the ownership being proved, that the owner was liable. The evidence of said owner held inadmissible. WEBB *v.* DALY
[Q. B. IV. *M.* 180

DISENTAILING DEED—*Capacity requisite for execution by protector of settlement—Elements from which capacity implied—Antecedent knowledge of nature of transaction—Urgency—Want of instructions—Lucid interval—Undue influence* —3 & 4 *Will. IV., c.* 74, *sec.* 42—*Jurisdiction of Equity Judge as to trial without jury—Weight attaching to opinion of judge at trial—Costs.*] What constitutes sufficient mental capacity to execute a deed must greatly depend upon what is the nature of that which the person so executing is called upon to consider, and will vary accordingly. It need not be the same where what has to be considered involves a simple affirmative or negative in a matter easy of comprehension, or an exertion of thought or memory largely taxing the intellectual powers, where it has to do with an object with which the mind has long been familiar, or with a proposal made for the first time, and requiring laborious effort to ascertain its nature and the consequences of its adoption; and all that is necessary for the efficacy of the execution is that the understanding should be clear enough, and the will strong enough to reach an intelligent and independent decision, having regard to the nature of the transaction itself, although under other conditions there might be a want of competency to render the instrument binding. Therefore, where the circumstances were such as to establish that the protector of a settlement, who on his death-bed, by executing a disentailing deed, gave his consent thereto, possessed understanding sufficiently clear to know its nature and effect, it having been under his consideration and in contemplation before his illness and the mental feebleness consequent thereon, the deed, in so far as it purported to testify such consent, was upheld, although previous to the

DISENTAILING DEED—*continued.*
time of his signature, which had been hastily procured, but without undue influence or pressure from without, he had not been consulted about the actual preparation of the deed; and in contemplation before his illness and the mental feeble- involving the complicated considerations of a family arrangement, or had been executed without previous reflection on its purpose, the evidence might not have established his competency as being sufficient to give validity to the execution. MONTGOMERY *v.* MONTGOMERY. - - **H. L. XIV. 1**

—— Dispensing with—Payment out of Court to tenant in tail.
[II. *M.* 22
See PRACTICE—CHANCERY—PAYMENT OUT OF COURT. 4.

DISHORNING CATTLE—Cruelty to animals.
[XXIV. *M.* 374
See CRIMINAL LAW—CRUELTY TO ANIMALS. 1.

DISMISSAL FOR WANT OF PROSECUTION.
See Cases under PRACTICE—DISMISSAL FOR WANT OF PROSECUTION.

DISMISSAL OF BILL.

—— Chancery.
See Cases under PRACTICE—CHANCERY—DISMISSAL OF BILL.

DISTRESS—Rent.
See Cases under LANDLORD AND TENANT—DISTRESS.

—— After order for winding-up company. - **I. *M.* 337**
See COMPANY. 4.

DISTURBANCE OF TRADE—*Illegal demand of tolls—Corn brought to store—Obstructing.*] A plaint averred that the plaintiff carried on business as a corn merchant, and that the defendant, intending to injure him, prevented customers coming to him to sell corn, under colour of requiring them to pay tolls, whereby he lost business and was damaged. To this the defendant demurred on the grounds that the claim for tolls was not *bonâ fide*, that the detention of customers was not stated to be with violence, and that the damages were too remote:—*Held*, that the demurrer should be allowed. HIGGINS *v.* O'DONNELL - - - - **Q. B. IV. *M.* 107**

DOG—Biting Railway Passenger - - **XXVII. 125**
See NEGLIGENCE. 8.

—— Sporting
See SPORTING DOGS.

DOMICILE.

1. —— M. H. S. was born at D., in Ireland, and when five years of age was brought to England, where he remained till he was fifteen. At that age he was sent to live with his uncle at C., in France, where he remained till he was nineteen. He then went to B., in England, and stayed there three years, after which he returned to his uncle, and two years afterwards was married to the plaintiff at the British Consulate at N., in France. A short time afterwards his wife left him, and through her solicitor threatened him and his uncle with legal proceedings, alleging that she had been deprived by fraud and violence of property amounting to £12,000, and that she had by similar means been induced to sign a promissory note for 20,000 francs. M. H. S. then entered into a partnership with his uncle and H. to carry on the business of perfumery at C., and subsequently registered himself with the mayor as having fixed his residence at C.:—*Held*, that M. H. S. had acquired a French domicile, and no writ could be served on him. Where H. O'D. had resided at C. for twenty-five years, following the profession of teacher of languages, and had obtained some fifteen years before the action letters of civil right to establish his domicile at C:—*Held*, that he was domiciled in France, and no writ could be served on him. SPURWAY *v.* SPURWAY
[C. A. XXVII. *M.* 597

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DOMICILE—*continued.*

2. —— *Husband and wife—Jurisdiction.*] Parties had been married in Ireland, where the petitioner, the husband, had real and personal property; and statements as to his acts in support of the contention that his domicile was in Ireland were made:—*Held*, that the wife's domicile is that of her husband, and the Court has jurisdiction to act. GILLIS *v.* GILLIS.
[M. VIII. *M.* 414

DONATIO MORTIS CAUSA.

1. —— *Condition of trust—Declaration of trust not contemporaneous with delivery—Bank deposit receipt.*] In order to constitute a *donatio mortis causâ* upon trust, it is necessary not only that the declaration of trust should be clear but contemporaneous with the delivery of the subject matter of the gift. DUNN *v.* BOYD - - - - V. C. IX. 17

2. —— *Deposit receipt—Transfer of action—Judicature Act, ss.* 36, 38—*Jurisdiction—Procedure.*] A deposit receipt may constitute the subject matter of a *donatio mortis causâ*. The fact that the receipt contains the words "not transferable" is not material, as the receipt is not thereby rendered incapable of assignment. (*Per* Palles, C.B.):—Where the equitable interest in the subject matter is alone transferred, so as to raise a trust by operation of law, a Common Law Division, though reluctant to entertain the case, has jurisdiction to determine it. Sec. 36 of the Judicature Act is directory only. CASSIDY *v.* BELFAST BANKING CO. - E. D. XXII. 46

3. —— *Deposit receipt—Equitable assignment.*] Six weeks before his death M. indorsed a bank deposit receipt, and handed it to S., informing him that it was for his (M.'s) niece K. S. indorsed the deposit receipt, and, on the day after M.'s death, presented it to the bank, who, without notice of M.'s death, paid him interest on the deposit receipt and gave him a new one in his own name for the principal. The administratrix of M. having brought an action against the bank to recover the amount so secured:—*Held*, that the plaintiff was entitled to recover, as the deposit receipt was not a negotiable instrument transferable by indorsement, and there had been no equitable assignment of it, nor did the transaction amount to a *donatio mortis causâ*, while if S. had been constituted M.'s agent, his authority had been revoked by M.'s death. MOORE *v.* ULSTER BANKING CO. Q. B. XII. 5

4. —— *Evidence of claimant—Delivery of savings bank book.*] A *donatio mortis causâ* may be proved by the evidence of the claimant alone, but that evidence must be clear and satisfactory. The intestate, a woman, when she became sensible that there was not any chance of her recovery, requested the claimant to hand to her the box containing her papers. This request having been complied with, the intestate took thence a savings-bank book and some stock certificates, and said to the claimant, "You know what these are. I feel I can never recover; they are yours for your own use":—*Held*, that this did not constitute a *donatio mortis causâ*. M'GONNELL *v.* MURRAY - - - - - - - - B. III. *M.* 568

5. ——*Vesting—Condition—Felony.*] The law will not support the vesting of an estate on condition of a person committing a felony—*e.g.*, suicide. AGNEW *v.* CLANCY
[E. D. XXVII. *M.* 511

——Voluntary settlement - - - XIII. 58
See SETTLEMENT—VOLUNTARY SETTLEMENT. 2.

DOWER AND THIRDS—Bar of - - VI. 5
See SETTLEMENT—DOWER.

DRAINAGE ACTS.

1. —— *Arbitration—Action for negligence.*] Where the lands of a person living in the drainage district are flooded, owing to the gross negligence of the Drainage Board, he is not compelled to refer the matter to arbitration, but an action will lie for the negligence. GLEESON *v.* KILMISHILLA DRAINAGE BOARD - Q. B. D. XXVII. *M.* 486

DRAINAGE ACTS—*continued.*

2. —— *Land Law (Ir.) Act*, 1881, *s.* 5—*Holding within a drainage area—Award of Commissioners of Public Works assessing tenant's payment to landlord in respect of the holding—Statutory judicial rent—Increased rent*—26 & 27 *Vic., c.* 88, *s.* 56—35 & 36 *Vic., c.* 31, *s.* 2.] Is a tenant of a holding within a drainage area whose rent has been judicially fixed under the 44 & 45 Vic., c. 49—without apparent reference to benefits to accrue from drainage works incomplete at the time of fair rent order—liable during the statutory term of 15 years to pay an increased rent to his landlord consequent upon an award made subsequently on completion of the drainage works by the Commissioners of Public Works in Ireland (on the application of the landlord), determining the contribution due by the tenant in respect of the holding? :—*Held*, that the tenant is liable to pay the said contribution as increased rent to his landlord, such contribution being in the nature of a drainage tax and essentially different from the contract rent paid for the use and occupation of a holding. ENNISKILLEN *v.* REILLY - - - - - Q. B. D. XXVII. 82

3. —— *Liability of Drainage Board—Injury to land outside drainage district—Alteration of natural bed of river causing damage to riparian proprietor—Construction of statute exempting public body from protection in respect of acts done—Absence of negligence in execution of works*—28 & 29 *Vic., c.* 55, *s.* 5.] By the Drainage and Improvement of Lands Amendment Act (Ir.), 1865 (28 & 29 Vic., c. 55, s. 5), it is declared that as against any person or persons interested in any land or property situate beyond the limits the jurisdiction of any Drainage Board (established under 26 & 27 Vic., c. 88) nothing contained in said Act shall be construed to render legal any work executed by such board that would, if such Act had not passed, have been illegal by reason of its injuriously affecting such land or property. The effect of this clause is to place the Drainage Board, as between that body and the proprietors of lands outside the drainage district, in the same position as if the works had been constructed by private individuals, in consequence of which injury had been occasioned to the lands of others; and so, while it might be that the Board would be entitled, like other riparian proprietors, by embanking or otherwise, to protect lands under their jurisdiction within the drainage district from injury occasioned by exceptional floods, even though in consequence the flood waters might be thrown upon and injure the lands of other riparian proprietors, the Board would not be entitled, by deepening or altering the natural bed of a river, to cause damage to the lands of other riparian proprietors, either above or below the river, and outside the drainage district by reason of the overflow or acceleration of the waters beyond the normal limits. NICOLLS *v.* MULKEAR RIVER DISTRICT DRAINAGE BOARD - - - Q. B. D. XIV. 22

DUPLICATE WILL—Construction . . I. *M.* 176
See WILL—RESIDUARY GIFT. 1.

DUTY—Joint and several estates—Bankruptcy
[XI. *M.* 318
See BANKRUPTCY—PRACTICE. 2.

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EASEMENT.

1. —— *Appurtenances — Deed — Construction — Acquisition of easement.*] A. granted certain premises to B. for a term "together with the right to use the walls on the north side of the said plot for building purposes." Subsequently B. demised these premises, *inter alia*, to C., describing them in the granting part of the deed as "the plot or piece of ground on the north thereof, as lately purchased from A., with the rights, members, and appurtenances thereto belonging," and setting out metes and bounds; and after execution of the latter deed A. assigned his interest to D.:—*Held*, that by

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EASEMENT—*continued.*

the first assignment from A. to B., the premises conveyed were impressed with the right to use the walls for building purposes and that, on the demise to C., the granting of the premises, as conveyed by the former deed, without mention specifically of the right so to use the walls, was sufficient to pass such right. RENWICK *v.* DALY - - - - - C. P. XI. 96

2. —*Prescription—Damage.*] In an action for damages for the obstruction of a stream and for flooding, the defendant pleaded that he was possessed of a mill adjoining the river, and that the occupier of it for twenty years enjoyed the right of penning up the water for working the mill; to this plea the plaintiff demurred:—*Held*, by Whiteside, C. J., and O'Brien, J. (George, J., *diss.*), that the demurrer should be allowed. O'BRIEN *v.* ENRIGHT - Q. B. I. *M.* 156

See Cases under PRACTICE—LANDED ESTATES COURT—EASEMENT.

LANDLORD AND TENANT—EASEMENT.

—Effect on of local and personal Act of Parliament [II. *M.* 704

See STATUTE. 2.

—Light.

See Cases under LIGHT.

—Watercourse—Pleading—Counterclaim - XXI. 22

See PRACTICE—COUNTERCLAIM. 9.

—Way.

See Cases under WAY

ECCLESIASTICAL BENEFICE—Registration of Judgment Mortgage - - - - I. *M.* 101

See MORTGAGE—JUDGMENT MORTGAGE. 14.

ECCLESIASTICAL COURT—*Practice.*] In a case in a provincial Court on an application by the respondent for extension of time to plead, which was resisted on the ground of delay, the judge directed the case to be heard in a fortnight, the respondent to file any plea before then. MILLS *v.* CRAIG - - - - - PROV. COURT. I. *M.* 393

ECCLESIASTICAL LAW.

—Burial Grounds.

See Cases under BURIAL GROUND.

—Military chaplain officiating within parish - I. *M.* 735

See MILITARY CHAPLAIN.

—Pews.

See Cases under PEW.

ECCLESIASTICAL LEASE.

1. —*Advance of under-tenant's contributions for purchase of sub-perpetuity—Salvage claim.*] The Church Temporalities Act, 3 & 4 Wm. IV., c. 37, contains no provision or machinery for enforcing the payment of interest due upon contribution-money payable by a sub-tenant, to his immediate landlord, who has obtained a fee-farm grant of the lands. Therefore, a party advancing to the sub-tenant such sum as enabled him to obtain a fee-farm grant from his immediate landlord, and taking as his security a mortgage from the sub-tenant, was not allowed to stand in the position of salvagor as regarded the interest on the contribution-money due by the sub-tenant. *Re* KIDD'S ESTATE - - - L. E. C. IV. *M.* 108

2. —*Conversion of under Church Temporalities Act—Effect of as to tenant in* quasi *tail*—3 & 4 *Wm. IV., c. 37, s.* 148.] A testator by will, dated 1836, devised his property in trust for his eldest son, P. D., for life, with remainder to P. D.'s first and other sons in *quasi* tail, remainder to testator's second son, S. D., for life, with like remainders, remainder to testator's third son, R. D., for life, with like remainders. Portion of testator's property consisted of lands held under a sub-lease from the See of Clogher for a term of 21 years, with *toties*

ECCLESIASTICAL LEASE—*continued.*

quoties covenant for renewal, which on 29th June, 1851, was converted into a perpetuity, under the provisions of the Church Temporalities Acts. Testator died in 1842, and his eldest and second sons having died without issue, his third son, R. D., became entitled. C. R. D., the eldest son of R. D., predeceased his father, on the 21st Oct., 1851, without issue, leaving his father his administrator and heir at law:—*Held*, that as the estate to which C. R. D. was entitled at the date of the perpetuity grant was an absolute chattel interest, it remained of the same quality, the only difference being that on his death, instead of going to R. D. as his administrator, it went to him absolutely as his heir at law. *Re* DANE'S ESTATE [L. E. C. X. 20

3. —*Renewal—Fines—Power to increase*—3 & 4 *Wm. IV. c.* 37, *ss.* 160, 161—*Irish Church Act, sec.* 12, *part* 3.] On an application by a tenant for a renewal of his lease of see lands, the Commissioners of Church Temporalities are not bound to ascertain the amount of fines by the average of the past nine years, but may increase the amount, so that the increased fines, together with the rent, shall be equivalent to the purchase money of a perpetuity. *Re* LESLIE - C. C. T. V. 12

4. —*Renewal fine—Additional or reserved fines.*] In 1828, a sub-lease of lands was made by S. (who held under an ecclesiastical lease) for 21 years with a *toties quoties* covenant for renewal, reserving any additional or increased fines that should be demanded by the Bishop. The sub-lease was renewed in 1847, but the covenant for renewal was on reserving and paying an additional or renewed fines. The defendant purchased S.'s interest in Landed Estates Court, subject to the lease of 1847, and obtained a perpetuity grant from the Ecclesiastical Commissioners. The sub-lessees presented a petition for a sub-perpetuity grant:—*Held*, that the purchaser was not entitled to the annual fine in addition to the covenant in the lease of 1847. KELLY *v.* FRENCH [R. I. *M.* 422

EJECTMENT BILL—*Legal remedy—Want of equity—Prayer for partition, account, and discovery.*] A bill was brought to have a declaration made that the plaintiff was entitled to a life estate in certain lands, and for a discovery of the tenancies, and for an account and partition:—*Held*, on demurrer, that there was nothing charged which showed that the plaintiff could not recover in an action of ejectment, and that the defendant's demurrer for want of equity should be allowed. MOORE *v.* KEMPSTON - V. C. IV. *M.* 508

EJECTMENT BY THE LANDLORD.

See Cases under LANDLORD AND TENANT—EJECTMENT—BREACH OF COVENANT.

LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT.

LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

LANDLORD AND TENANT—EJECTMENT—OVERHOLDING.

EJECTMENT ON THE TITLE.

1. —*Acceptance of a less rent by the head landlord—Evidence to prove a surrender in law.*] The plaintiff, in an action of ejectment on the title, produced an old lease of the premises for which the ejectment was brought, to his grandfather, under whom he claimed. The plaintiff had left the country, and his mother, who had married the defendant, remained in possession as agent for her son for a very long period; a lesser rent than that originally reserved had been received by the head landlord:—*Held*, that this did not amount to a surrender in law of the original lease, and that the plaintiff was, in consequence, entitled to recover. ROCHE *v.* ROCHE - - - - - C. P. VIII. 7

2. —*Action for recovery of land and mesne rates—Pleading—Acquiescence in title of defendant, how pleaded—Demurrer—Costs—O. VI., r.* 9—*O. XII., r.* 7—*O. XXVIII.,*

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EJECTMENT ON THE TITLE—*continued.*

rr. 5, 8, 9—*O. XXXIX., r.* 9—*App. D., form* 2.] In an action for recovery of lands and for a sum for mesne rates, the defendant, by his statement of defence, as to a portion of the lands claimed, merely denied by the first paragraph that "he ever entered into or now is in the possession of the said lands"; and as to another portion pleaded by his third paragraph that he, "with the knowledge, approbation, and consent of the plaintiff," built a wall as a boundary wall between the plaintiff's lands and his own, which included the portion of land in question, and that the plaintiff was bound thereby. On demurrer:—*Held*, that the first paragraph was good, though it admitted the title of the defendant, because an action for recovery of land since the Judicature Act differs from an action of ejectment on the title before that act, inasmuch as judgment can now be signed for mesne rates, as well as for possession of the lands, unless the defendant appears and delivers a statement of defence; and that, accordingly, to such an action a denial of possession of the lands is a defence which a defendant is entitled to make. *Held*, further, that the second paragraph was good, because it was capable of bearing the meaning that the "knowledge, approbation and consent" of the plaintiff referred to the particular wall that was actually built and to the purpose for which it was built, *viz.*, for the purpose of marking the boundary between the plaintiff's and the defendant's lands. SHERIDAN *v.* BARRETT - - - - - **E. D. XIII. 75**

3. —— *Adding new plaintiffs—Practice.*] A plaintiff in ejectment obtained an order from a Judge in Chambers to add three new plaintiffs who were mortgagees of the property in question prior to the title of the plaintiff, who claimed as assignee of the sheriff under a *fi. fa.*:—*Held*, that, irrespective of the fact that the plaintiff had a judgment-mortgage prior to the mortgages of the new plaintiffs, the Court had power to add the new plaintiffs under either sec. 85 or 231 of the C. L. P. Act, 1853. A consent to their being added, given by the attorney for the mortgagees who were sought to be added, was held sufficient authority. PERRY *v.* MOORE **[C. P. VII. 149**

4. —— *Affidavit verifying civil bill*—14 & 15 *Vic., c.* 57, *sec.* 83—37 & 38 *Vic., c.* 66.] The affidavit required by section 83 of 14 & 15 Vic., c. 57, in ejectments on the title under that Act, does not apply to ejectments under 37 & 38 Vic., c. 66. (By Palles, C.B.) DYNES *v.* DYNES - **Cir. Cas. X. 150**

5. —— *Alien plaintiffs—Disclaimer—Evidence.*] Alien plaintiffs with Irish plaintiffs succeeded in obtaining a judgment in ejectment on the title against tenants who set up a disclaimer of tenancy and who were nearly entitled to claim a title through the Statute of Limitations. (By Pigot, C. B.) DAVIES *v.* LYNCH - - **Cir. Cas. I. *M.* 140**

6. —— *Civil bill—Statement of tenure—Administrator against next of kin—Common title*—14 & 15 *Vic., c.* 57, *s.* 83—37 & 38 *Vic., c.* 66, *s.* 1—40 & 41 *Vic., c.* 56, *ss.* 53, 54.] The statement of tenure required, under 14 & 15 Vic., c. 57, sec. 83, to be inserted in a civil bill process of ejectment on the title is essential in all civil bill ejectment processes, which come within sec. 79 of that Act. In such cases, Form 4 under the new rules should be used. Where the plaintiff and defendant claim under a common title to be possessed of an interest in lands, which is still subsisting and which is within the limits mentioned as to tenure in the 79th section of 14 & 15 Vic., c. 57, and as to the rent in the 53rd section of the 40 & 41 Vic., c. 56, the jurisdiction of the County Court Judge is given by the 79th section of the old Act, and not by 37 & 38 Vic.; and the civil bill ejectment should be brought accordingly in Form 4. An ejectment by an administrator to recover such an interest in lands from one of the next of kin comes under the old Act. SHILLADY *v.* HILLES - - - **Q. S. XIV. 106**

7. ——*Civil bill—Verification by affidavit.*] An ejectment on the title under the Civil Bill Act (14 & 15 Vic., c. 57) must be verified by affidavit, as required by sec. 83 of that Act, which is not repealed as regards ejectments on the title by sec. 104 of the "Landlord and Tenant Amendment Act (Ir.), 1860." (By Whiteside. C.J.) COLLINS *v.* M'DONNELL **[Cir. Cas. VI. 157**

8. ——*Civil bill—Proof of valuation*—40 & 41 *Vic., c.* 56, *s.* 32.] Proof of valuation under 40 & 41 Vic., c. 56, s. 32, must be in the form of a "certificate"; a mere extract from the valuation books, even though signed by the clerk of the union, cannot be received as evidence under that Act. M'CAUL *v.* KIRK. - - - - - - - - - **Q. S. XIV. 121**

9. —— *Civil bill—Lessee for lives (his own being the last) and tenant from year to year devising "whatever interest or estate he might have"—Right of lessee to hold on till next gale day—Tenancy from year to year created—Graft—Common law and equitable rights of plaintiff different—Jurisdiction.*] A. held lands, portion of them under a lease for lives, his own being the last, and portion as tenant from year to year. By his will he devised them to his widow, and after her death to F. "whatever estate or interest he might have therein." A.'s widow left the lands to D. In an ejectment on the title by F. against D.:—*Held*, that F. was entitled to a decree for that portion of the lands held by A. as tenant from year to year; but the tenancy from year to year, which was created in the other portion when the lease for lives expired on A.'s death, would be considered to be a graft, which would properly be determined at the equity side of the County Court. F. could not succeed in a civil bill ejectment for that portion. (By Morris, C. J.) DELANY *v.* FLINN. **Cir. Cas. XIII. *M.* 237**

10. ——*Civil bill—Verifying affidavit*—14 & 15 *Vic., c.* 57, *sec.* 79.] A civil bill ejectment on the title brought under the 79th section of the 14 & 15 Vic., c. 57, and not being a proceeding between landlord or lessor and tenant, and not being brought for or against a person in occupation who has signed an acknowledgment under that Act, need not be verified by an affidavit such as is mentioned in the 83rd sec. thereof. SHUTER *v.* M'LUEDY - - - **C. P. VIII. 216**

11. —— *Claim for mesne rates—Counterclaim for board and lodging—O. XVI., rr.* 1, 2.] Where, in an action for recovery of land on the title, and mesne rates, the defendant pleaded, by way of counterclaim, that the plaintiff was indebted to him for board and lodging:—*Held*, that the counterclaim should be disallowed. HANLEY *v.* HANLEY **[Q. B. D. XIII. 60**

12. —— *Common Law Procedure Act*, 1853, *sec.* 237.] An ejectment on the title for a forfeiture is an action against an overholding tenant, within the terms of 16 & 17 Vic., c. 113, s. 237. TALBOT *v.* ODLUM - - - **C. P. V. 107**

13. —— *Common title of plaintiff and defendant—Recovery of portion of lands—Civil bill jurisdiction*—14 & 15 *Vic., c.* 57, *sec.* 79—37 & 38 *Vic., c.* 66, *sec.* 1.] A decree may be made by the Civil Bill Court, under the 37 & 38 Vic., c. 66, for the possession of a portion of lands claimed under a common title by the plaintiff and defendant, where it appears that the interest in the entire of the lands is in the plaintiff, although the defendant may hold a portion of the lands as tenant to the plaintiff. *Corboy v. Corboy* (1 C. & D., C. C. 572) distinguished. (By Barry, J.). BERRY *v.* BERRY **[Cir. Cas. XI. 57**

14. —— *Costs—Action by landlord, purchaser of tenant's interest at sheriff's sale, to recover the lands—Land Law (Ireland) Act*, 1881, *s.* 51—*Judicature Act, s.* 53—*County Courts Act*, 1887, *ss.* 53, 54.] After a landlord had recovered judgment against his tenants for rent, and had issued writs of *fi. fa.* and purchased at the sheriff's sale, he brought an action of ejectment on the title against the tenants for recovery of the lands. The tenants took defence in all the cases, which numbered thirty. Three of the cases were brought before the Court as test cases, and decided. Subsequently the tenants proceeded to trial with all the remaining cases, and judgments were given, after formal evidence, for the plaintiff. Some

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EJECTMENT ON THE TITLE—*continued.*

of the lands were within the civil bill jurisdiction. *Held* (by Fitzgerald, J.), that the landlord was entitled to his costs in all the actions. CLONCURRY *v.* DEVANE **N. P. XVI. *M.* 97**

15. —— *Costs—Putting forward pauper defendant.*] Where, in an action of ejectment on the title, the principal defendant did not appear and defend, but defence as to all the lands was filed by a pauper who was alleged by the plaintiff to be sub-tenant of a cabin upon the premises, and was served with the ejectment, and a verdict for the plaintiff was subsequently found, the Court upon being satisfied by affidavit that both the pauper defendant and the attorney who acted for him had been employed by the principal defendant so to take defence, ordered the principal defendant to pay the costs of the action. *Hutchinson* v. *Greenwood* (4, E. & B., 324). followed. LACY *v.* LACY - - - **E. VII. 51**

16. —— *Defence of outstanding tenancy.*] The heir at law of W. brought an ejectment against the defendants, who claimed as devisees under the will of W. Part of the premises were in possession of H., a defendant, who had been tenant from year to year to W., but whose tenancy had not been determined by a notice to quit. Judgment by default was marked against H.:—*Held*, that W.'s devisees could not set up as a defence H.'s outstanding tenancy. CARROLL *v.* QUIGLEY **[C. P. II. *M.* 212**

17. —— *Equitable defence—Parol agreement for a lease—Part performance—Decision on civil bill ejectment—Estoppel—Ambiguity*—23 & 24 *Vic.*, *c.* 154, *sec.* 59—19 & 20 *Vic.*, *c.* 102 *sec.* 85.] In an ejectment on the title against the defendant as a yearly tenant, the defendant pleaded by way of equitable defence that he had entered into and continued in possession of the lands under a parol agreement for a lease, of which the rent, term, and parcels were ascertained, and that there had been part performance of the agreement by the defendant; that the agreement had been held good as a defence in a civil bill ejectment on the title between the same parties for the lands, and that the decision of the chairman had been affirmed on appeal:—*Held*, that the plea should not be set aside on motion as ambiguous or embarrassing. *Turner* v. *M'Auley* (6 Ir. C. L. R. 245) distinguished. M'CARTHY *v.* BARRY - - - - - - **C. C. IX. 54**

18. —— *Equitable plea.*] A defendant in an action of ejectment on the title applied for liberty to file an equitable plea to the effect that in consideration of the defendant deepening a river along the holding, the plaintiff promised that though no new lease would be granted to the defendant, yet he would not be disturbed during the life of the plaintiff and another. The Court refused the motion. FARRELL *v.* REILLY **[C. C. V. 53**

19. —— *Equitable plea—Embarrassing.*] An equitable defence to an ejectment on the title, against an overholding tenant, averred a representation by the plaintiffs to him, that he would be allowed to remain in possession as tenant from year to year so long as he paid an increased rent; that relying on such representation, and under the expectation and belief that he would be so allowed to remain in possession, he, with the knowledge of the plaintiffs, made improvements which enhanced the value of the land, and expended money in tilling it, which he would not have done but for the representation so made to him. The Court refused to set aside the defence as embarrassing, but gave the plaintiffs liberty to reply and demur. KENNA *v.* TALLON - **C. C. V. 200**

20. —— *Freehold lease—Clause in lease against alienation—Devise of freehold interest to executor upon trusts—Forfeiture.*] Devise of a house to an executor for (amongst other purposes) a sale. The lease, which was for lives, contained a covenant against sub-letting, assigning and alienation, under a penalty of forfeiture. The executor brought an ejectment against the testator's daughter, a permissive occupant, to recover possession of the rooms in the house in which she lived with her father. The landlord received rent from the

EJECTMENT ON THE TITLE—*continued.*

executor:—*Held*, that the executor was also trustee of the will, and had therefore an estate which entitled him to maintain the ejectment; that the receipt of rent from the executor constituted a waiver of the condition against alienation; and that the relation of landlord and tenant did not exist between the executor and the daughter. (By Fitzgerald, J.) COYNE *v.* BYRNE - - - - **Cir. Cas. II. *M.* 185**

21. —— *Heir at law.*] M. had three sons and a daughter; he went to America, leaving his wife to manage the farm. On the marriage of her daughter, M.'s wife gave half the farm to G. and promised the remainder to him at her death for £15. On her death G. brought an ejectment against the younger son:—*Held*, that G. was not entitled to succeed, as the eldest son (who was in America) was entitled. (By Fitzgerald, J.) M'INERNY *v.* GRIFFIN - - - **Cir. Cas. I. *M.* 67**

22. ——*Invalid assignment of interest in land—Insolvency.*] A lease was made for three lives (one of them was in being), to B., who subsequently disposed of his interest to M. by an agreement not under seal. M. paid the rent to the landlord and died intestate, leaving a widow who afterwards married McM. McM. became insolvent and his interest passed to his assignees, who were held entitled to recover against McM. and the persons claiming under him. (By Fitzgerald, B.) MURPHY *v.* BURNS - - - **Cir. Cas. I. *M.* 282**

23. —— *Jurisdiction of chairman—Value not exceeding* £20.] The 37 & 38 Vic., c. 66, sec. 1., gives chairmen jurisdiction to try by civil bill actions of ejectment on the title when the value of the land in dispute does not exceed £20 a year. (By Deasy, B.) ANON. - - - **Cir. Cas. IX. 171**

24. —— *Landed Estates Court conveyance—Tenant from year to year—Notice to quit.*] A plaintiff under a Landed Estates Court conveyance, dated 1866, is entitled to recover land in an action for ejectment upon the title against a tenant marked in the schedule to the conveyance, as tenant from year to year, tenancy determinable on 1st November in each year. Notice to quit on 1st November, 1865, had been served on this tenant. LAUDER *v.* SEERY - - - **E. I. *M.* 119**

25. —— *Liberty to appear and defend—O. VIII., r.* 13—*O. IX., r.* 8 (*b*)—*Compromise of action—Leave to redeem—Specific interest*—23 & 24 *Vic.*, *c.* 154, *s.* 71.] A., being entitled to the interest in a freehold lease, devised to B., and died. H. the son of a deceased sister of A., remained in possession after A.'s death, disputing the will, and claiming as one of three co-parceners. B. brought an action for recovery of the land on the title, against H., and after a verdict for the plaintiff, and an order for a new trial, the action was compromised, H. signing a consent for judgment:—*Held*, that at that stage of the proceedings the Court would not give liberty to another of the co-parceners to appear and defend the action. *Quære*, whether, if the application had been made at an earlier stage of the proceedings, it would have been granted? *Semble*, a person claiming as heir at law of the owner of a freehold lease, and alleging the will of such owner to be invalid, has not a specific interest in the lease within the meaning of sec. 71 of 23 & 24 Vic., c. 154, the will not having been set aside. The lands having been evicted in an action of ejectment for non-payment of the rent of the lands against H., B. was given leave to redeem. STAVELEY *v.* HEDDERMAN. O'BRIEN *v.* HEDDERMAN **[E. D. XIV. 111**

26. —— *Liberty to defend.*] Liberty to defend in an action for ejectment on the title was given after the time had expired, as a settlement had been anticipated. KANE *v.* MULLOY **[Q. B. I. *M.* 102**

27. —— *Liberty to defend after time expired.*] An affidavit of merits is necessary for liberty to defend after time expired. GALVAN *v.* NUNAN - **C. C. VIII. *M.* 109**

28. —— *Mortgage of lands sub-let by mortgagor—Outstanding legal estate.*] M. W., a tenant from year to year, died in-

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EJECTMENT ON THE TITLE—*continued.*

testate. His widow agreed with the landlord to purchase the fee of the holding, part of purchase money to be secured by mortgage, which was subsequently executed. On an ejectment on the title:—*Held*, that the mortgagee could not recover without first determining the outstanding tenancy in the personal representatives of M. W. COSGRAVE *v.* D'ARCY [Q. B. D. XII. 27

29.——*Mortgagee against mortgagor—Service—Persons interested under any registered conveyance.*] A civil bill process, issued by a mortgagee against a mortgagor for recovery of possession of lands affected by the security, must be served on all parties having an interest in the lands under registered conveyance, whether it be prior or puisne to the security vested in the plaintiff. SHILLADY *v.* BLACKSTOCK [Q. S. XIV. 106

30.—— *Motion for interrogatories.*] A motion for interrogatories in an action of ejectment on the title was refused, the plaintiff's counsel stating in Court the nature of the plaintiff's claim. PORTER *v.* STEVENSON E. VII. *M.* 585

31.—— *Motion to set aside as frivolous a demurrer to the statement of claim—Title of plaintiff, how far necessary to set out—Title of defendant—Judicature Act, Sched. rr.* 11, 21, 23,—*O. XVIII., rr.* 8, 15, 18.] In a statement of claim to recover possession of lands, the plaintiffs deduced a good title in themselves to a term of years as against A., and then proceeded to state that, at the time when their title commenced, A. "was possessed of, or entitled to, the possession of the said lands under a lease made thereof," by a superior landlord for the term, and "that the defendants A. B. and C. are in possession of the said lands and withhold possession thereof from the plaintiffs." C. demurred, on the ground that he was not shown to claim through A., and that no title was shown by the plaintiffs against him. On motion by the plaintiffs to set aside this demurrer as frivolous:—*Held*, that the plaintiffs' statement of claim was sufficient, and that the demurrer should be set aside. HODGINS *v.* HICKSON Vac. J. XII. 104

32.—— *Landlord and tenant—Name on rent-book as tenant—Ejectment by executors.*] On the death of a tenant who held from year to year, his two sons remained in possession, and the elder got his name put in the landlord's rent-book as tenant. They worked the farm for more than twenty years, after this change, for their joint benefit, till the elder son died, when his executors brought an ejectment on the title for the whole farm against the younger son:—*Held*, the executors were not entitled to recover. (By Andrews, J.) THE EXECUTORS OF JOHN M'ILHERRON, DECEASED, *v.* DANIEL M'ILHERRON Q. S. and Cir. Cas., XXVII. 62, 63, note

33.—— *New trial—Heir at law—Trustees for charity.*] Cause was shown against a conditional order for a new trial in an action by the trustees of the Netterville Charities under Lord Netterville's will, obtained on the ground that the legal estate was outstanding in his heir at law, and that the receipts given by the trustees to the defendant did not estop him from denying that they were legal owners. The Court allowed the cause shown. FINGAL *v.* ELCOCK C. P. X. *M.* 367

34.—— *New trial—Evidence.*] The Court will not grant a new trial in an action of ejectment on the title, on the plaintiff's application, on the ground of misdirection and new evidence, when there was evidence to go to the jury, as his rights were not concluded by the verdict. TIGHE *v.* HICKEY [E. I. *M.* 423

35.—— *Outstanding legal estate in parties who have allowed judgment to go by default.*] In an action of ejectment on the title, the defendant gave in evidence five leases of the premises. These leases had been made by J., the husband of A., who claimed under the will of J. The plaintiff claimed as heir at law of A., and gave in evidence an attested copy of a judgment by default against the lessees. It was admitted that the leases were subsisting unless they had been avoided by that judgment; that they comprised all the premises; and that

EJECTMENT ON THE TITLE—*continued.*

the lessees had been in possession. Verdict for the plaintiff on a bill of exceptions:—*Held*, that the defendant should have judgment. FITZGERALD *v.* WESTROPP Q. B. III. *M.* 708

36.—— *Previous notice to quit—Subsequent action to recover the holding for non-payment of rent—Judgment—Possession—Restitution obtained by mortgagee of tenant's interest—New action before expiration of notice to quit—Waiver.*] A tenant from year to year owed a year's rent, and the landlord on the 26th March served a notice to quit on the 29th September; and subsequently on the 21st April he brought an action to recover the holding for non-payment of rent, in which judgment for possession was entered upon 11th May, and possession thereunder had on 27th June. A mortgagee of the tenant's interest on the 21st August obtained an order for restitution, and possession was restored on 31st October. An action to recover land on the title having been brought on the 14th October:—*Held*, on demurrer, reversing the Common Pleas Division, that the notice to quit was not waived by the proceedings for non-payment of rent, and the judgment and possession recovered thereunder. LISTOWEL *v.* KELLY [C. P. D. XVII. 26. C. A. XVII. *M.* 285

37.—— *Waiver of temporary bars—Jurisdiction of judge in Consolidated Chamber.*] The Court granted a motion for the waiver of temporary bars, leaving the judge at the trial to decide the objection if such were raised. CASTLETOWN *v.* WINGATE - - - - - - - C. C. VIII. *M.* 179

38.—— *Waiver of temporary bars—Jurisdiction of Judge of Assize.*] The Judge of Assize has power to entertain a motion for the waiver of temporary bars. (By Monahan, C. J.) COMYN *v.* COMYN - - - - Cir. Cas. VIII. *M.* 375

39.—— *Waiver of temporary bars.*] A notice of motion under s. 89 of the Common Law Procedure Act, 1856, for an order to waive temporary bars in an action of ejectment need not specify any particular bar. EAGAR *v.* MAUNSELL [Q. B. I. *M.* 82

40.—— *Waiver of temporary bars—Sufficiency of affidavit—Jurisdiction of Judge in Chambers.*] The lessee of a freehold, having mortgaged his interest, directed by his will that the mortgage should be paid off, and devised the estate to A. for life, and, after his death, to B. The incumbrance was paid off by A., and a re-conveyance was subsequently executed to B. by the executor, but not by the heirs of the mortgagee. B. having brought an ejectment on the title against C., who claimed an equitable title, the Court on motion (although it was not sworn, in terms, that C. threatened to set up the outstanding legal estate):—*Ordered*, that all temporary bars be waived, and the real title tried in said ejectment. A judge has jurisdiction in Consolidated Chamber, to order the waiver of temporary bars, under 19 & 20 Vic., c. 113, s. 89. *Smeeton* v. *Collier* (I. Ex. 463), followed. WALKER *v.* HANBRIDGE - - - - - - C. C. VII. 191

41.—— *Waiver of temporary bars—Jurisdiction of Judge in Chambers.*] A Judge in Chambers has jurisdiction to order a waiver of temporary bars in an action of ejectment on the title. BROWNE *v.* O'KELLY - - C. C. VII. 191 (n)

—— By judgment mortgagee—Outstanding legal estate [XII. 159

See MORTGAGE—JUDGMENT MORTGAGE. 9.

—— Civil Bill—Service - - - - XXVII. 102

See PRACTICE—CIVIL BILL COURT—SERVICE OF CIVIL BILL. 4.

—— Counterclaim to.

See PRACTICE—COUNTERCLAIM. 10, 11.

—— Counterclaim for specific performance—Transfer of action to Chancery Division.

See PRACTICE—TRANSFER OF ACTION. 8, 9.

—— Coverture—Plea - - - - - - VII. 93

See HUSBAND AND WIFE. 15.

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EJECTMENT ON THE TITLE—*continued.*

—— Mistake in Landed Estates Court conveyance **XI. 50**
See LANDED ESTATES CONVEYANCE. 2.

—— Security for costs - - - - **I. *M.* 701**
See PRACTICE—COMMON LAW—SECURITY FOR COSTS. 14.

—— Substitution of service—Trustees - - **I. *M.* 138**
See PRACTICE—COMMON LAW—SERVICE. 21.

—— Writ of restitution—Mistake—Statute of Limitations **[I. *M.* 26**
See WRIT OF RESTITUTION. 5.

ELECTION.

1. —— *Acquiescence—Presumption of election—Family arrangement.—Onus of proof.*] The requisites for holding a party bound by an election are that he must have had knowledge of his rights, and that the property would become his independently of the will. He must know the relative value of the properties and the rule of equity which forbids him to take both estates. The Court must be satisfied that he made a deliberate choice, with the intention of making it, and may infer, from a long course of dealing, that he possessed all the requisite knowledge. The onus of proof rests on the party alleging that the knowledge existed and that the choice was made. SWEETMAN *v.* SWEETMAN - - **V. C. II. *M.* 136**

2. —— *Secured creditor—Proof of debt*—20 & 21 *Vic., c.* 60, *sec.* 262.] Mortgagees, who had obtained an order for sale of the premises, subsequently proved for a portion of the mortgage debt, as being the balance over the value of the premises as then estimated by the mortgagees. A dividend being struck on debts proved, the mortgagees refused to accept their quota, pending the realisation of their security. The premises, afterwards sold, realised sufficient to pay the mortgagees in full:—*Held*, that the mortgagees had elected to take a dividend upon the amount proved for, as unsecured creditors, and that such election was binding and could not be retracted. *Re* DALY. **[B. VI. 172**

3. —— *Will—Disposition of lands the title to which is disputed.*] Lord Dunboyne by his will dated 1800 devised his T. estates to trustees in trust for his wife for life, and after her death to raise £1,000, £500 for P. O. B. and £500 for E. O. B., and subject thereto to M. O. B. for life, remainder to his first and other sons in tail, remainder to P. O. B. in tail, remainder to E. O. B. in tail. He devised his M. estates to C. B. for life, with remainder to trustees of Maynooth College. He died in 1801, leaving C. B. his heiress at law. A suit was instituted by C. B. against the trustees of Maynooth College to impeach the will, and a compromise was agreed upon, which was not carried out till 1809. In 1805 C. B. made her will, leaving T. estates to M. O. B. for life with remainders over, with remainder to P. O. B. in tail, and left the M. estates to P. O. B. She died in 1807, leaving only the real estate which she claimed as heiress at law of Lord Dunboyne. P. O. B. took possession of the estates, and died in 1812. Lady Dunboyne died in 1860. A petition was filed to raise the two sums of £500:—*Held*, that the will of C. B. raised a case of election against P. O. B., and that having taken the M. estates under it, he or the petitioners claiming under it could not claim the legacies bequeathed by the will of Lord Dunboyne. SADLIER *v.* BUTLER - **R. I. *M.* 612**

ELECTION.
See Cases under PARLIAMENT—ELECTION.

—— County treasurer—Notice—Time—*Quo warranto* **[I. *M.* 156**
See QUO WARRANTO. 2.

—— Municipal Corporation.
See Cases under MUNICIPAL CORPORATION—ELECTION.

—— Petition.
See Cases under PARLIAMENT—ELECTION PETITION.

EMBARRASSING PLEADING.
See Cases under PRACTICE—COMMON LAW—PLEADING.

EMPLOYERS' LIABILITY.
See Cases under LIABILITY OF EMPLOYER.

EMPLOYERS' LIABILITY ACT, 1880—Transfer of action under from Civil Bill Court to High Court.
See PRACTICE—TRANSFER OF ACTION. 3, 4.

ENGLISH JUDGMENT—Enrolled in Ireland—Writ of sequestration - - - - **XXVII. 17**
See PRACTICE—SEQUESTRATION. 2.

EQUITABLE ASSIGNMENT—*Policy of insurance.*] F., a trader, whose premises and stock had been consumed by fire, was entitled to receive an unascertained amount from the A. Insurance Company on foot of his loss. He was at the time indebted by M. to an unascertained amount for goods sold and delivered, and, being pressed for payment, F. gave M. a letter addressed to the agent of the A. company, through whose hands the insurance money was to pass, and to whom the contents of the letter were communicated, authorising him to retain the amount of M.'s account. The letter expressed anxiety to settle with all the creditors in full, and expressly provided that if F. went into business again he would pay M. himself. The policy remained in the hands of F. Before the settlement of his claim on foot of the fire policy, he absconded, and was adjudicated bankrupt. Notice of the letter in the hands of M. was given to the A. company, who paid the whole amount of the claims on foot of the fire policy to the assignees:—*Held*, that the letter was not an equitable assignment of any portion of the proceeds of the policy, and that it did not create any lien or charge upon the fund in favour of M. *Re* FOSTER - - **B. VII. 83**

—— Deposit receipt - - - - - **XII. 5**
See DONATIO MORTIS CAUSA. 3.

EQUITABLE EXECUTION.
See Cases under PRACTICE—RECEIVER.

—— Debt payable *in futuro* - - **XXII. 49**
See ASSIGNMENT OF DEBT. 4.

EQUITABLE MORTGAGE.
See Cases under MORTGAGE—EQUITABLE MORTGAGE.

EQUITY TO A SETTLEMENT—Jurisdiction of Landed Estates Court - - - - - **I. *M.* 299**
See PRACTICE—LANDED ESTATES COURT—JURISDICTION. 9.

ERASURE—*Name in deed—Effect of.*] A deed to secure the repayment to sureties of two instalments of a bankrupt's composition, was executed by the bankrupt and by the four sureties, one of whom afterwards drew a pen through his own name and that of another surety. The seals remained untouched:—*Held*, that the erasure in the deed was not a material one, and did not avoid it. CALDWELL *v.* PARKER **[B. III. *M.* 446**

ESTATE FOR LIFE.

—— Settlement - - - - - **VI. 143**
See SETTLEMENT—CONSTRUCTION. 7.

—— Will.
See Cases under WILL—ESTATE FOR LIFE.

ESTATE IN QUASI TAIL—Settlement - **V. 44**
See SETTLEMENT—CONSTRUCTION. 9.

ESTATE TAIL.

—— Settlement - - - - **VIII. 153**
See SETTLEMENT—CONSTRUCTION. 8.

—— Will.
See Cases under WILL—ESTATE TAIL.

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ESTOPPEL.

1. —— *Administration with will annexed—Effect of grant.*] An administrator *cum test. an.* is not, by accepting administration, estopped from claiming adversely property bequeathed by the will, or from disputing facts stated in the will. KANE *v.* KANE - - - - - - - - **R. I. *M.* 176**

2. —— *Title by—Effect of proceedings in administration suit to bind the Landed Estates Court.*] By a marriage settlement made in 1810 a sum of money subsequently increased to £1,300 was transferred to W. upon the trusts thereof. By a settlement made in 1836 upon the marriage of W., his estate was conveyed to trustees upon trust for W. for life, and then, as to one moiety, to the use of his wife for life, then to the issue of the marriage, and, failing them, to T., his heirs and assigns. W. converted the £1,300 to his own use, and in November, 1853, a petition was filed by the tenant for life under the deed of 1810 and his son against W., and in March, 1854, it was declared that there was due by W. £1,644 8s. 7d. on foot of the trust fund. New trustees of the settlement of 1810 were appointed. The decretal order was registered under 13 & 14 Vic., c. 29, against the estate of W., including the moiety of the lands ultimately limited to T. W. died without issue and an administration suit was brought against his widow, the trustees of the deed of 1837, and T., by the tenant for life under and the trustees of the deed of 1810, to have W.'s estate administered, when it was declared that £1,864 was due to the petitioners, and a sale of the lands was ordered, and a petition for sale was filed in the Landed Estates Court. An application was made to Hargreave, J., by the petitioners that the moiety should be sold discharged from all right or title of T. thereto, which was refused, as the limitation of T. was valid. W.'s widow died, and T.'s estate became an estate in possession. On the settlement of the schedule the trustees of the deed of 1810 claimed priority in respect of £1,644 8s. 7d:—*Held*, by Lynch, J., that as the decrees and the administration suit did not deal with any relief, nor was it sought, as against the estate limited to T., he could not hold that T.'s estate was bound as assets of W., and as T.'s estate could not be sold when it was in remainder, it could not be sold when in possession. *Re* THOMAS' ESTATE - **L. E. C. I. *M.* 533**

—— Conduct - - - - - - **XXVI. 98**
See WILL—LEGACY. 4.

—— *In pais*—Rent fixed by arbitration—Statutory deductions not allowed - - - - - **XXV. 69**
See LAND LAW (IRELAND) ACTS, 1881, 1887. 10.

—— Laches—Landed Estates Court - **V. 21; VI. 20**
See SETTLEMENT—CONSTRUCTION. 5.

—— Payment of Rent - - - - **XX. 55**
See LANDLORD AND TENANT—RENT. 4.

—— Use and occupation—Statute of Limitations **II. *M.* 153**
See LIMITATIONS, STATUTE OF. 25.

ESTUARY—Fresh water stream flowing through **[XII. 131; XIII. 81**
See FISHERY. 5.

—— What constitutes - - - **XII. *M.* 201**
See FISHERY ACTS. 5.

EVIDENCE.

1. —— *Admissibility of estate maps.*] Ancient maps or surveys, coming from proper custody, though mere private documents, may be received in evidence as against persons deriving title from the proprietor under whose direction the maps or surveys were made. M'KENNA *v.* HOWTH **[L. C. XXVII. 48**

2. —— *Declaration of third parties in connection with Acts—Setting aside verdict.*] On a motion for a new trial on the ground of the reception of illegal evidence, the Court held that the refusal of parties to take rooms in consequence of light being interfered with could not be received in evidence. GRESHAM HOTEL COMPANY *v.* MANNING **Q. B. I. *M.* 26**

EVIDENCE—*continued.*

3. —— *Memorial—Settlement.*] The memorial of a settlement was allowed to be read in evidence although no proof was given of a search for the original. SINNOT *v.* KEHOE **C. I. *M.* 5**

4. —— *New trial motion.*] Where an unsigned memorandum in an agent's rent book was given in evidence at the trial, and the jury in consequence found that there had been an agreement in writing reducing the rent, and judgment was given accordingly, and the Judge's notes contained no record of any objection having been made to the memorandum being so given in evidence, the Court, without deciding definitely as to the admissibility of the memorandum as evidence, refused a motion for a new trial, or to alter the verdict. CARROLL *v.* DE GROOT - - - - **Q. B. D. XXVII. *M.* 511**

5. —— *Presumption—Interruption.*] In an action for injury to the reversion, the plaintiff claimed a prescription of forty years. The defendant relied on acts of interruption in September, 1863, acquiesced in by the plaintiff for one year before this action. The plaintiff gave in evidence proceedings in an action commenced in January, 1864, by his tenant for the same acts of the defendant. Verdict for the plaintiff. On a motion for a new trial:—*Held*, that that evidence was not illegal. BEYTAGH *v.* CASSIDY - - - - - - **E. II. *M.* 6**

6. —— *Presumption—Death*—20 & 21 *Vic., c. 77, s.* 73.] While there is no presumption of law, either of death or of continuance of life at any particular time during the septennial period, there may be a presumption of fact. IN THE GOODS OF CONNOR - - - - - **P. XXVI. 77**

7. —— *Presumption of death—Lease for life—Tenancy from year to year—Originating notice to fix judicial rent.*] In April, 1842, a lease was made for 21 years, and during the life of Bryan Gill, then aged 21 or 24. In 1856, Bryan Gill went to Steeven's Hospital, Dublin, suffering from an affection of his eyes; and a short time afterwards some members of his family called but could hear nothing of him. It was deposed that he left this country in that year; and it was stated that, when leaving home, he had got £5 from his relatives. It did not appear that he had subsequently asked for any assistance from them, and William Gill, his brother, had not heard from him since, and stated his belief that his other brothers and sisters had not heard from him. But the other brothers and sisters made an affidavit, nor did it appear what inquiries were instituted to discover his whereabouts, and it was sworn that a bailiff had been informed that Bryan Gill was a mate on board an American vessel in March, 1875. During Bryan Gill's absence, rent had been paid by William Gill, and received by the lessor, but not, so far as appeared, with knowledge that, as alleged, Bryan Gill was dead. William Gill (whose elder brother would have been entitled to the land, if Bryan Gill was still alive), claiming to be a "present tenant" under a tenancy from year to year, having served an originating notice to fix a judicial rent under the Land Law Act, 1881:—*Held*, that the evidence was insufficient to warrant a presumption that Bryan Gill was dead, and that, even if he were to be so presumed, no circumstances were shown such as would create a tenancy from year to year between the lessor and William Gill; and, therefore, that the originating notice could not be sustained. GILL *v.* MANLY **[L. C. XVI. 57**

8. —— *Presumption of death—Determination of judicial rent—Lease for lives—Evidence as to existence of* cestui que vie*—Burden of proof—7 Wm. III., c. 8—Land Law (Ireland) Act*, 1881, *ss.* 8, 21.] At the hearing of an application to determine a judicial rent, a lease of the holding for three lives was produced. Evidence was given that two of the lives were dead, but there was no evidence as to the third except that he had left the country for America 34 years ago. His nearest relatives in Ireland were not produced, and the landlord offered in evidence a letter purporting to have been written by him a few months previously. No proof was offered, however, that this letter was in his handwriting:—*Held*, that the onus of proving the death of the *cestui que vie* lay on the tenant

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EVIDENCE—*continued.*

once the lease was proved; and that no presumption could arise of his death from the facts. *Semble*: The letter would have been admissible in evidence if necessary in proof of his being alive, if it bore internal evidence of having been written by him. AYLWARD *v.* JONES - - L. C. XVIII. 111

9. —— *Presumption of death—Absence beyond the seas—Person for whose life estate was granted—Proof of continuance of life—Letters—Comparison of disputed with genuine handwriting—Jurisdiction of Judge of Assize—7 Wm. III., c.* 8, *s.* 1—*C. L. P. A. Act,* 1856, *s.* 30.] Where a person, for whose life an estate has been granted, remains beyond the seas for seven years together it is sufficient evidence in order to rebut a presumption of his death that letters written by him have been recently received in reply to others addressed to him. A Judge of Assize has power, on a civil bill appeal, to compare disputed with genuine handwriting, for the purpose of testing the genuineness of that which is disputed. (By Barry, J.) CROFTON *v.* SMITH Cir. Cas. IX. 120

10. —— *Register of baptism by Roman Catholic clergyman.*] To render an entry, made by a person in the course of business or duty, admissible in evidence after his death, it is not necessary that the duty should be one imposed by law. An entry of the baptism of T. D., contained in the Baptism Book of a Roman Catholic Parish Church, in the handwriting of the clergyman who performed the ceremony, was received in evidence after his death, it being proved that by the rules of the church it was his duty to make the entry, and that neglect of such duty would render him liable to ecclesiastical penalties. *Davis* v. *Lloyd* (1 C. & K. 275), disapproved. *Malone* v. *Lestrange* (2 I. E. R. 16), approved and followed. *Farrell* v. *Maguire* (3 I. L. R. 187), distinguished. DILLON *v.* TOBIN - - - - - P. XII. 32

11. —— *Schedule of assets in Probate Division—44 Vic., c.* 12, *s.* 28.] Where, for the purpose of obtaining a grant of administration, a party has filed a schedule of assets in the Probate Division, on which credit is taken under 44 Vic. c. 12, s. 28, for debts due, the Court will not compel the Probate official to produce such schedule, even though subpœnaed for that purpose by a party in the proceedings. LYONS *v.* HUGHES - - - - - Q. S. XVIII. 20

12. —— *Traverse—Work and labour done.*] In an action for work and labour done by an attorney the Judge's refusal to allow to be admitted as evidence an agreement by which the plaintiff was only to be paid in the event of a certain fund being realized, was confirmed, following *Leach* v. *Palmer.* (11 Ir. Jur. N.S. 259). STRANGE *v.* KELLY C. P. I. *M.* 713

13. —— *To contradict deed—Action on covenant for repayment of loan.*] In an action on the covenant for the repayment of a loan in a bill of sale by way of mortgage, the defendant pleaded an equitable plea, that the deed was executed at the request of the mortgagee wholly without consideration, and for the purpose of defrauding creditors, all of whom had since been paid off. The deed recited the loan, and the receipt of the money alleged to have been lent was endorsed. Parol evidence showing the purpose for which the deed was executed, and that no money was lent, was admitted. SCRAGGS *v.* COX - - - - C. N. P. VII. 56

14. —— *Usage of trade—Interpretation of written contract—Ambiguity in the meaning of a word of art—"Salesman"—Question for jury.*] An agreement was entered into between the plaintiff and defendant that the plaintiff should enter the defendant's service as "salesman" in the tea trade, the plaintiff understanding that he was only to be employed as traveller. The plaintiff afterwards acted for some time in the capacity of traveller, but was ultimately required by the defendant to act in the wholesale warehouse of the defendant. In an action for breach of contract thereupon:—*Held,* that evidence to explain the meaning of the word "salesman" in the written agreement was admissible. M'MULLEN *v.* GREENE [C. P. VIII. 166

EVIDENCE—*continued.*

15. —— *Usage of trade—New trial.*] On a motion for a new trial, objection was made to the reception of evidence at the trial regarding the waste which occurred in a neighbouring grocer's shop in weighing the goods in small quantities, such waste in the plaintiff's shop being a matter in issue. The Court (*diss.* Fitzgerald, B.) considered the evidence admissible. M'FADDEN *v.* MURDOCK - - - - E. I. *M.* 247

16. —— *Valuation—Field notes of valuer—Necessity of production of original notes.*] A valuer of land who had made notes in writing on the land, of the value he put upon various portions of the lands, afterwards compiled from these notes a full report or valuation of the lands in writing. It having been proposed to allow him to look at this paper during his examination in order to refresh his memory:—*Held,* that he could not use this paper unless he produced the original field notes and submitted to cross-examination out of them. MURRAY MAHON - - - - - L. Sub.-C. XVIII. 8

17. —— *Witness—Criminating questions—Liability of witness as* particeps criminis *in a breach of the Licensing Acts—Licensing Act,* 1872, *ss.* 5, 6—14 & 15 *Vic., c.* 93, *s.* 13.] On the hearing at Petty Sessions under 14 & 15 Vic., c. 93, sec. 13 (5), of a complaint against a licensed publican, for selling spirits at prohibited hours, it was alleged that a woman knocked at the public-house door, and handed in a bottle, which was returned to her with spirits, for which she paid, but that she had throughout remained in the street, outside the licensed premises. Having been called as a witness, she refused to give evidence of the transaction, on the ground that so doing would criminate herself, on which objection she insisted, apparently owing to the intervention of a solicitor engaged in the case; and she was thereupon committed for contumacy. On application for a writ of certiorari:—*Held,* that as, under such circumstances, her evidence as to the transaction could not have criminated herself, and as her objection to answer was not made by her *bonâ-fide* for her own protection, the application should be refused. R. (ATKINSON) *v.* THE JUSTICES OF ARMAGH. - - - - - Q. B. D. XVIII. 2

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EXECUTOR (AND ADMINISTRATOR)—ACTION AGAINST.

1. —— *Funeral expenses—Pleading.*] In an action against executors for money paid for funeral expenses, the count did not aver that the expenses were proper and necessary, or that the defendant had assets:—*Held*, bad. MAGENNIS *v.* DEMPSEY **[Q. B. III. M. 280**

2. —— *Claim on estate of deceased person—Corroboration—Lapse of time.*] A claim on the estate of a deceased person, in which the evidence of the claimant was uncorroborated by vouchers, receipts, or demand of payment during the lifetime of the deceased, and in which it appeared that the claim originated 14 years before the death of the deceased, was disallowed. BOAK *v.* MOORE - - **V. C. XIII. 127, note**

3. —— *Claim on estate of deceased person—Evidence of claim and claimant—Corroboration—Variance between rule of equity and common law—Judicature Act. sec.* 28, *sub-s.* 11.] In proving a claim against the assets of a deceased person, the rule of equity that the evidence of the claimant must be corroborated now applies at law as well as in equity. (By Fitzgibbon, L. J.) FERRIS *v.* HANNA **[Cir. Cas. XIII. 127**

EXECUTOR (AND ADMINISTRATOR)—ACTION AGAINST—*continued.*

4. —— *Claim on estate of deceased person—Uncorroborated evidence of claimant.*] The Court will not in any way allow, out of the assets of a deceased person, the amount of a claim which is sustained only by the uncorroborated testimony of the claimant. HARTFORD *v.* POWER - **V. C. III. M. 559**

5. —— *Claim on estate of deceased person—Evidence—Corroboration—Shop books.*] Shop books kept by a creditor in his own hand-writing may be used in corroboration of a claim by him upon the estate of a deceased customer. (By Andrews, J.) WARD *v.* HAROLD - - **Cir. Cas. XXVII. 115**

—— Claim against assets of deceased—Corroboration **[XXII. 42**

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EXECUTOR (AND ADMINISTRATOR)—ACTION BY—*Continuance of action by administrator before grant—Judgment* de bonis propriis—*Assets.*] The widow of an intestate remained in the possession of his assets for two years without taking out administration, and then took out administration, and revived and continued, as administratrix, an action which had been pending at the death of her husband. She was non-suited in the action, and judgment was marked against her in her own right:—*Held*, that the sheriff could not give a good title to a purchaser to a chattel real forming portion of the assets of the intestate, and sold under a *fi. fa.* issued against her for the costs of the non-suit. WILLIAMS *v.* HEPENSTALL. **[C. P. VIII. 6**

EXECUTOR (AND ADMINISTRATOR)—ADMINISTRATION—*Administrator—Title—Assets—Profits of the trade of a deceased person carried on without lawful authority—Chattels bought out of such profits.*] Some of the next of kin of an intestate carried on his business of farming, and purchased stock out of his assets. Judgment was recovered against these persons, and the said stock seized and sold under a writ of *fi. fa.* issued thereon. Afterwards, another of the next of kin of the intestate took out administration, and sued the sheriff and judgment creditor for conversion of the assets:—*Held*, that the stock did not become assets till the administrator had elected to take it as such; and that such an election could not be made after a *bonâ-fide* title had accrued to a stranger under the execution. M'CARTHY *v.* MORRIS. **[R. D. XV. 9**

EXECUTOR (AND ADMINISTRATOR)—ADMINISTRATION ACTION (AND SUIT).

1. —— *Accounting party—Plaintiff submitting to account.*] A party who would be entitled to obtain a decree for the administration of the estate of a deceased person, if he were not himself an accounting party to the estate, can obtain such a decree, if, in his statement of claim, he offer to account so far as he is personally liable. O'LOUGHLIN *v.* CANAVAN **[V. C. XIII. 26**

2. —— *Concurrent suits in English and Irish Courts—Removal of assets by administrator—Personal liability of administrator—Conflict of jurisdiction.*] M., a creditor of an intestate and plaintiff in an administration suit. "M. *v.* R.," in the English Court of Chancery, obtained therein a decree to account against R., the defendant and administrator of the intestate. Subsequently B. the widow of the intestate instituted an administration suit, "B. *v.* R.," and obtained therein a decree to account, in the Irish Court of Chancery, against R. as administrator, B. undertaking to abide any order that might be made in reference to the Irish suit by the English Court in the suit of "M. *v.* R." An order was afterwards made in the suit of "M. *v.* R.," with B.'s consent, that all further proceedings in the suit of "B. *v.* R." should be stayed till the chief clerk should have made his certificate under the decree in the suit of "M. *v.* R." Subsequently, C., an Irish creditor of the intestate, served R. with a writ of summons and plaint for the amount of his debt, and

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EXECUTOR (AND ADMINISTRATOR)—ADMINISTRATION ACTION (AND SUIT)—*continued.*

(the Irish Court of Chancery having refused to restrain C. from proceeding at law) marked judgment for the amount of his debt, with interest and costs. Nearly all the available assets had been transferred, in the meantime, from Ireland to the credit of the English suit of "M. *v.* R." On appeal from an order of Chatterton V. C., refusing a motion by C. in the suit of "B. *v.* R.," that R. should be declared personally liable to pay him the amount of his claim on foot of the judgment he had obtained:—*Held*, having regard to the condition in the decree in "B. *v.* R.," and it not having been shown that R. had done any act save in obedience to the orders of the English Court of Chancery, that R. was not personally liable to B. for the amount due on foot of the judgment. *Ex parte* CROKER. *Re* BROWNE *v.* ROBERTS [Ch. A. VIII. 169

3. —— *Consent by parties to sell property out of Court—Sale by solicitor of plaintiff—Making consent rule of Court.*] An intestate died in 1859, leaving a wife and four children, two sons and two daughters, his next of kin. His estate at the time of his death consisted of a house held in freehold tenure, and the profits of a business carried on in it. The intestate's wife became his administratrix, and invested part of the personal estate in the purchase of certain lands. In 1875 the eldest son and heir-at-law of the intestate filed a bill against his mother, brother, and sisters, and obtained a decree directing certain accounts to be taken of the real and personal estate of the intestate. All the parties in this cause having signed an agreement to waive the taking of some of these accounts, and to consent to the sale, by the plaintiff's solicitor, of the lands mentioned: upon a motion to make such consent a rule of Court:—*Held*, that the Court should not permit the sale of a property out of Court under such circumstances. MOLONY *v.* MOLONY - - - - - R. XII. 157

4. —— *Costs of—Testamentary expenses authorised by will.*] A testator, having directed his trustees and executors, out of all sum and sums of money which might be in his possession at the time of his decease, standing to the credit of his account in the Bank of Ireland, or elsewhere, to pay and satisfy all debts that might be due or owing to him at the time of his decease, and also his funeral and testamentary espenses:—*Held*, that the costs of a suit to administer his estate were not included in "testamentary expenses." MULOCK *v.* MULOCK [R. VI. 174

5. —— *Insolvent estate—Proof by secured creditor—Judicature Act, s.* 28, *s.* (1).] T., whose estate was being administered, had died in March, 1886. In 1873, being indebted to the Bank of Ireland, he deposited his title deeds with the Bank by way of equitable mortgage. In September, 1885, he executed a legal mortgage to the Bank of the lands of which he had deposited the title deeds, to secure all moneys then due, and future advances. In the action the Bank claimed for £975 16s. 9d. principal and interest, and the claim contained the following paragraph:—"Inasmuch as there does not appear any reason to expect that the estate of T. will be insufficient for payment of his debts and liabilities, the bank have not valued the foregoing securities or taken out a summons asking for an order that the lands and premises affected by the said securities shall be sold or realised immediately under the direction of the Court, but if the defendant, Esther Teahan, the executrix, apprehends that the estate will be deficient, and if she so informs the said bank, they will thereupon take the steps required by the Judicature Act in the case of insolvent estates." The solicitor for the Bank wrote to the solicitor having carriage, asking if the estate would prove insolvent, and, if so, what dividend it would pay, to which a reply was sent stating that the solicitor for the executrix thought the estate would prove insolvent, but could not say what dividend it would pay. After the chief clerk's certificate was filed, the Bank served notice of motion for leave to sell the lands, with a view to ascertain the value of the security:—*Held* (reversing the decision of the Vice-Chancellor), that the Bank should be allowed to value their securities, and deduct that value from the amount of their debt, and prove for the balance against the general assets. COOPER *v.* TEAHAN [V. C. & C. A. XXIII. 55, 57

6. —— *Payment on account of legacies.*] Where an action has been a long time in Court, and the funds would be ample for the payments of the legacies in full, the Court ordered payments on account to be made to the legatees. GRAY *v.* PERRY [R. XXVII. *M.* 388

7. —— *Personalty—Fee-farm grant—Fine on surrender.*] A testator had made a fee-farm grant containing a clause enabling the grantees to surrender on payment of a surrender fine of £100. He bequeathed his personalty to two persons and his freehold property to other persons. The fee-farm grant was surrendered after his death, and the fine of £100 paid:—*Held*, that the fine formed part of his personal estate. ARMSTRONG *v.* ARMSTRONG - - - R. XVII. 105

8. —— *Plaintiff a creditor and mortgagee—Practice.*] The plaintiff in an administration suit claimed to be a creditor in respect of a large sum of money for which he held several mortgages for the amount due to him:—*Held*, that the plaintiff was entitled to prove his claim for the full amount against the general assets, without being bound to realise his mortgage securities; the time at which the amount of the debt should be ascertained would be when it was brought in under the posting for creditors; he would then receive a rateable dividend (the estate being insolvent) subject to being charged with sums received out of the mortgaged premises. FOTTRELL *v.* KAVANAGH - - - - - - V. C. X. *M.* 354

9. —— *Practice—Interest on debts—Creditor coming in under decree—Rules of June*, 1891, *O. LV., r.* 65—*Preamble to rules—Matter then pending.*] Order LV., rule 65 (Rules of June, 1891), allowing interest on debts not otherwise carrying interest, where the creditor "comes in and establishes" same under a judgment or order of the Court, is not retrospectively applicable to cases where the primary administration decree was obtained prior to June 1, 1891, and where nothing remained to be done after that date save to obtain an allocation order. *In re* ROWLEY, ROWLEY *v.* ROWLEY [C. A. XXV. 49

10. —— *Reduction of rents—Application by tenants.*] The Court will not entertain an application by the tenants of lands, the subject of an administration action, for a reduction of rent; the application must be made by the receiver or the personal representative. HINDS *v.* POTTERTON V. C. XXIII. 40

11. —— *Sale by auctioneer prior to decree—Purchaser paying 2½ per cent. fees to auctioneer—Administrator surcharged with difference between commission and fee.*] Where an administrator sold property prior to instituting proceedings in the County Court for administration and the purchaser paid the auctioneer 2½ per cent. commission on the purchase money, which was to include the cost of advertising:—*Held*, that the administrator must bring into Court the difference between the amount of the commission so paid and what was a reasonable fee. HALL *v.* HALL - - Q. S. XXVII. 61

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See PRACTICE—CHANCERY—SALE BY COURT.

EXECUTOR (AND ADMINISTRATOR)—ADMINISTRATION SUMMONS.

1. —— An order for administration was made on summons where there was a difficulty in ascertaining all the next of kin. (By Madden, J.) M'MAHON, DECEASED, UPPERTON *v.* BRIGG - - - Vac. J., XXVII. *M.* 82

2. —— *By one creditor alone—Real estate.*] A creditor may obtain under 30 & 31 Vic., c. 44, s. 153, an order on summons for the administration of the real estate of a deceased person, without joining the other creditors of the deceased. *Re* M'KEOWN - - - - - R. VIII. 18

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EXECUTOR (AND ADMINISTRATOR)—ADMINISTRATION SUMMONS—*continued.*

3. —— *By administratrix—Laches—Presumption of due administration of assets after great lapse of time—Unexplained delay—Discretion of Court.*] A next-of-kin of a deceased, who died a very long time before, obtained letters of administration many years after she attained age. Without explaining her delay in instituting proceedings, she sought to have a decree for administration made. The Court refused to make the decree. MADDEN *v.* SCANLAN **R. XXVI. 137**

4. —— *Real Estate—Settlement.*] The Court will not make an order on summons to administer real estate where it has been put in settlement, and where there is a question as to whether a debt was created by the will so as to take the plaintiff's claim out of the Statute of Limitations. ELLIOTT *v.* MONTGOMERY - - - - - **R. IV. *M.* 215**

5. —— *Suit more proper for inferior Court—County Courts Act*, 1877, *ss.* 31, 33.] On a summons for the administration of an estate, where the gross value was estimated at £630, but in which was included the selling value of a farm estimated at £161, and where it did not appear that the annual value exceeded £30, no rule was made, the Court intimating that the County Court was the proper tribunal. HARTEN *v.* HARTEN **[V. C. XII. *M.* 87**

EXECUTOR (AND ADMINISTRATOR) — LIABILITIES (AND DUTIES).

1. —— *Administration summons — Lease — Non-claim for breach of covenant—Liability of administrator and next of kin —22 & 23 Vict. c. 35, s. 27.*] An administrator, in such his capacity, became possessed of a lease of premises on which large arrears of rent remained unpaid, and which had been suffered to become dilapidated, in violation of the lessee's covenants to pay rent and to repair. On a summons for administration of the assets of a devisee of the lessee, the receiver over the lessor's estate came in, claiming the arrears of rent, and to have provision made out of the personal estate of the deceased for the future payment of rent—making no claim in respect of the dilapidations—and a decree was made declaring the receiver entitled to the arrears, but silent as to any provision for future payment. The administrator having subsequently applied by summons for an inquiry as to whether he was under any liability by reason of the covenants in the lease, and if so, as to what provision ought to be made for his indemnity:—*Held*, that the inquiry should be refused. FITZGERALD *v.* LONERGAN - - - **Ch. A. IX. 186**

2. —— *Misconduct*—Ne exeat regno—*Costs.*] An executor, who had drawn out of bank a sum of money, forming portion of the assets of the testator, wrote to a legatee of the testator claiming 6 per cent. on his portion and that of the other legatees, and informed him that he was about to emigrate from the kingdom. A bill to administer assets was thereupon filed and a writ of *ne exeat regno* was issued against him. In his answer the executor admitted being in possession of the assets, and gave a full account thereof:—*Held*, that the costs of the proceedings up to and including the answer must be paid by the executor, but that he was entitled to the subsequent costs. FARRER *v.* CARROLL - - - - **R. VIII. 172**

3. —— *Notice to creditors—No claim sent in*—22 & 23 *Vic., c.* 35, *ss.* 26, 27, 28, 29.] Executors, having published the usual advertisements in the newspapers, calling on all creditors to send in notice of their claims against the testator's estate before a given date, proceeded, on the expiration of the time limited, to administer the estate, and distribute the entire of the assets among the parties who had sent in claims in reply to the advertisement, and those entitled under the will, without regarding an outstanding mortgage on the property. The mortgagees had sent in no reply to the advertisements for creditors, but the executors were aware of the existence of the mortgage:—*Held*, on appeal (reversing the decision of the Vice-Chancellor), that the executors, knowing of the existence of the outstanding mortgage, were bound to take it into account in distributing the assets. The meaning of the term "notice" in 22 & 23 Vic., c. 35, s. 29, considered. SCOTTISH EQUITABLE SOCIETY *v.* BEATTY - - - - **C. A. XXIII. 66**

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EXECUTOR (AND ADMINISTRATOR)—LIABILITIES (AND DUTIES)—*continued.*

EXECUTOR (AND ADMINISTRATOR)—POWERS.

1. —— *Interest taken by, in estate of deceased—Judgment for rent subsequent to death of testator—Seizure in execution of a tenancy from year to year—User—Delay—Estoppel.*] A statement of claim, in an action for the recovery of land, alleged that on the death, in October, 1879, of the tenant of the land, held under a tenancy from year to year, the defendant, as his executrix, entered into possession and paid the year's rent which had become due in the September previous; that in September, 1880, the rent for the preceding year became due by the defendant to the plaintiff, for the amount of which the plaintiff brought an action against her, and recovered judgment; that a portion of the said amount was realised and paid to the plaintiff, and that for the balance a writ of *fi., fa.*, was issued against the goods of the defendant under which the sheriff took in execution the defendant's estate and interest in the said land, and sold the same to the plaintiff at public auction, and subsequently executed an assignment thereof to the plaintiff:—*Held*, on demurrer, that the assignment did not entitle the plaintiff to the land, as when he obtained the judgment the defendant was not entitled to the land in her own right but as executrix, and under the circumstances appearing there had been no dealing or conduct on her part to estop her from so maintaining. TALBOT DE MALAHIDE *v.* MORAN - **Q. B. D. XV. 63**

2. —— *Power to let lands—Restriction of power in will—Civil bill ejectment*—14 & 15 *Vic., c.* 57, *ss.* 72, 93—*Jurisdiction—Decree for possession of part of lands and dismiss as to rest.*] A. devised chattels real to B., his infant son, same to be managed during his minority by his executor, who was one of the defendants, the will containing a provision that the executor "should not have power either to let or sell the (devised) lands without the consent of C." The executor made a lease for years, and on its expiration a yearly letting of a portion of the lands so devised, and subsequently became tenant from year to year to the plaintiff of the entire lands at one rent. Notice to quit was served only on the executor:—*Held*, that the executor had power to create the tenancy, notwithstanding the limitation contained in will, and that the tenancy was undetermined. The Court has no jurisdiction to grant a decree for possession of a portion and a dismiss as to another portion of the same lands. (By Battersby, Q.C., Judge of Assize.) O'DONNELL *v.* O'ROURKE **[Cir. Cas. X. 158**

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—— According to the tenor.

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—— According to the tenor—Executor of—Grant of administration - - - - - **II. *M.* 244**

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See WILL—EXECUTORY TRUST.

EXPOSING GOODS FOR SALE OUTSIDE SHOP.

1.—*Dublin Police Act*, 5 & 6 *Vic., sess.* 2, *c.* 24—*Obstruction of thoroughfare.*] Between the front of a butcher's shop and a public footway in Great Britain Street, Dublin, was a space belonging to the shop, and bounded on one side by a rail projecting from the corner wall of the house to the footway. The public had no right of walking over or using this space, and the rail prevented it being so used. The butcher having exposed meat for sale on a table there placed:—*Held* (Fitzgerald, J., *dubitante*), that he was not guilty of an offence within the 5 and 6 Vic., sess. 2, c. 24 ("An Act for Improving the Dublin Police"), sec. 17, sub-sec. 7. BYRNE *v.* RING [Q. B. X. 82

2.—*Dublin Police Act*, 5 & 6 *Vic., sess.* 2, *c.* 24, *sec.* 17, *sub-sec.* 7.] A summons for exposing goods for sale outside a shop was dismissed, where the defendant deposed that he was the owner of the ground out to the footway, and had for thirty years placed goods over the covered area; that the only dedication to the public was when the customers passed in and out: and that he had flagged the place himself. WILLIAMSON *v.* MONKS - - - M. P. C. X. *M.* 469

3.—*Obstruction of thoroughfare—Dublin Police Act*, 5 & 6 *Vic., sess.* 2, *c.* 24, *sec.* 17 (7).] Sec. 17, of 5 & 6 Vic., sess. 2. c. 24 ("An Act for the Improvement of the Dublin Police") renders liable to penalties every person who, in the words of the 7th sub-sec., "shall expose anything for sale in any park or public garden, unless with the consent of the owner, or other person authorised to give such consent, or upon, or so as to bring over any carriage way or footway, or on the outside of any house or shop; or who shall set up or continue any pole, blind, awning line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare." The concluding words of that sub-section, "so as to cause any annoyance or obstruction in any thoroughfare," refer exclusively to the branch of the sub-section which commences "or who shall set up or continue any pole," &c. A provision dealer having been summoned for exposing provisions for sale outside his shop in Talbot Street, Dublin, it appeared that the premises of which he was the owner had formerly been a private dwelling house, having an area in front, which area was separated from the public thoroughfare by a railing; that the area had afterwards been covered over by a flagging, raised some inches above the level of the footway adjoining, and that the railing next the street had been left standing. Upon this covered area, forming part of his premises, the provision dealer had exposed his goods for sale outside his shop:—*Held*, that the defendant was guilty of an offence within the meaning of 5 and 6 Vic., sess. 2, c. 24, s. 17, sub-sec. 7. KAVANAGH *v.* DOLAN E. X. 80

4.—*Obstruction of thoroughfare.*] The exposing of goods for sale on a covered area which forms part of a trader's own premises is not an offence within the 5 & 6 Vic., sess. 2, c. 24. *Dowling* v. *Byrne* (X. 79), and *Byrne* v. *Ring* (X. 82), approved of; *Kavanagh* v. *Dolan*, (X., 80), not followed. KAVANAGH *v.* GRANT - - - - - - C. P. XI. 34

5.—*Shop steps leading to shop door—Dublin Police Act*, 5 & 6 *Vic., sess.* 2, *c.* 24, *sec.* 17, *sub-sec.* 7.] Where it appeared that a trader exposed goods for sale on the steps leading to his shop door, and forming portion of his premises:—*Held*, that he had committed no offence within the 5 & 6 Vic., sess. 2, c. 24 ("An Act for Improving the Dublin Police"), sec. 17, sub-sec. 7. DOWLING *v.* BYRNE - - C. P. X. 79

EXPRESS TRUST.

See LIMITATIONS, STATUTE OF. 12-16.

—Charity—Statute of Limitations - IV. *M.* 738

See CHARITY—SCHEME. 1.

F

FAIR COMMENT—Libel.

See DEFAMATION—LIBEL. 4, 5.

FALSE IMPRISONMENT.

1.—*Assault and detention—Plaintiff wrongfully in possession of defendant's goods.*] In an action for assault and false imprisonment for a long time, a defence was made that the plaintiff had in his possession a chattel of the defendant's and was about wrongfully to carry it away, whereupon the defendants gently laid hands on and detained the plaintiff, in order to prevent his carrying it away, doing no more and detaining the plaintiff no longer than was necessary. On demurrer:—*Held*, that the defence was no justification of the imprisonment. HARVEY *v.* MAYNE - C. P. VI. 130

2.—*Assault—Arrest for drunkenness—Detention in police barracks for night.*] In an action against members of the police for assault and false imprisonment, it appeared that the assault took place in arresting the plaintiff for being drunk for which he was fined at Petty Sessions. The defendants were not justified in detaining him for the night if he was capable of taking care of himself going home, and the plaintiff would be entitled to damages. MAHONEY *v.* LYNCH [Q. S. X. *M.* 91

3.—*Embarrassing defence—Crime and Outrage (Ir.) Act*, 1848.] To an action for false imprisonment, the defendants, an inspector of constabulary and two constables, pleaded that before, &c., they being, &c., suspected the plaintiff, &c. On a motion to set aside the plea as embarrassing for omitting to state the grounds of suspicion:—*Held*, that the defence implied reasonable ground of suspicion. BUCKLEY *v.* BARRY - - - - - - E. II. *M.* 353

4.—*Pleading—Embarrassing summons and plaint—Malicious prosecution.*] A plaintiff pleaded as follows:—"And that also the defendant falsely, &c., caused the plaintiff to be arrested and imprisoned, and afterwards caused him to be brought before a magistrate in custody, on a false charge that he had been guilty of felony":—*Held*, that it should be set aside as embarrassing. HARRINGTON *v.* MURPHY [C. C. III. *M.* 407

—Assault—Action against magistrate—Pleading [VII. *M.* 526

See PRACTICE—COMMON LAW—PLEADING. 38.

—Prolixity—Pleading - - - I. *M.* 713

See PRACTICE—COMMON LAW—PLEADING. 33.

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FALSE PRETENCES.

See Cases under CRIMINAL LAW—FALSE PRETENCES.

FALSE REPRESENTATION.

1. —— *Pleading—Duplicity—Setting aside summons and plaint.*] On motion to set aside paragraphs of a summons and plaint averring that the defendant knowing that a horse was unsound, by then fraudulently "concealing from the plaintiff that said horse was unsound," and representing to him that it was sound, induced the plaintiff, who was ignorant of such unsoundness, to buy the horse:—*Held*, that the words "concealing from the plaintiff that said horse was unsound" should be struck out. TIMPSON *v.* DALTON [Q. B. VIII. 184

2. —— *Pleading—Amendment.*] In an action for false representation in which the summons and plaint did not aver that the representation was false to the knowledge of the defendant, the plaintiff was given liberty to amend within a few days; otherwise the paragraph was to be struck out. CROOKE *v.* POWERSCOURT - - - - - - Q. B. I. *M.* 660

3. —— *Setting aside statement of claim—Prolixity—Pleading evidence—Fraud, whether necessary to allege expressly—Statement of claim, independent of writ—Judicature Act, sched. rr.* 21, 23—*O. VIII., rr.* 3, 16.] In an action for fraudulent representation by a lessor and his agent, whereby the plaintiff was induced to become the lessee of certain premises, and for breach of covenant in preventing the plaintiff opening a butcher's shop on the premises, and breach of covenant for quiet enjoyment, the statement of claim contained a lengthy narrative of the transactions between the parties, and alleged various matters of knowledge on the part of the lessor and his agent, relied upon by the plaintiff as containing an inference of fraud, but without expressly alleging fraud, on the part of either lessor or agent, or separating and distinguishing the causes of action:—*Held*, that the statement of claim should be set aside because the causes of action were not distinctly stated, but were mixed up and inseparable, and also because the manner in which each cause of action, taken separately, was stated was prolix and evidence was pleaded instead of facts. The writ of summons alleged expressly that the misrepresentations were fraudulently made; while the statement of claim merely averred circumstances from which the inference of fraud was deducible:—*Held*, that fraud should be expressly alleged as a fact; and it is not sufficient to merely set out the circumstances from which it is to be inferred, and that in this respect the statement of claim must be treated independently of the writ of summons. DOYLE *v.* HORT [E. D. XII. 172

FAMILY—Bequest for benefit of - - **XV.** 36
See WILL—DISCRETIONARY TRUST.

FAMILY ARRANGEMENT—Deed - **XII.** 2
See INFANT—SETTLEMENT. 3.

FEE-FARM GRANT.

See Cases under RENEWABLE LEASEHOLD CONVERSION ACT.

—— Fine payable on surrender—Personalty **XVII.** 105
See EXECUTOR—ADMINISTRATION ACTION. 7.

FEES FOR TRANSCRIPT OF RECORD—Writ of error - - - - - **I** *M.* 316
See CRIMINAL LAW—WRIT OF ERROR. 3.

FEVER HOSPITAL—Presentment for.

See Cases under GRAND JURY—PRESENTMENT—FEVER HOSPITAL.

FIERI FACIAS.

See Cases under SHERIFF.

FINAL EXAMINATION—Bankrupt.

See Cases under BANKRUPTCY—FINAL EXAMINATION.

FINE—Allowance for in fixing fair rent—Redemption of rent.
See REDEMPTION OF RENT (IRELAND) ACT, 1891. 9, 15.

—— Irish money—Irish statute - - - **XI.** *M.* 207
See JUSTICES—PRACTICE. 5.

—— Renewal of Ecclesiastical lease.
See ECCLESIASTICAL LEASE. 3, 4.

—— Surrender of fee-farm grant—Personalty - **XVII.** 105
See EXECUTOR—ADMINISTRATION ACTION. 7.

FIRE INSURANCE.

See INSURANCE. 1-5.

FISHERY.

1. —— *Public right of fishing—River navigable but not tidal.*] Trespass for fishing in the plaintiff's close covered with water. Defence:—That the acts were done in a navigable river in which the public had immemorially fished. There was no traverse of the averment that the close was the plaintiff's, and the plea admitted that the acts were done in a part of the river above where the tide ebbed and flowed. Demurrer:—*Held*, that navigable imports that the tide ebbs and flows in that part of the river which is thus described, and that the defence was bad. MURPHY *v.* RYAN - - - C. P. II. *M.* 150

2. —— *Several fishery—Grant of—Private Act of Parliament—Oysters.*] By an Act of Parliament entitled "An Act to enable E. J. C. to establish and protect a salmon fishery upon the lakes and rivers of O. and A.," after reciting that he was the proprietor of estates and fisheries, and was desirous of removing certain obstructions and of constructing the lands, passages, and cuts in the Act mentioned, for the purpose of admitting salmon up the said rivers to spawn, upon the terms that the exclusive right of fishing for, and the protection of, salmon and other fish in, among others, the Bay of B., should be vested in him, and that the establishment of a salmon fishery would be beneficial to the public, by affording employment to the poor, it was enacted that E. J. C. should be empowered, at his own cost and expense, to make and maintain two canals in such manner as might be sufficient to enable the salmon to ascend into the rivers and lakes; to purchase the existing rights and privileges of fishing for salmon and other sea fish within the Bay of B. from any persons, &c., and upon payment of the money agreed to be paid, &c., that all existing rights should vest in him, &c., and that the Bay of B., &c., and the several rivers and streams into which salmon and their fry or young, and other sea fish, might at any time thereafter enter, should be taken and deemed to be the free fishery of E. J. C. for ever, and that it should be lawful for him to take and catch by nets, and all lawful means, &c., salmon and other sea fish within the said Bay:—*Held*, that the Act did not confer an exclusive right to fish for oysters. CRICHTON *v.* CONNOR - - - - - - Q. B. V. 161

3. —— *Several fishery—Plea that* locus in quo *is an arm of the sea.*] In an action for trespass to a several fishery, the defendant pleaded that the *locus in quo* was an arm of the sea, in which all the Queen's subjects had a right to fish, and the plaintiff did not by replication set forth his right to a several fishery therein:—*Held*, that the defendant was entitled to a verdict upon proof of the fact of its being an arm of the sea. CRICHTON *v.* COLLERY - - - - - E. IV. *M.* 671

4. —— *Several fishery—Appeal—Licence—Agent.*] Lord Carew had by lease demised his fishery at W. to O., with the right of erecting and maintaining a weir, under the impression that he had a several fishery, which was not the case—but he owned the land adjoining. O. erected the weir, and paid Lord Carew the rent:—*Held*, that the weir should be looked upon as Lord Carew's, and O. acted only as his agent, and so the weir should not be abated. O'NEILL *v.* MAGUIRE [Q. B. I. *M.* 176

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FISHERY—*continued.*

5. —— *Several fishery—Fresh-water stream flowing through estuary—Change in course of stream—Limit of several fishery—Medium filum aquæ.*] The plaintiff and defendant held between them the right of fishing in a certain estuary through which there ran a fresh-water stream, and of the western and eastern foreshores of which they were the respective possessors. The estuary was covered by the tide at high water, and the soil was vested in the Crown. Both parties contended that a grant from the Crown of the fishery must be presumed by prescription, and no claim on behalf of the public was put forward. The only limitation of the rights of the parties *inter se* were contained in a series of title deeds under which the plaintiff claimed, and which defined his right of fishery in the words, "the fishings for salmon, trout, and eels, from the western bank to the middle of the channel." Some time before the commencement of the suit the fresh-water stream had changed its course within the estuary, so as to flow about eighty yards nearer the eastern (defendant's) foreshore than previously. The plaintiff's contention was, that he was entitled to follow the stream and to fish in the estuary to the middle of the channel of its new course. The defendant, on the other hand, maintained that the middle of the old channel was still preserved as a geographical boundary, up to which he had an exclusive right of fishing in the estuary. At the trial the only question left to the jury was whether the river had substantially shifted its course, which they found affirmatively, and judgment was thereupon entered for the plaintiff. This judgment was unanimously affirmed, by the Exchequer Division. On appeal:—*Held* (May, C.J., *diss.*), that the decision of the Exchequer Division ought to be affirmed, inasmuch as the phrase "to the middle of the channel" being ambiguous, and there being evidence of many fluctuations in the course of the river and of a custom to take the middle of the actual stream in these fluctuations as the boundary of the respective rights of fishery between the parties, it was more natural that by those words was meant the channel wherever it might be within the estuary, than the fixed line of the middle of the channel existing at the date of the original conveyance. (*Per* May, C.J.):—There ought to be a new trial, inasmuch as a several fishery is capable of being possessed in the open sea, independent of any fresh-water river, and it had not been ascertained either by verdict or by consent of parties, or otherwise, that the plaintiff possessed such rights in the fresh-water stream as would attach upon and accompany its course through its deviations. MILLER v. LITTLE - - **E. D. XII. 131; C. A. XIII. 81**

6. —— *Several fishery—Ejectment—Embarrassing summons and plaint.*] An ejectment was brought to recover "the close of land covered with water, being the bed and soil of the river Bann, *with the several fishery of, in, and within the said river*, from the high sea to Lough Neagh." On a motion to set aside the plaint as embarrassing:—*Held*, that the plaintiff must elect to proceed either for the fishery alone or for the soil alone; and that he, if he elected to proceed for the fishery, must strike out the words "bed" and "soil," and also insert words showing that he was proceeding for the fishery as a separate thing, and not as attached to the bed and soil. IRISH SOCIETY *v.* CROMMELIN - - - - - **C. P. II. *M.* 265**

7. —— *Several fishery—Title to*—13 & 14 *Vic., c.* 88, *sec.* 44—*Jurisdiction.*] To bring a case within the exception in the 13 & 14 Vic., c. 88, s. 44, a claim of title must be, not merely *bonâ fide*, but also to a several fishery. (By Keogh, J.) PEQUIN'S CASE - - - **Cir. Cas. III. *M.* 351**

8. —— *Several fishery—Illegal fishing—Riparian owner of one bank—Written permission.*] A riparian owner (unless the "several fishery" in his waters has been vested in other persons, by grant or otherwise) is proprietor of a "several fishery" in the waters adjoining his land, *usque ad medium filum aquæ*: BOARD OF CONSERVATORS OF WATERFORD FISHERY DISTRICT v. CONNOLLY - - - - - **E. D. XXIV. 7**

FISHERY—*continued.*

—— Oyster and Mussel Fishery (Ireland) Act, 1866—Prohibition **[I. *M.* 701**

See WRIT OF PROHIBITION.

—— Prosecution—Admissibility of defendant's evidence **[XI. *M.* 550**

See JUSTICES—PRACTICE. 6.

—— Several fishery—Declaration of title **[II. *M.* 316, 494; III. *M.* 196**

See PRACTICE—LANDED ESTATES COURT—DECLARATION OF TITLE. 3.

—— Several fishery—*Bonâ fide* claim to title—Justices' jurisdiction - - - - - - **III. *M.* 351**

See JUSTICES—JURISDICTION. 10.

—— Trespass—Injunction - - - - **XV. 78**

See PRACTICE—INJUNCTION. 5.

FISHERY ACTS.

1. —— 5 & 6 *Vic., c.* 106, *s.* 27.] The fact that a boat, under or beside which salmon could not pass, intervened between the bank and the end of a net shot down or drawn across the river, is not in itself an answer to a complaint under section 27. M'GILLYCUDDY *v.* SULLIVAN **[Q. B. D. XXVI. *M.* 324**

2. —— *Appeal*—5 & 6 *Vic., c.* 106, *sec.* 19—*Lease for life or lives.*] Appeal from an order of the Fishery Commissioners abating a weir. The appellant claimed title to erect and maintain his weir by virtue of a lease of lands adjoining for three lives of 31 years, one of which lives was in being:—*Held*, that he was a "tenant for life or lives" within the first part of sec. 19 of 5 & 6 Vic., c. 106, and not (under the proviso of the section) under a lease for life or lives determinable. O'NEILL *v.* MAGUIRE - - **Q. B. I. *M.* 177**

3. —— *Appeal.*] Appeals from the magistrates in a case under the Fishery Acts for breach of 5 & 6 Vic., c. 106, sec. 78, are by 13 & 14 Vic., c. 88, sec. 52, to be heard by the Judge of Assize. (By O'Brien, J.). D'ALTON *v.* BROWNE **[Cir. Cas. I. *M.* 139**

4. —— *Appeal—Reversal of conviction.*] A conviction by a Petty Sessions Court for not having a free or Queen's gate at a weir was reversed by the Chairman of Quarter Sessions without prejudice to any future prosecution, the appellant giving a promise that he would immediately comply with the requirements of the statute in that respect. *Re* DARLEY **[Q. S. II. *M.* 153**

5. —— *Bag-nets—Estuary*—13 & 14 *Vic., c.* 88, *s.* 1—26 & 27 *Vic., c.* 114—32 & 33 *Vic., c.* 92, *s.* 10.] An estuary is a bay formed by the sea, and does not necessarily mean the mouth of a river, and its limits may exist beyond that of the river and extend into the open sea or an inlet of it, provided there are conditions existing which justify the Commissioners in considering a place an estuary. The existence of such conditions is a question of fact to be considered in connection with the question as to whether it is expedient or necessary that an alteration should be made in the estuary. LITTLE *v.* CAVAN **[P. C. XII. *M.* 201**

6. —— *Certiorari—Riparian rights—Common of piscary—Fishing in fresh-water portion of river—User—Ouster of summary jurisdiction—Bonâ fide claim of title*—5 & 6 *Vic., c.* 106, *s.* 65.] Certain cot fishermen having been summoned at Petty Sessions for having fished in the inland and fresh-water portion of the river Nore, contrary to the 65th sec. of 5 and 6, Vic., c. 106 they offered evidence that, for more than twenty years before the passing of the Act, the riparian proprietors had not interrupted such fishing, and claimed that the jurisdiction of the magistrates was ousted by reason of there being a *bonâ fide* question of title so to fish, as of public right, founded on such user, involved in the controversy. A conviction was pronounced, which was affirmed on appeal to Quarter Sessions. On an application for a writ of certiorari, for the

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FISHERY ACTS—*continued.*

purpose of quashing the conviction:—*Held*, that the common of piscary referred to in the exception to the 65th sec. of the statute is one created by grant or prescription; that a right of the public, as such, to fish in inland waters based on an uninterrupted user cannot exist; that the claim of right, being incapable of legal existence, could not, though made *bonâ fide*, oust the jurisdiction of the justices; and therefore that the conviction was valid. R. (MORRISSEY) *v.* THE CHAIRMAN AND JUSTICES OF KILKENNY [Q. B. D. XVIII. 95

7. —— *Fishing with nets in fresh-water part of river—Non-production of certified copy of Fishery Commissioners defining the tidal limits of river.*] The evidence of the local Inspector of Water Bailiffs, regarding fishing in fresh-water part of a river, was held sufficient without the production by him of the certificate of the Fishery Commissioners defining the tidal limits of the river. O'CLEARY *v.* BOURKE P. S. XI. *M.* 361

8. —— *Fixed net—Conviction—Certificate of inspectors.*] A certificate that a fixed net is legal, granted by the Inspectors of Fisheries, under the Fisheries (Ir.) Act, 1869, is not, *per se*, conclusive against a conviction under the 5 & 6 Vic., c. 106, s. 22, for erecting the same fixed net. ALEXANDER *v.* SHEIL [Q. B. VI. 167

9. —— *Fixed net—Substitution of stake for bag net*—26 & 27 *Vic., c.* 114, *sec.* 4.] A bag net consists of a bag (which floats in deep water, and is the catching part) and of a leader, which is placed between high and low water and is used to direct the fish into the bag. A stake net is one fixed by posts between high and low water mark. Bag nets having been made illegal, the owners of some of them erected in their stead stake nets on the sites of the leaders:—*Held*, that the owners of nets, which were illegal only by reason of their structure, had a right to alter the structure so as to render the nets legal; and that the stake nets, being on the sites of the leaders (which were, as much as the bags, parts of the bag nets) were on the same sites as the bag nets. REEVES *v.* ROBINSON; ANNALY *v.* ROBINSON - - - Q. B. III. *M.* 618

10. —— *Order of Commissioners where two differ.*] The Court of Queen's Bench reversed an order whereby the Commissioners declared two weirs illegal, and ordered them to be abated; and referred the case back to them to report whether either of the weirs was injurious to navigation. The two Commissioners accordingly made a report, but differed in opinion upon the question:—*Held*, that there was not before the Court any order of the Commissioners on which the Court could act. O'NEILL *v.* MAGUIRE [Q. B. III. *M.* 708

11. —— *Penalty and forfeiture of net in which fish were attempted to be caught between Saturday morning and Monday morning.*] When a party is summoned under the 26 & 27 Vic., c. 114, s. 20, for fishing with a net between Saturday morning and Monday morning, the magistrate may inflict a penalty, and adjudge the net, though not seized, to be forfeited. GRANT *v.* CORCORAN - - - C. P. II. *M.* 168

12. —— *Salmon fishery—Illegal fishing—Fixed engine—User of seashore—Parties entitled to erect fixed nets—Certificate of such right*—5 & 6 *Vic., c.* 106, *ss.* 3, 19, 28—13 & 14 *Vic., c.* 88, *s.* 1—26 & 27 *Vic., c.* 114, *ss.* 5, 6—32 & 33 *Vic., c.* 92, *s.* 16.] A net tied to a stone, or otherwise fixed to the shore at one end, is a fixed engine within the meaning of 13 & 14 Vic., c. 88, s. 1. Fishing for salmon with a net so fixed, without a certificate from the Special Commissioners under the Salmon Fishery (Ireland) Act (26 & 27 Vic., c. 114, s. 6), is illegal (32 & 33 Vic., c. 92, s. 16). Obstructing a person so fishing without a licence is not an offence within 5 & 6 Vic., c. 106, ss. 3, 28. LONG *v.* DUNNE - - Q. S. XXIII. 47

13. —— *Tenant under Bishop's lease—Erection of fixed nets.*] A tenant under a Bishop's lease who has not obtained a perpetuity grant is not entitled to erect a fixed net under the 5 & 6 Vic., c. 106, s. 19, without the previous consent in writing of the lessor. DEANE *v.* THE IRISH SOCIETY Q. B. V. 150

14. —— *Throwing dynamite into river—Deleterious matter—Killing and taking fish*—5 & 6 *Vic., c.* 106, *s.* 80.] Using dynamite for the purpose of destroying and taking fish in a river is within 5 & 6 Vic., c. 106, s. 80. MURPHY *v.* CONSERVATORS OF ILEN RIVER - - - Q. S. XXI. 20

FIXTURES—Removal of—Compensation for.

See PRACTICE—LANDED ESTATE COURT—COMPENSATION. 9, 10.

FLOODING LANDS—Pleading.

See EASEMENT. 2.

PRACTICE—COMMON LAW—PLEADING. 24.

FORCIBLE ENTRY—Purchaser under *fi. fa.* XV. 103

See MANDAMUS. 2.

FOREIGN JUDGMENT—*Pleading—Replication—Supplying defects in plea.*] In an action upon a judgment of the Tribunal of Commerce of the Seine, for the recovery of money, the defendant pleaded in substance that at the time of the commencement of the suit and to its termination he was absent from France, and that he was not summoned to appear in and had no knowledge or notice of any of its proceedings. The plaintiff demurred and also replied that for a long time before the commencement of the suit the defendant was resident in France, and became there indebted to the plaintiff, who was a French subject, and that by the French law when the defendant is absent from the jurisdiction a copy of the process in the action is served upon the Procureur Imperial, and another posted upon the door of the Tribunal, and that if the defendant make default the plaintiff may proceed to judgment. Further, that the defendant left France after the accrual of the cause of action, and that the judgment was a valid one by the laws of France. To this replication the defendant demurred:—*Held*, that the defence was bad, as consistently with its averments the defendant might have been a French subject, might have been resident then in France, or might have property there when the cause of action accrued, or might through an agent have been served with process:—*Held* (by Fitzgerald and Hughes, BB.), that the plaintiff was entitled to recover. *Held* (by Pigot, C.B.), that the plaintiff having alleged certain grounds of jurisdiction in the replication impliedly excluded all others; that these were not sufficient; and that the plaintiff having thus shown he had no cause of action, judgment should be for the defendant. MANBOURQUET *v.* WYSE - E. I. *M.* 676

FORESHORE.

See SEASHORE.

FORFEITURE—Lease—Offensive trade. XIII. 161, 165

See LANDLORD AND TENANT—SURRENDER. 1.

—— Settlement.

See SETTLEMENT—FORFEITURE CLAUSE.

—— Will.

See Cases under WILL—CONDITION.

FRAUD—Averment of in civil bill - - X. *M.* 447

See PRACTICE—CIVIL BILL COURT—FRAUD.

—— Pleading - - - - - XII. 176

See PRACTICE—DEFENCE. 1.

—— Power—Execution - - - - I. *M.* 533

See POWER. 4.

—— Setting aside sale—Evidence - I. *M.* 260, 794

See VENDOR AND PURCHASER. 8.

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FRAUDS, STATUTE OF.

1.—*Account stated.*] The defendant agreed, not by writing, to pay £270 for the good-will of the plaintiff's farm, and paid £260. The plaintiff alleged that the defendant then promised to pay the balance when he got the money:—*Held*, that it was not such an agreement concerning an interest in land as must be in writing under the Statute of Frauds. FERGUSON *v.* M'MINN - - - - Q. S. II *M.* 604

2.—*Agreement for a lease—Part performance.*] Where a tenant of a holding enters into a parol agreement with his landlord for a lease at a new and increased rent, and the tenant continues, subsequent to the agreement, to pay the old rent, such payment does not amount to a part performance of said agreement within the Statute of Frauds. SWEENEY *v.* DENIS - - - - - L. Sub-C. XVII. 76

3.—*Invalid special contract—Right to recover on* quantum meruit*—Amendment of particulars—Practice, Common Law.*] Where a special oral contract is entered into between the plaintiff and defendant, if the part to be performed by the defendant involve several terms, one of them within the provisions of the Statute of Frauds, the contract cannot be enforced by the plaintiff if the defendant relies on the statute. In such a case, if the entire work and labour to be done under the contract have been performed by the plaintiff, and the benefit of it accepted by the defendant, the plaintiff can recover the value of the work and labour done under the common count on a *quantum meruit*, although he may have up to the trial insisted upon the special contract; and it is not necessary for the plaintiff to elect to abandon the special contract before bringing the action. The plaintiff's bill of particulars referred merely to the special contract:—*Held*, that an amendment of the particulars at the trial, by which all reference to any special contract was omitted, was properly allowed by the Judge. CANNING *v.* SAVAGE C. P. I. *M.* 349

4.—*Land acquired in trust to discharge money secured and advanced by surety—Written evidence of trust—Surrender of tenancy by operation of law.*] An equity civil bill declared that a farm was vested in H. M'C. to have it in trust to pay £200 and £150. In 1868 H. S. purchased the farm, and £150 of the purchase money was borrowed from E. M'C. In 1871 an arrangement was made that H. S.'s son S. S. should acquire the farm, subject to £200 to H. S. and the £150 to E. M'C., for which purpose the farm was to be vested in H. M'C. as trustee. H. M'C.'s name was entered in the landlord's books, and S. S. gave promissory notes for the £200 and £150:—*Held*, that in the absence of writing to satisfy the Statute of Frauds, there was no legal transfer of the farm from H. S. to H. M'C., clothed with the trusts to pay the sums of money, and that the bill should be dismissed:—*Held*, on appeal, that a legal tenancy was created in H. M'C.; but that in the absence of written evidence of the alleged trust, the bill should be dismissed. (By Flanagan, J.) M'CUTCHEON *v.* STEWART [Q. S. & Cy. Ct. A., XIX. 63, 64 note

5.—*Part performance.*] A circular stating that H. had consented to give the tenants leases for 21 years at increased rents, and that draft agreements carrying out the proposed arrangements would be sent to them for signature, was sent by S., the agent, to the tenants of H. A. received the circular and signed the draft agreement:—*Held*, that the circular and agreement did not constitute a sufficient agreement in writing to satisfy the Statute of Frauds. ARCHBOLD *v.* HOWTH - - - - C. P. I. *M.* 760

—Agreement for lease—Omission of date of commencement of term.
See LAND LAW (IRELAND) ACT, 1881. 126, 127, 143.

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FRAUDULENT CONVEYANCE—*Bill in Chancery to set aside—*10 *Car I., sess.* 2, *c.* 3*—Practice, Landed Estates Court.*] Where there are circumstances tending *primâ facie* to show conveyances to be fraudulent under 10 Car. I, sess. 2, c. 3, the Court will retain the moneys due under them to an incumbrancer pending a suit in Chancery to set the conveyances aside, and this is too although the creditor asking to have the money retained has no charging order or lien on the property comprised in the conveyances. *Re* TIERNEY'S ESTATE - - - - - - - - L. E. C. VIII. 62

—Sale of bankrupt's effects - - - - XII. 37
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FREEMAN—Grand-birth claim - - IV. *M.* 543
See PARLIAMENT—FRANCHISE. 7.

FRIENDLY SOCIETY—*Nomination by will—Friendly Societies Act*, 38 & 39 *Vic.*, *c.* 60, *s.* 15 (3).] The nomination by a member made by will is invalid, as it must be strictly in the manner provided by the statute. M'KEE AND ANOTHER *v.* MEIKLE - - Q. S. XXVII. 100

FUND IN COURT—Changing investment of trust property [I. *M.* 5
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FUNERAL EXPENSES—Pleading in action against executor - - - - - III. *M.* 280
See EXECUTOR—ACTION AGAINST 1.

G

GAME.

1.—*Magistrates' case stated—Game prosecution—Complainant under the Game Acts.*] A prosecution lies at the suit of a common informer for having game in possession during the close season contrary to the provisions of the 27 Geo. III., c. 35, ss. 4, 19. and 37 Geo. III., c. 21, s. 2. CRICHTON *v.* BRADY - - Q. B. D. XXVII. 42

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GAME—*continued.*

2. —— *Prosecution under* 1 & 2 *Wm. IV., c.* 32, *s.* 4—*Right of member of public to prosecute.*] A member of the public has a right to prosecute under 1 & 2 Wm. IV., c. 32, s. 4. TOWNSHEND *v.* BYRNE - **M. P. C. XXV.** *M.* **127**

3. —— *Purchase of, from person unauthorised to sell—Informer—Case stated.*] On the hearing of a case stated, it appeared that justices held that the evidence of an informer who deposed to the purchase of game by a licensed dealer of game from a person not authorised to sell it shou'd be corroborated, and dismissed the summons:—*Held*, that the case should be remitted back to them to be adjudicated upon according to law. MADIGAN *v.* STREET **Q. B. D. XXVII.** *M.* **241**

4. —— *Reservation in lease of exclusive right to—Statutable tenancy under Land Law (Ir.) Act*, 1887—*Prosecutions under* 27 & 28 *Vic., c.* 67—*Ground Game Act*, 43 & 44 *Vic., c.* 47—*Land Law (Ireland) Act*, 1881, *s.* 5.] A competent prosecutor is not prejudiced in a prosecution by being joined with an incompetent complainant. A reservation in a lease of "all game" will give the lessor an exclusive right to the game on the demised premises. Such reservation is in no way affected by an order made by the Land Commission creating a tenancy on the holding, and being a condition not inconsistent will form part of the new contract of tenancy. *Sturgess* v. *Ryan*, (24 L. R. (Ir.) 305.) distinguished. *Wickham* v. *Hawker* (7 M. & W. 63), not followed. IRVINE *v.* OSBORNE **[Q. B. D. XXV. 36**

5. —— *Trespass in pursuit of—27 Geo. III., c.* 35, *ss.* 10, 11—*Defendant found on lands of plaintiff with a gun—No other evidence.*] The Court set aside a conviction under 27 Geo. III., c, 35, where the only evidence against the defendant was that he was found on the complainant's land with a gun. REILLY *v.* PALMER - - - **Q. B. D. XXVI. 106**

6. —— *Trespass in pursuit of—Summons by landlord against person other than occupier or authorised deputy—Pursuit of rabbits—Lands in occupation of tenant subject to statutory conditions—Land Law (Ireland) Act*, 1881, *s.* 5—*Ground Game Act*, 1880, *s.* 7—27 & 28 *Vic., c.* 67, *s.* 1—27 *Geo. III., c.* 35, *s.* 10.] Rabbits constitute game, for trespass in pursuit of which the landlord, in the case of a judicial tenancy subject to the statutory conditions, reserving the game to him, under the Land Law (Ireland) Act, 1881, as well as in the case of a tenancy created by deed with a similar reservation, is qualified by 27 & 28 Vic., c. 67, as though he were in occupation, to prosecute a person other than the occupier, under 27 Geo. III., c. 35, s. 10, notwithstanding such rights in respect of game as interfering with reservations of game, are conferred on occupiers by the Ground Game Act, 1880. HOPE *v.* CALLAGHAN **[Q. B. D. XXIV. 5**

7. —— *Trespass in pursuit of—Land in occupation of tenant—Summons by landlord—27 Geo. III., c.* 35, *ss.* 10, 11, 21—27 & 28 *Vic., c.* 67.] The landlord is entitled to prosecute for a trespass in pursuit of game, and the occupying tenant need not be a party. BRUCE *v.* M'ALLISTER **[Q. B. D. XV.** *M.* **310**

8. —— *Trespass in pursuit of—Reservation in lease—Complainant.*] Where the game is exclusively reserved to the landlord, the landlord and not the tenant should be the complainant in a summons for trespass in pursuit of game. BOURKE *v.* HEAD - - - - - - - - **P. S. VIII.** *M.* **221**

—— Reservation of—Lease - - - - - **XII. 141**
See LANDLORD AND TENANT—LEASE. 29.

GARNISHEE.

See PRACTICE—GARNISHEE.
PRACTICE—COMMON LAW—GARNISHEE.

GIFT—*Deposit receipts—In joint names of husband and wife—Advancement—Wife's survivorship.*] A husband having, for a long period, several sums of money lodged in bank on deposit receipts in his own name, drew the moneys from time to time and re-lodged same in the joint names of himself and his wife, and lodged further sums also in their joint names during a number of years, but continued to take deposit receipts in his own name for other lodgments. The husband having died, leaving his wife surviving:—*Held*, that an equitable gift of the moneys lodged in their joint names had been created for the advancement of the wife, that the deposits were impressed with a trust for the joint use of the husband and wife, and that the wife took by survivorship. TALBOT *v.* CODY - - - - - - - - - - **R. IX. 187**

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See WILL—LAPSE. 3.

GRAFT.

1. —— *Administratrix of yearly tenant procuring a lease to herself—Ulster custom.*] Where the widow of a tenant from year to year entered into possession of the premises, as administratrix to her husband, and procured a lease to be granted to her in her personal capacity, the Court held that the benefit so obtained by her, while occupying a fiduciary position as administratrix, should be held by her in trust for the next-of-kin of the intestate, and that, accordingly, the lease should be deemed a graft on the original tenancy for their benefit. KELLY *v.* KELLY - - - - **V. C. VIII. 173**

2. —— *New lease—Declaration of trust—Purchaser for value without notice—Waiver of covenant against alienation—Costs of two counsel—Question of difficulty.*] A. and B., in the year 1807, obtained a lease of 28 acres of Kilroddan for the life of A., which lease contained a covenant against alienation. By deed of 1811 A. and B. demised to C. and D. 18 acres thereof for the residue of the term. C. and D. partitioned in 1815. C. demised his half to E., who got receipts for his portion in his own name. Shortly afterwards E. sold his interest in six acres of same to F., the father of the respondent. A. in 1858 obtained a new lease of the entire, at an increased rent for the term of 31 years. From that time down to the death of A., in 1873, the proportionate increased rent was paid by each of the parties. The landlord knew of and recognised the rights of all the parties at the time of the granting of the lease of 1858. The interest of A. in lease of 1858 was taken in execution, and sold to the appellant. On an appeal from a County Court decree in favour of the respondent:—*Held*, that the new lease was a graft; that the appellant was not entitled to rely on his being a purchaser for value without notice; and that the covenant against alienation was waived by the landlord. *Held*, further, that the cost of two counsel for the respondent ought to be allowed, the case being one of difficulty. DORE *v.* AMBROSE **[Q. S. XII. 140; C. XII. 154**

3. —— *Settlement—Notice.*] Under the trust of a settlement of a leasehold interest, A. was the tenant for life, and by virtue of leasing power he made a lease to B. and arranged, by executing a bond, to sell him the absolute interest in the leasehold, and to make title afterwards; B. assigned the underlease to C. who entered into possession; C. arranged with head landlord for a reduction of the head-rent, and he allowed the lease to be evicted by ejectment, and the head landlord made a new lease to him at a reduced rent:—*Held*, that the new lease was a graft on the old lease, and was bound by the trust of the settlement. STRATTON *v.* MURPHY - **B. I.** *M.* **578**

4. —— *Surrender of old lease—New lease—Graft in Equity.*] M., tenant for life of a farm, held under a lease for three lives, one of which was in being, joined with T., who was entitled to the entire interest in remainder, in surrendering the old lease. They procured a new lease for three lives to themselves and their heirs as joint tenants. M. survived T., and devised to B.; T. had previously devised to E.:—*Held*, that B. took the legal estate in trust for the plaintiff who was heir-at-law of T. & E. HILL *v.* HILL - - **Ch. A. IX. 1**

—— Lease—Tenancy from year to year **XVII.** *M.* **99**
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GRAND JURY—CESS.

1. —— *Collector — Magistrate's warrant — Special bailiff —Police escort—Obstruction—Petty Sessions Act*, 14 & 15 *Vic., c.* 93—*Grand Jury Act—Construction of—Inconsistency—Repeal—Contemporaneous exposition—Costs.*] The 152nd sec. of the Grand Jury Act, which directs that the warrant shall issue to the collector of county cess, is inconsistent with the Petty Sessions Act (14 & 15 Vic., c. 93), and has therefore been repealed by it. The execution of the warrant is now cast upon the police, and not upon the complainant. *R.* v. *Unkles*, (VIII., 38,) applied R. (JONES) *v.* BARRY **E. D. XXIII. 28**

2. —— *Collector — Surety of high constable — Bond taken at Petty Sessions*—6 & 7 *Wm. IV., c.* 116, *ss.* 148, 149—*Defence on equitable grounds—Want of privity.*] Where, in an action against the sureties of a collector of county cess, the defendants raised the question on demurrer, whether they could be held liable, the collector not having been duly appointed by reason of his not having perfected his surety bond before the Grand Jury at the Assizes. or before the Justices of the Peace at the Quarter Sessions or Special Sessions, but before the Petty Sessions, contrary to the 6 & 7 Wm. IV., c. 116, s. 148, it was held that the provisions of that statute were directory and not mandatory, and that the collector having received the treasurer's warrant to collect, was duly authorised so to do. On a cross demurrer by the plaintiff to an equitable plea of the defendants, it was held that the fact of the treasurer of the county not having informed the defendants of the previous misconduct of the county cess collector, could raise no equity in favour of the defendants, between whom and the county treasurer, in his official capacity, no privity could exist, and consequently the equitable defence could not stand. LAWDER *v.* SIMPSON - - - - - **C. P. VII. 89**

3. —— *Collector for time being—Warrant and applotment book annexed—Delivery—Grand Jury Act, s.* 149—19 & 20 *Vic., c.* 63, *s.* 4.] Where a collector declined to be re-appointed and the office of collector remained vacant, it was held that civil bills were maintainable in the name of the late collector for the recovery of amounts remaining unpaid under the

GRAND JURY—CESS—*continued.*

warrant addressed to him. A warrant tied up in a parcel with a copy of an applotment is "annexed" thereto within the meaning of 19 & 20 Vic., c. 63, s. 4. Where a warrant and applotment were left by the treasurer in the custody of his clerk, and the collector was informed of the facts "within two months," it was held a sufficient delivery. (By Holmes, J.) KEPPEL *v.* WEBSTER - - **Cir. Cas. XXIII. 45**

4. —— *Collector — Warrant — Delivery within two months —Impossibility — Grand Jury Act, s.* 147—11 & 12 *Vic., c.* 26, *s.* 1—11 & 12 *Vic., c.* 32, *s.* 2—19 & 20 *Vic., c.* 63, *s.* 4.] A cess collector, appointed under 10 & 11 Vic., c. 26, s. 1, at a Quarter Sessions, held more than two months from the date of the delivery to the Treasurer of the copies of the presentments, has no power to collect, the Treasurer's warrant being invalid. (By Holmes, J.) BUTLER *v.* WEBSTER **[Cir. Cas. XXIII. 46**

5. —— *Collector—Magistrates' warrant*—6 & 7 *Wm. IV., c.* 116, *s.* 152—14 & 15 *Vic., c.* 93, *s.* 25.] An application for a conditional order for a *mandamus* to compel magistrates to issue warrants to a cess collector, pursuant to sec. 25 of the Petty Sessions Act, was refused, the affidavit of the collector not being sufficiently explicit. In *re* ROBINSON **[Q. B. D. XXIV. *M.* 360**

6. —— *Collector—County Treasurer — Presentment — Warrant—Construction of — Statutory provisions limiting time or manner of doing an act commanded—Estoppel*—19 & 20 *Vic., c.* 63, *s.* 4—6 & 7 *Wm. IV., c.* 116, *ss.* 149, 150, 151.] The provision of section 4 of the Grand Juries Amendment (Ireland) Act, 1856 (19 & 20 Vic., c. 63)—that the County Treasurer shall, within two months after receiving from the Clerk of the Crown copies of the presentments of the preceding assizes, make out and deliver to such collector a copy of so much of the applotment as relates to the collector's district, and shall annex thereto, under his hand and seal, a warrant to the collector to collect and levy the sums in such copy mentioned—is, so far as the two months' limit is concerned, directory and not mandatory, and such warrant, though not sealed until after the lapse of the statutory period so limited, is not void. *Semble*, the other time limits imposed in the same Act upon the county officers in ss. 142, 149, 151, 152, and 157, are likewise directory only, but such time limits are not therefore to be exceeded or neglected without grave reason. *Keppel* v. *Ryan* (XXIII. 30, 20 L. R. Ir. 575), overruled. GROVE *v.* MCELHINNEY **[C. A. XXVI. 34**

7. —— *Covenant to pay rent free from any deduction—Landlord and Tenant (Ir.) Act*, 1870, *s.* 65—*Land Law (Ireland) Act*, 1881, *s.* 22—*Meaning of "inconsistent" in the latter section.*] A tenant under a contract of tenancy which was created after the passing of the Land Law (Ireland) Act, 1881, though the annual value of his holding is under £150, may validly contract to pay the whole of the Grand Jury cess. (By Andrews, J.) MACARTNEY *v.* HENRY **[Cir. Cas. XXVI. *M.* 512**

8. —— *Deduction from rent—Agreement after* 1870 *to allow half Grand Jury cess—Order fixing fair rent.*] Prior to the passing of the Landlord and Tenant (Ireland) Act, 1870, a tenant from year to year held at the yearly rent of £55. In 1872 an agreement was entered into between the landlord and tenant that the rent should be increased to £58, and that the tenant should thenceforth be allowed half the Grand Jury cess cut of the rent. An originating notice under the Land Act of 1881 was subsequently served by the tenant, and an order made thereon in 1883 reducing the rent to £42 10s.:—*Held*, that the order did not affect the rights of the tenant under the agreement of 1872, and that he was still entitled to deduct one-half of the Grand Jury cess as before. LURGAN *v.* JOHNSTON - - - - - **Q. S. XX. 20**

9. —— *Deduction from rent payable by tenant—Contract, prior to Landlord and Tenant Act*, 1870, *to allow deduction, an increased rent being imposed—Judicial rents determined on tenant's application.*] Prior to the passing of the L. & T.

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Act, 1870, arrangements were entered into between certain tenants and their landlords, under which an increased rent was to be paid for the holdings, and the tenants, having regard to such increase, were to be allowed to deduct one-half of the Grand Jury cess. After the passing of the Land Law Act, 1881, the tenants applied to have judicial rents of their holdings determined by the Land Commission; whereupon the rents were reduced respectively, except one which was confirmed.—*Held*, that there having been no new tenancy created since the passing of the Act of 1870, and the contracts having been superseded by the operation of the proceedings to determine a judicial rent, the right of the tenants as to the deduction in respect to the Grand Jury cess was abrogated (By Andrews, J.) RANKIN *v.* MULLAN; DRIPPS *v.* RANKIN [Cir. Cas. XVIII. 40

10. —— *Deduction from rent under Land Act of* 1870—*Acknowledgment by occupiers of lands under the Land Act,* 1860—33 & 34 *Vic., c.* 46, *s.* 65.] Where the head landlord evicted a middleman, and the under-tenants signed acknowledgments in form No. 7 to the schedule of the Land Act of 1860, and after some time became tenants to the head landlord, nothing being said by the landlord at the time of the new letting with reference to the county cess:—*Held*, that the tenants were not entitled to deduct any county cess under s. 65 of the Land Act, 1870. LEADER *v.* SINGLETON - Q. B. D. XXVII. 27

11. —— *Deduction from rent—Tenancies created since the Land Act of* 1870—33 & 34 *Vic., c.* 46, *s.* 65.] Where ejectment proceedings were taken against the tenant, under a lease of 1791, and the sub-tenant was put out accordingly, but his son (who had been living with him) was allowed back as caretaker, and a lease was granted to the son in 1890, the fine being paid out of the father's money:—*Held*, that there was not such a change of occupation as to bring the case within s. 65 of the Landlord and Tenant Act (Ir.), 1870. *Leader* v. *Singleton* (XXVII. 27), followed. BEECHER *v.* VAUGHAN [Q. S. XXVII. 79

12. —— *Lands held under Commissioners of Irish Lights—Rent payable to Board of Trade—Liability.*] The respondent held lands under the Commissioners of Irish Lights, in whom the lands were vested for public purposes. The Merchant Shipping Act exempts property and dues, &c., forming part of a fund (in which the respondent's rent went), from all public, parochial, or local taxes and rates of every kind:—*Held*, that the respondent was, nevertheless, liable to county cess in respect of the premises in question. BOAL *v.* BUCKLE [C. P. II. *M.* 150

13. —— *Liability of lessee for entire cess.*] Where a lease reserves the yearly rent "over and above all taxes, charges, and impositions whatsoever," the lessee is bound to pay the entire county cess, and cannot deduct a moiety thereof from his landlord. *Re* BRADFORD'S ESTATE [L. J. XXVII. *M.* 470

14. —— *Money paid to defendant's use*—6 & 7 *Wm. IV., c.* 116, *s.* 103.] A deputy cess-collector paid the amount of county cess due by the defendant to the collector, it not having been received from the defendant, and no authority given by the defendant to pay it:—*Held*, that the collector could not recover it as money paid to defendant's use. (By Fitzgerald, B.) BOYLE *v.* LENNON - Cir. Cas. XII. *M.* 161

15. —— *Railway guarantee—Failure to levy—"Other cause"*—19 & 20 *Vic., c.* 53, *s.* 6—6 & 7 *Wm. IV., c.* 116, *s.* 145.] Inability to collect Grand Jury cess owing to the Treasurer's warrant not having been sealed within the prescribed time, is an "other cause" within the meaning of sec. 6 of 19 & 20 Vic., c. 63, and the amount so uncollected can be represented at any subsequent Assizes. (By O'Brien, J.). *Re* CARLOW PRESENTMENT - - - - - - - Cir. Cas. XXIII. 34

16. —— *Remedies of collector—Justices' warrant—Duties of police—Grand Jury Act, sec.* 152—*Petty Sessions Act, ss.* 23, 25.] Warrants issued by Justices for the collection of Grand Jury cess, in pursuance of sec. 152 of the Grand Jury Act,

should be addressed to the sub-inspector or head constable of constabulary, or other person in accordance with the provisions of sec. 25 (2) of the Petty Sessions Act, and not to the barony cess collector. Cess collectors may take as much Grand Jury cess as they can collect, and sue for the balance. The Grand Jury should not allow poundage on cess, unless they consider that no more could reasonably have been collected. (By O'Brien, J.) *Re* PRESENTMENTS OF THE BARONIES OF FORTH AND RATHVILLY - - - Cir. Cas. XXIII. 33

17. —— *Reservation in lease after passing of Landlord and Tenant (Ireland) Act,* 1870.] A reservation of rent "over and above all taxes, charges, and impositions whatsoever" with a corresponding covenant to pay it, in a lease executed since the passing of the L. and T. (Ir.) Act, 1870, deprives the tenant of the right to deduct a moiety of the Grand Jury cess, under the 65th sec. of that Act. HELY *v.* KENNEDY Q. S. VIII. 26

18. —— *Statutory term—Landlord and Tenant (Ireland) Act,* 1870, *s.* 65.] A tenant of a tenancy created before 1870 surrendered portion of her farm to her landlord, who agreed to let it to the plaintiff "on the same terms" as the former tenant had held it. The plaintiff subsequently applied to the Land Commission to fix a fair rent for the holding, which was done, and he now claimed to be allowed one-half of the Grand Jury cess, as his tenancy was created after the passing of the Land Act of 1870:—*Held*, that the agreement to take the holding "on the same terms" as the previous tenant had held it amounted to a special contract to pay the whole of the Grand Jury cess, and that this contract was not abrogated by the fixing of a fair rent by the Land Commission. (By May, C. J.) HALLY *v.* LANE-FOX. - - Cir. Cas. XVIII. 54

19. —— *Valuation Acts—Appeal—Annual revision.*] A summons against the defendants for county rates, which had been applotted upon reservoirs, and from which the defendants had appealed, and the appeal was dismissed, was heard, and a decree for the amount claimed with costs was given. ALMA *v.* DUBLIN (MAYOR, &C.) - - M. P. C. X. *M.* 188

20. —— *Warrant—Collector—Period of annexing seal*—19 & 20 *Vic., c.* 63, *s.* 4.] The provisions of 19 & 20 Vic., c. 63, s. 4, which directs that the warrant under hand and seal shall be annexed to the copy of the applotment within the period of two months, is mandatory, and a warrant not sealed within that period is void. KEPPEL *v.* RYAN E. D. XXIII. 30

21. —— *Waterworks—Evidence of liability—Mode of raising question of exemption.*] Waterworks had been valued under the Valuation Acts, and no appeal was taken to the Quarter Sessions: a summons to recover the county cess in respect thereto was opposed on the ground of the non-liability of waterworks to county cess:—*Held*, that that question could not be raised on the hearing, but by appeal to the Quarter Sessions. ALMA *v.* DUBLIN CORPORATION M. P. C. VIII. *M.* 195

—— Deduction by tenant.

See LANDLORD AND TENANT (IRELAND) ACT, 1870. 206-210.

—— Seizure of cattle trespassing on lands—Right of action of owner of cattle - - - - XXI. 17

See ACTION. 1.

GRAND JURY—PRESENTMENT—BOARD OF WORKS LOAN—*Instalments payable before assizes when presented for*—43 & 44 *Vic., c.* 14, *s.* 15.] The Commissioners of Public Works in Ireland having, under the Relief of Distress Amendment Act, 1880 (43 & 44 Vic., c. 14), as amended by the Irish Loans Act, 1880 (43 & 44 Vic., c. 44), advanced certain moneys to the Tralee and Fenit Pier and Harbour Commissioners by way of loan, for the purpose of constructing and maintaining a pier and harbour at Fenit, presentments were passed guaranteeing, by certain baronies, repayment of a rateable proportion of said sum, with interest at £4 per cent., in forty years, by instalments to be

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GRAND JURY—PRESENTMENT—BOARD OF WORKS LOAN—*continued.*

made payable at such periods as should be agreed upon, and it was therefore agreed upon that the moneys advanced should be repaid by a certain annual rent-charge payable by half-yearly instalments. On the 19th June, 1885, the Commissioners of Public Works certified that the instalments for the "period" ended April 30th of that year amounted to £3,192 11s. 4d., and that the same was chargeable upon the baronies; but on a presentment to the Grand Jury, it appeared that the sum claimed represented the consolidated amount of the instalments accruing for two and a half years, although sec. 15 of the Relief of Distress Amendment Act, 1880, prescribes that the Commissioners, for the purpose of presentments, should make out before "each" assizes a certificate specifying the amount "then" chargeable upon (*i.e.*, payable by) the baronies:—*Held*, that the presentment should not be fiated, as the instalments should have been applied for at each assizes after they became due. *Re* PRESENTMENT OF COMMISSIONERS OF PUBLIC WORKS

[Cir. C. R. XX. 47

GRAND JURY—PRESENTMENT—BRIDGES—*One Justice of the Peace signing orders for repair of two bridges.*] Under the 6 & 7 Wm. IV., c. 116, s. 49, two justices signed an order for the repair of a broken bridge, and one of them afterwards signed in conjunction with a third justice, a like order in respect of another bridge:—*Held*, that this second order was legal. (By Monahan, C.J.) *Re* MORLY

[Cir. Cas. III. *M.* 352

GRAND JURY—PRESENTMENT—CORONER—44 & 45 *Vic.. c.* 35.] 44 & 45 Vic., c. 35, does not take away the power of the Grand Jury to present for the salary of coroners. (By Dowse, B.) ANON. - Cir. Cas. XVI. *M.* 132

——Presentment—Coroner

See Cases under CORONER.

GRAND JURY—PRESENTMENT—COUNTY INFIRMARY.

1. ——*Chaplain.*] The Grand Jury have no jurisdiction to present for a chaplain to the County Infirmary. (By Monahan, C.J.) *Ex parte* QUIRKE

[Cir. Cas. VIII. 194

2. ——*Discretionary power of Grand Jury—Rejection of presentment or diminution of amount approved of by the Sessions*—5 *Geo. III., c.* 20, *s.* 6—45 *Geo. III., c.* 111, *s.* 5—*Grand Jury Act, sec.* 85.] The Grand Jury have a discretionary power to reject a presentment for a County Infirmary, approved of at a Presentment Sessions under 6 & 7 Wm. IV., c. 116, s. 85, or to reduce the sum and pass the presentment for the reduced amount. *Re* MAYO COUNTY INFIRMARY PRESENTMENT - - - Cir. C. R. IX. 119

3. ——*Increase of amount presented at Presentment Sessions*—6 & 7 *Wm. IV., c.* 116, *ss.* 47, 85.] The Grand Jury can increase the amount of a presentment made for a County Infirmary. (By Sir P. O'Brien, C.J.) *Re* PRESENTMENT FOR THE SUPPORT OF THE WICKLOW COUNTY INFIRMARY

[Cir. Cas. XXVI. *M.* 493

4. ——*Medical officer's salary—No intern patients—Grand Jury Act, ss.* 85, 86.] A presentment can be made for the salary of a medical officer to an infirmary although there are no intern patients. (By Harrison, J.) *Re* MEDICAL OFFICER OF KILDARE INFIRMARY - Cir. Cas. XXIII. 43

5. ——*No duly appointed surgeon in charge—Grand Jury Act, s.* 85.] The Grand Jury cannot make a presentment for the support of a County Infirmary, where no duly appointed surgeon is in charge. *Re* GALWAY COUNTY INFIRMARY PRESENTMENT - - Cir. C. R. XXVII. *M.* 360

6. ——*Roman Catholic chaplain.*] The Grand Jury have no power to present for a salary for the R.C. chaplain of the infirmary. (By Monahan, C.J.) ANON.

[Cir. Cas. VIII. *M.* 545

GRAND JURY — PRESENTMENT — COUNTY PRINTING.

1. ——*Franchise and Registration Acts*—6 & 7 *Wm. IV., s.* 116, *ss.* 115, 131—13 & 14 *Vic., c.* 69, *s.* 70.] Printing contracts for the purpose of the Franchise and Registration Acts must be made in the manner and subject to the conditions prescribed by the Grand Jury Act. *In the matter of* CAREW'S PRESENTMENT - - Cir. C. R. XXIV. 22

2. ——*Lowest tender—Discretion of Grand Jury.*] The Grand Jury have a discretion as to the acceptance of tenders for printing. (By Keogh, J.) ANON.

[Cir. Cas. VIII. *M.* 376

GRAND JURY—PRESENTMENT—COUNTY SURVEYOR.

1. ——*Salary—Apportionment Act,* 1870.] In apportioning the amount payable to a County officer who has quitted office during the half-year, the salary must be calculated on the proportion of the number of days served to the entire number of days in the period from assize to assize, for which the half-year's salary is presented; thus where the half-year's salary was £225, and the period from the first assize to the second was 242 days, the amount per diem was 18s. 7d., and the officer having served 134 days, was held entitled to £124 11s. 9d. *Semble*: "Half-year" means from assize to assize, and not six months. (By Johnson, J.) *In the matter of* A PRESENTMENT FOR THE COUNTY SURVEYOR'S SALARY

[Cir. Cas. XX. 12

2. ——*Salary.*] The Grand Jury alone under 6 & 7 Wm. IV., c. 116, sec. 130, are the judges to determine whether the county surveyor's salary should be withheld. (By Fitzgerald, J.) *Re* BREWSTER - - - Cir. Cas. II. *M.* 186

3. ——*Superannuation allowance.*] The Grand Jury have no power to grant the full salary as superannuation allowance to a county surveyor. *Re* BUCKLEY AND KERRY PRESENTMENTS - - - - - Q. B. XI. *M.* 318

4. ——*Works executed by his directions—Form of presentment.*] It is illegal for the Grand Jury to present sums of money to the county surveyor, to be by him employed in paying for works executed in the county by his direction. Forms of presentment by the Grand Jury, in the respective cases where no tender has been made at the adjourned Presentment Sessions, and where works contracted for have not been executed within the proper time or according to the terms prescribed. (By Palles, C.B.) *Re* THE NORTH TIPPERARY PRESENTMENTS - - Cir. Cas. VIII. 116

GRAND JURY—PRESENTMENT—COURT-HOUSE

1. ——*Presentment approved of by Grand Jury and rejected at subsequent sessions—Summary presentment.*] The Grand Jury have no jurisdiction to present summarily for the cost of repairing the court-house. A presentment for the repair of the court-house at W. had been read and approved of by the Grand Jury, and a plan and specification prepared for the work, but the presentment was rejected at the subsequent Presentment Sessions:—*Held*, that the succeeding Grand Jury were not authorised by the 69th section of the Grand Jury Act to pass the presentment. (By Dowse, B.) *Re* THE WICKLOW COURT-HOUSE - Cir. Cas. VIII. 207

2. ——*Special Sessions.*] A presentment for building a court-house need not be tendered for at Special Sessions. (By Deasy, B.) *Re* CASTLEBAR COURT-HOUSE

Cir. Cas. IV. *M.* 510

GRAND JURY—PRESENTMENT—FEVER HOSPITAL.

1. ——*Corporation—Presentment—Fever hospital and dispensary—Grand Jury Act, ss.* 81, 85.] A hospital was founded under 11 Geo. IV., c. 57, as a hospital and infirmary, and under that Act the governors had no power to refuse fever patients. A presentment was traversed on the ground that no fever patients had, in fact, been received therein lately, and an under-

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GRAND JURY—PRESENTMENT—FEVER HOSPITAL—*continued.*

taking was given that for the future they should be received therein:—*Held*, that without the undertaking the presentment could be fiated under sec. 85 of the Grand Jury Act, but with the undertaking it should be fiated under sec. 81. (By Fitzgerald, J.) *Re* BARRINGTON'S HOSPITAL [Cir. Cas. XIII. *M.* 236

2. —— *Nominal presentment—"Shall or may present"—Construction of Grand Jury Act.*] As long as a fever hospital, established under the Hospital Statutes, legally subsists, the Grand Jury are bound to present for its maintenance, and in a substantial amount, notwithstanding that they may be of the opinion that the further maintenance of the hospital has become unnecessary. *Re* KERRY FEVER HOSPITAL PRESENTMENT [Cir. C. R. XII. 179

GRAND JURY—PRESENTMENT—INDUSTRIAL SCHOOLS—*Loan for building—Security—Publication of notice*—48 & 49 *Vic., c.* 19, *s.* 6.] At the Summer Assizes of 1889 an application was made to the Grand Jury by the Trustees of an Industrial School to give security to the Commissioners of Public Works for a loan to enable the trustees to erect new buildings. Notice of this application was given by the trustees as required by sec. 6 of the Industrial Schools (Ireland) Act, 1885. On an objection being made that this notice should have been given by the Grand Jury, the application was adjourned to the Spring Assizes, 1890, and the secretary of the Grand Jury was directed to publish such notice. At the Spring Assizes, 1890, the application was granted on the condition of two solvent securities being approved by the Grand Jury. The Grand Jury approved of the securities at the Summer Assizes, 1890:—*Held*, that it was not necessary to publish a notice of the intention of the Grand Jury to approve of the securities, at the Summer Assizes of 1890, and that the presentment should be fiated. *In re* PRESENTMENT FOR MEATH INDUSTRIAL SCHOOLS [Cir. C. R. XXIV. *M.* 624

GRAND JURY—PRESENTMENT—JURIES ACT, 1871.

1. —— *Expenses incurred by the sheriff for printing and other expenses in execution of the Juries Act*, 1871, *and Acts amending same—Power of Grand Jury to present for such expenses—Authority and procedure of "Court for presentment cases reserved" considered—Explanation of terms "expenses," "remuneration," "compensation"*—4 *Geo. IV., c.* 43, *s.* 1—3 & 4 *Wm. IV., c.* 91—6 & 7 *Wm. IV., c.* 116, *s.* 110—34 & 35 *Vic., c.* 65, *ss.* 13, 15, 16, 22.] The Grand Jury of the County of Sligo presented the sum of £20 to be levied off the county at large and to be paid to the sub-sheriff for reasonable and necessary expenses actually incurred by him for printing, and other expenses attending the execution by the sheriff of the Juries (Ir.) Act, 1871, and the Acts amending same. The Judge of Assize (Palles, C.B.) fiated the presentment, but suspended payment on the same. An order having been obtained, at the instance of a cess-payer, that a writ *certiorari* should go to remove and quash the presentment:—*Held* (Fitzgibbon, L.J., *diss.*), that a Grand Jury had no authority under the Juries (Ir.) Act, 1871, s. 16, to present any sums for expenses incurred by the sheriff for printing done in pursuance of that Act, or the Acts amending the same, whether such expenses be incurred by reason of additional duties thereby imposed upon the sheriff or not. *Bailie's Presentment* (XXIV. M. 361), followed. *Re* HUNTER: ALEXANDER'S PRESENTMENT - Q. B. D. XXVI. 20; C. A. XXVI. 83

2. —— *Expenses incurred by sheriff in carrying Act into execution.*] A presentment cannot be made for expenses incurred by a sheriff in carrying the Juries Act, 1871, into execution, unless specifically mentioned in the Act. *Re* BAILIE'S PRESENTMENT - - Cir. C. R. XXIV. *M.* 361

GRAND JURY—PRESENTMENT—JURIES ACT, 1871—*continued.*

3. —— *Expenses of sheriff in carrying Act into execution.*] The Grand Jury has power, under sec. 16 of the Juries Act, 1871 (34 & 35 Vic., c. 65), to present for the amount of outlay actually incurred by the sheriff, for printing and other expenses in connection with the discharge of his duties in carrying the Act into execution. *Re Bailie's Presentment* (XXIV. M. 361), not followed. (By Fitzgibbon, L. J.) *Re* BOTTOMLEY'S PRESENTMENT - - - - Cir. Cas. XXV. 26

4. —— *Remuneration to poor rate collector for attendance before Clerk of Union under Juries Act.*] The Act 34 & 35 Vic., c. 65, is open to the construction that the Grand Jury cannot present for the remuneration to poor rate collector for attendance before the Clerk of the Union under the Juries Act. (By Dowse, B.) ANON. - Cir. Cas. X. *M.* 186

GRAND JURY — PRESENTMENT — LUNATIC ASYLUM—The Corporation of Limerick objected to a presentment which they had to vote towards the expenditure of the County Asylum, they having no control over the asylum. The Judge directed the presentment to be fiated. (By Deasy, B.) ANON. - Cir. Cas. VIII. *M.* 545

GRAND JURY—PRESENTMENT—MAIMING.

1. —— *Form of presentment—Right to traverse fiat of Judge of Assize—Presentment Sessions* — Certiorari — *Grand Jury Act, ss.* 16, 38, 106, 133, 174.] A presentment was made by the Grand Jury of C., in favour of L. "for compensation for being maimed after having given evidence against O., who was charged with an offence against the public peace, pursuant to the Act 6 & 7 Wm. IV., c. 116, s. 106":—*Held*, that the presentment was good on the face of it, although it did not go on to state that L. was maimed "previous to the trial of the said O." Sec. 133 of 6 & 7 Wm. IV., c. 116, does not confer a right to a traverse in the case of a presentment for maiming under sec. 106. It is competent for a Grand Jury to deal with a presentment under sec. 106, without any previous application having been made in the matter to a presentment Sessions. *Semble, per* Sir M. Morris, C.J.: When a Judge of Assize has fiated a presentment, it becomes a judgment of a Court of Record, and is not examinable for something bad on the face of it. *Per* O'Brien, J.: If the presentment be entertained by the Judge at the trial, it is doubtful whether any *certiorari* ought to be granted. *Re* LEAHY'S PRESENTMENT [Q. B. D. XXII. 89

2. —— *Injury entitling to compensation—Traverse—Costs—Grand Jury Act, s.* 106.] A cut on the back of the hand received from the blow of a stone held sufficient to bring the person injured within sec. 106 of the Grand Jury Act. There is no power to traverse a presentment under the 106th sec. (By Andrews, J.) *Re* ANTHONY'S PRESENTMENT [Cir. Cas. XX. 14

3. —— *Injury causing disablement—Grand Jury Act, s.* 106.] The Grand Jury have power to make a presentment for maiming where the injury was a lacerated scalp wound, with serious injury to the periosteum, with a possibility of brain disease, and the applicant was unable to discharge his ordinary duty. *Re* CURRAN'S PRESENTMENT Cir. C. R. XXIV. *M.* 329

4. —— *Presentment for, when mandatory — Compensation, how estimated*—6 & 7 *Wm. IV., c.* 116, *s.* 106.] (1) A broken collar-bone is evidence on which the Grand Jury can find that a man was maimed. (2.) The Grand Jury are obliged by the words "shall" and "may" in section 106 of the Grand Jury Act to make a presentment when they found that the applicant was maimed. (3.) The Grand Jury are not obliged to award full compensation in the ordinary sense, but only such sum as they think just and reasonable, having regard to the rank and position of the applicant. (4) The Judge should fiat such presentment. *Re* NOLAN'S PRESENTMENT [Cir. Cas. R. XXIV. *M.* 623

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GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—AREA OF LEVY.

1. —— The discretion of the Grand Jury as to the area of levy of the compensation for malicious injury will not be interfered with by the Judge of Assize. (By Holmes, J.) *Re* PRESENTMENT OF THE BARONY OF PORTNAHINCH
[Cir. Cas. XXIII. 45

2. —— *Signature of application—Posting of notices*—6 & 7 *Wm. IV., c.* 116, *ss.* 37, 135—7 *Wm. IV., c.* 2, *s.* 3.] Objections to the fiating of a presentment for compensation for malicious injury on the ground that the lands of the applicant were excluded from the area to be charged therewith, that the applicant did not himself sign the application, and that the notices were not posted as well as served at the police barrack were overruled, and the presentment was fiated. (By Morris, C.J.) *Re* COOPER'S PRESENTMENT Cir. Cas. XV. *M.* 195

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—COSTS AND EXPENSES.

1. —— *Costs—Ratepayers opposing*—6 & 7 *Wm. IV., c.* 116, *s.* 138.] A Judge has jurisdiction under the 6 & 7 Wm. IV., c. 116, s. 138, to direct payment of costs by ratepayers opposing an application for a presentment which has been thrown out by the Presentment Sessions and Grand Jury. *Re* DOUGHTY'S PRESENTMENT - - Cir. C. R. XIII. 120

2. —— *Presentment not proceeded with.*] Leave was obtained under the 138th sec. of 6 & 7 Wm. IV., c. 116, to enter a traverse to a presentment, but it was not proceeded with. On an application being made by the person in whose favour the presentment was made, that he should be allowed his costs of preparing to support the presentment:—*Held*, that there was no jurisdiction to allow them. (By George, J.) *Re* ALLEN'S PRESENTMENT - - - Cir. Cas. I. *M.* 535

3. —— *Expenses.*] Claimant's house had been maliciously burnt down, and the Presentment Sessions presented £5 for actual loss. The Grand Jury made a further presentment for £6 10s. for expenses incurred by claimant attending the Sessions, posting notices, &c. On the matter being brought before the Judge of Assize, he held that the 6 & 7 Wm. IV., c. 116, sec. 135, does not empower Grand Jury to present for expenses incurred in seeking compensation for malicious injuries, but only for the actual loss incurred. (By Christian, J.) ANON.
[Cir Cas. I. *M.* 159

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—JURISDICTION.

1. —— *Application struck out at Presentment Sessions for informality—Grand Jury Act, s.* 135.] Where it appeared that an application for compensation for malicious injury was marked at the Presentment Sessions as having been struck out, the applicant having by mistake omitted to bring with him the necessary proofs, and that afterwards he attended with the proofs, but the Court had risen, the Grand Jury were directed to inquire into the preliminary proofs, notices, &c., and if they found them correct, to consider the matter of the presentment in the ordinary way. (By Murphy, J.) *Re* BURKE'S PRESENTMENT Cir. Cas. XXVI. *M.* 698

2. —— *Ecclesiastical Commissioners.*] A petition for malicious injury done to a church, which had not been before Presentment Sessions or the Grand Jury, was presented to the Judge of Assize by the clergyman of the church under the 3 & 4 Wm. IV., c. 37, which gave a power to the Ecclesiastical Commissioners, since transferred to the Representative Church Body. As the petitioner had only the written authority of the latter body, and not their authority under seal, the Judge refused to hear the petition. (By Armstrong, Serjeant, Judge of Assize.) *Re* COTTON - Cir. Cas. X. *M.* 447

3. —— *Grand Jury Act*, 6 & 7 *Wm. IV., c.* 116, *ss.* 38, 135, 138—*Power of Grand Jury to present—Application for malicious injury indorsed at Presentment Sessions "Rejected"—*

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—JURISDICTION—*continued.*

Practice.] An application under the 135th section of the 6 & 7 Wm. IV., c. 116, for compensation for malicious injury was indorsed "Rejected" at the Presentment Sessions. The Grand Jury at the ensuing Assizes were directed to consider the application, and, if they considered the claim well founded, to present money to be raised for compensation, although the application for the raising of the money had not been approved of at the Presentment Sessions, in accordance with sec. 38. (By May, C.J.) *Re* MADDEN'S PRESENTMENT
[Cir. Cas. XI. 84

4. —— *Poisoning of horses.*] In considering the question of compensation where a number of horses died from poison, the question to be considered is whether the poisoning was accidental or maliciously done—malice not being understood in the ordinary sense of ill-will. The sole question is that of intention. (By O'Brien, J.). STEED'S PRESENTMENT
[XXII. *M.* 247

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—NOTICES.

1. —— A notice that it is the *intention* of a person to apply for a presentment for compensation for malicious injury, without stating that he will apply, is informal, and a fatal objection to the presentment. (By Deasy, B.) *Re* M'HUGH
[Cir. Cas. IV. *M.* 401

2. —— *Death of applicant—Disagreement of Presentment Sessions and Grand Jury—Traverse—Proof of notices—Grand Jury Act, ss.* 135, 138.] Where an applicant for compensation for malicious injury died, after serving all the requisite notices, but before the matter came before the Presentment Sessions, a presentment in proof by his widow, who continued the claim before the Sessions and the Grand Jury, was fiated. A presentment having been passed by the Grand Jury, and no notice having been given that proof would be required on a traverse of the service of the preliminary notices:—*Held*, that no notice was necessary, and that the claimant was bound to prove the preliminaries. *Re Gethin* (III., M. 598), not followed. *Re Canavan* (XI., 84), followed. (By Johnson, J.) *Re* POWELL'S PRESENTMENT - Cir. Cas. XXIII. 44

3. —— *Giving in examinations on oath—Time—Prevention by illness—Grand Jury Act, ss.* 135, 137.] The onus lies on a party who claims compensation for malicious injury to satisfy the Grand Jury that he had served the prescribed notice within six days after the commission of the injury. *Re* WALPOLE'S PRESENTMENT - Cir. C. R. XXIV. *M.* 329

4. —— *Intention to apply.*] An applicant for a presentment for a malicious injury should not only serve a notice of his *intention* to apply for compensation, but should also post a notice of the application. *Re* HERBERT'S PRESENTMENT
[Cir. C. R. III. *M.* 406

5. —— *Non-production of original information—Endorsement on application—Service of notices*—6 & 7 *Wm. IV., c.* 116, *ss.* 135 *and* 137.] An applicant for compensation for malicious injury, under the 135th section of 6 & 7 Wm. IV., c. 116, made the information required of the 137th section of that Act. The Clerk of Petty Sessions refused to give the information to the applicant to produce at the Presentment Sessions, but gave him a certified copy thereof. The Presentment Sessions refused to act on the copy of the information, and marked the application "Notices not served." The Grand Jury having, in consequence of the endorsement, refused to consider the application, the Court directed the Grand Jury to consider the service of the notices, and to admit the certified copy of the information in evidence of a compliance with sec. 137. (By May, C.J.) *Re* CANAVAN'S PRESENTMENT - - Cir. Cas. XI. 84

6. —— *Notice of application for compensation.*] A malicious injury having been committed in a parish containing two police stations, H. served and posted at the nearest station only a notice of her intention to apply for compensation,

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GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—NOTICES—*continued.*

omitting to serve and post any formal notice of application:—*Held*, sufficient notice to entitle her to compensation under the 135th sec. of the Grand Jury Act. *Re Herbert's Presentment* (III. M. 406 Ir. R. 3, C. L. 556), not followed. (By Monahan, C.J.) *Re* HALL'S PRESENTMENT - **Cir. Cas. VIII. 175**

7. —— *Objection to presentment—Omission to lodge application for compensation.*] The fact that an applicant for compensation for malicious injury served the High Constable of the Barony with a *notice*, stating substantially the matters which section 135 of the Grand Jury Act requires to be stated in an *application*, but did not serve an *application*, is not a fatal objection to the fiating of the presentment. (By Hughes, B.) *Re* PRESENTMENT FOR MALICIOUS INJURY **[Cir. Cas. I. *M.* 515**

8. —— *Posted on nearest police barrack not in proper parish.*] In a presentment for malicious injuries the damages had been directed to be levied off a particular parish, and the notices had been posted by the police on the "nearest" police barrack, which was not situated in the parish; the Judge refused to fiat the presentment, as the posting was insufficient. (By Fitzgerald, J.) *Re* CUNNINGHAM'S PRESENTMENT **[Cir. Cas. I. *M.* 515**

9. —— *Posting what is sufficient—Notice of intention to apply for compensation—Grand Jury Act, s.* 11.] The posting of a notice of intention to apply for compensation for malicious injuries, upon a file hung in the interior of a police barrack, is sufficient compliance with sec. 11. *Per* Morris, C.J.: The section is, as regards the requirements for posting, directory only, and not mandatory. *Re* CONNELL'S PRESENTMENT **[Cir. C. R. XXIII. 15**

10. —— *Preliminary requirements under statutes*—6 & 7 *Wm. IV., c.* 116, *ss.* 11, 135—1 *Vic., c.* 2, *s.* 3.] An application for £50 loss and damage occasioned by the wilful and malicious breaking of a flax dam was disallowed at the Presentment Sessions. It was returned so on the Grand Jury Presentment Book, with note, "Notices properly served, with the exception of Petty Sessions Clerk." Questions having been raised before the Grand Jury, (1) that only one notice was served of the application instead of two; and, (2) that the Petty Sessions Clerk was not served at all:—*Held*, that the Grand Jury were not bound to inquire into anything but the point of service taken and reserved at the Presentment Sessions, and the questions of malice and amount of damage; and that service of notice on the Petty Sessions Clerk in such cases is not necessary under the Act. (By Lawson, J.) *Re* M'CAUL'S PRESENTMENT - - - **Cir. Cas. XIV. 41**

11. —— *Service of notices—Churchwarden.*] Since the disestablishment of the Church in Ireland, service on the two principal inhabitants is a sufficient compliance with the provisions of the 135th sec. of the Grand Jury Act. (By Holmes, J.) *Re* PRESENTMENT OF THE BARONY OF CULLENAGH **[Cir. Cas. XXIII. 45**

12. —— *Service of statutory notices*—6 & 7 *Wm. IV., c.* 116, *s.* 135.] Service of the statutory notices of an intention to apply for compensation for malicious injury upon two owners of property in the parish where the offence has been committed, who do not reside in the parish, is not sufficient. (By Andrews, J.) *Re* BELL'S PRESENTMENT - **Cir. Cas. XXV. 67**

13. —— *Signature of agent*—6 & 7 *Wm. IV., c.* 116, *s.* 135.] A Grand Jury can make a presentment for malicious injury where only the notice of the injury and of the intention to apply for compensation, but no application, was lodged with them and the Barony Constable; and the notice is good if signed by an agent for the applicant. (By Palles, C.B.) *Re* CARTER'S PRESENTMENT - **Cir. Cas. XXVI. *M.* 504**

14. —— *Time.*] The six days within which notice of intention to apply for compensation for malicious burning must be served under the 6 & 7 Wm. IV., c. 116, s. 135, are exclusive of the day when the offence was committed. (By Whiteside, C.J.) *Re* LAWLER - - - - **Cir. Cas. VI. 85**

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—NOTICES—*continued.*

15. —— *Time—Sunday—"Within six days."*] The 6 & 7 Wm. IV., c. 116, s. 135, which gives a remedy to persons who have suffered loss in consequence of malicious injuries to classes of property therein specified, provides that certain notices shall be given "within six days" after the commission of the offence. Belfast was separated from the county of Antrim for certain purposes by the 28 & 29 Vic., sess. 1865, c. 183, and the 35th and following sections of the Act transfer the power to decide on giving compensation in cases of malicious injury to property to the Town Council of Belfast. Sec. 36 requires notice in writing of every application to be given to the Town Clerk "within six days after such offence committed." An offence within the meaning of the Act and of the Grand Jury Laws was committed on Monday, the 19th August, 1872. Notice was not given to the Town Clerk till Monday, the 26th August:—*Held*, that the notice was in time, that the first day should be excluded and the last included, and that as the last day then fell on Sunday, the notice need not be given till the following day. (By Lawson, J.) *Re* LUFF **[Cir. Cas. VII. 143**

16. —— *Traverse of presentment—Compensation for malicious injury—Proof on traverse of six days' notice required by sec.* 135 *of* 6 & 7 *Wm. IV., c.* 116—*Notice to produce proof.*] A presentment for a malicious injury having been made by the Grand Jury, was traversed at the Assizes. On the hearing of the traverse:—*Held*, that the person in whose favour the presentment had been made need not prove, at the hearing of the traverse, that the six days' notice required by the 6 & 7 Wm. IV., c. 116, s. 135, has been given. (By Whiteside, C.J.) *Re* GETHIN - - **Cir. Cas. III. *M.* 598**

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—SUBJECTS.

1. —— *Boat—Pleasure boat*—6 & 7 *Wm. IV., c.* 116, *s.* 135.] A pleasure boat does not fall within any of the subjects of property enumerated by the 135th section of the 6 & 7 Wm. IV., c. 116, for which a Grand Jury are entitled to present for compensation for malicious injuries. *Re* ATHLONE BOAT CLUB PRESENTMENT - - - - **Cir. C. R. XI. 76**

2. —— *Boat—Sinking of an unloaded boat—Absence of tumultuous assemblage.*] The sinking of a trading vessel, where it does not appear to have been accomplished by a tumultuous assemblage, is not a proper subject of compensation for malicious injury by presentment. (By Deasy, B.) *Re* JEREMY TAYLOR - - - - **Cir. Cas. IV. *M.* 401**

3. —— *"Boat or barge laden with provisions."*] A vessel of about twenty-five tons burden, after being discharged of a full cargo of potatoes, with the exception of 16 or 18 stone of potatoes, was maliciously burned:—*Held*, that it came within the description of a "boat or barge laden with provisions" under the Grand Jury Act, sec. 135. *Re* LYDON'S PRESENTMENT **[Cir. C. R. XV. 5**

4. —— *Fishing net.*] A fishing net does not come within section 135 of the Grand Jury Act, to enable a presentment to be made for malicious injury to it. (By Deasy, L.J.) *Re* CLONCURRY'S PRESENTMENT - **Cir. Cas. XVI. *M.* 132**

5. —— *Game covert—Evidence of unlawful assembly—Meaning of "produce"*—6 & 7 *Wm. IV., c.* 116, *s.* 135—16 & 17 *Vic., c.* 38.] Where there is evidence that fires by which a quantity of heather, gorse, and underwood (forming a game covert) were destroyed by more persons than one, acting in concert:—*Held*, (1) that there was sufficient evidence of unlawful assembly within 16 and 17 Vic., c. 38, to justify the Grand Jury in presenting a sum for compensation under the provisions of the statute; (2) that game covert is "produce" within the meaning of the Act. (By Fitzgibbon, L.J.) *Re* EARL OF KENMARE'S AND HUGGARD'S PRESENTMENT - - - - - **Cir. Cas. XXVI. 93**

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GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—SUBJECTS—*continued.*

6. —— *Grass not severed from the soil—Growing Corn—Grand Jury Act, s.* 135.] Meadow grass, ripe and dry, but not severed from the soil, is not the subject-matter for compensation for malicious injury under the 135th section of the Grand Jury Act, but growing corn is. (By Harrison, J.) *Re* BYRNE'S PRESENTMENT - - - - - Cir. Cas. XXIII. 43

7. —— *Hay—"Destroying"—Partial damage.*] Compensation can be given for hay which has been maliciously damaged and so reduced in value. (By Johnson, J.) *Re* ST. GEORGE CAULFIELD'S PRESENTMENT Cir. Cas. XX. 14

8. —— *Machinery of steam launch.*] The machinery of a steam launch used as a tug does not fall within the description of property for malicious injury to which the Grand Jury may present for compensation under the 135th section of 6 & 7 Wm. IV., c. 116. (By Dowse, B.) *Re* REVINGTON'S PRESENTMENT - - - - Cir. Cas. XV. 50

9. —— *Horse and car—Unlawful assembly—Title of Act in presentment*—6 & 7 *Wm. IV., c.* 116, *s.* 135—16 & 17 *Vic., c.* 38, *s.* 1.] No compensation can be awarded under 6 & 7 Wm. IV., c. 116, s. 135, or 16 & 17 Vic., c. 38, for loss occasioned by the removal of a horse which was never returned to the owner, where there is no proof of any injury having been inflicted on the animal. Compensation for injury to a car cannot be awarded under the 135th section, but can be awarded under 16 & 17 Vic., c. 38, s. 1. Where the facts of the case are such as would enable the Grand Jury to infer that an injury was committed by more than one person, they may infer that there was an unlawful assembly within the meaning of 16 & 17 Vic., c. 38, s. 1. (By O'Brien, C.J.) *Re* R. KEANE'S PRESENTMENT [Cir. Cas. XXVII. 122

10. —— *Plantation.*] The Grand Jury has no power to present for damage for the malicious burning of a plantation. (By Lawson, J., and Armstrong, Serjeant, Judge of Assize.) *Re* BRACKENBRIDGE'S PRESENTMENT Cir. Cas. XI. *M.* 206

11. —— *Sheep—Evidence—Costs*—6 & 7 *Wm. IV., c.* 116, *ss.* 135, 138.] An application for compensation for killing or destruction of sheep was made to the Grand Jury under sec. 135 of the Grand Jury Act. The evidence showed that the applicant was the object of malicious ill-feeling, and that the sheep had mysteriously disappeared off his lands under circumstances affording an inference of foul play, but there was no evidence of actual killing, and the bodies of the sheep were not found:—*Held*, that there was sufficient evidence to justify a presentment. £5 costs were allowed to the applicant. (By Harrison, J.) *Re* NAUGHTON'S PRESENTMENT - Cir. Cas. XXIV. 112

12. —— *Straw*—6 & 7 *Wm. IV., c.* 116, *s.* 135.] Where straw was burned by a boy under seven years of age:—*Held*, that the injury was not malicious or wanton, so as to entitle the owner to compensation under 6 & 7 Wm. IV., c. 116, s. 135. (By Murphy, J.) *Re* THOMPSON [Cir. Cas. XXVII. 77

13. —— *Threshing machine—"Other work"—Costs.*] A threshing machine in a building comes within the purview of the provisions of section 135 of the Grand Jury Act; but costs will not be given against ratepayers who unsuccessfully contested the application. (By May, C.J.) *Re* SULLIVAN'S PRESENTMENT - Cir. Cas. XIX. 41

14. —— *Varnish—Grand Jury Act, s.* 135.] "Varnish, turpentine, dryers, trade implements, stock of glass, and a smith's bellows," which were destroyed, were held not to be the subject of a claim for malicious injury. (By Murphy, J.) *Re* M'COURT'S PRESENTMENT Cir. Cas. XXIV. 10

15. —— *Vestments and church property.*] The words "other work belonging to any person" in the 135th sec. of the Grand Jury Act are *ejusdem generis* with those preceding them, and therefore the Grand Jury has no jurisdiction to present for compensation for the malicious destruction of vestments and other church property. (By Dowse, B.) *Re* COLLIER - - - - Cir. Cas. VIII. 208

GRAND JURY—PRESENTMENT—MALICIOUS INJURIES—TRAVERSE.

1. —— When an application for compensation for malicious injuries was refused by the Presentment Sessions and granted by the Grand Jury, where the cess-payers did not appear to oppose, leave to enter a traverse was refused. (By May, C. J.) *Re* O'CONNOR'S PRESENTMENT Cir. Cas. XIX. 41

2. —— *Case struck out at Presentment Sessions—Grand Jury Act, sec.* 135.] Where it appeared that an application for compensation for malicious injury was indorsed, at Presentment Sessions, as having been struck out after having been several times called, and that afterwards proof was tendered but not received, the Grand Jury were directed to consider the matter, and to receive proof of the serving and posting of the notices directed by the 135th section of the Grand Jury Act. (By Morris, J.) *Re* M'CULLAGH'S PRESENTMENT [Cir. Cas. IX. 73

3. —— *Empannelling Petty Jury.*] The fact of the Presentment Sessions and Grand Jury having disagreed in their findings:—*Held*, ground for empannelling a Petty Jury to try the matter of the application. (By Palles, C.B.) *Re* WILSONS' PRESENTMENT - - Cir. Cas. X. 151

4. —— *Evidence.*] The Grand Jury in considering a claim for compensation for malicious burning, sent up to them from the Presentment Sessions, ought to hear all witnesses whose evidence tends to throw light upon the subject of inquiry, and not confine the evidence to that of the claimants' witnesses. *In re Neale* (1 C. & D. Abr. N. of C. 294) disapproved of. (By Fitzgerald, J.) *Re* MATTHEWS Cir. Cas. X. 151

5. —— *Jurisdiction—Postponement of Petty Jury trial.*] No Grand Jury have authority to entertain an application for compensation for malicious injury save only the Grand Jury at the Assizes next ensuing to the Presentment Sessions to which the application has been made in the first instance. A Judge of Assize has no power to adjourn the consideration by the Grand Jury of an application for compensation for malicious injury from one Assize to the following. *Re* DUNPHY'S PRESENTMENT - Cir. C. R. XV. 5

6. —— *Leave to traverse, although presentment in applicant's favour—Grand Jury Act, s.* 138.] Leave to traverse a presentment, on the ground of inadequacy of the amount, was given although the presentment was in the applicant's favour. (By Andrews, J.) *Re* NELIGAN'S PRESENTMENT [Cir. Cas. XIX. 50

7. —— *Not passed by twelve grand jurors.*] It is not necessary that a presentment of a civil nature—*e.g.*, for malicious injury—should be passed by twelve grand jurors, a majority of those present and voting being sufficient. *Re* BOYLE'S PRESENTMENT - - - - Cir. C. R. XX. 36

8. —— *Rejection by Presentment Sessions and Grand Jury—Leave to traverse—Grand Jury Act, s.* 135.] Under special circumstances leave to traverse will be given were both Presentment Sessions and the Grand Jury have rejected the application under sec. 135 of the Grand Jury Act, as being "not malicious." (By Murphy, J.) *Re* NOLAN'S PRESENTMENT [Cir. Cas. XXIII. 46

9. —— *Traverse to increase amount awarded—Grand Jury Act, s.* 135.] Permission will not be granted to traverse a finding of Grand Jury, merely in order to increase the amount awarded, when malice has been found and a substantial sum granted. (By O'Brien, J.) *Re* REDMOND'S PRESENTMENT [Cir. Cas. XX. 56

10. —— *Trial before Judge of Assize.*] An application was made to the Judge of Assize to have a Jury empannelled to try a case of malicious burning, and it was granted. In consequence of the absence of the witnesses the judge postponed the inquiry until the next Assizes, when on an application being made to have the Jury empannelled the Judge held that sec. 136 of 6 & 7 Wm. IV., c. 116, confined the applicant to the Assizes next ensuing the Sessions, and there the applicant was late. (By Fitzgerald, B.) *Re* MAGOWAN [Cir. Cas. I. *M.* 211

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GRAND JURY—PRESENTMENT—POLICE—In a presentment for extra constabulary which the Grand Jury objected to on the ground that the number in the County was not above the Parliamentary establishment, the Judge intimated to the Grand Jury that the certificate of the Chief Secretary was conclusive as to the legality of the claim made by the Crown. (By Fitzgerald, B.) *Re* MONAGHAN POLICE PRESENTMENT - - - **Cir. Cas. I. *M.* 282**

GRAND JURY—PRESENTMENT—PRISON—*Governor of gaol.*] The Grand Jury have no power to pass a presentment for payment to the governor of the gaol the costs incurred by him in an action by a pauper for false imprisonment. (By Dowse, B.) ANON.
[Cir. Cas. VIII. 194 note

GRAND JURY—PRESENTMENT—PRISONERS.

1.—*Expenses of conveyance of prisoners.*] The Grand Jury are bound to present for the expenses for the conveyance. (By Holmes, J.) *Re* PRESENTMENT OF INSPECTOR GENERAL OF ROYAL IRISH CONSTABULARY.
[Cir. Cas. XXIV. *M.* 373

2.—*Expenses of conveyance and removal of prisoners after committal for trial*—14 & 15 *Vic., c.* 85, *s.* 4—40 & 41 *Vic., c.* 49, *ss.* 3, 17, 21, 35, 42.] By virtue of the General Prisons (Ir.) Act, 1877 (40 & 41 Vic., c. 49), the expenses incident to the conveyance or removal of prisoners from one place to another, after such prisoners have been committed for trial or on summary conviction enumerated in the 4th sec. of 14 & 15 Vic. c. 85, are no longer chargeable against Irish counties. *Re* PRESENTMENT FOR CONVEYANCE OF PRISONERS - - - **Cir. C. R. XVII. 46**

GRAND JURY—PRESENTMENT—ROADS.

1.—*Certificate by foreman.*] A foreman of a Grand Jury declined to give a certificate prescribed by the 6 & 7 Wm. IV., c. 116, sec. 27, that the necessary map, &c., for making a new line of road, had been lodged:—*Held*, that the section renders it imperative on the foreman to grant the certificate. (By Keogh, J.) *Re* HALAHAN
[Cir. Cas. II. *M.* 185

2.—*Neglect of roads by contractors—Re-presentment of money nilled by Judge—Subsequent Grand Jury's power.*] In January, 1868, several road contractors obtained from the county surveyor, at the Presentment Sessions, certificates; but during the interval between that date and the Assizes in the ensuing spring, neglected their roads, and the Grand Jury for that reason disallowed their salaries, and re-presented those sums to the credit of the several baronies. The Judge nilled those re-presentments. The roads were found then by the county surveyor to be in bad repair: the salaries therefore were not passed at the next Road Sessions; and the Grand Jury at the Summer Assizes again re-presented those sums. The re-presentments were again nilled. The sums were again re-presented at the Spring Assizes, 1869, and those re-presentments also were nilled. At the Summer Assizes, 1869:—*Held*, that the Grand Jury, at the Summer Assizes, 1868, had not any jurisdiction to entertain the application then made to them, the Grand Jury at the previous Spring Assizes having refused payment. (By Fitzgerald, J.) ANON. - - - - **Cir. Cas. III. *M.* 796**

3.—*New Road—Closing Road.*] When an application is made to close a road and to substitute another for it, the question as to what amount of convenience is afforded by the old road, and what number of persons would prevent its being useless, is to be determined by the circumstances of each case. (By O'Brien, J.) *Re* SPAIGHT'S PRESENTMENT.
[Cir. Cas. I. *M.* 85

4.—*Not fiated—Application at subsequent Assizes*—6 & 7 *Wm. IV., c.* 116, *s.* 23—20 & 21 *Vic., c.* 15, *s.* 1.] Where advertisements had been duly issued for tenders for a new road and bridge, but none had been accepted by the Grand Jury, and no presentment had been fiated by the judge; and

GRAND JURY—PRESENTMENT—ROADS—*continued.*
where at the next subsequent Assizes a tender was accepted and an application made for a presentment for the work:—*Held*, that no presentment having been fiated by the judge at the previous Assizes, the application then became void, and could not be presented for at the subsequent Assizes. (By Murphy, J.). *Re* DONEGAL BRIDGE PRESENTMENT
[Cir. Cas. XXVI. 96

5.—*Prospective presentment to stop a public road on the making of a new road.*] A prospective presentment to stop a public road as soon as a new road in substitution for it shall be made, is illegal, under 6 & 7 Wm. IV., c. 116, s. 60. *Re* DRISCOLL AND DOWNING - - **Q. B. II. *M.* 336**

6.—*Repair of road not entirely constructed—Grand Jury Act, ss.* 50, 55.] A road was laid out in 1846, and partly formed, but never completed or opened for traffic. The fences at each end remained, and those at the sides were so dilapidated that the adjoining occupiers used the road as grazing ground, and it was impassable even for foot passengers:—*Held*, that this was not an existing road; that a presentment could not be made under 6 & 7 Wm. IV., c. 117, sec. 50, to repair it; that the presentment to complete it must be under sec. 55, and that the notices under that section not having been served, the presentment could not be supported. *Re* CLARE ROAD PRESENTMENT - **Cir. C. R. III. *M.* 175**

7.—*Traverse by cess-payer of presentment for road contract.*] A cess-payer will be allowed to traverse a presentment for a road contract, alleged not to have been complied with, where the Grand Jury have declined to hear evidence. (By Palles, C.B.) *Re* GILLANDERS' PRESENTMENT
[Cir. Cas. X. 151

8.—*Traverse for damages—New road.*] At the Spring Assizes of 1867 a presentment for a new road was made. The necessary notices to the owner of the land did not reach him in time to enable him to enter a traverse at those Assizes. At the Spring Assizes of 1868 he applied for leave to enter a traverse. The Grand Jury Act, sec. 133, requires that every presentment "shall be traversed only at the Assizes at which the presentment shall be made":—*Held*, that the application must be refused. (By Keogh, J.) *Re* GREVILLE - - - - **Cir. Cas. II. *M.* 185**

9.—*Unfulfilled contract for repair of road—Money to be re-presented for.*] When a contract (which has expired) for the repair of a road has not been fulfilled by the contractor, and the money is lying unappropriated in the hands of the treasurer in consequence of the county surveyor not having certified that the road was repaired, the Grand Jury have power under the 6 & 7 Wm. IV., c. 116, sec. 145, to re-present the amount for such other purposes as they may deem expedient, notwithstanding that the Special Sessions have approved the presentment. (By Monahan, C.J.) *Re* A ROAD CONTRACTOR
[Cir. Cas. III. *M.* 426

GRAND JURY—PRESENTMENT—SURETY—*Person interested—Grand Jury Act, s.* 47.] No person qualified to act as an associated cess-payer at Presentment Sessions can become a surety for a contractor; and where such security is offered, the tender, even though the lowest, should be rejected. (By Palles, C.B.) *Re* LYNCH'S PRESENTMENT
[Cir. Cas. XVIII. 53

GRAND JURY—PRESENTMENT—TENDER.

1.—*Road repair—Varying name of contractor and amount of price*—20 & 21 *Vic., c.* 15, *s.* 1—6 & 7 *Wm. IV., c.* 116, *s.* 47.] Where the Grand Jury neither "approves or rejects" a presentment passed at the Presentment Sessions, it cannot vary the name of the contractor and the amount of the price, but must act under the provision of 20 & 21 Vic., c. 15, s. 1. (By Johnson, J.) *Re* GREACEN'S and M'CABE'S PRESENTMENT - **Cir. Cas. XXIV. 11**

2.—*Sureties.*] To a presentment under 6 & 7 Wm. IV., c. 116, sec. 23, for county printing, it was objected

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GRAND JURY—PRESENTMENT—TENDER—*continued.*

that it was not the lowest that was put in. The objector had made a lower tender, but when he and his sureties were called one of his sureties was absent, and the other refused. Thereupon the Grand Jury deemed the objector's tender null and void, and accepted the next lowest:—*Held*, that the mere failure of the sureties to appear at the very moment when called, would not justify the rejection of the tender, but that the Act did not make it imperative to accept the lowest tender. (By Morris, J.) *Re* ADAIR'S PRESENTMENT

[Cir. Cas. II. *M.* 152

GRAND JURY—PRESENTMENT—TRAVERSE.

1.—*Not heard—Costs of.*] The trial of a traverse of an application to widen a street was adjourned by one Judge of Assize till the next Assizes, upon the ground that the traverser had not time to prepare evidence of the value of the premises. Before the next Assizes the intention of widening the street was abandoned by the Grand Jury. An application was made that the costs of preparing the evidence should be paid to the traverser under sec. 133 of 6 & 7 Wm. IV., c. 116, which the Judge refused, holding that a traverse must be tried before his jurisdiction as to costs would arise. (By Ball, Q.C., Judge of Assize.) *Ex parte* DAVIS

[Cir. Cas. I. *M.* 211

2.—*Presentment for damages—Notice—Time for service—Jurisdiction to enter for trial.*] There is no jurisdiction to enter a traverse of a presentment for hearing at the Assize, coming within section 134 of the Grand Jury Act, when it is objected that the notice thereby prescribed was not served in due time. (By Morris, C.J.) In *re* MARYBORO' TOWN COMMISSIONERS' PRESENTMENT Cir. Cas. XIX. 40

GRAND JURY—PRESENTMENT SESSIONS.

1.—*Fatality in not holding—Applications before Grand Jury—Power of contractor's signature to Tender Committee of Grand Jury—Grand Jury Act, ss.* 3, 4, 38, 133.] Where, through a fatality, no Presentment Sessions are held, and the applications are consequently not "approved of" thereat, there is no power of presenting for the same. The Grand Jury has power to consider applications brought before, but not gone into by, the Presentment Sessions. A contractor need not sign the tender himself; it is sufficient if he gave his authority to sign for him. A Grand Jury cannot delegate its authority to committees. (By O'Brien, J.) In *re* PILTOWN PRESENTMENTS

[Cir. Cas. XXIII. 16

2.—*Lowest tender—Grand Jury Act, s.* 23.] The Justices and Associated Cesspayers at Road Sessions are bound to accept the lowest tender, and can exercise no discretion, unless either (*a*) the sureties offered are insufficient, or (*b*) the proposal is made for a fraudulent purpose. (By Palles, C.B.) *Re* CODY'S PRESENTMENT - Cir. Cas. XVIII. 53

3.—*Repair of roads—Lowest tender—Discretion as to accepting—Unfair or fraudulent purpose—Grand Jury Act, s.* 23.] The Justices and Associated Cesspayers at Presentment Sessions, having rejected a tender for the repair of a road, on the ground that the work could not have been done for the sum tendered, passed over several intervening tenders, and accepted that of the previous contractor, being satisfied that his was the lowest for which the work could be properly done. The Grand Jury having referred the matter to the Judge of Assize:—*Held* (1), that they were bound to accept the lowest tender, unless there were some fraud or unfairness in it; (2), that the fact that the work could not be done for the price tendered was not a valid ground of rejection, though utter inadequacy in price might be evidence that the tender was not *bonâ fide*; (3), that, having rejected the lowest tender, they were bound to go to the next lowest, and could not pass over any, except on the ground of fraud or unfairness. *O'Donnell and Boyle's Presentment* (14, L. R. Ir., 500), discussed and explained. (By Andrews, J.) *Re* DUNNE'S PRESENTMENT

[Cir. Cas. XXI. 19

GRAND JURY—PRESENTMENT SESSIONS—*continued.*

4.—*Tender.*] The Presentment Sessions have a discretion with regard to tenders, and are not bound to accept the lowest. (By Monahan, C.J.) *Re* DUNNE

[Cir. Cas. I. *M.* 142

GRAND JURY—ROAD CONTRACTOR.

1.—Certiorari—*Magistrate's order to take gravel*—6 & 7 *Wm. IV., c.* 116, *s.* 162.] The order of magistrates authorising a contractor with the Grand Jury to enter land for the purpose of procuring materials to repair roads should definitely limit the time during or within which the right of entry given thereby is to continue. THE QUEEN (FITZGERALD) *v.* THE JUSTICES OF LIMERICK - - Q. B. D. XXVII. 35

2.—*Magistrate's order to take gravel*—6 & 7 *Wm. IV., c.* 116, *s.* 162.] A magistrate's order under the 6 & 7 Wm. IV., c. 116, s. 162, authorising a Grand Jury contractor to enter on lands, must show on its face that the lands on which an entry is thereby authorised are not of the character excepted in the section, although it is not absolutely necessary that the exceptions should be expressly and verbally negatived. *Quære*, whether an incorporated reference in the order as to the extent and duration of the contract to five years is a sufficient and reasonable limitation of the time within which the contractor may enter the lands? REG. (MURPHY) *v.* JJ. OF WEXFORD - - Q. B. D. XXVII. *M.* 658

3.—*County surveyor refusing certificate to contractor—Practice.*] When a county surveyor refuses his certificate to a contractor, the proper course is for the Presentment Sessions to hear evidence on the subject, and to pass the presentment (if they think the surveyor erred in not giving the certificate), and to indorse on the presentment the absence of the certificate. (By O'Brien, J.) THE COUNTY SURVEYOR *ex parte* COX - - - Cir. Cas. III. *M.* 351

4.—*Bond—Liability of contractor and sureties after breach of contract—Evidence of damage*—6 & 7 *Wm. IV., c.* 116, *s.* 168—19 & 20 *Vic., c.* 63, *s.* 17.] Where, on the contractor's default to complete his contract for the maintenance of a road in repair, the County Surveyor has taken up the road upon a ten days' notice, the contractor and his sureties are liable for the necessary expense incurred by reason of such default, and the County Surveyor in such case is entitled to proceed under sec. 54 of the Grand Jury Act, which, though it directs repayment out of moneys otherwise due to the contractor, does not interfere with the cumulative remedy provided by the 168th section. (By Murphy, J.) ATTORNEY-GENERAL *v.* DELANEY - - Cir. Cas. XIX. 62

5.—*Order of magistrates to enter lands—Jurisdiction.*] The order of the Justices authorising a road contractor to enter lands to take gravel, &c., under 6 & 7 Wm. IV., c. 116, must be strictly accurate and must show that the justice signing it was himself satisfied that it was the most convenient place, and that it cannot be conveniently obtained elsewhere (By Fitzgerald, J.) BUTLER *v.* LEAHY

[Cir. Cas. I. *M.* 477

6.—*Production of contract before justices to show his contract.*] A road contractor applied for leave to enter land for the purpose of procuring materials for carrying out a contract for the Grand Jury, and did not produce the original contract, but only his quarry book and specification. The case was dismissed without prejudice. *Re* ROWLES

[P. S. IX. *M.* 479

7.—*Recognisance—Breach of contract—Damages.*] A road contractor who had contracted to make alterations in a road, and who failed to do it within the time specified, whereby the public were inconvenienced, was ordered to pay £5 damages. (By Whiteside, C. J.). MOORE *v.* ATTORNEY-GENERAL - - - - Cir. Cas. I. *M.* 475

8.—*Right of, to take stones from quarry—Compensation—Owner—Occupier—Grand Jury Act, s.* 162.] The 162nd sec. of the Grand Jury Act provides alone for compensation to the

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GRAND JURY—ROAD CONTRACTOR—*continued.*

occupier for surface damage; and the owner has a right at Common Law to maintain an action for the value of the stones removed. (By Lawson, J.) SMYTH *v.* M'ILDOWNEY [Cir. Cas. XX. 12

9. —— *Taking gravel from stream—Magistrate's order—6 & 7 Wm. IV., c. 116, sec. 162—Assent of landlord.*] A road contractor is not entitled to take from a stream which runs through a farm adjoining the road, gravel for the repair of the road, until he has obtained a magistrate's order under the 6 & 7 Wm. IV., c. 116, s. 162. When the farm is occupied by a tenant the landlord's assent to the acts of the contractor is immaterial. (By Fitzgerald, J.) SULLIVAN *v.* COLLINS [Cir. Cas. III. *M.* 638

GRAND JURY—TREASURER.

1. —— *Paying on forged receipt—Repayment.*] The Treasurer of the Grand Jury paid a sum to a party, who had forged on a receipt for it a road contractor's name:—*Held*, that he must pay it over again to the person lawfully entitled to it. (By Fitzgerald, J.) GALVIN *v.* KIRWAN [Cir. Cas. III. *M.* 390

2. —— *Unappropriated balance in Treasurer's hands—Motion to apply it to payment of barony cess—Collectors' fees.*] Applications were made on behalf of barony cess collectors for an order that the Treasurer of the Grand Jury should be at liberty to pay out of any available funds in his hands their poundage, which had been presented for at the then Assizes, instead of levying the amount presented for, and paying it at the next Assizes.—No rules were made on the motions. (By Monahan, C.J.) *Re* BARONY CESS COLLECTORS' APPLICATION [Cir. Cas. I. *M.* 524

GRAND JURY.

—— Number—Finding—Arrest of judgment I. *M.* 120
See CRIMINAL LAW—INDICTMENT. 4.

—— Presentment—Peace Preservation Acts.
See Cases under PEACE PRESERVATION ACTS.

—— Sale of Food and Drugs Act - - X. *M.* 187
See ADULTERATION. 3.

GRANT OF ADMINISTRATION.
See PROBATE—GRANT OF ADMINISTRATION.

GRANT OF PROBATE.
See PROBATE—GRANT OF PROBATE.

GRAVE—Bequest for maintenance of - XI. 128
See CHARITY—GIFT TO. 7.

GRAVEYARD.
See Cases under BURIAL GROUND.

GROUND GAME ACT, 1880—Summons by landlord for trespass - - - - XXIV. 5
See GAME. 6.

GUARANTEE.
See cases under PRINCIPAL AND SURETY.

GUARDIAN—*Ad litem.*
See PRACTICE—GUARDIAN AD LITEM.
PRACTICE—CHANCERY—GUARDIAN AD LITEM.
PRACTICE—CIVIL BILL COURT—GUARDIAN AD LITEM.
PRACTICE—LANDED ESTATES COURT—GUARDIAN AD LITEM.

—— Appointment by Court of Bankruptcy.
See BANKRUPTCY—JURISDICTION. 5, 8.

—— Infant.
See Cases under INFANT—GUARDIAN.

—— Lunatic—Practice - - - XII. *M.* 73
See LUNATIC—PRACTICE. 4.

—— Petition—Settled Estates Acts - - VIII. 305
See SETTLED ESTATES ACTS. 3.

H

HABEAS CORPUS.

1. —— *Ad testificandum—Affidavit of attorney for applicant that witness can give material evidence.*] A *habeas corpus ad testificandum* for the attendance of prisoners in gaol at the hearing of a case before justices was granted on the affidavit of the attorney for the applicant, setting out that the evidence was material and necessary for the party seeking it. DARRAGH *v.* GRAHAM - - - C. C. VIII. *M.* 486

2. —— *Affidavit filed without leave after granting of conditional order.*] Affidavits filed without leave subsequent to the granting of a conditional order for a *habeas corpus* cannot be used, except by consent, on the motion to make the order absolute; but the Court will, if necessary, discharge the order and make a new one. *Re* KEARSE - - Q. B. VIII. *M.* 54

3. —— *Bringing up prisoner already in gaol to be tried for another offence.*] A motion on behalf of the Crown for a writ of *habeas corpus* to bring up for trial at Quarter Sessions a man who was already undergoing a sentence, and who had broken prison and was arrested, was granted. R. *v.* M'DERMOTT [Q. B. XI. *M.* 206

4. —— *Coroner—Inquests—Bringing up prisoners at—Evidence of suspected persons.*] Where a prisoner committed to custody under a magistrate's remand, on a charge of homicide, desires to be present in order that he may hear the evidence, and be tendered as witness before the coroner sitting upon the body of the deceased, and it appears that the coroner does not object to the prisoner's presence, and that it would not tend to frustrate the ends of justice, the Court will, in the exercise of its discretion, grant a writ of *habeas corpus* to have the prisoner in attendance at the inquest, and so that he may be examined as a witness upon the taking of the inquisition. The police magistrates, in like case, have not jurisdiction to direct or authorise the production of the prisoner at the coroner's inquest. *Re* REARDON - - - - Q. B. VII. 193

5. —— *Bringing prisoner before coroner's inquest.*] Motion granted for a writ of *habeas corpus* to bring before a coroner's inquest persons who were suspected of having caused the death in question, and who were in custody under a magistrate's remand, so that they should be examined as witnesses at the inquest, and so that they should be thus present from day to day. *Re* MAGINNIS AND CAMPBELL - Q. B. VIII. 30

6. —— *Bringing prisoner before coroner's inquest.*] Motion granted, on the application of the Crown, for a writ of *habeas corpus*, so that a prisoner (in custody under a magistrate's remand on charge of infanticide) should be in attendance at a coroner's inquest from day to day, although not in order that the prisoner should be there examined as a witness. *Re* CLAFFY - - - - - - - Q. B. VIII. 20

7. —— *Bringing prisoner before coroner—Special circumstances—Prisoner desiring to be present to give evidence—Evidence of persons accused.*] Where a prisoner in custody under a magistrate's remand, on a charge of homicide, desires to be present at a coroner's inquest upon the body of the deceased, in order to hear the evidence and instruct counsel, or to be tendered as a witness according to circumstances, and it is not shown that the ends of justice would be thereby frustrated, the Court will, on the application of the prisoner or of the Crown, grant a writ of *habeas corpus* to have the prisoner in attendance at the inquest, so as to be there examined and so from day to day until the taking of the inquisition has concluded. Under special circumstances, as where the case against the prisoner depends on circumstantial evidence only, and the prisoner desires to be present at the inquest in order to hear the evidence and to instruct counsel or attorney, a writ of *habeas corpus* will be issued, on such application, so as to have the prisoner in attendance at the inquest, although it is not sworn that the prisoner intends to be tendered as a witness, unless it is shown that the ends of justice would be thereby

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HABEAS CORPUS—*continued.*

frustrated. *Semble*, that where, without other special circumstances, the prisoner wishes to be present at the inquest in order to hear the evidence and to assist counsel or attorney, a writ of *habeas corpus* may be issued, so as to have the prisoner in attendance at the inquest from day to day. *Re Reardon* (VII. 193), discussed and approved. *Re Cooke* (7 Q. B., 653), distinguished. *Re* MARSHALL - - **Q. B. VIII. 1**

8. —— *Claim by father to custody of infant aged 7 years.*] A conditional order for a *habeas corpus*, directed to the maternal grandfather of a girl aged over seven years, who had been, by the order of the Court of Chancery, left in the custody of her mother till she attained that age, was granted on the application of the father. *Re* MOORE **C. C. VII. *M.* 408**

9. —— *Plaintiff to be examined.*] A motion on behalf of the plaintiff that a *habeas corpus ad testificandum* should issue, to enable him to attend at the Quarter Sessions at the trial of a remitted action, was granted as of course. CLORAN *v.* REILLY - - - - - **C. C. VII. *M.* 379**

10. —— *Witness in gaol.*] An application for a *habeas corpus* to bring up a witness in gaol was granted as of course. ORMSBY *v.* FITZPATRICK - - - **C. C. VII. *M.* 343**

—— Ad testificandum - - - - **VIII. *M.* 564**
See BANKRUPTCY—JURISDICTION. 6.

—— Certiorari—Warrant dated and executed on Sunday. **[I. *M.* 622, 701**
See ARREST. 8.

—— Committal under Debtors Act - - **XIV. 115**
See DEBTORS ACT (IRELAND), 1872. 14.

—— Contempt of Court.
See CONTEMPT OF COURT. 5, 11.

—— Right to custody of female child up to 16 years of age **[XI. 122**
See INFANT—CUSTODY. 2.

—— Right to custody of illegitimate child.
See INFANT—CUSTODY. 3, 4.

HABERE, RENEWAL OF

1. —— *A motion to enlarge.*] A motion to enlarge a writ of *habere*, the writ not being out of return, was granted; if it had been out of return, the application should be to renew the writ. NOLAN *v.* NICHOLLS - - - **E. VII. *M.* 176**

2. —— *After execution—Resumption of possession by defendant—Delay.*] Plaintiff got possession under a writ of *habere* in Aug., 1866; in Nov., 1866, the defendant re-took possession; in May, 1867, plaintiff applied for renewal of writ of *habere*.—The Court refused it. SMITH *v.* CONNELL **[E. I. *M.* 647**

3. —— *After execution—Possession re-taken.*] A motion to renew a *habere* was granted, where it appeared that the defendants had re-taken possession of part of the premises of which they had given up possession when the *habere* was executed. WHITTLE *v.* CAMPBELL - - **C. C. VII. *M.* 440**

4. —— *After execution—Possession re-taken—Jurisdiction—Service.*] Where possession had been re-taken after execution of the writ of *habere*, a conditional order for renewal was granted, to be served by registered letter on the defendant. STACKPOOLE *v.* WALSH - - **Q. B. D. XV. *M.* 23**

5. —— *Non-execution by reason of disturbed state of the country—Alteration in the position of the parties—O. XLVII., r.* 1.] A motion for the renewal of a writ of *habere*, where the non-execution of it was alleged to be caused by the disturbed state of the country, was refused, it appearing that there was an alteration in the position of the parties since it was issued. MORIARTY *v.* LANDERS **E. D. XVII. *M.* 635**

HABERE, RENEWAL OF—*continued.*

6. —— *Practice—Exchequer Division.*] The practice in the Exchequer division is that a writ of *habere* will not be renewed; but a conditional order for attachment against a defendant who has re-taken possession will be made. COSTELLO *v.* COSTELLO - - - **E. D. XV. *M.* 140**

7. —— *Special circumstances.*] An order for the renewal of a *habere* was made, when it appeared that within a month of the defendant giving up possession quietly to the plaintiff, who locked the house up, the defendant returned to the house, entering through a window. WADE *v.* NOLAN **C. C. V. 44**

8. —— *Unexecuted from motives of charity.*] A motion to renew a *habere* was granted, it appearing that it had not been executed from motives of charity. PERRY *v.* MOORE **[C. C. VII. *M.* 440**

HEIR-AT-LAW—Ejectment on the title - **I. *M.* 67**
See EJECTMENT ON THE TITLE. 21.

—— Unsuccessful in suit—Costs of - - **XI. *M.* 18**
See WILL—CONVERSION.

HIGH TREASON—Evidence—Conspiracy **I. *M.* 337**
See CRIMINAL LAW—HIGH TREASON.

HIRING OF GOODS—Bankruptcy.
See BANKRUPTCY—ORDER AND DISPOSITION. 5-8.

HOLDING HELD BY HIRED LABOURER.
See LANDLORD AND TENANT (IRELAND) ACT, 1870. 120. 179.

HOME FARM.
See LAND LAW (IRELAND) ACT, 1881. 45, 130, 146, 158, 212, 213.
See LAND LAW (IRELAND) ACTS, 1881, 1887. 27, 49.

HOMICIDE—Onus of proof - - **VIII. *M.* 415**
See CRIMINAL LAW—HOMICIDE.

HORSE RACE.

1. —— *Action against steward of race course—Duty in respect of showing the course.*] In an action against the steward of a race course for negligently pointing out the wrong course to the plaintiff, whose horse, though coming into the winning post first, yet lost the race by reason of running over the wrong course, the defendant pleaded that there was no duty cast upon a steward to show the course. The plaintiff demurred to the defence, and the demurrer was over-ruled. (George, J., *diss.*) MANSERGH *v.* COPPINGER - - - **Q. B. IV. *M.* 612**

2. —— *Conditions—Weight for age—Alterations of conditions—Recovery of stakes—Money had and received.*] A horse race was announced to be held, subject to the conditions, "One sovereign entrance, weight for age," and the decision of the stewards to be final in all cases. According to the racing calendar, the weight that month for five-year-old horses was nine stone thirteen pounds. After the horse "The Gaiety" had been entered the stewards altered the conditions by changing the weight to nine stone for each horse; but the owner of "The Gaiety," although apprised of the change before he paid his entrance fee, allowed the horse to run carrying nine stone thirteen pounds. The other horses carried nine stone. "The Gaiety" came in third. The treasurer held the stakes. The owner of "The Gaiety" having sued to recover them, as money had and received, in an action against a person who acted as clerk of the course, hon. secretary, and as one of the stewards, and who merely received the entrance money and handed same to the treasurer:—*Held*, 1stly, That money had and received did not lie; 2ndly, That the contract was not completed until payment of the entrance money, and that the plaintiff, before then, having been notified as to the alteration

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HORSE RACE—*continued.*

in the condition, was bound by the condition as altered. (By Whiteside, C.J.) WOODS *v.* GALLAGHER [Cir. Cas. VIII. 124

—— Action against steward of course - IV. *M.* 180

See PRACTICE—COMMON LAW—PLEADING. 16.

—— Agreement of betting on - - - X. 56

See PRACTICE—COMMON LAW—NEW TRIAL. 3.

HOSPITAL—Insufficient number of attendants—Liability of Poor Law Guardians - - XII. 33

See CAMPBELL'S ACT. 1.

HUSBAND AND WIFE.

1. —— *Action against—Wife appearing by attorney—Motion for final judgment—O. XIII. r.* 1—*O. XV. r.* 8.] In an action against husband and wife, the husband filed no defence, but the wife appeared by attorney. A motion for final judgment was granted as against the husband, but refused as against the wife, as she had not defended by her next friend; and leave to her to do so was granted, the next friend to give security for costs if necessary. MOLLOY *v.* SWAN [V. C. XII. *M.* 161

2. —— *Action for injuries to wife—Money paid into Court—Motion by wife, living separately, to draw out money—Judicature Act, sec.* 27.] In an action brought by a husband and a wife against the defendants for damages for injuries to the wife, the defendants paid £75 into Court. The wife lived separately from her husband. A motion by the wife, that the money should be paid out to her solicitor, was refused. LYNCH *v.* CORK & MACROOM RAILWAY CO. E. D. XIII. *M.* 260

3. —— *Authority of wife, when husband a lunatic—Necessaries—Articles of luxury—Wife in receipt of sufficient income from husband—Ratification of contract.*] During the temporary confinement of the defendant in a lunatic asylum, his wife hired a pianoforte, and purchased a pianette from the plaintiffs on credit, for an expensive residence in London, which the defendant had taken previous to his infirmity. The defendant was possessed of a considerable estate, the entire income derived from which his wife was in receipt of, same being abundant for the maintenance of herself and their family:—*Held*, that, although where a husband is a lunatic, and living separate from his wife, she possesses an implied authority to pledge his credit for goods strictly necessary for her maintenance, the defendant was not liable in respect of the articles hired and purchased, as they were not necessaries, and his wife was in receipt of his whole income, same, though exceeded, being sufficient to support herself and their family. *Semble*, that he would not have been liable even for necessaries supplied on credit, in the absence of a finding by the jury of express authority given, as his income, wholly received by his wife, was so adequate and ample. CHAPPELL AND CO. *v.* NUNN [Q. B. D. XIII. 104

4. —— *Bill of Exchange accepted by femme sole—Action thereon and judgment—Marriage of defendant—Continuance of proceedings against husband and wife—Married Woman's Property Act*, 1874.] An action was commenced against a *femme sole* on foot of a bill of exchange which she had accepted, and judgment was marked. The defendant married B. on the day on which judgment was marked. Leave was afterwards given to continue proceedings against the defendant and B., but on an application to issue execution against them no rule was made. On execution being issued against them:—*Held*, that the execution should be set aside, but the judgment should stand, but it was not to be binding against B. unless he received assets with his wife; and no execution to issue without application to the Court. WHITLEY *v.* BROWNE [Q. B. D. XV. *M.* 117

5. —— *Construction of marriage settlement—Liability of wife's general, personal, and separate estates to pay debts incurred by her before and during coverture—Contracts made*

HUSBAND AND WIFE—*continued.*

on faith of wife's separate estate—Allocation of chargeability of debts upon assets of wife dying intestate and possessed of separate estate—Savings of separate estate bound by settlement—Restraint on anticipation or alienation—Married Woman's Property Act, 1870.] By a settlement made in contemplation of the marriage of C. with the Countess of K., her jointure to which she became entitled under a settlement, executed on her former marriage with the Earl of K., and also the rents, issues, &c., of his residuary, real, and personal estate which should accrue during her life, and to which she was entitled under his will, and all other property to which she was entitled under that will, were assigned to trustees upon trust during the joint lives of C. and the Countess of K., for her sole use and benefit, separate and apart from C., and so that she might not deprive herself of the benefit thereof in any mode of "anticipation or alienation," and in the event of C. surviving the Countess of K., then as to all such parts of the said moneys and premises as should "not have been spent or disposed of" by her during her lifetime upon trust for such person or persons who, at the time of her death, should be her next of kin, if she had not been under coverture. The marriage took place on the 12th November, 1872, and the Countess of K. died intestate on the 1st of April, 1873, leaving one daughter by the former marriage her sole next of kin, within the meaning of the settlement. The debts due by the Countess of K. at her death amounted to £855 11s. 9d., of which sum £754 7s. 10d. represented her ante-nuptial debts, and the balance of £101 3s. 11d. her post-nuptial debts. C. obtained letters of administration of her real and personal estate, and, as such administrator, held personal estate to the extent of £195 13s. 7d.; and a further sum of £1,607 15s. 8d., composed partly of her jointure, and partly of interest on a charge of £120,000, to which she became entitled under the will of the Earl of K. The administrator also received the proceeds of certain furniture to which she was entitled under the same will. In a suit brought by T., her solicitor, for the administration of her assets and for certain accounts, he proved a debt against her estate incurred by her partly before, and partly after, her marriage with C.:—*Held*, (1.) That the Countess of K. held the jointure and interest on the charge of £120,000 for her life, and *semble*, that she had an estate for life only in the furniture, which under the settlement passed to her daughter, Lady B. (2.) That the Countess of K. having contracted with T. after her marriage with C., on the faith of her separate estate, the portion of her debt to T. incurred during coverture stood on the same ground as that incurred previously. (3.) That the sum of £195 13s. 7d., being the general personal estate of the Countess of K., should, *pari passu* with the sum of £1,607 15s. 8d. separate estate in the hands of C. as administrator, be applied in payment of her ante-nuptial debts; and, this having been done, her post-nuptial debts should be paid out of the remainder of the £1,607 15s. 8d. The effect of the "Married Woman's Property Act" (33 & 34 Vic., c. 93, s. 12) is only to relieve the husband of a wife possessed of a separate estate from payment of her ante-nuptial debts during her life, and, consequently, when she died intestate her general personal estate—*i.e.*, her personal estate not settled to her separate use—is left liable to the payment of her debts, as it was before the passing of the Act. The savings of the separate estate of a married woman may legally be bound by ante-nuptial settlement so as to exclude the marital right. *Cowman v. Harrison*, (10 Hare 234), distinguished. TURNER *v.* CAULFIELD [R. XIII. 70

6. —— *Contract to marry—Breach of promise of—Defence of misstatement—Demurrer.*] In an action for breach of promise of marriage it was consistent with the facts averred in the plea that the representation thereby alleged had been made by the plaintiff without any view to induce the defendant to propose for her, and might have been forgotten by her before the proposal was made:—*Held*, that such a representation did not avoid the contract. ANON [E. III. *M.* 780

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HUSBAND AND WIFE—*continued.*

7. —— *Conveyance by wife—Dispensing with husband's concurrence*—4 & 5 *Wm. IV., c.* 92, *s.* 81.] Where husband and wife have separated by mutual consent, and no provision has been made by the husband under a marriage settlement, or otherwise, for the wife's support, the Court will dispense with the husband's concurrence in a conveyance by the wife. *Re* CROTHERS - - - **C. P. D. XVIII. 12**

8. —— *Conveyance of interest in land by married woman—Concurrence of husband dispensed with—Irish Fines and Recoveries Abolition Act.*] The circumstances under which the concurrence of a husband in a deed of conveyance by a married woman of an interest in lands was dispensed with, under 4 & 5 Wm. IV., c. 92, s. 81, stated. *Ex parte* FOUHY **[C. P. D. XIII. 48**

9. —— *Examination of married woman—Before a commissioner*—19 & 20 *Vic., c.* 120, *s.* 37.] Where an application was made that a married woman might be examined by a commissioner, pursuant to 19 & 20 Vic., c. 120, sec. 37, it not being shown that the married woman would be put to personal inconvenience by her attendance before the Master of the Rolls, beyond the fact of her having to make the journey from Belfast to Dublin:—*Held*, that she should attend before the Master of the Rolls himself. *In re* CRAWFORD & BLAKELY ESTATE - - - - - - **R. VIII. 17**

10. —— *Examination of married woman—Wife's conveyance—Extension of time for return of commission for the acknowledgment of a deed by a married woman.*] A commission to take in Canada the acknowledgment of a married woman, was not executed until two days after that on which it was made returnable. This delay was caused by the severity of the weather in Canada and by the lady's being in delicate health:—*Held*, that the commission might under the circumstances be amended by extending the time for its return. *Re* GRIERSON **[C. C. III. *M.* 758**

11. —— *Gift to wife without trustee.*] A gift of proposal property by a husband to his wife, made previously to the passing of the Married Woman's Property Act, 1882, without the intervention of a trustee, is void as against the husband's assignee in bankruptcy, notwithstanding that the chattels may have been regarded by the husband and wife and their friends as the property of the wife. *In re* A. B. WILSON **[B. (Local). XXIV. *M.* 345**

12. —— *Husband seized of fee-farm rent in right of wife—Arrears accruing during wife's lifetime.*] Where a husband became seized of a fee-farm rent in right of his wife, who subsequently died intestate:—*Held*, that the right to arrears accrued during the lifetime of the wife vested in her husband, in his marital capacity, and not in her administrator MERCER *v.* PEACOCKE **[Q. B. D. XVII. 36; C. A. XVII. *M.* 286**

13. —— *Married woman—Real estate—Power to contract—Suit for divorce by wife—Suit by husband for restitution of conjugal rights—Fines and Recoveries Act—Pin-money—Jointure.*] There is no distinction between the effect of a suit by a wife for divorce and of a suit for restitution of conjugal rights by the husband to which she alleges she has a defence entitling her to a divorce, in enabling the wife to contract with her husband. The power to contract in such case is limited to the matters in dispute between them. When once the incapacity of the married woman to contract is removed, her conscience must be deemed to be affected by her act, and she will be decreed to perform a contract disposing of her real estates, even though she has not complied with the provisions of the Fines and Recoveries Act. The three exceptions to the rule that a married woman cannot contract—namely, a contract binding a *femme coverte*, and election by her, and a fraudulent misrepresentation by her as to her real estate acted upon by the opposite party—are all homogeneous, and depend on the same equitable principle. A contract proposed in writing by one party, but altered and then accepted and signed by the other party, may be verbally

HUSBAND AND WIFE—*continued.*

accepted by the former, and the signature of the latter will be sufficient to satisfy the Statute of Frauds. CAHILL *v.* MARTIN - - - - **V. C. XIV. 45**

[This was affirmed by the Court of Appeal, 7 L. R. (Ir.) 361; and reversed by the House of Lords, *sub nomine*, CAHILL *v.* CAHILL, L. R. 11, H. L. 235.]

14. —— *Mortgage of wife's inheritance for husband's benefit—Payment of a debt secured—Right of wife to be exonerated out of husband's estate—Priority as against other incumbrances.*] A wife joining her husband in a mortgage of her estate of inheritance for his benefit is, on the payment of the amount secured by the mortgage out of her estate, entitled to stand in the place of the mortgagee and to be exonerated out of her husband's life estate, *jure mariti*, and to hold the priority of the mortgage so paid off out of her estate of inheritance. *In re* JOHNSTON'S ESTATE - - **L. J. XIII. 176**

15. —— *Pleading coverture—In ejectment.*] A plea in abatement by a married woman can be sustained in an action of ejectment on the title. RIORDAN *v.* WALSH **E. VII. 93**

[This was reversed on appeal, I. R. 8, C. L. 4.]

16. —— *Marriage—Consent—Presumption—Invalid marriage—Forfeiture—Marriage settlement—Will—Construction.*] By a settlement, dated 1st January, 1828, and executed upon the marriage of M. and S., the lands of B. were put in trust for the benefit of the children of the marriage, in such shares as M. should by deed or will appoint. M. by his will, dated 19th January, 1836, devised the lands of B. to trustees, after the death of S. to be divided amongst his four children (two sons, J. and T., and two daughters, H. and C.), being the issue of the said marriage, and directed that in case any of his sons or daughters should die intestate or before attaining the age of 21 years, or without issue, the portion of each child so dying should be divided among the surviving children. He further directed that if any of his sons or daughters should "marry without the full consent" of their mother or guardians, before attaining the age of 21 years, the portion of each of them so doing should be forfeited and divided among his other children. The sons, J. and T., died under 21 and unmarried. In September, 1847, M. left Ireland, and was last heard of a few days after in London. Probate of his will was granted to his wife (S.) in 1857. In 1848 H. married W. The consent of S. was obtained in writing to this marriage. The guardians of H., being aware of the intended marriage, did not object to it, one of them stating that he would have given a written consent to it had he been asked. C., in 1850, went through a ceremony of marriage with N., a Roman Catholic, in a Roman Catholic chapel, the ceremony being performed by a Roman Catholic priest. C. was a Protestant up to the date of the ceremony, which took place without the consent of S. or the guardians of C. S. and N. being dead, and a suit being brought by C. against H. (*et alt.*) to have the trust of the deed of 1828 carried into execution:—*Held*, that H. had obtained the requisite consent to her marriage with W., and consequently did not forfeit her share of one half of the lands of B.; that the marriage of C. being null and void under 19 Geo. II., c. 13, she did not forfeit her share of the other half of the lands of B., although she went through a ceremony of marriage without consent; that a marriage by habit and repute would not be presumed in this case; and that marriage within the meaning of the will of M. was a legal marriage, conferring the status of husband and wife on the parties. MARTIN *v.* SHEPHERD **[R. XII. 142**

17. —— *Married Woman's Property Act*, 1870—*Liability of husband to pay wife's debts contracted before marriage—Joint liability.*] A *femme sole* having made a promissory note jointly with an accommodation maker, afterwards married. Previous to the marriage, a judgment was obtained at suit of the payee against both makers, and after the marriage the accommodation maker paid the balance due on foot of the note. An action having been brought by him against his co-maker and her husband, upon an implied contract of indemnity, to recover

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HUSBAND AND WIFE—*continued.*

the amount so paid by him:—*Held*, that the money so paid was for a debt contracted before the marriage, and that under the 12th sec. of the Married Women's Property Act, 1870, the husband was not liable. CONLON *v.* MOORE **C. P. IX. 68**

18. —— *Promissory note to wife* dum sola—*Wife's chose in action—Action by wife's administrator.*] In an action by the plaintiff, as administrator of his deceased wife, on a promissory note given to her *dum sola*, and which fell due during coverture, the defendant pleaded payment to the wife during coverture, and the plaintiff replied that the wife never had authority from, or assent of, the plaintiff after her marriage to receive payment:—*Held*, that the plea did not disclose a good payment. (By Fitzgerald, B.)—During coverture payment could only be made to the husband. ROGERS *v.* BOLTON **[E. D. XV. 39**

19. —— *Promissory note given during coverture—Possession of separate estate—Non-joinder of husband as defendant—Married Woman's Property Act*, 1870.] On a process against a married woman alone for the amount of a promissory note given by her during coverture:—*Held*, that even though she might be possessed of separate estate, she could not be sued in her own name or without her husband being made a co-defendant. M'OSCAR *v.* M'ARDLE - - **Q. S. XV. 22**

20. —— *Reduction into possession—Agreement by husband to grant lease of wife's chattels real.*] Building ground was demised for years to the wife of H., who joined her in mortgaging the lease. The equity of redemption was reserved to the husband and wife, or as he and she or they should direct. Afterward H. alone agreed to let the houses which had been built on the ground, and died intestate:—*Held*, that the agreement was binding on the wife, and that the rent formed part of the assets of H. DONEGAN *v.* HIBSON **R. III. *M.* 548**

21. —— *Separate estate—Will—Construction—Sole use and benefit—Statute of Limitations.*] V. bequeathed to his daughter, a married woman, £2,000 "for her sole use and benefit":—*Held* (1), that those words were, when taken by themselves, sufficient to create a separate use in the legacy. *Held* (2), that a suit between a *cestui que trust* and the trustee is not barred by the Statute of Limitations. HARTFORD *v.* POWER **[V. C. II. *M.* 242**

[(1) was affirmed, on appeal. I. R. 3 Eq. 602.]

22. —— *Separate estate—Mortgage—Covenant.*] V. devised lands to his sister for her separate use for life. She mortgaged her life estate, and covenanted to pay principal, interest, and future advances:—*Held*, that that covenant bound, not only the mortgaged property, but all other separate estate of the mortgagor. *Re* JENNINGS' ESTATE **[Ch. A. II. *M.* 316**

23. ——*Separate estate—Will—Construction—"Sole use."*] A testator devised real and personal estate to trustees upon trust to pay thereout certain annuities to his sister and her son; and the will contained a declaration that as to the residue of rents and as to the other lands to which the testator was entitled the trustees should stand seized in trust for the "sole use" of the testator's daughter, H. E. A further legacy was given to another of his daughters, B. M., for her life, "and her receipt to be sufficient discharge for the same:"—*Held*, that the mere use of the word "sole" did not sufficiently indicate an intention that H. E. should have a separate estate to the exclusion of marital rights, and that a comparison of the two bequests showed the difference in the nature of the interests. MASSY *v.* HAYES - - - **[Ch. A. I. *M.* 63**

24. —— *Separate estate—Promissory note—Charge of debt of separate estate—Form of order.*] In an action against husband and wife on their joint and several promissory note the statement of claim alleged that the wife was entitled for her separate use to a life estate in remainder in certain lands, and also to an annuity issuing out of other lands. These allegations not having been traversed, the jury found for the plaintiff. On a motion for judgment, the Court declared the debt, interest, and costs of the action well charged on such separate property, without a reference to the Master. REDINGTON *v.* O'CONNOR **[C. P. D. XIV. 39**

25. —— *Voluntary deed of separation—Power to sue on—Intervention of trustee—Married Woman's Property Act*, 1882, *s.* 1 (1).] A deed of separation mutually entered into between husband and wife, consequent upon prior differences, does not require the intervention of a trustee to render it valid; and mere living in the same house together after its date, without cohabitation, will not avoid it. Under such a deed the wife can sue. MOUTRAY *v.* MOUTRAY **[Q. S. XXVI. 146**

26. —— *Wife's chose in action—Ante-nuptial parol agreement—Reduction into possession by husband—Corroboration—Effect—Statute of Frauds—Post-nuptial declaration of trust—Assets of deceased—Chancery Rules.*] Mrs. C. was possessed in her own right of six shares in the London and County Bank. On the treaty for her marriage with C. it was agreed by parol agreement between her and C. that she should retain the shares as her own exclusive property. No settlement had been executed. After the marriage the shares were transferred to the husband's name, who, by virtue of this transfer, became entitled, on a new issue of shares, to purchase eight additional shares, which he did. He, however, always paid the dividend on the six shares to his wife in pursuance of the ante-nuptial agreement:—*Held*, that, as the agreement was void by the Statute of Frauds, and as at the time of making it he had nothing belonging to the wife, there was no evidence to show that he did not reduce the shares into possession. A post-nuptial parol declaration by a husband that shares acquired by his marriage, and which had previously belonged to his wife, were her own separate property, may be a valid declaration of trust in her favour in respect of them. When a claim is made against the assets of a deceased person, there must be some corroboration of the claimant, however slight, in order to take the case out of the rule of law requiring such corroboration. The quantum of corroboration needed to establish the claimant's demand is to be considered as a subsequent matter, and must depend upon all the circumstances of the case. CLEGG *v.* CLEGG **[V. C. XXII. 42**

27. —— *Wife's conveyance—Acknowledgment of deeds by married woman—Extension of time for officer to receive the document—Practice, Common Law.*] A motion that the officer might be at liberty to receive the documents connected with the acknowledgment of a deed by a married woman notwithstanding that more than a month had elapsed since the making of the acknowledgment was granted as of course, when the time was short. When much time had elapsed, a search must be made, and a certificate produced that no later Act appears of record. ANON. - - - **C. C. VII. *M.* 125**

28. —— *Wife's earnings in Ireland—Protection order from English Divorce Court.*] *Quære*, does a protection order obtained from the English Divorce Court protect the earnings of a wife, which were made in Ireland, from the claims of her husband after her death? *In the Goods of* MUNROE **[P. I. *M.* 65**

29. —— *Wife's reversion—Personalty—Election.*] A married woman cannot part with a reversionary interest in a chose in action, neither can she do so indirectly by election. *Wall* v. *Wall* (16 Simon, 513), overruled. WILLIAMS *v.* MAYNE **[R. I. *M.* 758**

30. —— *Wife's reversion—Assignment by married woman—*4 & 5 *Wm. IV., c.* 92.] Part of a sum charged on land as portions for younger children was vested in A., who, on his marriage, assigned it in trust for himself for life, then for his wife for life, then for their children, as they or the survivor of them should appoint. After the death of A. the charge was paid to the trustee. A.'s widow married H., and afterwards appointed the fund to A.'s only surviving child, R.; and afterwards she and her second husband by deed (acknowledged by her) assigned her life interest to R. The trustees lodged the fund in Court, and R. presented a petition to have it trans-

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HUSBAND AND WIFE—*continued.*

ferred to him:—*Held*, that the case did not fall within the 68th section of the 4 & 5 Wm. IV., c. 92. ALGEO'S TRUSTS [R. III. *M.* 4

31. —— *Wife's reversion—Personalty*—20 & 21 *Vic.*, *c.* 57.] A settlement of 1839 empowered B. to appoint a sum of money amongst his children, to one of whom (a married woman) B. in 1868 appointed part thereof:—*Held*, that she was entitled under the deed of 1839, and therefore could not under the 20 & 21 Vic., c. 57, dispose of her reversionary interest. *In the matter of* BUTLER'S TRUSTS - - - V. C. III. *M.* 117

—— Appearance entered for married woman through solicitor [XV. 48

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—— Joint judgment - - - - - X. 100

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—— Motion for judgment against wife—Averment of separate Estate.

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—— Motion to charge separate estate - - XVI. 54

See PRACTICE—DEFAULT. 1.

—— Payment out of Court to wife subsequent to desertion [VIII. 117

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—— Promissory note—Indorsed by wife - XI. 4

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—— Voluntary deed—Mortgagor to his wife - IV. *M.* 400

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I.

ILLEGITIMATE CHILD—Custody.

See INFANT—CUSTODY. 3, 4.

—— Maintenance

See Cases under INFANT—MAINTENANCE.

ILLICIT SPIRITS—Summons for having in dwelling-house [XXV. 17

See JUSTICES—OFFENCES. 3.

IMPOSSIBILITY — *Condition — Recognizance—Impossibility of performance.*] M., in an action by plaintiff against him, obtained a conditional order for a new trial, which order was discharged. From the order discharging the conditional order he appealed, and S. entered into a recognizance by way of security for costs that M. should prosecute the appeal with effect. M. died before the said appeal was prosecuted. Plaintiff sued S. on the recognizance. S. pleaded the death of M.:—*Held*, on demurrer, that this was a good plea. LEITRIM *v.* STEWART - - - - - Q. B. IX. *M.* 383

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See LAND LAW (IRELAND) ACT, 1881, 46-50, 62-65, 72-77.
LAND LAW (IRELAND) ACTS, 1881, 1887, 5, 7, 21.
LAND LAW (IRELAND) ACT, 1887, 5.
REDEMPTION OF RENT (IRELAND) ACT, 1891, 2.

INCITING TO COMMIT A FELONY.

See CRIMINAL LAW—INCITING TO COMMIT A FELONY.

INCOME TAX.

See REVENUE—INCOME TAX.

INCUMBERED ESTATES COURT CONVEYANCE —*Description of tenancies—Schedule—Reference to lease—Construction.*] A schedule to an Incumbered Court conveyance contained a column headed "Tenure by which tenants hold." That column contained this clause: "Lease dated the 16th day of April, 1806, from John Donnellan to Joseph Fitzpatrick, for the lives, &c., whichever should last longest, provided the term of 89 years, to be computed from the 29th day of September, 1726, or the three lives granted of said premises to the said John Donnellan should last longest, at the yearly rent of £32 late currency or for 61 years from 25th March, 1813, at the rent of £32 late currency":—*Held*, that that clause did not amount to an affirmance by the Incumbered Estates Court that, as a fact, the term in question was a term for 61 years from the 25th March, 1813, but merely referred to the lease that actually existed.
DE VESCI *v.* O'KELLY - - E. C. III. *M.* 528

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INFANT. Col.

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INFANT—CONTRACT—*Infants' Relief Act*, 1874—*Ratification—Acceptance by adult of bill of exchange for debt contracted during infancy—Liability to* bonâ fide *endorsee for value.*] The acceptor of a bill of exchange, accepted after he had come of age, in payment of a debt to the drawer, contracted by the acceptor during infancy, and subsequent to the Infants' Relief Act, 1874 (37 & 38 Vic., c. 62), is liable for the amount of the bill to a party to whom, before it fell due, it was endorsed for valuable consideration, without notice of the previous transactions between the drawer and acceptor leading to the acceptance of the bill. BELFAST BANKING CO. *v* DOHERTY - - - - - Q. B. D. XIII. 40

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INFANT—CUSTODY.

1. —— *Advantages from association with other children — Personal examination of child twelve years old.*] The Court will not, without grave reason, remove a minor from the society of his brothers and sisters, and in determining who is to have the custody of the child, takes into consideration whether it will have the advantage of the society of other children. The Court is unwilling to consult a child of twelve years old as to his wishes. *In re* HAMILTON **R. XIX. 37**

2. —— *Female child up to 16 years of age.*] Up to the age of 16, a female child has no right to withdraw herself from the custody of her father, and in the event of his death, from the custody of her mother; and if she do so, the Court has jurisdiction to order her to return or to be restored to such custody. *In re* SMYTHE - - - - - **Q. B. XI. 122**

3. —— *Illegitimate child—Contest between putative father and brother of deceased mother*—Habeas Corpus.] When an illegitimate child, after the death of the mother, has legally—that is, without force or stratagem—been brought into the custody of the father, a writ of *habeas corpus* will not be granted on the application of a brother of the mother, although the mother in her lifetime gave the child into the custody of the applicant, and the child had remained in the custody of the applicant for some time after the mother's death. *Re Crowe* (XVII. 72), approved. *In re* KERR, OTHERWISE M'ILWRAITH **[C. A. XXIV. 3**

4. —— *Illegitimate child—Right of putative father to custody of*—Habeas Corpus.] Where an illegitimate child, aged about seven years, was, after the death of its mother, removed from the custody of its father by a stranger, acting upon a wish that had been expressed to him by the mother with reference to bringing up the child in her religion instead of in its father's, the custody of the child on a writ of *habeas corpus*, issued for the purpose, was transferred to the father. *Re* CROWE. **[Q. B. D. XVII. 72**

5. —— *Next of kin.*] A boy under eight years old was left by his mother under the guardianship of persons whom she paid for his care and maintenance. After the mother's death, her sister sued out a *habeas corpus* to obtain possession of the child. On the return the Court held that she had no legal right to the custody of the child. *In re* MEDLEY **[Q. B. V. 60**

—— Habeas Corpus - - - - - **VII. *M.* 408**
See HABEAS CORPUS. 8.

INFANT—GUARDIAN.

1. —— Ad litem—*Leasing power—Chancery (Ireland) Regulation Act*, 1850, *15th sec.—Petition—Minor—Fee-farm grant.*] A guardian *ad litem*, appointed by a Master in Chancery, in a petition referred to him under the 15th section of the Chancery Regulation Act (Ir.) 1850, has no power to execute leases on behalf of the minor for whom he is appointed. *Semble*, in a cause fully constituted, with a guardian of the minor's estate duly appointed, a Court of Equity could not, unless on petition filed for the purpose, direct such guardian to execute a fee-farm grant on behalf of the minor, so as to confer a valid title on the grantee. In a 15th section petition for administration, the Master refused to appoint a guardian for the purpose of executing a fee-farm grant on behalf of a minor, but directed a petition to be filed for the purpose, under the Renewable Leasehold Conversion Act. PALMER *v.* SMYTH - - - - - - **M. VIII. 108**

2. —— *Testamentary — Appointment of Roman Catholic clergymen—Issue to try validity of will.*] A man who professed the Protestant religion married a person professing the same. Several children were the issue of the marriage. The father went into a workhouse to get relief for himself and some of his children, and having for some months previously adopted the Roman Catholic religion, enrolled himself and them as members of that persuasion. Shortly before his death he drew up a paper appointing two Roman Catholic priests guardians of the minors. The mother of the minors disputed the validity of the alleged will, and removed by force the children from the custody of the guardians, who sought from the Court a *habeas corpus* to recover possession of them:—*Held*, that Roman Catholic ecclesiastics are capable of being guardians of minors, but as it appeared, from the conflicting statements in the affidavits, that further inquiries into the validity of the papers purporting to be the last will and testament of the father of the minors were necessary, the Court refused to decide the question upon the affidavits, but directed an issue, not removing the minors from the care of their mother, but requiring her undertaking to surrender them if called on so to do, in the event of the verdict being against her. *In re* BYRNES' MINORS **[Q. B. VII. 75**

3. —— *Ward of Court—Grandfather—Mother.*] An application by the grandfather of a minor, who was also trustee of the minor by the will of his father, that the minor might be made a ward of Court, and that the applicant should be appointed guardian of his person and fortune as against the minor's mother, who had married again:—*Held*, that the mother should be appointed guardian of the person, and the applicant guardian of the fortune. *In re* BLACKHALL **[C. XVII. *M.* 428**

—— *Ad litem.*
See PRACTICE—GUARDIAN AD LITEM.
PRACTICE—CHANCERY—GUARDIAN AD LITEM.
PRACTICE—CIVIL BILL COURT—GUARDIAN AD LITEM.
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—— *Ad litem*—Petition for payment out of Court **I. *M.* 459**
See TRUSTEE—TRUSTEE RELIEF ACT. 9.

—— Appointment of by Land Commission.
See LAND LAW (IRELAND) ACT, 1881. 168, 169.
LAND PURCHASE ACTS. 8.

—— Opposition to erection of labourers' cottages in demesne lands - - - - - - **XVII. *M.* 634**
See LABOURERS ACT, 1883.

INFANT—MAINTENANCE.

1. —— *Illegitimate child*—1 & 2 *Vic., c.* 56, *s.* 53—*Statute of Frauds—Revocation of promise to pay for support.*] A promise by the father to the mother of an illegitimate child to pay for its support so long as it should live discloses a good consideration, but is revocable at any time. (By Palles, C.B.) M'GREAVY *v.* CONOLLY - - **Cir. Cas. X. 162**

2. —— *Illegitimate child—Covenant by mother to maintain—Pleading — Release — Covenant not to sue — Consideration.*] Action for support of illegitimate children. Plea, that in consideration of £50 plaintiff released defendant from all past claim for maintenance, and covenanted to maintain said children, and not to claim from defendant any sum for future maintenance. A demurrer was brought on the ground that the defence did not disclose an answer to the action, as the release could not operate to release a cause of action not then in existence:—*Held* (by Whiteside, C.J., Monahan, C.J., Fitzgerald, O'Brien, and George, J.J., upholding the judgment of the Court of Exchequer), that the defence did not disclose any answer to an action in respect of claims accruing after the execution of the release. MAGEE *v.* FARRELL **[E. III. *M.* 795; E. C. V. 17**

INFANT—PROPERTY.

1. —— *Advancement to, out of funds in Court.*] An infant was entitled to a sum of money in Court to his separate credit. His mother, the guardian, applied for payment to her of a portion of it for the purpose of paying a proportion of the furniture of a house which she had considered it advisable to take for him to live in with her:—*Held*, that the Accountant-General should transfer the amount asked for, with £5 for costs of the motion. PERRY *v.* PERRY - **R. IV. *M.* 315**

2. —— *Carrying on trade for benefit of—Practice Chancery.*] The property of minors will, where it is manifestly for their interest, be allowed to be continued in trade. The practice

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INFANT—PROPERTY—*continued.*

settled, viz., after recognizances by person carrying on business, a yearly balance-sheet is to be lodged, and the profits to be brought in, and if any allowance is to be made to the infants, such is to be made by the person carrying on the business. PERRY *v.* PERRY - - - - R. III. *M.* 482

3. —— *Repairs to residence—Mortgage of land in settlement—Originating summons—Rules, June*, 1891, *O. LV., r.* 4.] The Court has power on originating summons to determine the matter of the raising of money by mortgage of the infant's property to put the residence into tenantable repair, the repairs to be strictly in the nature of salvage. HURST *v.* HURST [R. XXVI. 98

INFANT—SETTLEMENT.

1. —— *By Court of Chancery—Infants' Settlement Act—Power—Transfer of funds.*] Under a marriage settlement executed on the marriage of a lady, a minor, with the approval of the Court of Chancery in England, pursuant to the 18 & 19 Vic., c. 43, certain funds lodged in the Court of Chancery, Ireland, were settled upon such trusts as the minor should appoint by deed before or after she attained twenty-one, and by will after that age, and in default of appointment to her separate use. The marriage took place, and on the following day she, by deed poll, appointed the funds to F. on trust to sell the stock, and after payment of the costs of the settlement and the Chancery proceedings both in England and Ireland, to pay the surplus to the minor for her separate use:—*Held*, that the 18 & 19 Vic., c. 43, did not so alter the ordinary legal status of the minor as to validate the execution of the power in the marriage settlement for such a purpose, and that payment of the funds must be accordingly refused. *In re* ARMIT'S TRUSTS - - - - - R. V. 155

2. —— *Ward of Court—Marriage.*] On a motion that a settlement of a minor, a ward of Court, should be settled at Chambers after the Court had approved of the marriage, the Master of the Rolls stated that the exclusion of the husband from the wife's share in the draft settlement in case he survived her was contrary to the recent cases; he should be secured his right to take upon her death and in the event of there being no children. Particulars of his property should be furnished to the Court, and the word "issue" should be excluded from the settlement, the marriage not to take place till the settlement had been executed. *In re* VINCENTS [R. XIII. *M.* 378

3. —— *Recital—Covenant to settle after-acquired property—Subsequent adoption on attaining age—Family arrangement and property coming thereby.*] It was recited in a marriage settlement that on the treaty for the marriage it was agreed "that the lands and premises therein mentioned, and all other the hereditaments, moneys, and premises (if any), to which P. B. (the intended wife) might be entitled, should be settled (so far as might be) upon the uses, trusts, and provisions hereinafter mentioned, and that the said R. D. (the intended husband) should enter into the covenant thereinafter contained." The covenant referred to was as follows:—"The said R. D., does, for himself, his heirs, executors, and administrators, covenant with the trustees hereof, that if the said P. B. shall live to attain the age of 21 years, they, the said P. B. and R. D., according to their respective estates, rights and interests, shall and will convey and assure all their real and personal estate which the said P. B. is now, or at any time hereafter during the said intended marriage shall become entitled to by descent, representation, devise, gift, limitation, or otherwise howsoever unto the trustees thereof, upon the same uses, trusts, provisoes, and limitations as thereinbefore contained concerning the freehold estates of the said P. B.; and that such estate, real or personal, shall, until such conveyance or assurance shall be made or executed, be held subject to such uses and trusts, or as near thereto as the different natures of such properties will admit." P. B. was entitled (as next of kin of an intestate) among other property, real and personal, to a third of the amount payable on a policy of assurance, which did not fall in during the coverture:—*Held*, that the property was bound by the trusts of the settlement. By a family arrangement, L. Y.'s share (as widow of the intestate) of the policy of assurance was assigned to P. B., and another daughter of L. Y.:—*Held*, that the share was not bound. The appointment of a trustee of a settlement in pursuance of a power contained in it, after a *cestui que trust* comes of age, is an adoption of the settlement. *Hammond* v. *Hammond* (19 Beav. 29), distinguished. LINDESAY *v.* YELVERTON - - - - - V. C. XII. 2

INFANT—WARD OF COURT—*Discharge—Reference dispensed with.*] When the annual income of a minor Ward of Court was inconsiderable, the minor was discharged out of Court without any reference as to anything being due for maintenance or costs, the petition stating that nothing was due. *In re* PERCY - - - - - R. I. *M.* 386

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—— Appearance by Attorney—Vitiating Judgment [I. M. 661

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See LAND LAW (IRELAND) ACT, 1881. 169.

—— Payment of Dividends to Mother—Trustee Relief Act [I. *M.* 489

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—— Will—Contraction—Executor according to the tenor [II. *M.* 98

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INSOLVENCY—ADJOURNMENT.

1. —— *Adjournment of hearing of insolvency case—Doubts as to the truth of the Schedule.*] At an adjourned hearing the insolvent was remanded, because the Court could not declare that it felt no doubt touching the matters alleged against the insolvent at the hearing, which would prevent his discharge. The hearing was adjourned *sine die*. *In re* TRAIN [In. II. *M.* 355

2. —— *Mortgage immediately preceding insolvency.*] When the Court finds property has been conveyed away, mortgaged, or removed, shortly before the failure of a bankrupt or insolvent, it will draw the inference, unless the contrary appears in evidence, that it was done in contemplation of bankruptcy, or insolvency, and the parties shall be punished accordingly. *In re* WARREN - - - - In. I. *M.* 692

INSOLVENCY—ALLOCATION ORDER—*Officers in public departments.*] Officers in public departments will not meet with same clemency as traders in the Court, but will receive no favour. *In re* MONS - In. I. *M.* 423

INSOLVENCY—ALLOWANCE—*Remand for seduction—Prison allowance.*] Where an insolvent is remanded for seduction, and there is an allowance to prisoners in the prison where he is confined, the detaining creditor will not, under sec. 224 of the Bankrupt and Insolvent Act, be called upon to pay the insolvent anything. *Re* MORAN - In. I. *M.* 318

INSOLVENCY—ARREST—*Warrant for contempt—Sunday.*] A warrant for arrest for contempt in disobeying an order of the Court for an insolvent to pay money, cannot be executed upon a Sunday. *In re* KAVANAGH In. I. *M.* 424

INSOLVENCY—BAIL.

1. —— *Application to admit an insolvent to bail—Seduction.*] The Court refused to admit an insolvent out on bail, the detainer being for damages in an action of seduction. *Re* O'BRIEN - - - - - In. II. *M.* 445

2. —— *Lodging proceeds of sale in Court.*] The practice of the Court of Bankruptcy is, that if there is a sale after the imprisonment of an insolvent, not to grant a bail rule until after the proceeds of the sale are brought into Court. *Re* DALTON - - - - - In. I. *M.* 715

3. —— *Surety.*] A bail surety tendered as bail under the 20 & 21 Vic., c. 60, s. 186, was not a householder, but was a clerk to an English firm, and was liable to be recalled to England at any moment:—*Held*, a valid objection to the bail. *Re* BROWNE - - - - - In. II. *M.* 371

INSOLVENCY—CHARGE AND DISCHARGE—*Extending time for filing discharge.*] When the Court has extended the time for filing a discharge and none is filed, the Court will not extend the time further. *Re* ROCHE [In. II. *M.* 106

INSOLVENCY—CONTEMPT—*Appointment of Assignee.*] Upon an application being made to postpone the appointment of an assignee until the debtor, who had been arrested upon a *ca. sa.* and sent to prison, and neglected to file a schedule, had taken steps to set aside the judgment, the Court held that they would receive no application from a party in contempt. *In re* WALKER - - - - - In. I. *M.* 691

INSOLVENCY—COSTS—*Order to review Report—Order for lodgment by attorney of money paid him for costs.*] The Court in 1867 made an order reviewing the Chief Clerk's Report in an insolvency of 1838, and the solicitor was ordered to lodge the sum which had been paid to him on account of costs *Re* GILL - - - - In. I. *M.* 158

INSOLVENCY—DISCHARGE OF INSOLVENT.

1. —— *Action for Breach of Promise of Marriage.*] When an action is brought against husband and wife for breach of promise of marriage by the wife, the penal section of the Irish Bankrupt and Insolvent Act does not apply against the husband, and the Court will not remand him under the discretionary clause. *Re* ROWLAND - In. III. *M.* 120

2. —— *Bringing an unfounded action—Debt fraudulently contracted.*] Where a party brings an action that appears of a very frivolous character, and the plaintiff, when the cause is in the list, withdraws the record; and where he is afterwards arrested for the costs of the day, for which he seeks to be discharged by the Insolvent Court, it will not be deemed to be a debt fraudulently contracted. *Re* CONROY [In. I. *M.* 8

3. —— *Exorbitant interest—Co-surety with insolvent—Creditor.*] When 25 per cent. is charged as interest on a loan, the Court will not treat the case as that of an ordinary trade character. When a person, with others, is joined with the insolvent as security to a third party for that third party's debt, such person is not a creditor, and will not be allowed to oppose. *Re* BYRNE - - In. III. *M.* 503

4. —— *Indebtedness of insolvent for damages in an action for malicious prosecution—Evidence of malice—Absence of opposing creditor.*] An action of malicious prosecution having been brought into the Civil Bill Court, a decree for £20 was obtained. On the defendant coming up to be discharged as an insolvent:—*Held*, that the decree should be taken as evidence of the malice that he might go into a case of mitigation. The absence of an opposing creditor is not a bar to the case being proceeded with. *Re* FERRALL [Q. S. III. *M* 650

5. —— *Indemnity.*] The indemnity to the Official Assignee under sec. 284, refers only to acts previous to the discharge of the insolvent. *Re* DOYLE - - In. IV. *M.* 661

6. —— *Insolvent contracting debt under false pretences—Trader giving credit after being cautioned—Condonation.*] When a creditor is cautioned as to the propriety of giving credit, yet gives it, and sometimes is paid on account of the debt, the Court will not, at *his* suit, remand the insolvent. If goods are bought, to be paid for in cash, and the creditor takes a bill which he afterwards renews, that is a condonation of the offence of contracting the debt under false pretences. *Re* A. B. - - - - In. III. *M.* 486

7. —— *Opposition by creditor who had taken civil proceedings for the recovery of his debt.*] Civil bill proceedings for recovery of debt will debar creditors from opposing discharge of insolvent with reference to the same debt. *Re* KIRKWOOD [In. IV. *M.* 661

8. —— *Opposition of creditor charging high interest.*] An insolvent was discharged when the only creditor opposing his discharge was a money-lender who lent money to him at an exorbitant rate of interest. *Re* HOME In. I. *M.* 443

9. —— *Opposition of creditor to discharge—Circumstances under which debts were contracted.*] Debts amounting to more than £5,000 appeared on the schedule of the insolvent

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INSOLVENCY—DISCHARGE OF INSOLVENT—*con.*

who, personally, owed but one of the debts; the remainder was due on accommodation bills accepted by him for his father. The Bank of Ireland opposed his discharge. Their debt (£21) was second on the schedule:—*Held*, that their opposition failed because they did not show that the insolvent when he accepted the bill, had any idea that he or his father would not be able to meet it. *Re* MARA - **In. III. *M.* 158**

INSOLVENCY—ESTATE.

1. —— *Bill of sale—Making away with property.*] An insolvent, immediately after executing a bill of sale of the greater portion of his property, purchased goods from a creditor. The Court adjourned the case for the purpose of having the property which passed under the bill of sale brought in. *In re* KEOGH - - - - - **In. I. *M.* 691**

2. —— *Future acquired property.*] When the mother of an insolvent effects a policy of insurance on her life for the benefit of her children, share and share alike, the amount on her death to be paid to her son, who in the meantime becomes insolvent, and nothing with regard to the policy appears in his schedule; upon her death the assignees are not entitled to receive the amount. *In re* HANNON - - **In. I. *M.* 8**

3. —— *Future acquired property—Discharge of insolvent under 3 & 4 Vic., c. 107.*] The proceeding under the 20 & 21 Vic., c. 60, as to compelling an insolvent who has not obtained an absolute discharge, to apply future acquired property in paying his debts, does not apply when the discharge took place under the 3 & 4 Vic. c. 107. ANON. **In. II. *M.* 25**

4. —— *Property passing to assignees—Appointment—Insolvent.*] A share of leasehold property was appointed under a power in a settlement to one of the objects of the power who had been an insolvent:—*Held*, that it did not pass to the assignees. STRATTON *v.* MURPHY - **[R. I. *M.* 578**

5. —— *Surplus in insolvency—Interests on debts—Revesting Order.*] The old rule in insolvency cases of not allowing interest on debts after filing the petition is now set aside by the 20 & 21 Vic., c. 60, s. 304; and where there is a surplus, interest will be allowed in insolvency as well as in bankruptcy. Without notice to the insolvent the Court will not re-vest his estate in his assignees under a deed. *In re* SLATOR **[In. III. *M.* 138**

6. —— *Unappointed property of deceased wife of insolvent—Right of children.*] When a mother, whose husband is then insolvent, dies without appointing a sum of money, her own property, and a suit for a settlement thereof on the children has not been commenced before her death, the money becomes the property of her husband's creditors, and the Court will not make thereout a provision for the infant children. *Re* THOMAS - - - - - **In. II. *M.* 62**

INSOLVENCY—EXAMINATION.

1. —— *Before adjudication of insolvent who is in prison.*] When an insolvent is in prison under a *ca. sa.* the Court will not order him to be brought up before the day appointed for hearing the petition, although the object be to inquire after property. *Re* WALKER - - **In. II. *M.* 247**

2. —— *Insolvent should be examined last—Governess not a servant within sec. 249.*] An insolvent is always the last witness examined at the hearing of his petition. A governess is not a "servant" within the meaning of the 249th section of the Act. *In re* CHRISTIAN - **In. IV. *M.* 661**

INSOLVENCY—PETITION—*Hearing of petition of insolvent, notwithstanding notice of adjournment served on creditors—Omission of creditors from schedule—Dismissal of petition.*] The hearing will not be postponed, although the insolvent serves on all his creditors a notice that he will, when his petition comes on for hearing, apply for an adjournment with a view to have omitted creditors placed on the schedule. The petition will be dismissed when a creditor, to whom a debt is due on foot of bill of exchange, has been omitted from the schedule. *Re* ANON. - **In. II. *M.* 138**

INSOLVENCY—REMAND.

1. —— *Adjournments with a view to settling with opposing creditors.*] Adjournments with a view to settling with hostile creditors will not be permitted, such a course being contrary to the proper administration of the insolvent code. *Re* LANGLEY - - - - **In. II. *M.* 385**

2. —— *Bringing an unfounded action—Mistaken identity.*] An insolvent who brought an unfounded action, and neglected to accept an interview with the defendant with a view to define his identity, and whose costs in the action caused his insolvency, was remanded for twelve months. *In re* ARDREY **[In. I. *M.* 459**

3. —— *Debt contracted by insolvent by breach of trust—English and Irish Bankruptcy Law.*] An insolvent was remanded for nine months for having fraudulently contracted a debt to his employers by means of a breach of trust. *Re* BROWN - - - - - **In. II. *M.* 428**

4. —— *Contracting debt and pledging purchased property.*] An insolvent who contracted a debt without necessity, and pledged the property purchased, was remanded for twelve months. *Re* WEEKES - - - **In. I. *M.* 405**

5. —— *Fictitious business—Obtaining money from collector—Exorbitant interest.*] An insolvent, who carried on a fictitious business, contracted a debt by causing a party employed as collector to lodge money as security, and charged an exorbitant rate of interest, was remanded for twelve months. *Re* NEAGLE - **In. I. *M.* 475**

6. —— *Frivolous action after an apology—Costs of non-suit—Promotion of Bubble Companies.*] When an insolvent brings an action for alleged slander and lays the venue in a distant county after an ample apology is given, and then when the venue is changed to Dublin, does not proceed with the action, the costs of a non-suit in such a case will be deemed to be a debt fraudulently contracted. A debt incurred in the promotion of a Bubble Company, where the promoter has no means whatever of his own to pay it, will be held to be a debt fraudulently contracted. Obtaining forbearance from a creditor on the allegation that a large debt was due to the insolvent, which he does not return in his schedule, will be grounds for a remand for twelve months. *Re* HOARE **[In. I. *M.* 84**

7. —— *Hiring property—Refusing to return it—Vexatious Litigation.*] A publican hired a tent upon an express written undertaking to return it in good order within a certain time, and paid £5 for the hire of it. He did not return it, and was sued for the amount. He filed a sham defence and became insolvent. On opposition by the owner of the tent:—*Held*, that the insolvent should be remanded for eighteen months. *Re* O'ROURKE - - - - **In. II. *M.* 137**

8. —— *Indebtedness for damages in action for breach of promise of marriage.*] Although the statute empowers the Court to remand for two years an insolvent who seeks a discharge from a debt under a judgment obtained against him for breach of promise of marriage, and although the amount of the verdict and the condition in life of the parties are the basis on which the Court must found its decision, yet, where there was not any misconduct or aggravating circumstances on the insolvent's part, the remand was confined to four months. *Re* BEHAN - - - - - **In. II. *M.* 389**

9. —— *Insolvent making away with property—Bill of sale.*] When an insolvent, in order to secure an antecedent debt, executes a bill of sale of all his chattels which remain, however, in his order and disposition, the Court will direct that they shall be sold for the benefit of the creditors, and will under sec. 229 remand the insolvent for making away with property. *Re* RONAYNE - - - - **In. II. *M.* 151**

10. —— *Insolvent as commission agent fraudulently obtaining goods.*] Where a commission agent obtains goods to be sold on commission, and sells them in his own name, and does not pay for them, the case will be dealt with as a breach of trust and the insolvent will be remanded. *In re* CHRYSTIE **[In. IV. *M.* 200**

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INSOLVENCY—REMAND—*continued.*

11. —— *Making away with property—Raising money at loan offices.*] Where an insolvent, though earning good wages, borrowed money from loan offices, and when a decree was made against him, made away with his property, the Court marked its censure on his conduct by further remanding him in prison. *Re* REDDY - - - - In. I. *M.* 158

12. —— *Opposition to insolvent on ground of vexatious litigation—Action brought under advice of counsel—Making away with property.*] When Counsel advises that there are grounds for damages in an action for breach of contract and for a malicious prosecution, though the verdict be given against the plaintiff, and the defendants are put to costs, the Court will not remand for vexatious litigation. When long before the insolvency, houses were assigned to the insolvent's family, the Court would not remand for making away with property, but left assignee to go, if so advised, before a Court of Equity. *Re* BAKER - In. III. *M.* 120

13. —— *Representations by insolvent as to means.*] Representations made as to the insolvent's means of paying debts contracted, and obtaining forbearance, although these representations are untrue, are no ground of remand, if he believed he would have the means of payment. *In re* DILLON [In. I. *M.* 692

14. —— *Vexatious defence by insolvent to an action—Suing for more than is really due.*] When a defendant is served with a writ for more than he owes, and he brings it to an attorney, and tells him to defend it, or give a consent for judgment as he thinks proper, and he gives it to the Counsel, who takes a frivolous demurrer, and afterwards a consent for judgment is given for the sum really due, he will not to be remanded for a vexatious defence. *In re* MURPHY [In. IV. *M.* 276

INSOLVENCY—RE-VESTING ORDER.

1. —— *Annuitant in possession of insolvent's property—Reference to Chief Clerk—Death of annuitant pending reference.*] An annuitant continued for some years in possession of an insolvent's property when a creditors' assignee was appointed. On an order of Reference to the Chief Clerk to make his report being made, he found that the annuitant was fully paid and had some money in his hands. The annuitant died shortly before the report was presented. The Court was now asked to make a re-vesting order upon the sum which was found due being lodged in Court; this was done and it was directed that a personal representative should be raised to the annuitant. *Re* BARRETT - - In. I. *M.* 158

2. —— *Heir at Law—Insolvent tenant in tail—Ejectment.*] The Court will not, on the application of the heir at law of a deceased insolvent tenant in tail, make a re-vesting order though the schedule debts have been paid, but will leave him to bring his ejectment against the parties in possession of the property. The assignees are not necessary parties to the ejectment. *In the matter of* MONTGOMERY - In. IV. *M.* 69

INSOLVENCY—SCHEDULE.

1. —— *Imperfect schedule filed by insolvent—Dismissal of petition—Filing a new schedule.*] When the absence of books and documents causes a schedule to be prepared so imperfectly as not to give a true account of the insolvent's dealings, but during the investigation of the case there are disclosed facts which will enable the solicitor to prepare a more correct schedule, the Court will, without dismissing the petition, allow such a schedule to be filed. *Re* TRAIN - In. II. *M.* 247

2. —— *Making away with property—Reference to Chief Clerk.*] Where the schedule was unsatisfactory, and property had been assigned by the insolvent pending litigation, the matter was referred to the Chief Clerk to vouch and report. *In re* HOPKINS - - - - - In. I. *M.* 761

INSOLVENCY—SCHEDULE—*continued.*

3. —— *Omission of a debt from the insolvent's schedule—20 & 21 Vic., c. 60, ss. 212, 232.*] The 20 & 21 Vic., c. 60, s. 212, discharges an insolvent only from such debts as are returned on the schedule, and the "omission, mistake, or misdescription" mentioned in sec. 212, is an omission, mistake or misdescription of something in the description of a debt returned on the schedule. DARLEY *v.* M'DONNELL [Q. B. III. *M.* 22

INSOLVENCY—SECOND INSOLVENCY.

1. —— *Imprisonment at the same time under different custodies*—Habeas corpus.] An insolvent was at first detained in the custody of the County Sheriff when he filed his petition and schedule. Being now in a different custody, his solicitor applied to have him heard upon his first petition and discharged, so that he might file a new petition as to newly contracted debts. A difficulty having arisen as to that course, he was brought up on a writ of *habeas corpus*, and discharged under the first petition, and then the County Sheriff discharged him from custody. ANON. - - In. II. *M.* 301

2. —— *Insolvent contracting new debts—Opposition on special grounds.*] When an allocation has been made in a former insolvency, and new debts have subsequently been contracted, the first allocation will not be interfered with, but a new one will be made. If creditors oppose on special grounds, the Court will deal with the case regardless of consequences. *Re* A. B. - - - - - In. III. *M.* 314

3. —— *Pending an allocation.*] An insolvent will be discharged from debts contracted pending an allocation made under a previous insolvency, creditors being allowed to apply afterwards, if they pleased, for a second allocation. ANON. [In. II. *M.* 385

INSOLVENCY — SERVICE — *Insufficient description of creditors in the schedule—Service of order for hearing—Creditors non-resident in the United Kingdom—Amount of Bail Rule.*] When a creditor is described merely as residing in London, service of the order for hearing on a person of that name in London will not be deemed good service, unless enquiry has been made at the residence of that creditor at the date of contracting the debt, to ascertain whither he has gone. When creditors reside out of the United Kingdom, it will be necessary to ascertain if they have any agent or representative here upon whom service may be effected. When debts are all returned as admitted, it is all the more necessary that service of the order of hearing should be perfect. *Re* TRAIN [In. II. *M.* 197

INSPECTION AND INTERIM PRESERVATION OF PROPERTY.

See PRACTICE—INSPECTION AND INTERIM PRESERVATION OF PROPERTY.

INSURANCE.

1. —— *Fire—Arbitration clause—Construction—Action—Staying proceedings—C. L. P. A. Act, 1856, sec. 14.*] A policy of fire assurance was conditioned that the assured should, if the goods were consumed, furnish an account of the loss or damage, and should, if required, prove said account; that, if any difference should arise touching loss or damage, the same should be submitted to arbitration, and that, if a fraudulent claim were made in respect of alleged loss or damage, the policy should be null and void, and the assured should forfeit compensation. The goods subject to the policy having been burned on September 17th, the assured informed the assurers on the 18th of the fire, and on the 23rd furnished his estimate of loss, but was not required to prove the same. The premises were examined on behalf of the assurers 23 days after the fire. The claim not having been adjusted, an action was threatened on November 22nd, and further correspondence took place respecting the service of a summons and plaint. On December 13th the writ was issued; and on December

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INSURANCE – *continued.*

19th the defendants offered a sum less than that claimed for compensation, and for the first time, suggested arbitration. The defendants having applied that the proceedings be stayed under the C. L. P. A. Act, 1856, sec. 14:—*Held*, that the motion should not be granted. *Per* Pigot, C.B., Fitzgerald and Hughes, B.B.:—If it were intended by the applicant to raise a question of fraud by reason of a wilfully exaggerated claim, the action should not be stayed. *Per* Pigot, C.B.:—Persons who are desirous of taking advantage of an arbitration-clause in a contract should so intimate, at the earliest possible moment, in the ordinary course of business. The applicants were bound to show, but had failed to do so, that at the time the writ was issued they had been willing to refer the matter in dispute. *Per* Hughes, B.:—The period at which the applicant's willingness to arbitrate should be shown to have existed, was when they first became aware of the action being brought; this had been shown, and they had exercised due promptitude. *Quære*, whether the plaintiff's claim should have been proved in the manner prescribed by the policy, as a condition precedent to adjustment by arbitration? DOOLEY *v.* THE LONDON ASSURANCE - - - - - - **E. VI. 31**

2. —— *Fire—Conditions—Incendiarism.*] H. M. set fire to his house, and the fire spreading burned the adjoining premises belonging to the plaintiff, which were insured. A condition of the policy provided that the company should not be liable for loss or damage "occasioned by or in consequence of incendiarism":—*Held*, that the plaintiff could not recover on the policy, as the fire was directly occasioned by and in consequence of H. M.'s act of incendiarism. WALKER *v.* THE LONDON AND PROVINCIAL FIRE INSURANCE CO. **[E. D. XXII. 84**

3. —— *Fire—Exemption from liability in case of incendiarism—Evidence—Burden of proof—Misdirection—New trial—Judicature Act, s. 48, sched. r. 32.*] In an action upon a fire policy to recover the value of hay, which had been destroyed by fire, the company pleaded a condition in the policy exempting them from liability in the event of the insured property being destroyed by the act of an incendiary, and averred that the fire had been wholly caused by an incendiary. At the trial it appeared, in cross-examination of the witness produced for the plaintiff, that proceedings had been taken by the company in the name of the plaintiff, to obtain compensation under the Grand Jury Act, on the ground that the fire was malicious, and that the plaintiff, at the instance of the company, had signed the necessary notice of application for such compensation, and that these proceedings resulted in the Grand Jury finding that the injury was malicious, and awarding a sum for compensation, less however, than the value of the property, and which the plaintiff refused to accept. The Judge at the trial, at the close of the plaintiff's case, having directed a verdict for the defendants, holding that the plaintiff was estopped, by the proceedings before the Grand Jury, from denying that the fire had been malicious:—*Held*, (1) that this was a misdirection; (2) that the 32nd sched. rule did not apply, so as to deprive the plaintiff of the right to a new trial. (*Diss.* Morris, C.J.) The operation of the 32nd sched. rule, as controlled by section 48 of the Judicature Act, discussed and explained. *Slattery* v. *Dublin & Wicklow Railway Co.* (3 App. Cas. 1155), considered and applied. O'BRIEN *v.* WEST OF ENGLAND INSURANCE CO. **[C. A. XIX. 17**

4. —— *Fire—Insurable interest, what constitutes.*] A. agreed to enter into partnership (for which purpose a deed was afterwards to be executed) to carry on the business on certain premises with B. who had mortgaged the premises to C. No deed of partnership was executed, and C. refused to allow A. to enter into possession of the premises, unless he would insure the goods thereon against fire. This A. did, and entered. The goods were destroyed by fire:—*Held*, that A. had such an interest as entitled him to effect the policy of insurance. JAMES *v.* THE ROYAL INSURANCE CO. **[C. P. IX. 194**

INSURANCE – *continued.*

5. —— *Fire—Pleading—Embarrassing reply—Defence negativing delivery of notice or account, as conditioned—Reply that defendants had knowledge of matters to be notified, and by their acts excused and prevented the plaintiff from giving notice.*] In an action on a policy of fire insurance the defendants pleaded that the policy was subject to a condition requiring the plaintiff to give notice of the fire and to deliver an account of the loss within 15 days, which condition was not complied with. The plaintiff pleaded by way of reply, that the defendants, through their agents, had full knowledge within said 15 days of the fire, and amount of loss, "and that plaintiff was excused and prevented by the acts and conduct of the defendants from giving the notice":—*Held*, that the reply was embarrassing, and should be amended, by substituting for the latter paragraph an averment that the defendants, having such knowledge, excused the plaintiff, by their acts and conduct, from giving the notice. DURKAN *v.* THE ALLIANCE BRITISH AND FOREIGN LIFE AND FIRE INSURANCE CO. - - - - **Q. B. D. XV. 85**

6. —— *Life—Accident — Condition—Instantaneous death—Impossibility of giving notice under the conditions.*] A policy of insurance against death, or injury from accident, contained a condition precedent, that in the event of any accident, fatal or not, notice must be given of the accident at the chief office of the company in London within seven days after the occurrence of the accident. The summons and plaint on the policy averred that the deceased met with an accident and died immediately, and his death was the instantaneous result of the occurrence; and that it was therefore, by the act of God, impossible to have delivered within seven days after the occurrence the notice in the condition; and that no other person having knowledge of the existence of the policy had within seven days any knowledge or notice of the accident:—*Held*, on demurrer, that the condition was not discharged by the act of God, which made death instantaneous, and the demurrer should be allowed. GAMBLE *v.* THE ACCIDENT INSURANCE CO. - - - **E. IV. *M.* 272**

7. —— *Life—Concealment of material fact—Sale of life policy—Fraud.*] In a suit to set aside because of fraud and fraudulent concealment of a material fact, an agreement to assign a policy of insurance, the Court ought not, in the absence of fraudulent concealment or active misrepresentation, to interfere on the single ground that one party to the agreement knew a fact which had some influence on, and of which the other was ignorant. THOMPSON *v.* LAMBERT **[E. II. *M.* 369**

8. —— *Life—Injunction—Action on policy fraudulently effected—Assignee—30 & 31 Vic., c. 144.*] A policy of insurance was effected by A. and assigned to B., who sued the company in his own name under 30 & 31 Vic., c. 144. The defendants at law filed a bill in Chancery to have the policy delivered up to the canceller, and to stay the action on the ground of A.'s fraud in effecting it. The defendant's answer denied all knowledge of the fraud. A motion for an injunction to restrain the action at law was refused. SCOTTISH AMICABLE ASSURANCE SOCIETY *v.* FULLER - - - **V. C. I. *M.* 777**

9. —— *Life—Injunction—Action on policy.*] B. died pending a contract for an insurance on his life. He has become transferee from C. of the proposal which, because originally made by C., did not contain the conditions which had been infringed, and the non-observance of which would have been a defence to an action on the policy. B.'s personal representative sued on the contract:—*Held*, that the action should be restrained by injunction. HANCOCK *v.* MACNAMARA **[C. II. *M.* 58**

10. —— *Life—Proposal—Fraudulent suppression—Misrepresentation—Action at law by assignee of policy—Injunction—Concurrent jurisdiction—Question for jury—Discretion of Court.*] For the purpose of effecting a life policy a proposal was made to an insurance company containing a declaration which was to form the basis of the contract, that if any untrue

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INSURANCE - *continued.*

averment were made in the proposal or in answer to questions put by the company's medical officer, the policy should be void. A bill having been filed by the company for the cancellation of the policy, as having been obtained by fraudulently misstating in the proposal that the life had not been proposed to and rejected by any other office, and in answer to the medical officer that the assured was of temperate habits, a motion was made to restrain an action at law upon the policy, brought by an assignee thereof:—*Held*, that the Court had full jurisdiction to restrain the action, but that the case would be more suitably tried at law before a jury; and so, that the motion should be refused. LIFE ASSOCIATION OF SCOTLAND *v.* M'BLAINE - - - - - - **R. IX. 41**

11. —— *Marine—Names of underwriters not expressed in policy—Registration of association for mutual insurance—Illegal company—Power of attorney—Covenant—Failure of consideration—Uncertainty of contract—Stamps*—25 & 26 *Vic., c.* 89, *s.* 4—30 & 31 *Vic., c.* 23, *s.* 7.] C., the manager of two incorporated associations for mutual marine insurance, received a telegram and letter from D., offering a vessel for insurance in the amount of £600 in each of said associations, and replied by telegram that the vessel would be accepted for insurance in the amount of £500 in each of said associations, at the same time forwarding a form of tender to be filled up. D. filled up the form without inserting the amount of the sums for which the insurances were to be effected, the amount of the estimated premiums being also left in blanks, and thereby authorised C. to enter his (D.'s) name as member of the associations, pursuant to their existing or any subsequent rules, which he agreed to abide by; and having signed the form he returned it to C., writing therewith that he hoped there would be no difficulty in getting £1,500 on the vessel. C. thereupon procured and sent to D. two policies of insurance on the vessel for £500 in each of the associations, subject to the payment of an estimated premium of £12 per cent. per annum, and of such additional premiums as should be required, as provided by the rules annexed to the policies and forming part thereof. The policies were executed by C., purporting to be *per* procuration of the several members of the associations; but the names of the underwriters, who consisted of more than twenty persons, were not specified in the policies as required by 30 & 31 Vic., c. 23, s. 7, nor were the associations registered as required by 26 & 26 Vic., c. 89, s. 4. Subsequently, in April, 1874, D. executed a deed poll, signed by the several underwriters of both associations, but bearing a stamp for only a single power of attorney, whereby, after stating that the parties thereto were members of said associations, C. was appointed their manager, and their and each of their attorneys to sign or underwrite policies of insurances on vessels belonging to them or any of them; to sue for the premiums, &c.; and to draw upon them respectively for contributions, &c., when such should become due to or from any of them respectively by reason of any insurance; and whereby the parties then covenanted to pay such manager all contributions which he, by the existing or any future rules of the associations, or either of them, should be empowered to levy. The only rule in that behalf empowered the manager to levy calls of one-fourth of the estimated annual rate, *i.e.*, the rate or quantity of the sum assured by such member; and by the policies the insurers bound themselves to contribute, each one according to the rate and quantity of his sum therein assured. D. afterwards presented a petition for arrangement with his creditors, whereupon C. tendered a proof of debt, claiming in his capacity of manager of the associations a sum due to them in respect of calls for premiums on the policies:—*Held*, that the policies were void under 30 & 31 Vic., c. 23, s. 7, by reason of the names of the underwriters not having been expressed therein; that the associations, as being for mutual insurance, had for their object the "acquisition of gain," within the meaning of 25 & 26 Vic., c. 89, s. 4, and therefore not having been registered, were illegally constituted, and could not appoint an agent to contract in their behalf; that, even if the associations were legally constituted, the arranging debtor would not

INSURANCE - *continued.*

be bound by his covenant in the deed (even if it had been sufficiently stamped) as the consideration for it—the obtaining of valid policies—had failed, and as, if regarded as an independent contract, it was for sea insurance, and therefore invalid under 30 & 31 Vic., c. 23, s. 7, by reason of the rules not being expressed in the policy, and as the amount payable for calls was not fixed or ascertained so as to constitute a provable debt; and that the documents *dehors* the policies and deed, if regarded as evidence of an independent contract, in addition to being subject to like objections, showed no concluded agreement in consequence of the amounts being unsettled, and could not be referred to in evidence because unstamped. *In re* D. **[B. XI. 97**

—— Assignment—Bankruptcy—Interpleader - **XI. 73**
See PRACTICE—COMMON LAW—INTERPLEADER. 6.

——Life policy—Action on—Pleading - **II. *M.* 211**
See PRACTICE—COMMON LAW—PLEADING. 17.

—— Order and Disposition.
See BANKRUPTCY—ORDER AND DISPOSITION. 2, 3.

—— Plate Glass—Malicious injury—Compensation—Owner **[XXVII. 116**
See MALICIOUS INJURIES. 2.

——Pleading - - - - **VII. *M.* 400**
See PRACTICE—COMMON LAW—PLEADING. 70.

—— Premiums—Interest on money advanced for payment of **[I. *M.* 731**
See INTEREST. 1.

INTEREST.

1. —— *Annuity charged on lands — Judgment — Collateral decree for Arrears.*] A tenant for life of land granted an annuity to A. in consideration of £4,000. The life estate, a judgment, and two policies of insurance were assigned to a trustee to secure the annuity. A further policy on the life of the grantor was effected, which was to be kept up out of the annuity. On the annuity falling into arrear, a cause petition was filed and a receiver appointed over the lands, and in 1853 a decree found a certain sum due to the petitioners in respect of it, which was declared to be well charged upon the lands. The tenant for life died in 1863, and in 1866 a suit to administer his real and personal estate was instituted, and the administrator of A. claimed against the assets the arrears of the annuity so found due, and further arrears and interest. The Court decided that no interest was payable on the arrears of the annuity, or on the sum declared to be payable by the decree, or on the sums advanced to keep up the policies. BEAMISH *v.* FARMER - - - - **R. I. *M.* 731**

2. —— *Contract for loan—Interest until completion or until contract be broken off and interest paid—Penalty.*] A contract for a loan contained a stipulation that interest should be payable until the completion, or until the same was broken off held good on demurrer. The averment of forbearance at interest implies an agreement to pay interest for the forbearance. LAWLESS *v.* BRYCE - - **C. P. V. 5**

3. —— *Money due—Count for—Pleading.*] A count for interest upon money due from the defendant to the plaintiff, and forborne at interest by the plaintiff to the defendant, was held good on demurrer. The averment of forbearance at interest implies an agreement to pay interest for the forbearance. LAWLESS *v.* BRYCE - - **C. P. V. 5**

4. —— *Rate of—None fixed—Charge on land—Evidence of former payment—G. O.*, 1867, 211.] By marriage settlement of 24th February, 1824, certain lands were vested in trustees upon trust for R. R., the husband, for life, and from the death of R. R., in case there should be issue of the marriage, in trust to the use and behoof of such child and children of said intended marriage, whether male or female, in such shares, &c., and charged and chargeable with such sum and sums in favour

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INTEREST—*continued.*

of the other children of the marriage as R. R. should by deed or will appoint. R. R., by his will in 1841, charged the lands with £2,500, payable on his death, with interest, but did not specify the rate of interest. A tenant for life of the lands paid interest at 5 per cent. On his death a petition for sale was presented by a person in whom a portion of the charge was vested, and an absolute order for sale was made:—*Held*, that notwithstanding the payment at higher rate by the tenant for life, the 211th General Order applied retrospectively, and 4 per cent. was the amount of interest payable. *Leslie* v. *Leslie* (1 Ll. & Goold *temp.* Sugden 1), and *Purcell* v. *Purcell* (2 Dr. & War. 217), followed. *Ruttledge* v. *Ruttledge* (1 Dr. & War. 248), distinguished. *Balfour* v. *Cooper* (23 Ch. Div. 472), commented on. *In re* ROBINSON'S ESTATE - **L. J. XXV. 8**

5. —— *Rate of—Judgment on bond—Rate of interest not specified—Distinctions between legal and equitable claims as to interest allowed.*] If a contract has been made for payment of a specified sum, with interest, but the rate of interest has not been mentioned, the rate to be allowed by the Court will depend on whether the claim is a legal one or merely equitable. In the latter case the interest allowed will be that which is allowed by the Court of Chancery—viz., 4 per cent. In the former the rate is for the discretion of the judge, who will allow such rate as in his opinion a jury would award if an action had been brought. *In re* DAY'S ESTATE **[L. R. C. X. 18**

6. —— *Rate—Legacy.*] A decree in a suit, commenced by cause petition directed, that legacies should be paid with interest from twelve months after testator's death:—*Held*, that the interest was to be calculated at £4 per cent. under G. O. 211 (1867). SEALY *v.* STAWELL - - **R. III. *M.* 238**

7. —— *Rate—Usurious—Setting aside deed.*] Where a loan is secured by a deed and the interest is at a usurious rate (60 p. c.), if the position of the debtor was such as left him at the mercy of the creditor, the Court will set aside the deed. RAE *v.* JOYCE - - - **V. C. XXVI. *M.* 324**

[This was affirmed on appeal, 29 L. R. Ir. 500.]

8. —— *Writ of Sequestration.*] A writ of sequestration is not in the nature of an execution, but a process for contempt, and interest at £5 per cent. is payable on an amount found due under a decree, in respect of which a writ of sequestration had been issued. SMITH *v.* BRAZIER - **C. X. *M.* 387**

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INVESTMENT—Trust property.
See Cases under TRUSTEE—INVESTMENT.

IRISH CHURCH—*Clergymen—Mandamus—Marriage returns to Registrar-General—Clergymen of Church of Ireland must make quarterly returns*—7 & 8 *Vic., c.* 81, *ss.* 63 *to* 74—26 & 27 *Vic., c.* 27, *ss.* 6, 9, 10—32 & 33 *Vic., c.* 42—33 & 34 *Vic., c.* 110.] The provisions of the 7 & 8 Vic., c. 81, as to the registration of marriages applicable to the clergy of the then united Churches of England and Ireland, apply to incumbents of the present Church of Ireland. R. (REGISTRAR-GENERAL) *v.* MAGEE - - - - - - **Q. B. D. XXVII. 59**

IRISH CHURCH ACT.

1. —— *Annuity—Curate—Guarantee of sum in addition to salary.*] A curate had, before the Irish Church Act, accepted his curacy on the express terms that an annual sum from the parishioners, in addition to his salary from the rector, should be guaranteed to him:—*Held*, entitled to an annuity equal in amount to both. *In re* ORR - - - **C. C. T. V. 67**

2. —— *Annuity—Payable quarterly—Defendants authorised by Privy Council regulating payments half-yearly.*] Though by sec. 15 of the Act annuities are payable quarterly, yet the rules of the Church Temporalities Commissioners, which received the sanction of the Privy Council, and which regulate the limits of payments to six months, are binding on annuitants, and they cannot insist upon quarterly payments. WHITTY *v.* CHURCH TEMPORALITIES COMMISSIONERS **[Rec. C. XII. *M.* 9**

3. —— *Archbishop and Bishop's tax*—3 & 4 *Wm. IV., c.* 37—*Ecclesiastical Commissioners—Transfer of property—Commissioners of Church Temporalities—Church Act, sec.* 11.] The right to receive and enforce the tax payable under the 3 & 4 Wm. IV., by archbishops and bishops to the late Ecclesiastical Commissioners, has been transferred to the Commissioners of Church Temporalities under the Irish Act, sec. 11. *In re* THE LORD PRIMATE - - **C. C. T. V. 13**

4. —— *Charge of tithe rent charge before passing of Act—Commutation of Clergyman—Liability.*] A clergyman, who before the passing of the Act charged tithe rent charge with an annuity, subsequently left the country, receiving commutation money. In an action by the owners of the annuity against the defendants:—*Held*, (1) that the plaintiffs were not bound to give notice to the defendants of the deed; (2) that the clergyman's resignation had not created an equitable

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IRISH CHURCH ACTS—*continued.*

answer to the plaintiffs' claim; and (3) that an account should be taken of what was due thereunder. WARE *v.* COMMISSIONERS OF CHURCH TEMPORALITIES - - **R. X. *M.* 468**

5. —— *Compensation—Erroneous return by incumbent of the amount of the tithe rent charge—Mode of calculating poor rate—Permanent curate—Calculation for five years—Visitation fees—Deduction of tax formerly payable to Ecclesiastical Commissioners.*] A clergyman who returned by mistake a smaller amount of rent charge is not bound by it. The Commissioners have the power of calculating the poor rate for any average they consider proper, which will be three or five years, according to circumstances. A voluntary payment made to a curate cannot be deducted. The salary of a curate is to be deducted from the incumbent, although he has not been five years in the incumbency. Visitation fees ought not to be deducted, but the ecclesiastical tax should be. *In the matter of* KING - - - - - - **C. C. T. IV. *M.* 318**

6. —— *Curate—Sequestered benefice—Transfer—Right to Compensation—Sec.* 66.] A curate who, in addition to his curacy, has discharged the duties of a sequestered benefice, does not by his acceptance of a vacant benefice after the date of the Irish Church Act, forfeit his right to compensation under sec. 66 of that Act, in regard of the stipend paid him for his duties in the sequestered benefice. Such compensation is subject to the deduction of the proportion thereof from the date of his acceptance of the new benefice to the 1st of January, 1871, which will be paid to the Representative Body of the Church. *In re* EATON - **C. C. T. V. 14**

7. —— *Freehold office—Diocesan Architect—Irish Church Act, secs.* 16 & 17.] The office of Diocesan Architect is not such a freehold office as under the provisions of the Irish Church Act, sec. 16, parts 2 & 17, would entitle the holder thereof to compensation for loss of fees. *In re* CARROLL **[C. C. T. V. 12**

8. —— *Joint registrars—Right of survivorship—Compensation.*] Joint registrars of united dioceses under the 27 & 28 Vic., c. 54, are not, under sec. 45 of the Irish Church Act, each entitled to a deferred annuity contingent on his surviving his partner. *In re* NESBIT - - - **C. C. T. V. 68**

9. —— *Joint registrars of several dioceses—Compensation.*] Joint registrars of several dioceses receiving the fees jointly, and appointed by patent to them and the survivors of them, are entitled to an annuity to them and the survivors of them, calculated on the average of their aggregate receipts from all the dioceses. *In re* KEOGH - - - **C. C. T. V. 69**

10. —— *Perpetual curate—Stipend deducted—Sec.* 14.] Under the Church Act, sec. 14, the stipend of a perpetual curate will be deducted when he has been appointed beyond all power of removal at any future time, and his salary has been created a legal charge on the benefice. *In re* ROBINSON **[C. C. T. V. 13**

11. —— *Proctor of Ecclesiastical Courts—Proctor of office—Officer of Court of Faculties—Compensation—Irish Church Act, sec.* 45—*Matrimonial Causes (Ireland) Act, sec.* 30.] A proctor of the Ecclesiastical Courts, who was also proctor of office in those Courts, and an officer of the Court of Faculties, is not entitled to compensation for loss of fees, under the Matrimonial Causes (Ir.) Act, sec. 30, and the Irish Church Act, sec. 45. Such offices are of no special character, but involve only the ordinary relation in which an attorney or solicitor stands to the Court whereof he is a practitioner. *In re* SAMUELS **[C. C. T. V. 13**

12. —— *Purchase of advowsons—Incapacitated owners—Money lodged in Court—Practice.*] Money lodged in Court as the value of advowsons in the case of incapacitated owners, under the 57th section of the Irish Church Act, 1869, was not allowed to be transferred to a different credit, but directed to be invested in Government new 3 per cent. stock to the credit of the matter in which it was lodged. *In the matter of* THE COMMISSIONERS OF CHURCH TEMPORALITIES IN IRELAND. *Ex parte* MONCK - - - **V. C. VIII. 191**

IRISH CHURCH ACT—*continued.*

13. —— *Tithe rent charge—Private property*—11 & 12 *Geo. III., c.* 16.] A parish of the Church of Ireland, which was originally a perpetual cure, created under the 11 & 12 Geo. III., c. 16, though disestablished by the Irish Church Act, 1869, is not necessarily disendowed; and it may still claim the benefit of the tithe rent charge for its support, where the tithes out of which it was originally endowed were private property. (By Murphy, J.) REPRESENTATIVE BODY OF THE CHURCH OF IRELAND AND REV. CANON NEWLAND *v.* RICHARDSON - - **Q. S. & Cir. Cas. XXVII. 79**

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JOINT JUDGMENT—Husband and wife - **X. 100**
See PRACTICE—COMMON LAW—GARNISHEE. 13.

JOINT TENANCY.

1. —— *Investment by two sisters in trade of money in joint names.*] M. and C., who were sisters, carried on a trade together. They invested various sums in stock, the money being chiefly derived from their trade, at first in their separate names, and later in their joint names. No reason was given for their change of dealing. The executor of each, on her death, treated the last-mentioned investments as if they were held in joint tenancy:—*Held*, that the sisters were joint tenants of the stock. ROGERS *v.* DUFFY **R. XXVII. *M.* 9**

2. —— *Severance—Equitable interest—Legal estate.*] A. and B., being entitled as joint tenants to an equitable interest in a chattel real expectant on the death of X., concurred in a deed by which the entire legal estate was vested in A., in trust for X. for life, with an executory limitation over in favour of A. and B.:—*Held*, upon the death of X. in the lifetime of A. and B., that the equitable interest in the one undivided moiety, to which A. now became entitled in possession, was absorbed in the legal estate already vested in him, and that the joint tenancy between A. and B. was thereby severed. CONNOLLY *v.* CONNOLLY - - - - **Ch. A. I. *M.* 298**

—— Notice to quit served on one of two joint tenants.
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JUDGMENT.

1. —— *Joint bond—Charge on lands—Execution—Payment by surviving conusor—Statute of limitations.*] A payment by one conusor of a joint judgment is a sufficient payment to prevent the judgment being barred by the Statute of Limitations 3 & 4 Wm. IV., c 27, s. 40) as to the land of the other conusors. *Re* CORBETT'S ESTATE - - L. E. C. VII. 68

2. —— *Re-registration — Statute of Limitations — Effect of judgment entered prior to the Judgment Mortgage Act, upon lands subsequently acquired under a voluntary conveyance—3 & 4 Wm. IV., c. 42—3 & 4 Vic., c. 105.*] A judgment charged on the land of A. for £500 was put in settlement in 1843 upon trust for the owner for life, or until bankruptcy or insolvency, with remainder over. The fund was lent to him on his bond, on which judgment was entered up in 1845, and in 1849 he became insolvent. A suit was instituted against the trustees in respect thereof, and one of them paid £500 into Court. In 1869 the judgment entered on the owner's bond was registered as a mortgage against a leasehold interest which he had acquired in 1861:—*Held*, (1) that the omission to re-register the judgment was unintentional, since the amount was sought to be recovered from the conusor himself; (2) that the owner being under the terms of the settlement the person to pay and receive the interest until his insolvency in 1849, the bar of the Statute of Limitations did not apply; (3) though a judgment obtained prior to the passing of the Judgment Mortgage Act cannot be registered as a judgment against lands acquired after the passing of the Act, and that under a voluntary conveyance, it was immaterial as the judgment remained a charge on the lands under 3 & 4 Vic., c. 105. *Re* KEAY'S ESTATE - - - L. E. C. IV. *M.* 4

3. —— *Satisfaction of—Common Law Procedure Act*, 1853, *sec.* 144.] An application on behalf of the defendant to make absolute a conditional order to enter up satisfaction on a judgment (on foot of a bill of exchange, accepted by him) on the ground that the paintiff had given him a release from the bill, on payment of a smaller sum, was resisted by the plaintiff on the ground that he had been induced to consent to release the defendant on part payment of the demand, by a misrepresentation that his circumstances would not allow him to pay the full amount:—*Held*, that the case did not come within the C. L. P. Act, 1853, sec. 144 as it did not clearly appear that the judgment was satisfied. BRADLEY *v.* M'DERMOTT - - - - - - Q. B. V. 133

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See PRACTICE—JUDGMENT.
PRACTICE—COMMON LAW—JUDGMENT.

—— Mortgage

See Cases under MORTGAGE—JUDGMENT MORTGAGE.

—— Motion for—Action under Summary Procedure on Bills of Exchange Act - - - - - XII. 54

See BILL OF EXCHANGE. 5.

—— Vitiating—Appearance of Minor by Attorney—Error in fact - - - - - - I. *M.* 661

See PRACTICE—COMMON LAW—JUDGMENT. 1.

JUDGMENTS EXTENSION ACT, 1868.

1. —— *Certificate — Non-statement of christian names.*] A certificate of an English judgment, in which the judgment debtor was described as "Hand & Montgomery, coal merchants," without stating his christian name, is sufficient for the purpose of registration under the Judgments Extension Act, 1868. SMITH *v.* HAND - - - C. P. D. XV. 38

2. —— *Civil bill decree—Removal by* certiorari *into superior Court—27 & 28 Vic., c. 99, s. 9—Special certificate.*] Form of certificate, under "The Judgments Extension Act, 1868," for the purpose of registration in Scotland, of a judgment obtained in a Civil Bill Court and removed into a superior Court by *certiorari* under 27 & 28 Vic., c. 99, s. 9. M'DERMOTT *v.* WALLS - - - - - - Q. B. IX. 177

JUDGMENTS EXTENSION ACT—*continued.*

3. —— *Form of certificate—Variation from form in schedule to Act—Non-statement of service in action removed from inferior into superior Court—Setting aside registration of certificate.*] The Court will set aside the registration by the master of a certificate, issued by the master of an English superior Court under the Judgments Extension Act, 1868, where there is a serious variance between the form of the certificate and that given in the schedule to the Act, and such variance is not of an accidental character, but arises essentially out of the facts of the case. Therefore, where a defendant, resident in Ireland, out of the jurisdiction of the Court of Record for the borough of Derby, had been sued therein by an English plaintiff, although the Court had not jurisdiction to effect service of process on the defendant, and a judgment, obtained in default of appearance, was afterwards removed into an English superior Court, under 1 & 2 Vic., c. 110, s. 22, the Court here set aside the registration under 31 & 32 Vic., c. 54, s. 4, of the certificate issued by the master of the English Court, which contained no statement as to service on the defendant according to the prescribed form. PART *v.* SCANNELL [C. P. IX. 193

4. —— *Judgment more than twelve months old—Application to register certificate.*] An absolute order was made, on an *ex parte* motion, to register a certificate of an English judgment, under the Judgments Extension Act, 1868, sec. 1, where the judgment had been obtained more than a year previously and was still unpaid. BOSS *v.* O'CONNOR - C. C. IX. 231

5. —— *Motion for leave to register certificate of judgment.*] A motion for leave to register certificate of an English judgment under the Judgments Extension Act, the certificate showing that the judgment was more than 12 months old, grounded on an affidavit, was granted as of course. CARTER *v.* CHIPPELAW [C. P. VII. *M.* 246

6. —— *Order for costs on interpleader summons—Certificate of, for registration as a judgment—Interpleader Act, sec. 7—O. XLI., r.* 20.] An order for costs, under the interpleader Act (9 & 10 Vic., c. 64), made against an execution creditor, who, being summoned, does not appear, cannot be regarded, notwithstanding the terms of O. XLI., r. 20, as a judgment within the meaning of the Judgments Extension Act, 1868. BOOTH *v.* EGAN - - - - - - Q. B. D. XIV. 48

7. —— *Rule or order—Application for special certificate.*] The Court refused to direct the Master to give a special certificate of an order of the Court for payments of costs in order to enable the party to register it in England under the Judgments Extension Act. GAROD *v.* HALLIDAY - E. IV. *M.* 551

—— Security for Costs.

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PRACTICE—COMMON LAW—SECURITY FOR COSTS. 30.

JURIES ACT, 1871—Expenses in connection with—Presentment.

See Cases under GRAND JURY—PRESENTMENT—JURIES ACT, 1871.

JURISDICTION—Admiralty.

See Cases under PRACTICE—ADMIRALTY—JURISDICTION.

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BANKRUPTCY—STAYING PROCEEDINGS.

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—— Court of Bankruptcy—Setting aside lease **XI. 133**

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—— Court of Chancery.

See PRACTICE—CHANCERY—JURISDICTION.

—— Courts of Common Law—Defendant out of jurisdiction—Setting aside judgment - - - **I. *M.* 7**

See PRACTICE—COMMON LAW—JUDGMENT. 24.

—— Judge of Assize—Comparison of handwriting **IX. 120**

See EVIDENCE. 9.

—— Justices.

See Cases under JUSTICES—JURISDICTION.

—— Justices—Road contractor—Order to enter lands [**I. *M.* 477**

See GRAND JURY—ROAD CONTRACTOR. 5.

—— Landed Estates and Land Judges Court.

See Cases under PRACTICE—LANDED ESTATES COURT—JURISDICTION.

JUROR.

1. —— *A. sworn in mistake for B. for the trial of a prisoner.*] The fact that a juror was sworn by mistake for another of the same surname was held not to prevent the verdict being received from the jury, and the Judge declined to reserve a case. R. *v.* POWER - - - **C. C. T. XVI. *M.* 133**

2. —— *Jurors' Qualification Act*, 1876—*Branch manager of banking company.*] The head officer or manager of a branch office of a banking company is not qualified and liable, as such, to serve on juries, within the Jurors' Qualification Act, 1876, sec. 2. *Re* JURORS' QUALIFICATION ACT, 1876 [**Q. S. XI. 21**

3. —— *Summoning—Sheriff.*] The sheriff in summoning a juror should have regard to the attendance and service of jurors during the two preceding years. ANON. **Q. B. IX. *M.* 84**

——Age—Jury panel—Indictment **I. *M.* 45; II. *M.* 399**

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—— Special—Payment of—Railway traverse - **XX. 27**

See RAILWAY—TRAVERSE. 3.

—— View—Action for obstruction of light and air—Setting aside verdict - - - - **I. *M.* 6**

See LIGHT. 3.

JUS TERTII—*Trover—Conversion of goods wrongfully acquired—Bill of sale—Distress for rent—Damages.*] A. assigned a pianoforte to B., under a bill of sale by way of mortgage security for a debt, with a clause for re-demise on payment, a proviso that until default A. should retain possession, and a power of sale by B. on default. Subsequently A. transferred the pianoforte to C. under a *bonâ fide* sale, and C. took possession of the pianoforte accordingly, and removed same from A.'s premises. D., who was the landlord of A., and to whom a year's rent was due, then in ignorance both of the mortgage to B. and the sale to C., and without the knowledge of B., caused the pianoforte to be taken and replaced in the house of A. C. asked D. why he had done so, and D. replied that he had done so for the benefit of A.'s creditors, as he was a bankrupt; but there was no express demand of the pianoforte by C., or refusal to deliver possession by D. On the next day D. distrained for

JUS TERTII—*continued.*

the rent due upon A.'s premises, and seized the pianoforte under such distress. B. thereupon claimed it as his property under his bill of sale, but did not appear to controvert the right of distress. D. proceeded, however, to sell the pianoforte under the distress, and it was purchased by B., who then paid D. the amount due for rent and costs, and retained the balance of the purchase-money. In an action of trespass and trover brought by C. against D., in respect of the seizure and conversion of the pianoforte:—*Held*, that the defendant was liable, and was not entitled to rely, as against C., upon the *jus tertii* by reason of B.'s property in the pianoforte. *Held*, further *per* O'Brien and Barry, J.J. (May, C.J., *diss.*), that the plaintiff was entitled to substantial damages, measured in accordance with the reservation at the trial, at the value of the chattel. HAGGAN *v.* PAISLEY **Q. B. D. XIII. 27**

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JUSTICES—APPEAL FROM.

1. —— *Case stated—Notice.*] Under the 20 & 21 Vic., c. 43, s. 2, service of notice of an appeal from a conviction at Petty Sessions upon the respondent is a condition precedent to hearing the appeal, and service of a copy of the case stated by the magistrates without such notice is not sufficient. LITTLE *v.* DONNELLY - - - - - - **Q. B. V. 76**

2. —— *Case stated—Setting down for hearing—Time—Vacation—Rules*—20 & 21 *Vic., c.* 43—*O. XXVII., r.* 6—*O. LVIX., rr.* 5, 6.] The Court has power to hear a case stated by the magistrates under the Crimes Act, although the case is not set down for hearing within ten days, and if necessary can extend the time for so doing. As to whether the Long Vacation should count in the computation of such time, *quære.* R. (SUPPLE) *v.* SEGRAVE - - **E. D. XXII. 94**

3. —— *Quarter Sessions—Appeal from dismiss—Order reversed—Issuing warrant to execute sentence—Jurisdiction of County Court Judge.*] The County Court Judge has no jurisdiction to issue a warrant to carry out the sentence of the Court in a case where the judgment of the Justices dismissing a complaint is reversed by the County Court Judge sitting alone. FLATTERY *v.* LARKIN **Q. S. XXV. *M.* 577**

4. —— *Quarter Sessions — Costs — Estreating recognizances —Imprisonment.*] From a conviction on a summons at the suit of a private party before the magistrates the defendant appealed, and entered into the usual recognizances. The magistrates had ordered him to pay a fine of £2 for compensation, and 10*s.* costs, or in default to be imprisoned for one month. On appeal the conviction was affirmed, with 40*s.* costs. The 40*s.* costs were not paid, and the defendant went to gaol. The recognizance was estreated by the magistrates:—*Held*, on appeal, that the order of the magistrates estreating the recognizance should be reversed. MANNION *v.* RYAN [**Q. S. XXVII. *M.* 321**

5. —— *Quarter Sessions—First day of Quarter Sessions—Crown day—Excise Acts*—7 & 8 *Geo. IV., c.* 53, *ss.* 82, 83.] Where notice of appeal to the next General Quarter Sessions of the Peace is required by statute to be given within seven clear days at least before such appeal is to be finally adjudged and determined; and appellant gave notice on the 17th June, 1890, that the time of hearing of such appeal should be the 28th June, 1890, that being the first day fixed for the transaction of the civil business of the Quarter Sessions, and the Crown day upon which such appeal could only be heard was fixed for the 3rd July, 1890:—*Held* (reversing the order

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JUSTICES—APPEAL FROM—*continued.*

of the Chairman and Justices), that the General Quarter Sessions of the Peace, including both civil and criminal business, began on the 28th June, 1890, and that the notice of appeal was correct. R. (SIDES) *v.* M'GARVEY **[E. D. XXV. 25**

6. —— *Quarter Sessions—Jurisdiction—Petty Sessions Act,* 14 & 15 *Vic., c.* 93, *s.* 24—*Amendment.*] Where it was stated in all the documents prescribed by the Petty Sessions Act, s. 24, that the appellant appealed from the order of the Justices "to the next General Quarter Sessions at L.," except in Form H., where the appellant stated that he appealed to the "next Recorder's Sessions at L.," and the appeal came on for hearing at the next General Quarter Sessions for L., after the date of "the next Recorder's Sessions at L.":—*Held,* that Form H. being the record which brought the case into Court on appeal before the Chairman and Justices at Quarter Sessions, and that the appellant having stated therein that he appealed to a different Court, there was no jurisdiction to try the appeal. *Held,* also, that the Chairman had no power to amend. HENRY *v.* ROSS **[Q. S. XXVI. *M.* 659**

7. —— *Quarter Sessions—Jurisdiction—Service of notice of appeal.*] The Court has no jurisdiction to entertain an appeal from the Justices of which seven days' notice has not been given to the respondent. CONWAY *v.* HURST **[Q. S. XI. *M.* 42**

8. —— *Quarter Sessions—Mandamus—Form of notice—Statement as to intention to prosecute—Appeal*—14 & 15 *Vic., c.* 93, *s.* 24 (1) (5).] A conviction for assault having been pronounced at Petty Sessions on Sept. 8th, the defendant on the same day served notice on the Clerk of Petty Sessions of his intention to appeal, and entered into recognizance to prosecute same. On October 18th he served the complainant with notice that it was his intention "to appeal"—sec. 24 (5) of the Petty Sessions Act (14 & 15 Vic., c. 93) requiring the appellant to give notice of his intention "to prosecute his appeal." On an application for a writ of mandamus, to compel the hearing of the appeal at Quarter Sessions, notwithstanding objection made that the terms of the notice to the respondent were not in conformity with the statute:—*Held* (Lawson, J., *diss.*), that, under the circumstances, the notice of appeal given to the respondent sufficiently complied with the requirements of the statute. R. (DANIEL) *v.* THE CHAIRMAN & JUSTICES OF TIPPERARY - - - **Q. B. D. XVIII. 97**

9. —— *Quarter Sessions—Notice—Sunday.*] Sunday is to be included in the three days for serving notice of appeal. WILSON *v.* CARUTH - - - - **Q. S. XXVI. *M.* 403**

10. —— *Quarter Sessions — Notice — Seven days' notice — Stamp—Mandamus*—14 & 15 *Vic., c.* 93, *s.* 24—21 & 22 *Vic., c.* 100, *ss.* 8, 14.] In an appeal under sec. 24 of the Petty Sessions (Ireland) Act, 1851, the seven days' notice of appeal provided for by sub-section 5 thereof does not require to bear a stamp. R. (COUGHLAN) *v.* RECORDER AND JUSTICES OF CORK **[Q. B. D. XXVII. 8**

11. —— *Quarter Sessions—Railway strike—Signalman leaving post—Railway Acts,* 1840, 1842—*Petty Sessions Act,* 1851.] An appeal lies from an order made by a Metropolitan Police Magistrate under the Railway Acts of 1840 and 1842 against a signalman for leaving the signal-posts during a strike, such appeal being to the Recorder. NEILL *v.* DUBLIN W. AND W. RAILWAY CO. - - - **Rec. C. XXV. *M.* 103**

12. —— *Recognisance — Amendment.*] A recognisance had been, subsequent to the passing of the County Courts (Ireland) Act, 1877, entered into in the form prescribed by the Petty Sessions Act:—*Held,* that the Court had jurisdiction under 27 & 28 Vic., c. 99, s. 50, to amend it. WOLSELEY *v.* PORTARLINGTON LOCAL FUND - - - **Q. S. XI. *M.* 550**

13. —— *Solicitor.*] Only one solicitor will be allowed to appear for the same party in an appeal from the Judge. ANON. **[Q. S. XI. *M.* 549**

JUSTICES—APPEAL FROM—*continued.*

14. —— *Stamping of notice of appeal.*] The notice of appeal served on the respondent must be stamped. DUNLOP *v.* WRIGHT **[Q. S. XI. *M.* 42**

15. —— *Summary conviction at Petty Sessions—Petty Sessions Act, s.* 24 (5)—*Service of notice of appeal—"Opposite party."*] The phrase "notice to the opposite party" in the Petty Sessions Act, s. 24 (5), does not necessitate personal service on the party who appeared in the Petty Sessions (O'Brien, J., *diss.*) *Per* Holmes and Gibson, J.J.: Service on any person, who at the time of service is authorised as agent to accept service, is sufficient. *Per* Murphy, J.: Service at the house of the opposite party is sufficient, and, *semble,* by posting a letter to his address. *Per* O'Brien, J.: The expression "party" in sec. 24 (5) does not include the agent of such party. R. (CAMPBELL) *v.* DONEGAL JUSTICES **Q. B. D. XXIV. 47**

16. —— *Summary Jurisdiction Act* (14 & 15 *Vic., c.* 92, *s.* 23) *and Petty Sessions Act* (14 & 15 *Vic., c.* 93, *s.* 24)—*Non-attendance of applicant in Court below*—Ex parte *order.*] M. issued a summons against F., which was properly served under sec. 16, sub-sec. 1, of the Summary Jurisdiction Act, to recover £4 11s. 6d. wages, but F. did not attend on the hearing thereof. An order having been made *ex parte* that F. should pay M. £4 11s. 6d. wages and 12s. 6d. costs, F. appealed under sec. 23 to the next Court of Quarter Sessions of the Peace for the borough:—*Held,* that the order made by the magistrates was one for payment of money within the meaning of sections 14 & 15 Vic., c. 92, s. 23, and 14 & 15 Vic., c. 93, s. 24, and that an appeal lay notwithstanding that the order had been made. *Burnside* v. *Mercers' Co.* (XI. 60), distinguished. FITZPATRICK *v.* M'CULLOUGH **[Q. S. XXII. 36**

—— Audience of two solicitors for same party **X. *M.* 256**
See TOWN COMMISSIONERS. 10.

—— Case stated—Practice - - - **XIX. 57**
See JUSTICES—OFFENCES. 15.

—— Licensing Acts.
See Cases under LICENSING ACTS.

—— Order restraining cutting of turf—Time **XXI. 31**
See TURF. 1.

—— Quarter Sessions—Disqualification - **XXIV. 20**
See JUSTICES—DISQUALIFICATION. 1.

JUSTICES—CERTIORARI.

1. —— *Change of Petty Sessions Court House—Holding of inquiry—Adjournment from Court to magistrate's private room—Quashing proceedings at instance of magistrate who took part therein*—14 & 15 *Vic., c.* 93, *s.* 1.] On a proceeding under the Petty Sessions (Ir.) Act, 1851 (14 & 15 Vic., c. 93), s. 1, to change the place at which Petty Sessions should be held from a Court house at C. to one at B. in the same Petty Sessions district, the inquiry was opened and partly heard in the Court of Quarter Sessions, when it was proposed that the magistrates should retire to their private room, and there hear and discuss the matter. A number of magistrates, including Sir H. W. Becher, the owner of the Court house at C., who made no objection to the place or manner of the discussion, retired accordingly; the chairman and others remaining in Court transacting the ordinary business. In the discussion, which was then resumed, Sir H. W. Becher, who was accompanied by his solicitor, took part, and he also voted on the occasion against the change. The majority of the magistrates decided in favour of the change, and a memorandum of what occurred was duly made by the Deputy Clerk of the Peace. Sir H. W. Becher, having moved for a writ of *certiorari* to quash the proceedings, as not having taken place in the Court of Quarter Sessions, grounding his application not on any affidavit by himself as to the relative convenience of the Court house in question, or as to the matters within his own knowledge, but on an affidavit by his solicitor as to what had

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JUSTICES - CERTIORARI—*continued.*

occurred :—*Held*, that having regard to the course adopted by and on behalf of the applicant, a writ of *certiorari* should not go. *Ex parte* BECHER *v.* THE JUSTICES OF CORK [Q. B. D. XII. 167

2. —— *Discretion as to issuing—Acquiescence of parties in proceedings complained of—Malicious injury to property under £5 value—Evidence—Arrest without warrant—Absence of summons—Owner of property not named as complainant—Proceedings dealt with under summary jurisdiction—Waiver of objections—Not raising in Court below.*] Without warrant or summons issued, a police constable arrested parties and brought them before Justices at Petty Sessions, where, at the instance of the constable, they were charged with having maliciously broken some glass in a dwelling house. The clerk of the Petty Sessions entered the complaint as being made at the instance of "The Queen, at the prosecution of the Royal Irish Constabulary." No objection was taken to the absence of any individual complainant, and the proprietor of the dwelling house was present and a witness; nor did the parties complain of illegal arrest, nor object to the absence of a summons, or to the matter being disposed of, which it was, by the Justices under their summary jurisdiction; but, on the contrary, they went into evidence, and their solicitor, on a conviction being pronounced for malicious injury to the property (the value of which, though not stated in the charge, was admittedly under £5) asked that the sentence should be increased in order to admit of an appeal. On a motion for a writ of *certiorari*, relying on those objections:—*Held*, that in the proper exercise of its discretionary power, the Court should not allow the writ to go, the Justices having had jurisdiction, and the objections taken, which were all capable of being removed if taken in the Court below, having been waived by the conduct and acquiescence of the accused on the hearing before the justices. R. (MADDEN) *v.* GALWAY COUNTY JUSTICES - - Q. B. D. XIV. 92

3. —— *Nuisance—Disinfection of a house—Penalty.*] An order was made by Justices at Petty Sessions under the 18 & 19 Vic., c. 121, s. 12, that the owner should immediately disinfect a house, so that it should be habitable and free from infection at the expiration of one month, under penalties. By another order, made before the expiration of the month, the magistrate ordered payment of the penalties. The Court quashed the latter order by *certiorari*. R. *v.* THE DIVISIONAL JUSTICES OF DUBLIN - - - Q. B. VI. 184

4. —— *Jurisdiction—Conviction—38 & 39 Vic., c. 86—Refusal of application to have case sent forward to Assizes.*] A motion for *certiorari* was made on behalf of a man who was summoned for intimidating and preventing D. from selling a cow by ringing a bell and warning purchasers. After the prosecutor's case was over the defendant applied to the Justices to have the matter dealt with by a jury, which they refused. The motion for a *certiorari* was granted by a conditional order. (By Palles, C.B.) *Ex parte* FEENY *v.* LONGFORD COUNTY JUSTICES - - - - Vac. J. XV. *M.* 505

5. —— *Jurisdiction—Conviction—38 & 39 Vic., c. 86—Prosecutor.*] On a motion for a *certiorari* it appeared that a sub-inspector summoned F. for unlawfully preventing G. from saving hay in a meadow. G. stated that he believed that F. wanted to induce him to leave a certain employment:—*Held*, that the sub-inspector was a proper complainant, and that the Justices were justified in acting on their own experience. (By Palles, C.B.) *Ex parte* FARRELL *v.* LEITRIM CO. JUSTICES [Vac. J. XV. *M.* 506

6. —— *Mistake in warrant for imprisonment.*] A conditional order for a *certiorari* was made on the ground that the sentence was for two months, and the warrant of imprisonment was for one month in the first instance, and was supplemented by an additional month in a second warrant to complete the sentence. It appeared that the mistake arose through two men of the same name being sentenced the same day, one for one month, and the other for two months. The Court allowed the irregularity to be amended, but without costs R. *v.* HORNER [Q. B. IV. *M.* 509

JUSTICES - CERTIORARI—*continued.*

7. —— *Stowaway—Passenger Act*, 1855 (18 & 19 *Vic., c.* 119) *ss.* 18, 84—"*Charterer.*"] In a conviction under the 18th (the Stowaway) section of the Passenger Act, 1855, it must be stated that the intent was to obtain a passage without the consent of the "owner, charterer, or master," and the omission of any one of these words is fatal. *Quære*, whether a prosecution under sec. 18 is in all cases subject to the provisions of sec. 84? R. (MURPHY) *v.* JUSTICES OF QUEENSTOWN Q. B. D. XXVII. 43

——Disqualification - - XXVII. *M.* 486
See JUSTICES—DISQUALIFICATION. 4.

——Licensing Acts.
See Cases under LICENSING ACTS.

——Question of title—how raised - VII. *M.* 55
See JUSTICES—PRACTICE. 2.

—— Question of title.
See JUSTICES—JURISDICTION. 8, 9.

—— Supplemental affidavits - - - - XVI. 89
See JUSTICES—JURISDICTION. 8.

—— Sureties to be of good behaviour.
See JUSTICES—JURISDICTION. 2, 3.

—— Trespass—Cutting turf - - XVII. 105
See JUSTICES—JURISDICTION. 13.

—— Witness—Refusal to answer criminating questions [XVIII. 2
See EVIDENCE. 17.

JUSTICES—DISQUALIFICATION.

1. —— *Appeal to Quarter Sessions—Justice who sat in Petty Sessions acting on hearing of appeal—*40 & 41 *Vic., c.* 56, *s.* 73—*Assault occasioning actual bodily harm—*24 & 25 *Vic., c.* 100, *ss.* 42, 43.] C. was convicted at a Petty Sessions on a summons charging him that he did "assault, beat, and abuse E. J. C., thereby occasioning her actual bodily harm." He appealed to Quarter Sessions; one of the Justices who had acted at Petty Sessions sat on the bench at Quarter Sessions during part of the appeal, and at the request of the chairman, stated that there were eight Justices in the Court below, and that they were unanimous:—*Held*, that this amounted to acting in the hearing or decision of the appeal within the prohibition in sec. 73 of 40 & 41 Vic., c. 56. *Semble*, that the conviction was also bad, as being for an indictable offence under section 47 of 24 & 25 Vic., c. 100, and not for an offence summarily determinable by Justices under sections 42 and 43 of that Act. *In re* JOHN CLARKE - - - - E. D. XXIV. 20

2. —— *Conviction—Penalty—Imprisonment—Interested Justice adjudicating.*] A conviction against a boy for stealing some palings, for which he was sentenced to two months imprisonment with hard labour, was quashed, on the ground (1) that the penalty provided by the Act for a first offence was £5 without imprisonment, and (2) because one of the magistrates adjudicating was a trustee of the premises from which the palings were stolen. R. (ROE) *v.* KILDARE JUSTICES - - - - Q. B. D. XV. *M.* 233

3. —— *Interest—Bias—Licensing Act*, 1872.] T., the tenant of a house licensed for the sale of intoxicating liquors, was convicted of a breach of the licensing laws, and was fined. B. was the landlord of the premises which was situate close to his demesne wall, and from certain acts of his he had previously evinced a continued desire to extinguish this particular public-house; amongst other acts he at one time made an offer of an annuity to the former licensee of the premises if he would allow the license to drop. B. having been one of the magistrates who adjudicated on the case when T. was fined:—*Held* (O'Brien, J., *diss.*), that the conviction was bad and must be quashed. *Per* Johnson, J.,: Where there is a clear case made, satisfying the Court, and establishing the existence of a real bias in the mind of the

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JUSTICES—DISQUALIFICATION—*continued.*

adjudicating magistrate, the conviction cannot stand. *Per* Gibson, J.: Where an adjudicating magistrate believes he has such a pecuniary or proprietory interest in the subject matter of the litigation that the Court can reasonably come to the conclusion that this feeling would have influenced his judgment, the conviction must be quashed, and the Court will not go on the ground of his freedom from bias as a matter of fact. *Per* O'Brien, J.: Bias, however real or sincere, in order to disqualify, must be restricted to a bias arising from pecuniary interest, or an interest directly connected with the subject matter of the litigation. R. (Townley) *v.* Louth Justices - **Q. B. D. XXIII. 40**

4.——*Interest—Ex-officio Guardians.*] Where a defendant had been convicted of, and fined £10 for, a breach of the Contagious Diseases (Animals) Act, by a Court consisting of five Justices, all of whom were *ex officio* Guardians of the Union, and two of whom were present at the meeting when the prosecution of the defendant at suit of the Guardians was ordered, a *certiorari* was granted to quash the conviction. Guardians of Balrotherry Union *v.* Gallagher **[Q. B. D. XXVII. *M.* 486**

5.——*Interest—Poor Law Guardians appearing by officer.*] Justices who are *ex officio* Poor Law Guardians are disqualified from adjudicating on a summons brought by the Poor Law Guardians under the Malicious Injuries to Property Act. The Guardians can appear in such a case by their officer duly authorised. Guardians of the Mitchelstown Union *v.* Duffy - - **B. D. XXVII. *M.* 623**

JUSTICES—JURISDICTION.

1.——*Arrest—Dispute in market—Illegal arrest.*] The power conferred on a Justice of the Peace by 14 & 15 Vic., c. 92, sec. 17, to "cause all parties to be brought before him," in cases of market disputes, does not authorise him to order the arrest of a party against whom a complaint is made, for the purpose of enforcing his appearance before such Justice. Forbes *v.* Lloyd - - - - - **E. C. XI. 1**

2.——Certiorari—*Sureties to be of good behaviour—Inciting tenants not to pay rents—Jurisdiction—Summons or warrant—34 Edw. III., c.* 1.] On an information having been made by a police-officer that he had reason to believe and did believe that M'C. was a member of the "Ladies' Land League," a stranger to the locality and had been visiting various persons therein who had been served with writs for rent, and had advised them rather to submit to eviction than pay rent, while outrages followed immediately after her visits to a disturbed district, a warrant was issued against her, and she was arrested at a Land League meeting, and brought to the police barrack and thence to the Petty Sessions Court. The presiding magistrate then read over to her the information made by the police-officer, whom she declined to cross-examine, but admitted the truth of said allegations, and avowed that she was a member of the "Ladies' Land League" and was carrying out its objects, declining to give any other explanations or satisfactory account of herself. Accordingly, the magistrate made an order binding her over to be of good behaviour, or in default directing her to be imprisoned for three months. She refused to give bail; and on application for a writ of *certiorari* to quash the order:—*Held*, that the magistrate had jurisdiction, and was bound to act in the matter; and, on the information made, and what took place subsequently in Court, was justified in making the order, having just grounds for suspecting that she had entered, or was likely to enter, upon a course likely to lead to crime, and having regard to 34 Edw. III., c. 1, empowering Justices of the Peace to bind over to be of good behaviour all that be "not of good fame." R. (M'Cormick) *v.* Clare County Justices **[Q. B. D. XVI. 91**

3.——Certiorari—*Sureties to be of good behaviour—Inciting tenant not to pay rent—34 Ed. III., c.* 1—*Practice—Supplemental affidavits.*] While the society styled Irish National Land League were alleged to be acting in unlawful combination, for the purpose of inducing tenants not to pay their rents, the following words were addressed by H. R. in the presence of a crowd, including a tenant against whom a writ of *habere* for non-payment of rent was then being executed:—"Pay no rent to the landlord. We will make you right about the land. We will build you a house at any expense, and make you comfortable during the winter." The district had been prescribed under the Act for the Better Protection of Person and Property in Ireland (44 & 45 Vic., c. 4), and on the occasion in question the sheriff and his officers were accompanied by an armed force of police for their protection, under the command of a magistrate. H. R. appeared to have been entirely unconnected with the tenant, and to have come there, accompanied by an attendant crowd, for the seeming purpose of interrupting the legal proceedings, and apparently as the emissary or agent of a plurality of persons in possession of funds applicable to the fulfilment of the promises held out to the tenant. On information sworn accordingly, a summons was issued calling on H. R. to show cause why she should not be bound over to be of good behaviour; on the hearing of which she was ordered by the Justices at the Petty Sessions to find bail for that purpose, or in default to be imprisoned for six months. She refused to give bail; and on application for a writ of *certiorari* to quash the order:—*Held*, that sufficient reasons existed to warrant the Justices in inferring that when so exhorting or encouraging the tenant to pay no rent, H. R. was acting in unlawful concert and combination with an association, and in concluding that the repetition of such conduct should be prevented; and that while the Court would interfere with the exercise of such jurisdiction only in a strong and clear case of misused authority, the order made was justified, on the ground of probable suspicion that a crime was intended or likely to happen which should be so prevented, and having regard to 34 Edw. III., c. 1, empowering Justices of the Peace to bind over to be of good behaviour all that be "not of good fame." On showing cause against a conditional order for a writ of *certiorari*, it would be contrary to the practice, confining parties to the evidence given before the Justices, to allow it to be supplemented by affidavit. R. (Reynolds) *v.* County Cork Justices **[Q. B. D. XVI. 89**

4.——Certiorari—*Complaint—Issue of summons—Trespass of cattle—Limitation—*14 & 15 *Vic., c.* 93, *s.* 10 (4).] A *certiorari* was granted to quash a conviction for trespass of cattle on three occasions, the first of which was more than two months before the date of the summons. R. (Murphy) *v.* Justices of Wexford - - **Q. B. D. XXVII. 126**

5.——*Desertion of child—Place of hearing.*] The Justices at N. have a power to hear and determine a summons against a woman for deserting her child out of the jurisdiction of the N. Magistrates. R. *v.* Kelly - **P. S. X. *M.* 525**

6.——*Dismissal without prejudice.*] When a Court of Petty Sessions dismissed a case without prejudice, the Magistrates refused to hear it on a new summons, as "without prejudice" referred to a proceeding in another Court. Cinnamon *v.* Farley - - - - **P. S. I. *M.* 218**

7.——*Liability to civil action—Maliciously issuing summons—Staying proceedings—*12 *Vic., c.* 16, *s.* 7—*Pleading—Amendment—Adding new cause of action.*] Where, in an action brought against a Justice of the Peace for having maliciously and without reasonable and probable cause issued a summons, on a charge of felony, the defendant moved that the proceedings should be stayed, under 12 Vic., c. 16, s. 7; and upon the hearing the plaintiff deposed to the truth of the allegation on which the action was founded, and it was further alleged that the summons had been issued without informations:—*Held*, that the proceedings should not be stayed summarily. *Lalor v. Bland* (8 Ir. C. L. R. 115) considered. Anthony *v.* Percival **[Q. B. D. XIV. 94**

8.——*Question of title—Ousting jurisdiction—*Certiorari—*Affidavit showing question of title existed.*] On the hearing

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JUSTICES—JURISDICTION— *continued.*

of a motion for a *certiorari* to quash a conviction made by Justices in a case where trespass had been justified by the defendants on the ground of title, the Court allowed affidavits showing the existence of the question of title to be used, and quashed the conviction. R. *v.* DONEGAL JUSTICES [Q. B. VIII. *M.* 136

9. —— *Question of title—Reasonable supposition of right—Trespass on foreshore—Place, within* 14 & 15 *Vic., c.* 92, *s.* 8.] A conviction by Justices for entering upon the foreshore and taking away seaweed was quashed on *certiorari*, the foreshore not being a place within the 8th section of 14 & 15 Vic., c. 92. R. (SWEENY) *v.* CORK JUSTICES Q. B. D. XXIV. *M.* 586

10. —— *Several fishery—Title to.*] A *bonâ fide* claim of title to a several fishery ousts the jurisdiction of the magistrates. (By Keogh, J.) HEWSON'S CASE Cir. Cas. III. *M.* 351

11. —— *Summary Jurisdiction Act, sec.* 15—*Recovering possession of small tenements—Monthly tenancy—Service of summons—Jurisdiction of single Justice—Execution of warrant for possession—Computation of period—Delegation by constable of authority to execute warrant—Pleading—Justification* —Liberum tenementum.] The words of 14 & 15 Vic., c. 93, s. 15 sub-sec. 2, "cannot be found" (for service of a summons) do not mean "cannot be found in Ireland," but "cannot—due diligence being used—be so found that the service contemplated by that section cannot be effected." A tenancy from month to month is a holding for a "term not exceeding one month" within sec. 15, sub-sec. 1, of that Act, giving jurisdiction to the Court of Petty Sessions in respect of the recovery of possession of small tenements. Under secs. 1, 15, sub-sec. 3, of that Act, a single Justice has jurisdiction to issue a warrant to deliver possession. Sunday is included within the "eight clear days" from the date of such warrant within which it is to be executed under sec. 15, sub-sec. 3, of that Act. A warrant to deliver possession under sec. 15, sub-sec. 3, of that Act, endorsed by a sub-inspector "to Constable B. and his assistants," and by him delivered, but not, under 6 & 7 Wm. IV., c. 13, s. 16, endorsed, to certain sub-constables who have not been appointed by the sub-inspector or the head constable, under 14 & 15 Vic., c. 93, ss. 25, 26, will not authorise the execution of the warrant by the sub-constables in the absence of "Constable B.," and such delegation of the duty imposed upon him being illegal, the warrant would in such case afford no justification in an action of trespass *q. cl. fr.* consequent on such execution. Where a defence is pleaded technically and formally as a justification under the warrant of a Justice, and upon that construction the trial has proceeded, and a reservation has been made with the consent of defendant's counsel, the Court will not afterwards, on a motion to enter a verdict for the plaintiff, uphold the verdict for the defendant by allowing the defence to be construed in a different sense because its proved allegations may amount to a defence of *liberum tenementum*. BLUE *v.* FULLERTON - - - - - - E. X. 138

12. —— *Sureties to be of good behaviour—*34 *Ed. III., c.* 1 *—Recognizance—Forfeiture—Conviction under Prevention of Crimes Act*, 1882, *s.* 11—*Belief of Court not stated that cognizor was out of place of abode on an unlawful purpose.*] Where a recognizance was entered into, under 34 Ed. III., c. 1, to be of good behaviour, and the cognizor was subsequently sentenced to imprisonment, for that on a certain night, "between the hours of 10 and 12 o'clock p.m., he was discovered out of his place of abode under circumstances giving rise to a reasonable suspicion of a criminal intent, whereby he was guilty of an offence against the Prevention of Crimes Act, 1882, s. 11":—*Held*, that while an arrest would have been justified under such circumstances, it was necessary, in order to constitute an offence punishable by imprisonment under the Act, that the person arrested should have been found, in the belief of the Court, to be out of his place of abode, "and not upon some lawful occasion of business"; that in the absence of such an averment the conviction was bad, and therefore the recognizance was not, by reason of such conviction, liable to be estreated. R. *v.* GALVIN - - Q. S. XVII. 64

JUSTICES—JURISDICTION— *continued.*

13. —— *Trespass—Cutting turf—Assertion of right*—Certiorari—24 & 25 *Vic., c.* 97, *s.* 52.] Where it appeared that a tenant had been in the habit of paying the landlord for permission to cut turf on a bog, which formed no part of the holding, and on refusal to continue such payment had been warned that to cut turf in future would be a trespass, notwithstanding which the turf was subsequently cut, a number of persons assembling together for that purpose:—*Held*, that in the absence of any evidence offered to show that the turf was so cut in the exercise of a fair and reasonable supposition of right, a conviction for trespass, under 24 & 25 Vic., c. 97, *s.* 52, was rightly pronounced by the magistrates. R. *v.* JUSTICES OF FERMANAGH - - Q. B. D. XVII. 105

14. —— *Wilful damage to property—Fair and reasonable supposition of right*—24 & 25 *Vic., c.* 97.] A tenant from year to year, who had previously, in compliance with the rule on the estate, been in the habit of taking out a permit from the landlord to cut turf on the holding, having cut turf on one occasion without such permit, and having been convicted therefor at Petty Sessions for wilfully and maliciously committing spoil upon the property of the landlord:—*Held*, that the facts so appearing were not sufficient to sustain the conviction, but, without deciding whether under sec. 52 of the Act relating thereto (24 & 25 Vic., c. 97), it would be necessary that the existence of a fair and reasonable supposition of right in so acting in such case should be negatived. MAGEE *v.* MONTGOMERY - - - - - Q. B. D. XVII. 92

—— Application to have case sent forward to Assizes [XV. *M.* 505
See JUSTICES—CERTIORARI. 4.

—— Assault occasioning actual bodily harm. XXIV. 20
See JUSTICES—DISQUALIFICATION. 1.

—— Assault—One Justice - - - - IV. *M.* 509
See JUSTICES—OFFENCES. 12.

—— Contempt of Court - - - XXVII. 133
See CONTEMPT OF COURT. 12.

—— Imprisonment with hard labour for non-payment of penalty - - - - - XXV. 80
See LICENSING ACTS. 13.

—— Restraining cutting of turf - - XXI. 31
See TURF. 1.

—— Waiver of objections—*Certiorari* - XIV. 92
See JUSTICES—CERTIORARI. 2.

JUSTICES—NOTICE OF ACTION—*Insufficiency—Justice appointed Clerk of the Peace—Vacating Commission.*] A notice of action under 12 Vic., c. 16 (Justices Protection Act), which does not designate the place where the acts complained of are alleged to have been committed is insufficient, notwithstanding the repeal of sec. 10 by 16 & 17 Vic., c. 113. The acceptance of the office of Clerk of the Peace, the appointment to which is not vested in the Crown, but in the Custos Rotulorum of the County, does not operate to vacate a prior incompatible office, as Justice of the Peace, held under the appointment of the Crown; and therefore a Justice of the Peace, though also holding the office of Clerk of the Peace, continues to be entitled to notice of action under the Justices Protection Act, 12 Vic., c. 16. FORBES *v.* LLOYD [E. C. XI. 1

—— Maliciously issuing summons - - XIV. 94
See JUSTICES—JURISDICTION. 7.

JUSTICES—OFFENCES.

1. —— *Abusive language—Summons for using.*] A submanager of a bank was fined for calling a customer a "puppy and a blackguard," the words being spoken in the bank, which is a public place. DOWNEY *v.* FARQUHARSON [M. P. C. X. *M.* 268

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JUSTICES—OFFENCES—*continued.*

2.—*Assault on porter of Law Library.*] A barrister, who, contrary to the directions of the Bar Committee, entered the Law Library and assaulted the porter, was fined, with an alternative term of imprisonment. BRAMLEY *v.* BARNES [M. P. C. IX. *M.* 106

3.—*Excise laws—Illicit spirits found in dwelling-house—Conviction*—1 & 2 *Wm. IV., c.* 55, *s.* 17—31 & 32 *Vic., c.* 124, *s.* 6.] On a prosecution under 1 & 2 Wm. IV., c. 55, s. 17, of the owner or occupier of a dwelling-house, in which a quantity of illicit spirits and two bottles which had recently contained illicit spirits were found and seized by the Revenue authorities, the magistrates convicted and ordered the defendants to pay for fine the sum of £100, mitigated to the sum of £6, or in default, to be imprisoned for three calendar months. The defendant appealed to the Court of Quarter Sessions, and a case having been stated for the opinion of the Exchequer Division:—*Held*, that the conviction by the magistrates was bad, as the 17th sec. of 1 & 2 Wm. IV., c. 55, was directed against the proprietor or occupier of a house or place in which illicit spirits were distilled. M'CLELLAND *v.* DOHERTY [E. D. XXV. 17

4.—*Form of summons for drunkenness.*] A summons which stated that the defendant, "he being a licensed person did, on the 5th of September, permit drunkenness to take place on his premises, or did sell liquor to a drunken person," was dismissed. A conviction for selling liquor to a drunken person named A. B. would be sustainable. GREGORY *v.* HASLAM [P. S. X. *M.* 526

5.—*Injuries to public street—Penalties—County surveyor—Borough surveyor—Indictment*—14 & 15 *Vic., c.* 92, *s.* 9.] The Dundalk Gas Co. having, for the purpose of repairing their mains, excavated portions of the streets in Dundalk, a summons was issued against them for so doing "without the consent or authority of the complainants" by the Town Commissioners, suing by their Town Clerk and Borough Surveyor:—*Held*, that the summons disclosed no offence, and that if the Commissioners desired to proceed in such case they should do so by indictment. THE DUNDALK TOWN COMMISSIONERS *v.* THE DUNDALK GAS COMPANY - - Q. B. D. XX. 81

6.—*Keeping porter for sale.*] A summons for keeping porter for sale is sustainable, porter coming under the description of beer in the statute, though not mentioned in it, the words being "keeping for sale spirits, beer, cider, &c." R. *v.* RUSSELL - - - M. P. C. XI. *M.* 42

7.—*Larceny*—18 & 19 *Vic., c.* 126, *s.* 3—*Form C. in schedule—Insufficiency of certificate of conviction under Petty Sessions Act, "I. a."—Mistake—Costs.*] C. had been convicted at a Petty Sessions Court on the charge that he did unlawfully take, steal, and carry away a quantity of turf from the lands of A., the property of L., to the value of £4 sterling, and was sentenced to a fortnight's imprisonment with hard labour. Only the ordinary Petty Sessions Act, Form "I.a." 14 & 15 Vic., c. 93, had been filled up with these particulars by the Petty Sessions Clerk, without more, and was furnished to C. on application. On a conditional order for a *certiorari* having been made, from the affidavit of the Justices and the Petty Sessions Clerk, it appeared that the conviction had taken place under 18 & 19 Vic., c. 126 s. 3, and a book plea of guilty had been entered in the order book. The form C. set out in the schedule to the Act had been sent by the Petty Sessions Clerk to the Clerk of the Peace, but no copy given to C.:—*Held*, that the conditional order should be discharged, each party to bear his own costs. R. (CRAWFORD) *v.* TYRONE JUSTICES - - - - Q. B. D. XXIII. 43

8.—*Malicious Injuries Act—Killing a dog—Evidence—Cause of death—Malice—Assessment of value and award of compensation—Petty Sessions Act, sec.* 10—*Requisites of summons—Prosecution in Queen's name—Evidence of authority so to prosecute.*] Proceedings by a summons under the Petty Sessions Act (14 & 15 Vic., c. 93), sec. 10, which complies with all the requisites of that Act, are not invalidated by reason of the summons purporting, in the title thereof, to be brought in the name of the Queen, although no evidence is adduced of authority on the part of the complainant so to prosecute. A summons under the Malicious Injuries Act (24 & 25 Vic., c. 97) sec. 41, for unlawfully and maliciously killing a dog, is sustainable, although there is no proof of malice against the owner of the dog; nor is it necessary that there should be any assessment of the value of the dog, or any award of compensation to the owner. GUN *v.* R. (JONES) Q. S. XI. 146

9.—*Not going into evidence—Trespass—Sea-weed.*] Justices at Petty Sessions dismissed a summons for trespass on the statement and argument of the complainant's and the defendant's counsel without hearing evidence. The Court refused to make absolute a conditional order that they should hear and determine the complaint according to law. To gather sea-weed from a rock between high and low water-mark under a claim of right, there being no grant from the owner of the sea-shore, or prescriptive right thereto proved by the complainant, is not a trespass within the 14 and 15 Vic., c. 92, s. 8, or the 24 and 25 Vic., c. 97, s. 52. R. (LYNCH) *v.* BALBRIGGAN JUSTICES - - - Q. B. V. 148

10.—*Passengers Act*, 1855, *ss.* 18, 84.] In a conviction under the Passengers Act, 1855, s. 18, it must be stated that the intent was to obtain a passage without the consent of the "owner, charterer, or master," and the omission of any one of these words is fatal. Whether a prosecution under sec. 18 is in all cases subject to the provisions of sec. 84, *quere*. R. (MURPHY) *v.* QUEENSTOWN JUSTICES [Q. B. D. XXVII. 43

11.—*Playing marbles on Sunday—7 Wm. III., c.* 17, *s.* 3.] A summons for playing marbles on Sunday is not sustainable under 7 Wm. III., c. 17, s. 3. COTTON *v.* BYRNE [C. P. D. XVIII. *M.* 561

12.—*Power of one Justice to deal with case of assault—Police as complainants.*] A conditional order for a *certiorari* was obtained to remove a conviction in an assault case on the grounds that it was made by one magistrate alone, and that the police and not the party aggrieved were the complainants. On cause being shown, the Court allowed it with costs, being of opinion that 25 & 26 Vic., c. 50, gives one magistrate power to deal with the case, and to act on the complaint of a constable. R. *v.* O'FLAHERTY - - Q. B. IV. *M.* 509

13.—*Prosecution of publican for supplying drink to a drunken man.*] A summons against a publican for supplying drink to a drunken man was dismissed, the solicitor for the defendant waiving the objection that the name of the man supplied was omitted from the summons. ANON. [P. S. X. *M.* 551

14.—*Summary Jurisdiction Act, sec.* 10—*Turning cattle on public road.*] A fine was imposed upon a man for herding cattle along the public road. GEARON *v.* RESTRICK [P. S. XI. *M.* 309

15.—*Summary Conviction—Trespass—Case stated—Evidence*—14 & 15 *Vic., c.* 92, *s.* 8—20 & 21 *Vic., c.* 43.] In order to sustain a conviction for trespass pronounced by Justices of the Peace under 14 & 15 Vic., c. 92, s. 8, it is not sufficient to prove the posting of a notice on the lands warning persons not to trespass, even though the Justices may be of opinion that such notice must have been seen by the defendant. A personal warning must be proved, and a neglect or refusal to leave after such being given. On the hearing of a case stated by Justices, pursuant to 20 and 21 Vic., c. 43, a party is not precluded from raising any point on the ground that it was not raised or referred to on the original hearing in the Court below. CARPENTER *v.* MATHEWS - - - E. D. XIX. 57

16.—*Refusal of car-driver to stop to take up passenger—Fine.*] The fine, which was imposed upon a car-driver for refusing to stop to take up a passenger, was confirmed on appeal. MONCK *v.* SMARTT - - Rec. C. X. *M.* 48

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JUSTICES—OFFENCES—*continued.*

—— Assault - - - - - - **XXIV. 20**
See JUSTICES—DISQUALIFICATION. 1.

—— Desertion of child—Place of hearing **X. M. 525**
See JUSTICES—JURISDICTION. 5.

—— Drunkenness—Township.
See TOWN COMMISSIONERS. 5, 6, 10-14.

—— Keeping greyhound without qualification **VIII. M. 415**
See SPORTING DOGS.

—— Obstruction of thoroughfare—Band playing **XXII. 7**
See THOROUGHFARE.

—— Obstruction of footpath—Bicycle - - **XXVI. 40**
See BICYCLE.

—— Prostitutes in public-house - - **III. M. 467**
See PUBLIC-HOUSE.

—— Signalman leaving post—Appeal **XXV. M. 103**
See JUSTICES—APPEAL FROM. 11.

JUSTICES—PRACTICE.

1. —— *Agent appearing to conduct case.*] No agent, except a legal agent, can conduct a case at the Petty Sessions Court. JONES *v.* O'BRIEN - **P. S. XXVI. M. 611**

2. —— Certiorari—*Question of title—Affidavit.*] An objection was made, on *certiorari*, to the reception of affidavits showing ouster of jurisdiction of Justices by reason of a question of title; where, so far as it appeared from the order, they had jurisdiction:—*Held*, that the practice is to show it by affidavit. R. *v.* LIMERICK JUSTICES **Q. B. VII. M. 55**

3. —— *Constabulary—Complainants—Town Commissioners—Stamp.*] A summons brought by the Constabulary in the name of Town Commissioners, and bearing a red stamp, cannot be entered upon the Order Book. ANON.
[P. S. X. M. 48

4. —— *Constable prosecutor in assault witnessed by him—Assaulted party refusing to prosecute*—24 & 25 *Vic., c.* 100—25 & 26 *Vic., c.* 50.] When a party who has been assaulted refuses to prosecute, a constable who witnessed the assault can do so. BURNS *v.* ENNISKERRY JUSTICES
[Q. S. XVI. M. 193

5. —— *Fine—Irish money.*] A fine of £10, imposed by an Irish statute of 1796, is represented by £9 4s. 11d. British money; and when a fine of £10 British was imposed, the order of the magistrates was reversed. KEENAN *v.* SWEENEY
[Q. S. XI. M. 207

6. —— *Fishery prosecution—Admissibility of defendant's evidence.*] The defendant is not a competent witness in a fishery prosecution. SHERWOOD *v.* KINCHELA
[P. S. XI. M. 550

7. —— *Order not showing that party aggrieved refused or declined to prosecute.*] A conviction for assault under the 24 & 25 Vic., c. 100, s. 42, and 25 & 26 Vic., c. 50, s. 9, made on the complaint of a district inspector of constabulary, is bad, where it does not show on the face of it that the party aggrieved has refused or declined to prosecute. R. (RYAN) *v.* JUSTICES OF WICKLOW - **Q. B. D. XXVII. M. 9**

8. —— *Order—Dismiss without prejudice—Dismiss on the merits*—14 & 15 *Vic., c.* 93, *s.* 21.] Where magistrates, in a case of summary jurisdiction, entered or caused to be entered on the Order Book the word "Dismiss," it was held to be no bar to subsequent proceedings by the same complainants against the same defendants for the same offence. In case of dismissal the order should state whether it is "upon the merits" or "without prejudice" to a further complaint. GREAT SOUTHERN AND WESTERN RAILWAY CO. *v.* DARBY
[Q. B. D. XXVII. 45

JUSTICES—PRACTICE—*continued.*

9. —— *Power of adjournment—Case heard and determination arrived at—Conviction pronounced by a Bench differently constituted.*] The Justices at Petty Sessions possess an inherent power, to be exercised under circumstances properly so requiring, of adjournment, even to the extent of adjourning after the case has been heard and sentence fixed, though the conviction has not been pronounced and recorded; but, in order afterwards to constitute a legal judgment, it must be pronounced by a Court consisting of the same Justices. R. (SULLIVAN) *v.* CORK JUSTICES - **Q. B. D. XIX. 56**

10. —— *Refusing to issue summons—Previous summons dismissed without prejudice—Mandamus.*] A mandamus was granted to compel Justices to issue a summons against members of the Town Commissioners of Trim, for a sum of money surcharged by the auditor, which they had refused to do as a previous summons had been dismissed without prejudice. R. *v.* MEATH JUSTICES - - **Q. B. VIII. M. 415**

11. —— *Rehearing — Fresh evidence — Reducing to writing tendered—Assault on a female—Mandamus.*] Magistrates at Petty Sessions having heard an assault case, dismissed same; and subsequently a fresh summons was issued against the defendant on the same charge. The magistrates refused to re-hear the case. The prosecutrix stated that she had fresh evidence, but did not tender the evidence reduced to writing:—*Held*, that as no further informations were tendered or statement made to the magistrates, on behalf of the prosecutrix, showing what would be proved besides what appeared on the previous informations, the Court would not, under 12 Vic., c. 16, s. 5, compel the magistrates to re-hear the case. R. (MURPHY) *v.* THE JUSTICES OF DUBLIN - - **Q. B. D. VIII. 134**

12. —— *Relieving officer of union — Appearing for guardians.*] A solicitor must appear on behalf of guardians at Petty Sessions; the relieving officer, when appointed by power of attorney, cannot prosecute on their behalf. WEXFORD UNION GUARDIANS *v.* CLEARY - **P. S. XXV. M. 228, 285**

13. —— *Relieving officer appearing for guardians.*] A relieving officer was not allowed to appear on a summons for possession of a labourer's cottage. DILLON *v.* WHITTY
[P. S. XXVI. M. 204

14. —— *Right of caretaker to conduct case.*] A caretaker was allowed to conduct a case, the defendant's solicitor not objecting. ANON. - - **P. S. XXVI. M. 646**

15. —— *Right of railway official to prosecute.*] The Justices refused to allow a railway official to prosecute for travelling without a ticket. GREAT S. AND W. RAILWAY CO. *v.* BREEN
[P. S. XXVI. M. 659

16. —— *Ticket collectors as prosecutors.*] A ticket collector, ordered by the manager of the railway company to prosecute for smoking in the company's premises, was permitted to prosecute. DUBLIN W. AND W. RAILWAY CO. *v.* LAWLOR - - - - **P. S. XXVI. M. 18**

17. —— *Warrant of committal—Defendants not named in body of warrant.*] A warrant of committal is invalid if the names of the defendants are not given in the body of it as well as in the margin. HODGINS *v.* POE **E. C. I. M. 759**

—— Amendment—Form H. - - **XXVI. M. 659**
See JUSTICES—APPEAL FROM. 6.

—— Amendment Warrant - - - **IV. M. 509**
See JUSTICES—CERTIORARI. 6.

—— Appearance of Poor Law Guardians by officer
[XXVII. M. 623
See JUSTICES—DISQUALIFICATION. 5.

—— Complainant - - - - **XV. M. 505**
See JUSTICES—CERTIORARI. 5.

—— Order authorising road contractor to enter on lands
See GRAND JURY—ROAD CONTRACTOR. 1, 2.

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JUSTICES.

—— Committal of dangerous lunatic - - **XVI. 105**
See LUNATIC—COMMITTAL.

—— Compensation.
See COMPENSATION. 1, 2.

—— Fine—Alternative imprisonment with hard labour—Licensing Acts - - - - - **XXV. 80**
See LICENSING ACTS. 13.

K.

KNOWLEDGE OF CONTENTS OF WILL.
See Cases under PROBATE—KNOWLEDGE OF CONTENTS.

L.

LABOURERS' ACT, 1883—*Taking lands compulsorily—Demesne lands—Guardian of infant.*] Liberty was given to the guardian of an infant to oppose the erection of labourers' cottages on demesne lands of the infant, on the ground of injury to the property, and the absence of necessity for the works proposed. *In re* BRADSHAWS MINORS **[C. XVII. *M.* 634**

—— Deduction from tithe rent-charge of special expenses **[XXVI. 59**
See TITHE RENT-CHARGE. 1.

LACHES.

—— Creditor—Principal and Surety - - **I. *M.* 246**
See PRINCIPAL AND SURETY. 7.

—— Delay in bringing action - - **XII. *M.* 336**
See SPECIFIC PERFORMANCE. 1.

—— Forfeiture—Fines - - - - **II. *M.* 225**
See RENEWABLE LEASEHOLD CONVERSION ACT. 7.

LANDED ESTATES COURT CONVEYANCE.

1. —— *Adverse title—Ejectment.*] A Landed Estates Court conveyance conveying "the interest then remaining unexpired" could not revive a title which had been defeated by adverse possession previous to the conveyance. KENNEDY *v* WOODS - - **E. I. *M.* 64; E. C. II. *M.* 282**

2. —— *Description of premises—Lease referred to in the conveyance* — Falsa demonstratio — *Estoppel—Jurisdiction of Chairman—Ejectment on the title.*] In a civil bill ejectment on the title, brought under 37 & 38 Vic., c. 66, it appeared that the premises in question had been purchased by the plaintiff in the Landed Estates Court, and were correctly described in the rental as in M. Street, and were correctly delineated on a map referred to in the conveyance, and indorsed on it; but the rest of the description was erroneous, and, among other details, the premises were described as "held by H. under the lease mentioned in the schedule annexed hereto," which lease was set out therein as a lease for 999 years, whereas in reality no such lease existed, but H. held the premises under a lease for a short term, which had been terminated by civil bill ejectment:—*Held*, that the purchaser of the reversion under the Landed Estates Court conveyance was bound to show, before he could recover in ejectment, that the lease for 999 years set forth in his conveyance was put an end to, although no such lease was in existence. (By Keogh, J.) KENNELLY *v* COATES **[Cir. Cas. XI. 50**

3. —— *Mistake—Jurisdiction.*] A Landed Estates Court conveyance is unimpeachable, and irrevocable in the absence of fraud on the part of the purchaser, and the Court has no jurisdiction, by amendment or cancellation, to rectify any error which has arisen by act of the Judge or the party having carriage of the sale. *Re* WALSH'S ESTATE **Ch. A. I. *M.* 336**

LANDED ESTATES COURT CONVEYANCE—*continued*

4. —— *Mistake—Jurisdiction.*] The map annexed to a purchaser's conveyance included part of the estate of an adjoining owner. The L. E. C. ordered that the error should be rectified, and that the purchaser should reconvey that part to a trustee *habendum* on the trusts of the estate as they would stand had the conveyance not been executed. On appeal:—*Held*, that that order should be reversed, as the L. E. C. had not jurisdiction to make it. That Court, when once its seal had been put to the conveyance, is *functus officio* as regards the title; and any equities which affect the lands or the purchaser must be asserted in a Court of Equity. *In re* TOTTENHAM'S ESTATE **[L. E. C. II. *M.* 426; Ch. A. III. *M.* 134**

5. —— *Omission in—Claim for compensation under Landlord and Tenant (Ireland) Act*, 1870.] Lands were, in 1801, leased to M. for three lives. In 1833, two of the lives being still in being, the lands were leased to S. for those two lives and the life of C. (M.'s granddaughter). A trust was, at the same time, declared in S. for the benefit of R., M.'s son and successor (M. being then dead), and it was agreed that the new should not operate as a surrender of the old lease. On R.'s death C. (his daughter) entered into possession. The reversion was in 1871 sold in the Landed Estates Court, the schedule to the conveyance stating S. to be the tenant, under the lease of 1833, and not referring to the lease of 1801, or the declaration of trust. The last life in the old lease dropped in 1869. On a claim for compensation for permanent buildings, proved to have been erected prior to 1833, it was held by the Chairman at Land Sessions:—(1) That by the effect of the 34 & 35 Vic., c. 92, the sale in the Landed Estates Court was subject to any right to compensation for these permanent buildings, although not referred to in the conveyance; (2) that C. was not the "successor in title" to R., so as to entitle her to compensation, inasmuch as she must be treated as having become the lessee of a new lease in 1869, the date of the termination of the lease of 1801. The claim having accordingly been dismissed and the claimant having appealed:—*Held*, that it was not possible to go behind the Landed Estates Court conveyance; that the 34 & 35 Vic., c. 92, did not apply to the case; and that consequently no compensation could be awarded to the claimant. (By Dowse, B.) BARRON *v.* STEPHENSON **[Cir. Cas. IX. 145**

6. —— *Rates—Erroneous recital of lease in schedule—When not conclusive.*] A Landed Estates Court conveyance described premises as held under a lease dated the 18th February, 1875, at the yearly rent of £6, with a proviso that if the tenant paid all the rates the landlord should receive £4 in lieu of £6. The proviso in the lease only required the tenant to pay all city rates:—*Held*, that the tenant was not precluded by the erroneous recital in the schedule to the conveyance from deducting half the Poor Rate. (By Barry, L.J.) RIORDAN *v.* MULLINS **[Cir. Cas. XXVI. *M.* 646**

—— Motion to suspend - - - - **X. *M.* 644**
See PRACTICE—LANDED ESTATES COURT—CONVEYANCE.

—— Tenant from year to year—Notice to quit **I. *M.* 119**
See EJECTMENT ON THE TITLE. 24.

LAND LAW (IRELAND) ACT, 1881.

1. —— **Rule 2**—*Practice—Adjournment—Costs incurred at previous Sessions.*] When cases, entered for hearing at a previous sitting in Armagh of a Sub-Commission, were adjourned on the terms of the payment by the tenants of the costs of the day:—*Held*, that payment of the costs as ordered was a condition precedent to cases being called on for hearing now; following the practice in the Civil Bill Court under Rule 2 (Land Act 1881) and Rule 22 of 29th October, 1870. O'HARA *v.* M'GEOUGH - **L. Sub-C. XVI. 35**

2. —— **Rules 27, 62**—*Substitution of service of notice of sale—Execution creditor—Acts of violence—Disturbance in district.*] Liberty to substitute service of the notice of sale by the landlord as execution creditor was given where it was shown

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LAND LAW (IRELAND) ACT, 1881—*continued.*

that there was disturbance in the district accompanied with acts of violence, a copy of the order to be posted on the nearest Petty Sessions Court and copies to be sent through the post to the tenants. TAYLOR *v.* SIMPSON **L. C. XV. 102**

3. —— **Rules 27, 32**—*Service of originating notice—Sale—Danger to person serving—Disturbance in district.*] An order to substitute service will not be granted where the affidavit only shows that the disturbance in a district creating the alleged necessity for the order, existed at a time antecedent to the making of the application, and does not show that the same condition still continued, and that personal service would be attended with present danger. MEAGHER *v.* FITZGIBBON. DOGHERTY *v.* HAZLETT - - **L. C. XV. 93**

4. —— **Rules 28, 29**—*Service of originating notice—Several landlords.*] Where there are two landlords, both must be served with the originating notice. M'CLOSKEY *v.* COOKE **[L. C. XV. 82**

5. —— **Rules 28, 29**—*Service of originating notice—Landlord resident out of the jurisdiction—Registered letter to agent out of jurisdiction.*] The Court will give leave to substitute service of a notice to fix the fair rent of holding by registered letter, addressed to an agent residing out of the jurisdiction when the landlord also does not reside within the jurisdiction, and the rents had been always sent through the post by bank drafts to the agent. BRADY *v.* VERNES - **L. C. XV. 81**

6. —— **Rule 33**—*Substitution of service—Service out of the jurisdiction—Registered letter.*] When the landlord resides out of the jurisdiction, a formal application to substitute service must be made. FORSYTHE *v.* SHAW - - **L. C. XV. 94**

7. —— **Rules Dec. 1883, r. 36**—*Signature by tenant of originating notices.*] Where the tenant has not signed the originating notice and the objection was not made by the landlord in the Sub-commission Court:—*Held*, that the omission of the signature was a material omission, but it was waived by the landlord in the Court below, and the landlord was not prejudiced thereby. The Land Commission have power to amend it by inserting the name. HEMPENSTALL'S ESTATE **[L. C. XXVI. 80**

8. —— **Rule 51**—*Liberty to intervene—Conditional order.*] Liberty was given to the clergyman of the Irish Church to intervene in proceedings where it appeared that the lands were glebe lands, the conditional order to be served on the tenant, and the Superintendent of the Church Department of the Land Commission. JORDAN *v.* GIBBS **L. C. XXV. 27**

9. —— **Rule 74**—*Application to dismiss appeal—No notice of appeal.*] Where, through the grossest carelessness of the tenant, no notice of appeal had reached the landlord, the appeal was dismissed, with three guineas costs. BRAZIER *v.* LANE **[L. C. XXVI. *M.* 420**

10. —— **Rule 74**—*Extension of time for appeal—No formal order made up when time for appeal extended.*] No rule was made on an application for an extension of time to appeal, where it appeared that the applicant's solicitor had means of informing himself that a previous extension of time was only for a week, and that no formal order was then made up. WALSH *v.* SUGRUE - - - **L. C. XVII. 116**

11. —— **Rule 74**—*Leave to appeal—Extension of time—Mistake of solicitor.*] The time for appealing will not be extended on the ground of mistake by the solicitor. *Rhodes* v. *Jenkins* (7 Ch. D. 711), followed. JOLY *v.* BYRNE **[L. C. XXVI. 146**

12. —— **Rules, Dec. 1883, Nos. 115, 116**—*Alteration of date to tenant's prejudice, after signature and before filing—Setting aside agreement.*] The Court set aside an agreement fixing a fair rent which had been signed in Dec. 1882, but which was not filed till March, 1883, and the date of the agreement was altered so as to be in time. LYNCH *v.* LOUGHREY **[L. C. XXIII. *M.* 365**

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13. —— **Rule 108, Dec. 1883**—*Particulars of improvements—Statute measure.*] The measurement of improvements set forth in endorsed schedules must be regarded as made in the same manner as the measurement of the areas set forth on the face of the originating notices—*i.e.*, in statute measure. WILLIAMSON *v.* WESTENRA - **L. Sub-C. XIX. 42**

14. —— **S. 1**—*Sale of tenancy—Refusal of landlord to accept purchaser as tenant—Purchaser who had taken advantage of the Arrears of Rent Act.*] The fact that a purchaser of a tenant's interest had taken advantage of the Arrears of Rent Act is a fair and reasonable objection to his being accepted as a tenant. HEALY *v.* LISMORE **L. C. XVIII. 76 note**

15. —— **S. 1—Rule 22**—*Sale of tenancy—Reasonable grounds to decline purchaser as tenant—Intention of landlord himself to purchase—Purchaser's means insufficient—Purchaser who has taken advantage of Arrears of Rent Act—Amendment of landlord—Notice of refusal to accept purchaser.*] The fact that the purchaser of a holding has taken advantage of the Arrears of Rent Act is not a reasonable ground for declining to accept him as tenant. (Roche, *diss.*). Leave was given to the landlord to amend his notice of refusal. LEE *v.* MASSY **[L. Sub-C. XVIII. 75**

16. —— **S. 1—Rule 81**—*Sufficiency of notice to sell tenancy—Form No. 1, with words added fixing day of sale—No sale on that day—Subsequent sale.*] M. was a tenant of a holding under a judicial tenancy under the Land Law (Ireland) Acts, 1881, 1887. On the 30th December, 1889, he served notice of intention to sell the holding, which notice was in the prescribed form No. 1, with these words written in after the words notifying such intention "on Thursday, the 16th January, 1890." He attempted to sell on the 16th January, 1890, but failed. Afterwards on October 4th, 1890, M. did sell to G., and on October 31st, 1890, served notice of the name of the purchaser in form No. 3. The landlords on Nov. 7th, 1890, served an originating notice to have the sale declared void, because no notice of the intention to sell had been served. The tenant having moved to dismiss this notice:—*Held*, that the notice of the 30th December, 1889, was sufficient notice of intention to sell for the sale to G., although served so long before such a sale and for a particular day. Sec. 1 of the Act of 1881 considered. M'FARLANE *v.* CINNAMOND (TRUSTEES OF) **[L. C. XXV. 45**

17. —— **S. 1, (1) (2) (3) (4) (5) (6)**—*Sale of tenancy—True value—Disagreement between landlord and tenant—Declaration of sale to purchaser to be void—Right of pre-emption on part of landlord.*] Where a tenant serves on his landlord a notice of his intention to sell his tenancy and the landlord serves on the tenant a notice electing to purchase the tenancy, and applying to the Land Commission to fix the true value of the tenancy, a sale made by the tenant subsequent to such notice by the landlord will be set aside. In fixing the true value of the tenancy, the Court will not consider the market value of the tenancy, but what, having regard to the interest of landlord and tenant respectively under the code, would be the true estimate of the price between them. *Adams* v. *Dunseath* (XVI. 59), applied. LLOYD *v.* IRWIN **[L. Sub-C. XVI. 126**

18. —— **S. 1, (1) (8)**—*Sale of holding by tenant—Permanent improvements made by landlord—Notice by landlord to have improvements sold with tenancy and purchase-money apportioned—Jurisdiction—Rules* 69, 77, 78.] Where a tenant, exercising the right to sell his tenancy, desires that the landlord's permanent improvements should be sold therewith, it is incumbent on the tenant to apply for such purpose, under the Land Law Act, 1881, s. 1 (8), and in default thereof the Court has no jurisdiction to grant an application by the landlord to have the purchase-money of the tenancy, and such improvements, apportioned. MEADE *v.* TAYLOR **[L. C. XVII. 116**

19. —— **S. 1, (2).**] A., a tenant of B.'s, died, and bequeathed his interest in his holding to C. The holding was sold to D., whereupon B. intimated that he could not recognise D. as

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the purchaser, as no notice of intention to sell had been served on him as required by the Act:—*Held*, that as there was no evidence to show that the sale had not been made in pursuance of the Ulster custom, the provisions of the Land Act, 1881, s. 1 (2), did not apply. M'Comb *v.* Bourman
[L. C. XXVII. *M.* 647

20. —— Ss. 1, (2) (4) 2, 5—*Statutory tenancy—Tenant attempting to transfer without notice to landlord—Sub-letting—Ejectment.*] A sale by a tenant, having had a fair rent fixed by the Land Commission, and without notice to the landlord:—*Held*, to be a sub-letting within the meaning of the Act entitling the landlord to bring an action of ejectment for breach of the statutory conditions. (By Lawson, J.) Wright *v.* Whittaker - - - - - Cir. Cas. XX. 28

21. —— S. 1, (3)—*True value of tenancy—Sale pending application—Judicial rent not fixed.*] The tenant, S. W., wishing to dispose of a farm which had been left to her by her father-in-law, served notice on the landlord of her intention to sell her tenancy. The landlord offered £60 for the farm, which the tenant refused. Notice to fix the true value was then served by the landlord. Before this application was heard the farm was put up for auction, and sold for £155; but, pending the application to fix the true value, the purchase-money was not paid:—*Held*, that the sum which a tenant could obtain at an auction of her farm was not the true value as between landlord and tenant. Enniskillen *v.* Willis
[L. Sub-C. XIX. 25

22. —— S. 1, (3)—*Notice by tenant of intention to sell—Originating notice of application by landlord to ascertain true value—Sale by tenant pending hearing of application.*] After service by a landlord of the prescribed notice, claiming a right to purchase at the true value of the tenancy, it is not competent to the tenant to sell to another person pending the hearing of the application. The true value of tenancy is not competitive value, but is such value as shall be determined upon by the Court as being its true estimate, having regard to the respective interests of the landlord and tenant under the Land Law. Connor *v.* Gentleman
[L. Sub-C. XVIII. 28

23. —— S. 1, (3)—*Meaning of the "true value" of a holding.*] The "true value" of a holding under s. 1, sub-s. 3, of the Land Law (Ir.) Act, 1881, is what a thoroughly solvent and prudent man would give for the holding, intending to make the rent out of it and a fair profit besides on his capital expended. *Adams* v. *Dunseath* (XVI. 59), and the *Marquis of Headfort's Estate* (MacDevitt's Rep. 328) commented on. Ager *v.* Sealy
[L. Sub-C. XXVII. *M.* 63

24. —— S. 1, (12)—*Sale of a tenancy on an estate subject to the Ulster custom—Preference to adjoining tenant.*] A tenant on an estate subject to the Ulster custom assigned his tenancy under that custom. On the estate it was usual to make sales with the approval of the landlord, preference being given to an adjoining tenant. As the assignee was not an adjoining tenant, the landlord refused to recognise the sale:—*Held*, that the assignee had not the status that would entitle him to have a fair rent fixed. Boyle *v.* Coningham
[L. C. XXVII. 110

25. —— Ss. 1, (4) 2—*Statutory notice—Sub-letting.*] Where a tenant, J. N., previous to the passing of the Land Law Act, 1881, had agreed to assign to her son, on his marriage, her holding, reserving nevertheless to herself one room in house and the grass of one cow on said holding, and where, subsequent to the passing of the Act, J. N., by deed of assignment, carried into execution the terms of said agreement, without serving the statutory notices on the landlord; on an application to have a judicial rent determined, which was resisted on the grounds that the tenant had not served the statutory notices, and that he was not in exclusive occupation of the holding by reason of said reservation:—*Held*, that the tenant was entitled to have judicial rent determined. Nolan *v.* Hurley - - L. Sub-C. XVIII. 52

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26. —— S. 1, (5)—*Application to be set aside by tenant—Time within which it should be made—Just interest of landlord—Rule* 83.] An application to set aside a sale by a tenant made by a landlord who had knowledge of the sale for nearly two years before he applied, and who had himself failed to carry out an agreement to purchase, was refused. Kiernan *v.* Dawson - - L. Sub-C. XXVI. *M.* 612

27. —— S. 1, (5)—*Application by originating notice to declare sale void—Just interests of the landlord.*] The Court will not declare a sale by a tenant void on account of the failure of the tenant to give notice thereof to the landlord, unless the Court is of opinion that the "just interests of the landlord so require, and for instance, if he had intended to exercise his right of pre-emption, and such right had been interfered with." Poole *v.* Prendergast - - - - - L. C. XXIV. 12

28. —— S. 1, (6)—*Sale of tenancy—Reasonable grounds to decline to accept purchaser as tenant—Non-residence.*] Non-residence is not a reasonable ground for refusing to accept the purchaser of a tenant's interest as tenant. M'Kee *v.* Montgomery - - - L. Sub-C. XVII. *M.* 86

29. —— S. 1, (6)—*Sale of tenancy—Reasonable grounds to decline purchaser as tenant—Non-residence.*] Non-residence on part of the purchaser of a tenancy does not necessarily form a reasonable ground of objection by the landlord to accept the purchaser as tenant. Whether such an objection is or is not reasonable must be determined by the circumstances of each case. M'Menamin *v.* Stevenson - L. C. XVII. 48

30. —— S. 1 (14)—Rule 87—*Sale of bankrupt's interest in tenancy—Leave to apply to Land Commission Court.*] The Court gave leave to apply to the Land Commission Court for leave to sell the tenant-right interest in a tenancy forming portion of the assets of a bankrupt. *In re* Martin
[B. XVI. *M.* 106

31. —— Ss. 1, 13—*Sale of tenant's interest under execution—Application to fix fair rent—Stay of execution in ejectment.*] A stay on the execution of the decree in ejectment was granted where the tenant's interest had been sold under a *fi. fa.*, and he had applied to have a fair rent fixed, for the purpose of having the matter decided by the Land Commission. Plummer *v.* Stokes - - - - - Q. S. XV. *M.* 541

32. —— Ss. 1, 13, 22—*Future tenancy—Proviso that tenancy is to be determinable in event of bankruptcy of tenant—Right of sale.*] A proviso determining a future tenancy on the bankruptcy of the tenant is a good proviso, and is not inconsistent with sec. 22. Maconchy *v.* Douglas
[E. D. XXIII. 12

33. —— Ss. 1, 57—*Sale under execution—Notice to tenant—Rule* 82.] In an action to recover land on the title, it was proved that the plaintiff purchased the tenant's interest from the sheriff, and a deed of conveyance was executed to him. The sale took place on the 23rd August, the day after the Act passed:—*Held*, that it was not necessary to give the notice to the tenant under Rule 82, which had not then been made. Filgate *v.* Callan - - N. P. XV. *M.* 617

34. —— Ss. 1, 58 (7)—*Right of free sale—Letting to tenant during continuance of office.*] In 1864 a holding of land was let by the landlord, R. J. M., at an annual rent of £35, to the Rev. H. G. upon condition that it was to be held by him only whilst he continued clergyman of the parish. The buildings and the other permanent improvements thereon were made, some by the landlord and others by the tenant, being since substantially maintained by the tenant. In 1870 the Rev. H. G. died, and notice to quit was thereupon served upon his representatives. During his life the holding was worked as an ordinary farm by him, assisted by his brother-in-law, D. O'C., and by his nephew, R. O'C., the latter of whom from 1874 resided there to present time at the annual rent aforesaid. He having negotiated a sale to D. D., the landlord objected to the purchase on the grounds that the improve-

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ments of the holding had been substantially maintained by the landlord, that the holding was not agricultural or pastoral in its character, and that the letting was made to meet a temporary necessity:—*Held*, that under such circumstances R. O'C. was entitled to the right of sale. O'CALLAGHAN *v.* MAHONY - - - - **L. Sub-C. XVII. 95**

35.—Ss. 4, 15, 21, 57—*Yearly tenancy—Tenancy from year to year by tenant for life—Present or future tenant as against the remainderman—Home farm.*] A tenant under a tenancy from year to year, created by a tenant for life having no leasing power, served his originating notice in 1866, to fix a fair rent against the tenant for life, who, however, died in 1887, before the hearing of the application. The tenant remained in possession and paid rent to the remainderman, and an order was made continuing the proceedings as against the remainderman. It was not disputed that he was tenant from year to year to the remainderman:—*Held*, following *Massy* v. *Norse* (20 L. R. Ir. 57), that the existing yearly tenancy was created subsequent to the death of the tenant for life in March, 1887; that the tenancy was therefore a future tenancy; and that the originating notice must be dismissed. *Held*, on the evidence that the holding was not a home-farm. SPARROW *v.* HEPENSTALL - **L. C. XXIV. 65**

36.—S. 5 (5)—*Ejectment for breach of statutory condition—Obstruction of landlord in making road.*] Sec. 5 (5), in reference to tenancies subject to statutory conditions, relates to any entry upon the holding for an occasional or temporary purpose, and to making compensation for damage thereby occasioned, and does not extend to the creation of a right of way for the landlord, and any persons authorised by him, across the land of the tenant. (By Morris, C.J.) PEYTON *v.* MOLLOY

[Q. S. and Cir. Cas. XXI. 20, 21 note

37.—S. 5 (5)—*Turbary.*] Where the contract is silent as to turbary, the landlord is given by the Act a right of entry which he did not before possess. TOWNSEND *v.* COTTER

[V. C. XXVI. *M.* 324

[This was affirmed on appeal. 31 L. R. Ir. 86.]

38.—S. 5 (5)—*Turbary—Tenancy from year to year.*] Where a yearly tenant paid bog rent up to 1882, and in 1883 an order was made by the Land Commission Court fixing a fair rent for the farm, and not alluding in any way to the bog rent, the silence of the order as to bog does not alter the landlord's right of turbary; nor does the fact of the tenant's having ceased to pay bog rent, before going into the Land Court, alter the nature of the tenancy. MAGENNIS *v.* M'ALEESE

[Q. S. XXV. 80

39.—S. 5 (5)—*Turbary—Tenancy from year to year—Exclusion by contract—Effect of order fixing fair rent—Landlord and Tenant Act*, 1860, *s.* 29.] The right of a tenant to cut turf on his holding for *bonâ fide* consumption thereon, whether at Common Law or under sec. 29 of the L. and T. Act, 1860, is subject to be controlled or excluded by contract of which the conduct of the parties may furnish proof, as where the established usage on an estate, adopted and acquiesced in by the tenants, has been to disallow the cutting of turf without a written license from the landlord; and where an order has been made by the Land Commission in reference to a holding on which such usage had been established, determining the judicial rent payable as upon an acreage comprising the bog, such order cannot have the effect of conferring any greater right on the tenant to cut turf thereon than he had previously enjoyed, notwithstanding the provisions of the Land Law Act, 1881, s. 5 (5). *Lifford* v. *Kearney* (XVII. 30), approved and followed. (By Lawson, J.) DOUGLAS *v.* M'LAUGHLIN

[Cir. Cas. XVII. 84

40.—S. 5 (5)—*Turbary—Tenancy from year to year—Landlord and Tenant Act*, 1860, *s.* 29.] Conceding that sec. 29 of the L. and T. Act, 1860 (23 & 24 Vic., c. 154), applies in respect of the right to cut turf, as well as to tenancies from

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year to year created by parol as to demises by lease, such right is still subject to be controlled or excluded by contract, of which the conduct of the parties might furnish proof, as where the established usage, adopted and acquiesced in by the tenants, had been to disallow the cutting of turf without a written license from the landlord. And, *semble*, the rights or relative position of the parties in this respect are unaltered by the Land Law Act, 1881. (By Harrison, J.) LIFFORD *v.* KEARNEY - - - **Cir. Cas. XVII. 30**

41.—Ss. 5, 8 (2), 13, 60—Rules 24, 26—*Orders, Oct.* 19, 27, 1881—*Date of commencement of judicial rent—"First occasion" of sitting of Land Commission—Continuance—Adjournment—Order extending statutory time*—Ultra vires—*Jurisdiction—Application to fix fair rent—Retro-active operation of order.*] An application grounded on a tenant's originating notice to fix a fair rent comes within the 60th sec. of the Land Law Act, 1881, and when it has been moved in the Court of Land Commission on the first occasion of the sitting of the Court, and stands adjourned, the effect of a subsequent decision or determination, fixing the fair rent, will be that it will operate for all purposes as if it had been antedated and made on the day when the Act came into force, and the judicial rent will begin to accrue due from the rent day next succeeding the date of the passing of the Act, unless the Court should otherwise direct, having regard to whether or not it would be just that the applicant should be placed in the same position, and have the same right in respect of his tenancy, as if both the application and the order thereon had been made on the day when the Act came into force. While the Land Commission had no jurisdiction to extend or abridge the prescribed period for the sitting of the Court, described in the 60th sec. of the Act as "the first occasion on which it sits after the passing of the Act," the Court had power, by due continuance or adjournment, to sit *de die in diem* on said "first occasion" (which means while the Court is sitting for the first time), so long as was proper and necessary for the purpose of disposing of the applications really intended to be made on that occasion. *Nolan* v. *Morgan* (V. 18), distinguished. CHAINE *v.* NELSON - - - **C. A. XVII. 49**

42.—Ss. 5, 13, 20, 48—*Interlocutory injunction—Ejectment decree—Land Commission Court order—Conflict of jurisdictions.*] L., the landlord of G., obtained a Civil Bill decree in ejectment for overholding against G. Before the decree was actually pronounced, G. served an originating notice, and applied to have a stay, which was refused. G. appealed to the Judge of Assize. Before the Assizes a Sub-Commission fixed a judicial rent, and L. appealed from the order of the Sub-Commission. The Judge of Assize affirmed the decree in ejectment, and refused to stay execution. L. unsuccessfully attempted to execute the decree. Negotiations were then commenced for a settlement, pending which G. commenced an action in the Superior Courts, and issued a writ for a declaration of title and for an injunction to restrain L. from executing the decree. Afterwards, when the negotiations broke off, G. served the writ, and applied for an interlocutory injunction pending the hearing of the action:—*Held*, that the injunction should be refused, and that the conduct of G., the plaintiff, disentitled him to the relief sought. *Semble*, the Court has no jurisdiction to grant such an injunction. The principles on which interlocutory injunctions are granted discussed. GORMAN *v.* LATOUCHE

[E. D. & C. A. XXIV. 70

43.—Ss. 5, 21—*Resumption of tenancy determined by lease—Sale by tenant to landlord—Notice of application—Stamp—Rules October 21st*, 1881, *r.* 23.] The 21st section incorporates the 5th section as to sale to the landlord by the tenant, as well as to resumption. Though the original order be silent as to sale, the Court has jurisdiction to order sale in a subsequent proceeding. The notice on which to ground such proceeding is not an originating notice within Rule 23, October 21st, 1881, and does not require a stamp. CONNELL *v.* MURRAY

[Q. S. XXI. 12

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44. —— **Ss. 5, 21**—*Resumption of holding by landlord—Terms—Compensation to tenant—Value of holding if sold—Compensation for disturbance.*] On an application by the landlord to resume possession, the true test of the compensation to be given to the tenant would be what would be got for the place if sold in the open market at a fair rent, and the element of compensation for disturbance should not be considered. M'FARLAND *v.* CARRE - - - - **L. C. XVII.** *M.* **60**

45. —— **Ss. 5, 21, 58 (2) (7)**—*Determination of judicial rent—Letting for temporary convenience of landlord—Resumption of possession by landlord—Home-farm in connection with residence.*] Where a holding had been demised by agreement in writing of 20th December, 1864, at the rent of £28 for 11 acres statute containing a covenant by the tenant to give up possession on receiving three months' notice:—*Held*, to be a letting for the temporary convenience of the landlord, and that a notice served by the tenant to have a fair rent fixed should be dismissed. Where a holding had been demised on 20th December, 1864, by lease for 21 years, at £90 per annum for 61 acres statute, and the landlord served notice to resume possession on the termination of the term as being *bonâ fide* required by him for a "home-farm" in connection with his residence, but it appeared that the holding was purely agricultural, not in any way connected with residence, and not necessary to the convenient occupation of residence:—*Held*, not to be of the character of "home-farm." *Gamble* v. *Simpson* (XVII. 44), and *Lynch* v. *Callaghan* (Mac. D. 336), followed. SHARPE *v.* HAMILTON; HAMILTON *v.* SHARPE - **L. Sub-C. XX. 16**

[This was reversed in the Court of Appeal. 20 L. R. Ir. 224.]

46. —— **Ss. 7, 8 (4)**—*Fixing fair rent—Holding managed on English system—Permanent improvements made and maintained by landlord—Agreement for, in writing—Predecessor in title.*] Where the permanent improvements on a holding have been made and substantially maintained by the landlord or his predecessors in title, and not made or acquired by the tenant or his predecessors in title, it is not necessary, in order to bring the case within the provisions of the Land Law Act, 1881, *s.* 8, sub-s. (4), that there should have been an agreement in writing between the parties. TAYLOR *v.* ARRAN **[L. Sub-C. XV. 114**

47. —— **Ss. 7, 8 (9)**—*Originating notice—Holding formerly held under lease for 21 years expiring November 1, 1880—Reclamation—Building and drainage works executed by tenant during continuance of lease and subsequently.*] Where land was held under a lease for years containing a covenant on the part of the lessee for the execution of works of reclamation and drainage, and works of this description were carried out during the continuance of the lease and subsequent to its expiration:—*Held*, that such works were, to the extent covenanted for, to be treated as having been executed under the covenant, and therefore to be excluded from consideration on the question as to determining a judicial rent. MULLIN *v.* LAVENS **[L. Sub-C. XVI. 13**

48. —— **Ss. 7, 8 (9)**—*Improvements.*] Two holdings became vested in C., father of the tenant, who paid altogether for them, and for buying out cottier tenants, £400. The leases under which they were held expired before 1859, and in that year it was arranged that C. should continue on as yearly tenant, paying £17, a few shillings above the former rent. The landlord's rent-book contained reference to the tenancy, the amount of the rent for which was stated to be "for the present in consequence of C.'s improvements." Subsequently, in 1863 or 1864, an arrangement was made between his son and the agent that C.'s son should become tenant of the land, paying £17 rent, and £20 through the agent to C., which was carried out. C. died in 1876, and thereafter the two sums continued to be paid as heretofore:—*Held*, that there was in the new letting of 1863 or 1864 nothing to preclude the tenant from claiming for improvements; that C. was predecessor in title to the present tenant's son; and that £17 represented the present value

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of the land, having regard to the fact that the improvements were made by C. and the tenant. COLLIER *v.* FITZWILLIAM **[L. Sub-C. XVI. 86 note**

49. —— **Ss. 7, 8 (9), 57**—*Landlord and Tenant (Ireland) Act, 1870, s. 4—Improvements—Predecessor in title—Lessee continuing in occupation from year to year—Compensation by landlord—True value—Fair rent—Appeal—Retro-active operation of statute.*] The term "improvements" in the 9th sub-section of sec. 8 of the Land Law Act, 1881, has the same meaning as in sec. 70 of the L. and T. Act, 1870. The terms "tenant or his predecessor in title," in sec. 8, sub-sec. 9, of the Act of 1881, have the same meaning as in the 7th sec. (*Diss.*, May, C.J., Morris, C.J., and Deasy, L.J.). The provisions of the final paragraph of the 4th sec. of the Act of 1870, as to improvements made before the passing of that Act, are applicable to such improvements in determining fair rent under the 8th sec. of the Act of 1881. (*Diss.* Law, C.) The enjoyment during the currency of a lease of improvements made by a tenant during its sub-existence does not constitute a compensation by the landlord within the meaning of sec. 8, sub-sec. 9, of the Act of 1881. A lease made before the passing of the Act of 1870, demising lands, together with all houses, edifices, and buildings and appurtenances thereunto belonging, and containing the usual covenants, precludes the tenant from being regarded as having any interest in respect of improvement made (*e.g.*, a house built) before its execution in determining what is the fair rent of the holding under the 8th sec. of the Act of 1881. (*Diss.*, Law, C., Sir E. Sullivan, M.R., and Palles, C.B.). *Per* Law, C.: "Improvements" simply mean suitable and ameliorative work executed or done upon the holding, and no rent is to be imposed or made payable in respect of the yearly value of such actual improvement works themselves; but the increased letting value of the land beyond that, subsequently accruing to the land in consequence of the execution of such works, may be taken into account as entitling the landlord to benefit in the determination of the rent. "Predecessors in title" denote a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they have undergone. In estimating the "interest of the tenant," when determining fair rent under the 8th sec. of the Act of 1881, not merely his right to claim compensation under the 4th sec. of the Act of 1870 should be taken into account, but his right to sell his tenancy as it stands, improvements and all, whether executed before or after the Act of 1870, for the best price that can be got for the same, under sec. 1 of the Act of 1881; while, if the landlord seeks to exercise his right of pre-emption, he must pay, as the "true value" of the holding, what it would *bonâ fide* bring in the open market if sold to an unobjectionable purchaser. *Per* May, C.J.: "Predecessor in title," within the meaning of the Act of 1881, does not mean an antecedent occupier, but a previous tenant from whom the existing tenant derives his title to the tenancy. Upon an appeal from the decision of a Sub-Commission to the Land Commissioners, they should form their own independent judgment upon the evidence, which may not be confined to that which was adduced in the Court below, as the appeal should be regarded as a rehearing. *Per* Sir E. Sullivan, M.R.: "Improvements," within the meaning of the Act of 1881, sec. 8 (9), does not refer to the increased letting value of the holding caused by the making of the improvements, but simply the works which have caused that increase, or rather the interest of the tenant who made them, measured by the money expended on them as declared and limited by the Acts of 1870 and 1881. The right of sale given by the Act of 1881 does not give an absolute right to sell all the improvements as they stand, and the "true value" which the landlord must pay, when exercising his right of pre-emption, is not the market value, but what, having regard to the interest of the landlord and tenant respectively under the code, would be the true estimate of price as between them. *Per* Morris, C.J.: While the tenant is entitled to the benefit of improvements which add to the letting value of the holding,

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the inherent qualities and capacity of the land for such works should be taken into consideration in favour of the landlord when determining a fair rent. The interest of the landlord is the plenary interest in the holding save so far as the tenant establishes in diminution claims under the Acts of 1870 and 1881 which constitute his interest. The mere abstention by the landlord from availing himself of his legal rights and allowing the tenant to enjoy what if the landlord chose he himself might enjoy, amounts to a "compensation" by the landlord, within the meaning of the Act of 1881, sec. 8 (9), irrespective of threat or statement to that effect. *Per* Palles, C.B.: "Improvements," within the contemplation of the Act of 1881, sec. 8 (9), mean works which, being suitable to the holding, add to its letting value, as distinguished from the increased letting value itself; and the enjoyment by the tenant of improvements executed before the passing of the Act of 1870 cannot be excluded from consideration in determining fair rent. *Per* Deasy, L.J.: With respect to the fixing of a fair rent and the ascertainment of compensation for improvements to the tenant, the Land Commission has an unlimited discretion, and no general rule or principle should be laid down by the Court of Appeal that could, or ought to, bind the exercise of that discretion. *Per* FitzGibbon, L.J.: The words "paid or otherwise compensated by the landlord or his predecessors in title," in the Act of 1881, sec. 8 (9), include every form of recoupment which the tenant receives at the hands of the landlord, whether by way of cash payment or out of the landlord's estate, as an equivalent for the tenant's improvements; so, if a landlord gives over to an improving tenant, because he is such, the soil with all its natural powers, at a price so far below the letting value of the landlord's interest as to recoup the tenant for his improvements, the determination of a fair rent is not such a mere question of fact as should not form the subject of appeal. *Montgomery* v. *Montgomery* (XIV. 1), applied, and contrasted with *Grey* v. *Turnbull* (L. R. 1. H. L. 53): *Holt* v. *Harberton* (VI. 1), discussed. ADAMS *v.* DUNSEATH

[L. C. XVI. 15; C. A. XVI. 59

50. —— **Ss. 7, 21**—*Predecessor in title—Contract of tenancy.*] Where a tenancy in part of a present holding was determined by ejectment proceedings on notice to quit, and a new letting of the old farm and additional land was made by written agreement, containing special terms, with the present tenant:—*Held*, that the predecessors of the present tenant in occupation were his predecessors in title within the Land Law Act, 1881, sec. 7; and that the agreement was not within the terms of sec. 21. M'ATAVEY *v.* BOND

[L. Sub-C. XV. 115

51. —— **S. 8**—*Fixing fair rent—Rehearing.*] When a judicial rent is fixed by a Sub-Commission in one year, and on appeal by way of rehearing the Land Commission varies the amount of the rent so fixed, the rent as altered relates back and is the judicial rent payable for the statutory period of 15 years from the gale day rent after the date of the order of of the Sub-Commission. *Per* Morris, C.J.: If the decisions of the Sub-Commission and the Land Commission are antagonistic, the order of the latter shall be treated as the order of the Court, and the rent would be fixed by the order of the Land Commission. DAVIES *v.* M'MAHON

[E. D. XXIII. 11; C. A. XXIII. 25

52. —— **S. 8**—*Claim by tenant who had obtained a decree for compensation for disturbance to have fair rent fixed.*] A tenant who has obtained a decree for compensation for disturbance cannot apply to have a fair rent, and mere delay by the landlord in lodging the compensation money will not take away the rights of the landlord. BONAR *v.* WILSON

[L. C. XVI. *M.* 192

53. —— **S. 8**—*Fixing fair rent—Expenditure on part of landlord—Railway works executed by company in which landlord was a shareholder—General improvement caused in district by works—How far to be estimated in fixing a fair rent.*] On an application to fix a fair rent it was proved that certain railway works had been executed near the locality in which the farms in question were situate. The landlord alleged that he had expended £50,000 on the railway in question. In the Act of Parliament under which the railway company was formed the landlord's name appeared as a guarantor for the sum of £5,000:—*Held*, that neither this sum so guaranteed, nor any other sum invested by the landlord in shares of the company, should be allowed to the landlord as money expended for the benefit of his estate, in fixing a fair rent under the Land Law Act, 1881; and that the fact of the land in question being in proximity to the railway should form an element in fixing a fair rent. GORDON *v.* TOTTENHAM L. Sub-C. XVII. 16

54. —— **S. 8**—*Determination of judicial rent—Rent payable pending appeal.*] Until a case has been heard and adjudicated upon by the Sub-Commissioners the rent payable is the old rent; and until the rent they fix is varied on appeal that rent is payable. M'NAMEE *v.* NAPER

[L. C. XVII. *M.* 468

55. —— **S. 8**—*Form* 28.] Where the originating notice to fix a fair rent is by landlord, it must contain an averment that the landlord had demanded a certain sum, to be specified as and for an increased rent, and it is not sufficient to state merely that he demanded an increased rent. Where a landlord makes a demand from a tenant for an increase of rent, without specifically stating what that increase was to be, and the tenant refuses to pay any increase, such demand and refusal are not of a nature so definite as to warrant the landlord to make allegation in his originating notice that he had failed to come to an agreement with the tenant as to rent. MORIARTY *v.* BLENNERHASSETT - - L. Sub-C. XVIII. 73

56. —— **S. 8 (1)**—*Land deteriorated by flooding, caused by third party.*] A reversioner may bring an action for injury caused by a third party flooding land in possession of his tenant, and where, therefore, a reversioner neglects to bring such action the tenant is entitled to have the land valued in its present and deteriorated condition, and a judicial rent fixed accordingly. NELIGAN *v.* HERBERT - - L. Sub-C. XVIII. 18

57. —— **S. 8 (1)**—*Application by landlord to raise rent—Necessity of proof of demand of possession, or failure to come to agreement—Privilege of Court valuer—Official communication.*] A person who had been employed as a Court valuer by the Land Commission will not be permitted to be cross-examined as to the valuations made by him in his official capacity, when called as a witness in another case, such valuation having been made in the form of a report, and being an official communication, which should not be made public without the consent of the head of the public department to which it was made. A landlord who serves an originating notice, seeking to have the rent of a tenant raised, must give affirmative evidence of his having made a demand of an increase of rent, or of his having failed to come to an agreement with his tenant; otherwise his originating notice will be dismissed. BREWSTER-FRENCH *v.* M'DERMOTT - - - L. Sub-C. XVII. 16

58. —— **S. 8 (1)**—*Determination of judicial rent—Improvements effected by tenant—Small holdings aggregated into one large holding.*] A tenant is entitled to be recouped for having aggregated small holdings into one large one, in the determination of the judicial rent. M'ILPATRICK *v.* WHITE

[L. Sub-C. XVII. *M.* 87

59. —— **S. 8 (1)**—*Judicial rent, fixing of—Bad farming—Deterioration of land.*] Bad farming does not in itself form a ground for depriving the tenant of the right to have a judicial rent fixed, and the deterioration of the land will be taken into consideration in fixing it, so that the tenant may not profit by his own wrong. BELL *v.* ROBINSON L. C. XVII. *M.* 60

60. —— **Ss. 8 (1), 13 (3)**—*Ejectment for overholding—Stay of proceedings—Present tenancy—Determination of tenancy—Application to have judicial rent fixed.*] In an action of ejectment for overholding, the Court has power, at any time before possession is taken, to stay the proceedings on such

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terms and conditions as they may think fit, pending an application by the defendant to the Land Commission to fix a judicial rent, whether the originating notice has been served before or after the notice to quit expired. MONTGOMERY *v.* O'HARA - **Q. B. D. XXIII. 5; C. A. XXIV. 2**

61.—— Ss. 8 (3), 13 (3), 23—*Staying proceedings in action to recover land on title—Application pending to have judicial rent fixed—Present tenancy—Letting by mortgagor after execution of mortgage—Ejectment brought by mortgagee—Jurisdiction to stay proceedings—Injury to party—Judicature Act, s.* 28 (5).] Irrespective of the provisions of the Land Law Acts as to staying and suspending proceedings in actions, pending the determination of judicial rents by the Land Commission, the Court has inherent power, under its ordinary jurisdiction, to compel the postponement of proceedings brought under its process for a limited period when necessary in order to meet the requirements of justice. Where, if by reason of the Land Commission being unable to adjudicate upon a tenant's originating notice to determine a judicial rent before the hearing of an action brought against him for recovery of his holding upon the title, the tenant would, as the effect of a judgment against him in the action, be deprived of a beneficial right affecting his holding to which otherwise he would become entitled on a judicial rent being determined, the Court will be warranted in exercising its inherent jurisdiction to temporarily stay the proceedings in the action. *Semble*, the operation of sec. 13 (3), is not limited to the suspending of proceedings brought against a tenant by a person standing in the relation of landlord to the defendant. *Quære*, whether a tenancy from year to year, created by a mortgagor in possession after the execution of the mortgage, binds the lands under the Act, so that, as against the mortgagee, the tenant could claim to have a judicial rent determined? CLARKE *v.* NIXON - - - - - - **E. D. XXI. 45**

62.—— S. 8 (4)—*Improvements made by landlord—Tenant only partially compensated for expenditure by him—Receipt stating money received from landlord in full discharge of claims—Rebuttal.*] In order to come within sub-sec. (4), sec. 8, providing that an application to determine a fair rent may be disallowed where the improvements have been made by the landlord, it must appear that such improvements were so completely, and not merely partially, made by the landlord that there would be nothing in respect of which the tenant would be entitled to compensation. And it is open to the tenant to show that improvements made by him cost an amount in excess of the sum allowed to him therefor by the landlord, and to claim the benefit thereof to that extent, notwithstanding his having given a receipt admitting that the sum so allowed by the landlord "was paid pursuant to agreement" (contrary to the fact) "and was received by him in full discharge of all claims" on foot of said improvements. LYONS *v.* ORMATHWAITE **[L. Sub-C. XVI. 128**

63.—— S. 8 (4)—*English-managed estate—Permanent improvements.*] An estate is not "English-managed" where the permanent improvements, reclamation of other than buildings and waste lands, have been executed by the tenant before 1870, and 20 years before the hearing of the fair rent application. RUSSELL *v.* LECONFIELD **L. Sub-C. XVIII. 28**

64.—— S. 8 (4)—*Reclaiming slob lands—Permanent improvements.*] The reclamation of slob lands, and the subsequent drainage of the lands reclaimed from the overflow of the pent-up stream does not come within sec. 8 (4). PARK *v.* BRUEN **[L. Sub-C. XXVII.** *M.* **359**

65.—— Ss. 8 (4), 58 (2) (3)—*English-managed holding—Improvements by tenant—Home farm—Substantial portion agricultural in character—Letting for purposes of pasture—Extent of tillage permitted—Restrictive conditions as to sale and removal of farm produce.*] A holding cannot be regarded as an English-managed one, within sec. 8 (4), where the tenant holds under a contract containing a covenant, binding him to keep the premises and all the improvements thereon in repair, and where it is shown that suitable and necessary improvements have been in fact effected by him. Where a substantial portion of the holding is of an ordinary agricultural character, the holding does not constitute a house-farm within sec. 58 (2). The principle laid down by the Land Commission in the decision of *Drought* v. *Stubber* (XVIII. 37), applied and followed, as to the extent of tillage permitted, and the effect of covenants restrictive of the sale, and removal of farm produce, as effecting the question whether a holding was let "wholly or mainly for the purposes of pasture" within sec. 58 (3). SMITH *v.* O'CONNOR **L. Sub-C. XVIII. 74**

66.—— S. 8 (6)—Rule 115—*Application to set aside agreement—Coercion—Agent of landlord acting as witness.*] The Court refused to set aside an agreement fixing a judicial rent where the tenant did not prove coercion, and the witness was not at the time in the landlord's employment. DRISCOLL *v.* REORDAN **[L. C. XXIV. 93**

67.—— S. 8 (6)—Rule 100—*Witness to agreement and declaration.*] *Semble*, that the rule requiring the signature of a tenant to an agreement and declaration, stating what is the fair rent of a holding, to be witnessed by a clergyman, solicitor, commissioner for taking affidavits, Justice of the Peace, or Poor Law Guardian may be relaxed when there is extreme difficulty in obtaining one of the persons to be a witness to the instrument. *Ex parte* TILSON - - - **L. C. XV. 102**

68.—— S. 8 (6)—*Specific performance—Parol agreement to sign agreement and declaration fixing judicial rent—Part performance—Statute of Frauds.*] The payment and acceptance of an altered rent on foot of a parol agreement to sign an "agreement and declaration" fixing the judicial rent of a holding, under sec. 8 (6), is a sufficient part performance to sustain an action for specific performance of such contract. The Chancery Division has jurisdiction to decree such specific performance, and, for the purpose of effectuating its decree, to order the defendant to concur in doing all acts necessary to enable the agreement to be duly filed in the Court of the Irish Land Commission. *Semble*, it is for the Irish Land Commission to decide whether it will file the agreement or not. (By Chatterton, V.C.) BEAUCLERK *v.* HANNA **[Cy. Ct. Ap. XXIII. 26**

69.—— S. 8 (6)—*Application to revise rents fixed by agreement.*] Rents were fixed by agreement under the Land Act, 1881, s. 8 (6), in several cases between the years 1882 and 1885. In 1893 the tenants, with the landlord's consent, applied to have new rents fixed by the Land Commission:—*Held*, that there can be no revision or resettling of rent under the Act except at intervals not less than fifteen years, and that the Land Commission had no jurisdiction to grant the application. *Re* SCOTTISH PROVIDENT INST. *v.* MURRAY **[L. C. XXVII.** *M.* **658**

70.—— S. 8 (6)—*Fair rent agreements taken off the file of the Land Commission as fraudulent—Fraud inferred from the reservation of grossly inadequate rents.*] The Land Commission has jurisdiction to remove from its file any agreement improperly placed there. Where a landlord, tenant-for-life, had previously to forfeiting his estate made fair rent agreements with his tenants at a grossly inadequate value, the agreements were ordered to be struck off the file on the application of the succeeding tenant-for-life and an annuitant. M'GOVERN AND M'MORROW *v.* PEYTON - - **L. C. XXVII. 138**

71.—— Ss. 8 (6), 15—Rules, Oct. 1881, r. 105—*Agreement fixing fair rent between sub-landlord and tenant—Effect as regards head landlord—Ejectment decree for non-payment and writ of* habere *executed against sub-landlord—Collusive agreement—Evidence.*] The question whether the agreements made between the sub-landlord and his tenant were *bonâ fide*, and not collusive, is a matter of evidence, and in the absence of such evidence an application by the head landlord to have the agreements set aside will be refused with costs. DILLON *v.* DILLON - - - - - **L. C. XVII.** *M.* **466**

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72. —— **S. 8 (9)**—*Compensation for tenant's improvements—Covenants in lease to build and reclaim—Fixing fair rent.*] Where a tenant of a holding subject to the Ulster custom was granted lease for sixty-one years from November, 1864, and covenanted therein to reclaim and thorough-drain every year 1a. 1r. 20p. of the land demised, and also to thorough-drain one acre of the arable portion of the land yearly, and expend a sum of £300 on buildings; and it was proved that the rent reserved by the lease was the full letting value of the holding as it then stood:—*Held*, that the tenant was not, by the granting of the lease, compensated for improvements executed in pursuance of the covenants, and that in fixing the fair rent he should be allowed for his drains and reclamations, and no rent should be put on the buildings erected by him in pursuance of the covenant in the lease. CALDWELL *v.* HOUSTON - - - - **L. Sub-C. XXIV. 25**

73. —— **S. 8 (9)**—*Judicial rent, determination of—Tenant from year to year—Acceptance of lease prior to* 1870*—Imposition of rent in respect of increased value beyond yearly value of improvement works.*] The acceptance by a tenant from year to year before 1870, of a lease of the holding for twenty-one years, containing the usual covenants to keep and give up the premises in repair, precludes the tenant from being entitled to compensation, under the Land Act of 1870, for improvements previously made, and excludes such improvements from the prohibition to have rent charged in respect of them contained in the Land Law Act, 1881, sec. 8 (9); but in determining what would be a fair rent, the Court is at liberty to consider, having regard to all the circumstances of the case, whether it is just and fair that any, and if so what, deduction should be made from the full letting value of the lands, in respect of the money expended on such improvements; no correlative obligation being imposed to charge the highest rent upon all that the Court is not prohibited from putting any rent upon, but the amount of the rent being to be fixed having regard to the interest of the landlord and tenant respectively, and considering all the circumstances of the case. *Adams v. Dunscath* (XVI. 59), discussed and applied. BRENNAN *v.* LATOUCHE **[L. Sub-C. XVI. 102**

74. —— **S. 8 (9)**—*Landlord and Tenant (Ireland) Act*, 1870, *s.* 5—*Determination of judicial rent—Presumption in respect of improvements—Improvements effected more than* 20 *years before Act of* 1870.] When improvements do not fall within the presumption contained in the Act of 1870, that all improvements effected within twenty years of the passing of the Act were made by the tenant, there is no presumption on either side as to who made or constructed them; and the burden of proof lies on the other party bringing himself within the section. LONG *v.* BERESFORD **L. C. XVII.** *M.* **467**

75. —— **S. 8 (9)**—*Buildings—Lease of premises precluding tenant from having interest in improvements made before its execution—Exception from statutory presumption—Onus of proof—Landlord and Tenant (Ireland) Act*, 1870, *s.* 5 (3).] Where improvements have been made on a holding 20 years before the passing of the Landlord and Tenant Act, 1870, the statutory presumption contained in sec. 5 of that Act does not apply, and it lies on the tenant to establish affirmatively by evidence that the improvements were made by himself or his predecessors in title; in the absence of such evidence, the landlord is entitled to rent on such improvements. GORE-BOOTH *v.* SCANLAN - **L. Sub-C. XVIII. 16**

76. —— **S. 8 (9)**—*Determination of judicial rent—Improvements—Time when effected—Enjoyment of advantages of tenant—Tenant's interest, how to be estimated—Landlord and Tenant (Ireland) Act*, 1870, *s.* 4.] In fixing a fair rent, under the Land Law Act, 1881, no allowance is to be made to the tenant in respect of improvements other than permanent buildings and reclamations of waste lands, if the improvements were made before the passing of the Land Act, 1870, and twenty years before the service of the notice to fix a fair rent. Enjoyment by the tenant of the advantage of improvements made before the Land Act, 1870, which under sec. 4 is to be taken into consideration in reduction of the tenant's right to compensation, cannot be excluded from consideration in determining a fair rent under the Land Law Act, 1881. In estimating the tenant's interest in his improvement, when fixing a fair rent under the Land Law Act, 1881, his interest should be taken as it stands when the application to fix a fair rent is made, and not as it would be at the end of the statutory term of fifteen years, supposing the tenant at that time claimed compensation for improvements under the Land Act, 1870. *Adams v. Dunscath* (XVI. 59), discussed and applied. FERLEY *v.* LEFROY - - **L. C. XVII. 8**

77. —— **S. 8 (9)**—*Buildings and improvements completed in pursuance of covenant in lease of* 1811.] Where premises were held originally under a lease dated 1st January, 1811, containing covenants on the part of the lessee to erect buildings and to drain and fence certain portions of the land, and the buildings, drains, and fences were completed during the currency of the lease, the tenant (then the yearly tenant of the same holding) applied to have a fair rent fixed, and his claim to have the buildings and fences exempted from rent was resisted by the landlord on the ground that they were completed under and pursuant to the covenants:—*Held*, that on a holding admittedly forming part of an estate where tenant-right existed, and where admittedly the custom has been on the expiration of leases not to put rent on any improvements effected at the tenant's expense, even when that expense had been originally incurred pursuant to a covenant in an expired lease, the landlord was not entitled to rent on such improvements. BALL *v.* DOWNSHIRE **[L. Sub-C. XXIV. 28**

78. —— **S. 8 (10)**—*Dates of purchase by tenant and service of originating notice.*] The fact that the tenant purchased the holding and entered into possession on the day on which he served his originating notice to have a fair rent fixed, is not in itself any ground why evidence should not be gone into and an alteration made by the Court on the former rent. CRAIG *v.* WRAY - - - **L. C. XXIV. 114**

79. —— **Ss. 8, 13 (3), 21, 58 (7)**—*Staying proceedings in action to recover land on title pending application to fix judicial rent.*] Where a tenant applies to stay ejectment proceedings pending an application to the Land Commission to fix a judicial rent, the Court will not, on such an interlocutory application, determine whether the tenancy is one to which the Act applies. *Boyd* v. *Hodson* (XV. 120), followed. *Semble* (*per* Palles, C.B.), a tenancy under a written agreement for a year certain, existing at the date of the passing of the Act, is one to which sec. 21 applies. FITZGERALD *v.* BRENNAN - - **E. D. XVI. 56**

80. —— **Ss. 8 (9) 15**—*Judicial rent—Determination of Improvements—Sub-tenant becoming tenant to head landlord on expiry of middleman's lease.*] A sub-tenant becoming tenant to the head landlord on the expiration of a middleman's lease is entitled to exemption from rent in respect of buildings and other improvements admittedly made by him before the expiration of the middleman's lease. NOLAN *v.* GUNN **[L. Sub-C. XVII. 48**

81. —— **Ss. 8, 15, 17, 48, 57**—*Writ of prohibition—Irish Land Commission—Jurisdiction—Powers as to incorporeal rights.*] A conditional order for a writ of prohibition to restrain the Irish Land Commission from enforcing an order will be granted if the order of the Commissioners is plainly in excess of their jurisdiction, it being reasonably open to argument that the Land Commission is a Court of inferior jurisdiction although the Chief Commissioner is a Judge of the High Court of Justice. But the Land Commissioners do not exceed their jurisdiction in affixing a rent in respect of a profit *à prendre*, such as a right of pasturage attached to a holding. The word "land" occurring in the Land Law Act, 1881, is not to be cut down so as to mean merely the soil divested of its easements and profits *à prendre*, provided these are such as are usually enjoyed therewith; and a tenant

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acquiring a right to a holding as a present tenant, under the Act, is equally entitled to all easements and profits à *prendre* attached to the holding for the same period and subject to the same conditions. *Ex parte* HUTCHINSON. *In re* THE IRISH LAND COMMISSION - **E. D. XVII. 27**

82.—— Ss. 8, 15, 20—*Sub-letting—Ejectment on the title—Creation of new tenancy—Landlord and Tenant Act,* 1860, *s.* 94.] The lessee of a non-agricultural lease sub-let portion for dairy farms. On the expiration of the head lease an ejectment on the title was brought, to which the sub-tenant was not a party or served; or even put out of possession:—*Held,* that the sub-tenant was entitled to have a fair rent fixed. FREWEN *v.* SMITH-BARRY (No. 2)
[L. Sub-C. XXVII. *M.* 292

83.—— Ss. 8, 21—*Present tenant—Trinity College Leasing and Perpetuity Act,* 1851 (14 & 15 *Vic., c.* 128)—*Omission of tenant to take out grant in perpetuity—Payment of fine and additional rent.*] A tenant was in occupation of part of a property held by his landlord under a grant in perpetuity (under Trinity College), and conveyed by the Encumbered Estates Court under the description of "yearly tenancy determinable 1st November in each year," with an intimation "that the tenant held under a lease or agreement for a lease, with covenant for renewal, *toties quoties,* on payment of fine and additional rent, but no renewal had in fact been taken out since 1804, although rent in column included £2 19s. 6d. rent, and 2s. 6d. renewal fine, and 7d. increased rent." A renewal fine and additional rent were added in 1857. The conveyance was executed in November 1859. A further increased rent of 4s. 2d. was demanded (under the Trinity College Leasing and Perpetuity Act, 1851), and was paid by the tenant since 1866. Notice having been served by the tenant to have a fair rent fixed, as if a yearly tenant only, within the meaning of the Land Law (Ireland) Act, 1881:—*Held,* that consequent on the payment by the tenant in 1857 and since, of a proportion of fine and additional rent, and again of an additional rent of 4s. 2d. per annum since 1866 under the provisions of the Trinity College Leasing and Perpetuity Act, 1851, the tenant had converted his holding into a perpetuity, and was not a present tenant of a yearly tenancy within the meaning of the Land Law (Ireland) Act, 1881; and that the originating notice should be dismissed accordingly. *O'Callaghan* v. *Norton* (XXI. 24 Note), followed. *Boyle* v. *Lysaght* (1 Ridg. P. C. Cases, 384), and *Frankfort* v. *Thorpe* (2 Ball and Beatty), 372, considered. O'DONNELL *v.* NORTON
[L. C. XXI. 23

84.—— Ss. 8, 22, 57—*Future tenancy—Lease made in* 1882 *to commence in* 1883.] Where a proposal for a lease to commence on January 1st, 1883, was accepted, and the tenant put into possession thereunder on December 12th, 1882, the tenancy was held to have been created at the time it came into operation, and not at the date of the agreement. The judgment of the Land Commission reversed. HOWELL *v.* BRISCOE
[L. C. XX. 15; C. A. XXI. 73

85.—— Ss. 8, 41, 44, 48 (3), 57—*Fixing of fair rent—Tenant—Title—Occupancy—Jurisdiction of Land Commission—Writ of prohibition—Landlord and Tenant Act,* 1860, *ss.* 1, 3.] In order to constitute the relation of landlord and tenant, and to give jurisdiction to the Land Commission to fix a fair rent, the tenant must be a person not merely in occupancy, but also must be entitled under some contract of tenancy, and must be in direct privity with the landlord:—*Held* (Murphy, J., *diss.*), that the son of a former yearly tenant (one of several next of kin), who on his father's death enters into sole possession without taking out administration and pays the rent, receiving receipts as from the representatives of his father, is not such a tenant. The Common Law Division has power in such a case to issue a writ of prohibition directed to the Land Commission. Observations on the jurisdiction and constitution of the Land Commission. FOX *v.* LANGAN
[E. D. XXVI. 124

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86.—— Ss. 8, 57—*Determination of judicial rent—Tenant in occupation of holding.*] The tenant of a holding containing 21a. 3r. 32p. statute measure, had let two houses, with about 3 roods of land attached, to two sub-tenants, who occasionally laboured for the tenant, but were usually employed for others, and who paid rents respectively of £3 5s. and £1 6s. per annum, by half-yearly payments:—*Held,* that the tenant was not in occupation of the holding within the meaning of ss. 8 and 57 of the Act; and that his originating notice for a fair rent should be dismissed. M'KEE *v.* MUSSENDEN
[L. C. XIX. 51

87.—— Ss. 8, 57—*Present tenant—Alteration of tenure after passing of Act—Separate rent receipts for one holding, occupied in severalty.*] C. H. and J. H., after the death of their parents, each occupied half of a farm, which was originally held as one undivided farm by their father, and each contributed half of the gross annual rent, for which receipts were given in their joint names, until January, 1883, when, for the rent due in the previous November, they asked for, and obtained, separate receipts for their respective moieties:—*Held,* that C. H. and J. H. were "present tenants" within the Land Law Act, 1881; the mere fact of their having procured separate acknowledgments for the two rents not having the effect of altering the tenancy of either of them subsisting before the passing of the Act. HAMPTON *v.* COPE
[L. Sub-C. XVIII. 89

88.—— Ss. 8, 60—*Application to fix fair rent—Retro-active operation of order—Immediate payments in excess of rent as judicially determined—Recovery back, by way of set-off, as money had and received—Mistake of law—Legal coercion.*] Where between the dates of an originating notice to fix fair rent having been duly recorded under the Land Law Act, 1881, and of such rent being determined by the Land Commission at a reduced amount, the tenant, in consequence of a demand by the landlord's solicitor, made payments on foot of the former higher rent:—*Held,* that, as against a claim for rent by the landlord, the tenant was entitled to set off the amount of the rent so paid in excess of the fair rent fixed, as money had and received by the landlord to his use. *Semble,* that if the landlord had recovered and enforced judgment, the tenant would still have been entitled to the amount so overpaid. TWISS *v.* CASEY
[Q. S. XVIII. 83

89.—— Ss. 8, 60—*Originating notice to fix fair rent recorded under sec.* 60—*Agreement in Form* 33 *subsequently signed and originating notice struck out.*] Where an originating notice to fix a fair rent was recorded under sec. 60, and an agreement in Form 33 subsequently signed and the notice struck out, and the agreement was not filed in consequence of mistakes therein:—*Held,* that the notice could not be restored to the list, but a new notice should be served. M'MENAMIN *v.* HEYGATE
[L. C. XVII. 116

90.—— Ss. 9, 21—*Agreement for* 31 *years—Motion to dismiss originating notice to fix fair rent.*] An originating notice to fix a fair rent was dismissed where the tenant held under an agreement for a lease for 31 years. LONG *v.* SAYERS
[L. C. XV. 113

91.—— Ss. 9, 58 (2)—*Town parks—Unreasonable conduct.*] A fair rent was fixed on land adjoining Kilmallock, as it did not come within the definition of "town parks":—*Semble,* the application to have a fair rent fixed after the signature of an agreement to fix it, which agreement was never filed by the tenant's solicitor, comes within sec. 9 of the Act. BERGIN *v.* MAUNSELL
[L. Sub-C. XXVII. *M.* 111

92.—— S. 10—*Agreement for judicial lease—Specific performance—Jurisdiction—Lease subject to approval of Land Commission.*] The Court of Chancery will decree specific performance of an agreement for a lease under sec. 10, such lease being subject to the sanction of the Land Commission. KELLY *v.* ENRIGHT. - - **V. C. XVII. *M.* 466**

93.—— S. 13—*Extension of time for redemption—Notice of sale—Solicitor—Subsequent notices—Service through post.*] In

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all applications to extend the time for redemption where no notice to sell has been served, such notice must be served within a week; it can be signed by the solicitor, and can be served through the post. CAROLIN *v.* HAWKSHAW. [L. C. XV. 101

94. —— S. 13—*Notice of sale—Extension of time—Originating notice.*] Where there is an originating notice to fix a fair rent in a case where a decree in ejectment has been executed, the Court will require notice of sale to be served before extending the time. SHAIN *v.* CARSWELL [L. C. XV. 94

95. —— S. 13—*Extension of time to redeem—Evicted tenant—Present tenant—Inconsistent characters.*] A tenant evicted for non-payment of rent, and who stated he had been subsequently put back into possession of his holding as tenant, and who, in the character of tenant, was defending an action for recovery of the land on the title, is not entitled to apply to the Court for an extension of time to redeem his tenancy with a view to sale, because he appears in two inconsistent characters, namely, as a present tenant, and a tenant under eviction. *Per* Litton, Q.C.: Unreasonable conduct on the part of either landlord or tenant is to be taken into account by the Court on the hearing of any application. BAILLIE *v.* MONTGOMERY - - - L. C. XV. 113

96. —— S. 13—*Ejectment for non-payment of rent—Extension of time to redeem—Discretion—Lodgment of amount sued for—Ground of refusal.*] On a motion, under the Land Law Act, 1881, s. 13, to extend the time to redeem, being one addressed to the discretion of the Court, the Court will consider that the tenants not having lodged in Court the amount sued for in an ejectment for non-payment of rent, and proceeded to obtain a writ of restitution under the L. & T. Act, 1860, where the right to redeem is disputed by the landlord, is a ground for refusing the motion. RYAN *v.* SEALE [L. C. XV. 81

97. —— S. 13 (1) (2)—*Landlord and Tenant Act*, 1860, *s.* 34—*Extension of time to redeem tenancy with view to sale—Stay of execution—Requisites to enable tenant to benefit of defence in ejectment—Expiration of lease by death of* cestui que vie.] Where land is not let at a rack-rent the emblement section of the L. & T. Act, 1860 (23 & 24 Vic., c. 154, s. 34), does not apply. It must be shown also that a right to emblements existed. If a tenant had a right to remain in possession under that section until the last gale day of the year, that being a clear defence to ejectment proceedings taken before that time, a decree in ejectment is conclusive that he was not entitled to the benefit of the section. *Per* O'Hagan, J., and Mr. Vernon (Litton, Q.C., *diss.*):—The 13th sec. of the Land Law Act, 1881, does not embrace within its provisions the case of a lease which had expired before the passing of the Act. *Laverty* v. *Moore* (XV. 105), discussed. RUTLEDGE *v.* RUTLEDGE - - L. C. XV. 107

98. —— S. 13 (1) (2)—*Extension of time for sale—Decree—Restraining execution—Definition of tenant in Acts of* 1870 *and* 1881.] A tenant against whom a decree in ejectment on a notice to quit had been obtained before the passing of the Land Law Act, 1881, but on which a stay of execution until the 1st day of November had been put, and who had served a land claim for compensation under the Act of 1870, before the hearing of the ejectment, is entitled to sell his tenancy up to the execution of the decree; and the tenancy so sold is a subsisting tenancy, and the tenant is entitled to serve notice to fix a fair rent up to the time of the execution of the decree. The proceedings to compel a tenant to quit his holding embrace the whole proceedings commencing with the notice to quit. The Land Commission Court has no power to restrain a landlord from executing a Civil Bill decree in ejectment pending an application by the tenant to fix a fair rent for his holding. *Semple* v. *Hunter and Wife* (XV. 73), followed. LAVERTY *v.* MOORE - - - L. C. XV. 105

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99. —— S. 13 (2)—*Extension of time to redeem—Execution of decree—Renewal—Re-execution—Time from which period of redemption is to be computed—Estoppel—*27 & 28 *Vic., c.* 99, *s.* 19.] Where a tenant had re-taken possession of a farm from which he had been evicted under a decree in ejectment for non-payment of rent, and which decree was subsequently renewed and re-executed, he is estopped from disputing the legality of the execution of the original decree, and his time to redeem the tenancy must be computed from the execution of it, and not from the execution of the renewal. MARSH *v.* MORELAND - - - L. C. XV. 112

100. —— S. 13 (3)—*Suspending proceedings in action to recover land on non-payment of rent—Application pending to have judicial rent fixed—Leaseholder.*] The object of sec. 13 (3) is, there being two proceedings before two Courts to be determined on at two separate periods, to enable the tenant to be placed in the same position as if the whole matter for decision were before but one tribunal; and its provisions are to be read, accordingly, as being supplementary to those with respect to determining a judicial rent, so as to keep the parties to the proceedings before both tribunals *in statu quo*. Within this principle, where it is sought to suspend an action brought to recover land for non-payment of rent, portion of which would be unaffected by the determination of a judicial rent by the Land Commission, while the other portion would probably be reduced by that Court, it would be a fit condition to impose, within the purview of the enactment, when ordering a suspension of the proceedings, that the tenant should pay in full the portion that would be so unaffected, but otherwise as to the portion that would be affected. O'CONNOR *v.* DANAHER [E. D. XXI. 44

101. —— S. 13 (3)—*Action to recover land on title—Staying proceedings—Application for judicial rent—Contract of tenancy—Emblements—Jurisdiction.*] In an action to recover land on the title, where the defendants were in occupation of the lands, held originally under a lease which expired on the 31st January, 1881, after the expiration whereof they, representing the original lessee, remained in possession claiming the right of emblements, originating notices of application to the Land Commission Court to fix a judicial rent on behalf of defendants having been served on the 24th October and 1st November, 1881, and the writ of summons issued on the 14th November, 1881:—*Held*, that the proceedings in the action should not be stayed under the Land Law Act, 1881, s. 13, sub-s 3, on the ground that the Court should not decide, on a summary application, whether or not the claim for emblements, made by the defendants, would create a contract of tenancy sufficient to constitute a "present tenancy" so as to entitle the defendants to the benefits of the Act. BOYD *v.* KEARNEY [C. P. D. XV. 120

102. —— S. 13 (3)—*Staying proceedings in ejectment on the title—Application to fix judicial rent—Question for jury—Present tenancy—Jurisdiction.*] In an action to recover land on the title, where the defendant under the Land Law Act, 1881, had served on the plaintiff an originating notice to fix a judicial rent, and subsequently moved, under s. 13, sub-s. 3, to stay the proceedings in the action pending the application of the Land Commission, the plaintiff contending that the defendant was not a "present tenant" of the holding, and it appeared that the defendant's claim to be so considered rested on his having derived the interest in a lease from the plaintiff, by having married the daughter of the lessees; but that the lease had expired in 1879, since when no rent had been paid by the defendant:—*Held*, that the motion should be refused, on the ground that the defendant was not a present tenant of the holding. BEAMISH *v.* CROWLEY. C. P. D. XV. 118

103. —— S. 13 (3)—*Staying proceedings—Action to recover lands for non-payment of rent—Application to have judicial rent fixed—Terms as to paying portion of rent due.*] In an action to recover land, for non-payment of three and a-half years' rent, where the defendant had served an originating notice to fix a judicial rent, unrecorded, and subsequently

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moved, under the Land Law Act, 1881, sec. 13 (3), to stay the proceedings in the action pending the application to the Land Commission:—*Held*, that the proceedings should be stayed for three months, on the condition that the defendant should, within ten days, pay the amount of two years' rent. THE EARL OF ERNE *v.* HALL - - **Q. B. D. XV. 118**

104. —— **S. 13 (5)**—*Notice to quit by tenant—Stamp—Receipt of rent subsequent to expiration of notice to quit—Waiver—Landlord and Tenant Act*, 1870, *ss.* 57, 58.] A tenant of a present yearly tenancy served an unstamped notice to quit, which, while it was running, he expressed his intention to withdraw. The landlord declined to permit him to withdraw it after the notice to quit had expired; and the tenant had continued in possession, and served an originating notice to have a fair rent fixed. Subsequently to the service of the originating notice, the landlord sued for rent in respect of the holding for a period subsequent to the expiration of the notice to quit, and recovered such rent:—*Held*, that the notice to quit served by the tenant did not require a stamp, under the 57th and 58th sections of the Landlord and Tenant (Ir.) Act, 1870; and that sec. 13 (5) of the Land Law (Ir.) Act, 1881, does not apply to a notice to quit served by the tenant. *Per* Litton, J.: When the originating notice was served, the tenant had not the status of a present tenant under the Act of 1881, and the payment and acceptance by the landlord of rent subsequently accrued did not revive the tenancy so as to confer upon the tenant the status he had lost. *Per* Mr. Commissioner Fitzgerald: From the payment and acceptance of rent a waiver of the notice to quit was to be inferred, so that, as between the landlord and tenant, the old tenancy must be considered as never being determined; such waiver must necessarily relate back to the expiration of the notice to quit, and consequently it was immaterial that the payment of the rent had been made subsequently to the date of the originating notice. M'DONNELL *v.* BLAKE - - - - - - - - **L. C. XXIV. 48**

[Judgment of Mr. Commissioner Fitzgerald affirmed on appeal. 28, L. R. Ir., 395.]

105. —— **Ss. 13, 20**—*Notice to quit—Judgment for possession—Sale of tenancy by mortgagee—Execution of writ of habere.*] A., who was tenant of a holding within the Land Law Act, 1881, mortgaged it to B., who subsequently entered into possession. The landlord served a notice to quit on A., and on its expiration commenced an action against both A. and B. to recover possession of the holding, and obtained judgment. After the judgment was obtained, B., as mortgagee in possession, sold the interest in the farm to C., notwithstanding which a writ of possession was executed, and possession taken by the landlord. In an action to recover possession brought by C. against the landlord:—*Held* (*diss.*, Andrews, J.), that C. was entitled to recover possession; that the sale by B. after the judgment, revived, under the 13th section of the Land Law Act, 1881, the tenancy previously vested in A., and that nothing had been done to determine it in the hands of C. *Per* Andrews, J.: That the effect of the sale under that section was only to put the purchaser into the same position as the vendor, and that, he not having taken any steps to stay the proceedings, the tenancy was ultimately determined by the execution of the writ of possession. HAREN *v.* ARCHDALE **[E. D. XVII. 81**

[The judgment of the Court was reversed and that of Andrews, J., affirmed on appeal, 14, L. R. Ir., 296.]

106. —— **Ss. 13 (5), 20**—*Notice to quit—Middleman—Subtenant from year to year of middleman—"Tenancy."*] A tenant who has sub-let the whole of his holding is not a tenant to whom the Land Act of 1881 applies. His tenancy determines on the expiration of the notice to quit. Middlemen are entirely outside the benefit of the Land Act of 1881. HUGGARD *v.* WEST - - - - - **L. C. XXVII. 60**

107. —— **Ss. 13, 21, 57**—*Stay of proceedings in ejectment—Pending application to fix judical rent—Tenant of a "present tenancy"—Tenant holding over after expiry of lease previous to the passing of the Act, without creation of a new tenancy.*] A tenant, holding over after a lease had expired previous to the passing of the Act, where no rent had since been received from him, and no agreement express or implied existed for the creation of a yearly tenancy, does not come within the provisions of section 13, sub-section 3, enabling the Court to postpone or suspend proceedings for compelling the tenant of a present tenancy to quit his holding pending the determination of an application on his behalf to fix a judicial rent. RAINE *v.* HILIAR - - - - - - **Q. S. XV. 65**

108. —— **Ss. 13 (1) (2), 43, 50 (1), 60**—*Jurisdiction—Enlargement of time for redemption of tenancy evicted for non-payment—Delay of sale—"First occasion" on which Court sits—Validity of orders enlarging period embraced in such occasion.*] Where a tenant has been evicted for non-payment of rent, the Court has no jurisdiction, under the 13th section of the Land Law Act, 1881, to enlarge his time for redemption, save as ancillary to a proceeding by him for a sale of his tenancy. Where a tenant has been evicted for non-payment of rent, prior to the passing of the Land Law Act, 1881, an application made by him to the Court to extend his time for redemption after the six months allowed, by the L. and T. Act, 1860, have expired, is made in sufficient time through the combined operation of sections 13 and 60 of the former Act, if made between the 20th of October and the 12th of November, 1881—the periods fixed for the first session of the Court, under the orders of October 19, 27, 1881; and in defining the "first occasion" of the sitting of the Court, so as to extend beyond merely the first day of its sitting, those orders are not *ultra vires*. BARRETT *v.* VENTRY - - - **L. C. XVI. 50**

109. —— **Ss. 13, 48, 51**—*Landlord and tenant Act*, 1860, *s.* 34—*Power to restrain execution of decree—Application to fix fair rent—Prolongation of tenancy—Emblements.*] The Land Commission Court has no power to restrain a landlord from executing a civil bill decree in ejectment pending an application by the tenant to fix a fair rent for the holding. SEMPLE *v.* HUNTER - - - - - - **L. C. XV. 73**

110. —— **Ss. 13 (2), 60**—*Extension of time for sale—Ejectment with stay—Notice of sale.*] The effect of the 60th section of the Land Law Act, 1881, is to project a tenancy which has expired by the making of a decree, so as to give the tenant further time to apply to the Court. M'LOUGHLIN *v.* RICHARDSON - - - - - **L. C. XV. 94**

111. —— **Ss. 13 (3) (5), 60**—*First occasion of sitting of Land Commission—Order Extending statutory time—Jurisdiction—Determination of yearly tenancy—Service of notice to quit.*] A notice to quit was served on 21st March, 1881, which expired on 29th September following, and possession was demanded on 18th November. On 28th October the tenant served an originating notice, to have a fair rent fixed, which was lodged in Court on 29th October, and was recorded on 12th November, but was not heard till 14th October, 1882. In an ejectment to recover possession of the holdings:—*Held*, that there was a tenancy existing in the tenant at the time of the passing of the Act, and that he was entitled to have a fair rent fixed. BOYD *v.* PHELAN - - - **C. P. D. XVII. *M.* 634**

[This was affirmed on appeal, 14 L. R. Ir. 232.]

112. —— **Ss. 13, 21, 58 (3)**—*Staying ejectment, pending application to fix fair rent—Present tenant—Lessee in bonâ fide occupation—Pastoral holding, what constitutes—Special agreement as to mode of cultivation.*] By a lease dated 1851, forty-one acres of land were demised to Bryan Kavanagh for thirty-one years, and the lease contained clauses against breaking up or tilling more than sixteen acres in any one year, under penalty of forfeiture; and on the death of Bryan the defendant, Patrick Kavanagh, a dairyman residing in Dublin, entered into possession, but it did not appear how the interest in the lease became vested in him. On the expiration of the lease possession was demanded, and an action of ejectment for overholding was brought. A motion to have the action stayed till the defendant had a fair

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rent fixed was granted by Lawson, J. On appeal: *Held*, that the motion should have been refused, as the onus lay upon the lessee of showing that he was a lessee in *bond fide* occupation of his farm, so as to constitute himself a present tenant, and there was no evidence on which the Court below should have held the defendant a present tenant, his title to the lands not being shown. HUTCHINSON *v.* KAVANAGH
[Q. B. D. XVIII. 4; C. A. XVIII. 5 note

113. —— Ss. 13, 57—*Application to fix judicial rent—Tenant of present tenancy—Pending proceedings compelling to quit holding—Sale of tenancy under* fi. fa. *before passing of Act—Assignment to purchaser executed after passing of Act.*] Where, in execution of a writ of *fieri facias*, a tenant's interest in a tenancy from year to year is sold before the passing of the Land Law Act, 1881, and conveyed to the purchaser by the sheriff under an assignment executed subsequent to the passing of the Act, and before an application to the Court to fix a judicial rent, the proceedings are not pending proceedings for compelling the tenant of a present tenancy to quit his holding, within sec. 13, sub-s. (3). STACK *v.* PLUMMER
[L. Sub-C. XV. 122

114. —— Ss. 13 (3), 58 (2)—*Staying proceedings in action to recover land on title—Application to have judicial rent fixed—Demesne lands—Jurisdiction.*] In an action to recover land on the title, also claiming mesne rates, where the defendant under the Land Law Act, 1881, served an originating notice to fix a judicial rent, and the plaintiff alleged that the lands were demesne lands, within sec. 58 (sub-sec. 2), and that the defendant (who had remained in possession after the expiry of his lease), was not a "present tenant," the Court refused a motion, under sec. 13 (sub-sec. 3), by the defendant, to stay the proceedings in the action pending the application to the Land Commission to fix a judicial rent, on the ground that the Court should not decide, on a summary application, whether or not the case was one to which that Act applied. BOYD *v.* HODSON - - - - C. P. D. XV. 180

115. —— S. 14—*Grant of limited administration where there is an unproved will naming an executor.*] The Sub-Commission, on the hearing of an application to fix the true value of a holding, appointed a person nominated by the landlord, limited administrator for the purpose of selling the tenancy, the executor of the tenant not having taken out probate or nominated any person to act as limited administrator. The executor took out probate after the date of the Sub-Commission order, and appealed therefrom, and also from the order fixing the true value:—*Held*, that the Court has jurisdiction for the purpose of carrying out a sale to appoint a limited administrator of a deceased tenant, who died leaving a will naming an executor who had not taken out probate. MARQUIS OF HEADFORT *v.* COCHRANE - L. C. XXVI. 112

116. —— S. 14—*Land Commission—Jurisdiction of—Grant of limited administration—Writ of prohibition.*] The Land Commission can grant an order for limited administration to a person in occupation of land held by a deceased tenant, and as such occupier applying to have a fair rent fixed. Such person has the character of a tenant for such purpose. A writ of prohibition can issue against Land Commission for any excess of jurisdiction, though not issuable in the peculiar circumstances of this case. (By O'Brien, J.) FOX AND ANOTHER *v.* THE LAND COMMISSION AND LANGAN N. P. XXVII. 80

117. —— Ss. 14, 38—*Limited administration for purpose of having judicial rent determined.*] The Court granted limited administration for the purpose of having a judicial rent fixed to the eldest son of the testator, whose will was lost, and the executor named therein dead; the consent of one the next of kin who was out of the jurisdiction being dispensed with. FEE (REPRESENTATIVES OF) *v.* ANNESLEY L. C. XXIV. 104

118. —— S. 15—*Eviction of middleman for non-payment of rent—Under-tenants—Future tenancy.*] On the 15th April, 1884, a middleman was evicted for non-payment of rent, and his under-tenants constituted caretakers. The premises were

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not redeemed, and in April, 1885, after the period of redemption had expired, A., one of the under-tenants who had held under a sub-lease from the middleman, paid the head landlord a sum of money equal to half a year's rent at the rate reserved in his sub-lease, and obtained for it a receipt as for the rent for the six months ending 29th April, 1884, and was taken in as tenant to the head landlord at a lower rent than that reserved in his lease. A. having served an originating notice as a leaseholder to have a fair rent fixed:—*Held*, that A.'s former tenancy had been determined by the ejectment, and that a new tenancy had been created between A. and the head landlord in April, 1885, and that A. was accordingly a future tenant. CLANCY *v.* LETHIN
[L. Sub-C. XXV. 76

119. —— S. 15—*Ejectment for non-payment of rent—Sub-tenant—Determination of estate of middleman.*] A middleman having been evicted for non-payment of rent, possession was delivered by the sheriff to the head landlord. A sub-tenant, whose rent was not in arrear, and who was in occupation of part of the premises, having been put out of possession, brought an ejectment to recover back possession, claiming to be tenant from year to year, to the head landlord under sec. 15:—*Held*, that he was not entitled to recover, the decree for possession having destroyed all interests in the holding, and sec. 15 having no application to the case. (By Lawson, J.) COMMINS *v.* BARRON Q. S. XIX. 25. Cir. Cas. XIX. 38

120. —— Ss. 15, 21, 57—*Expiration of lease—Sub-letting with consent of landlord—Bond fide occupation.*] The proviso in sec. 57 that "where the tenant sub-lets part of his holding with the consent of his landlord, he shall, notwithstanding such sub-letting, be deemed for the purposes of this Act to be still in occupation of the holding," is general in its application, and applies to all sub-lettings whether before or after the passing of the Act. The word "tenant" in the proviso includes a "lessee," so that if a lessee has sub-let part of the demised premises with the landlord's consent, he is entitled to remain in occupation at the expiration of his lease as tenant from year to year under sec. 21. In such a case a distinct consent to each act of sub-letting is not necessary, if the lease itself contains an express permission to sub-let. The lessee, if entitled to remain in possession under sec. 21, is entitled to hold on as tenant of the entire premises demised, not of that part only of which he is in actual occupation, his sub-tenants having the same rights against him as he has against his head landlord. When the lessee has sub-let the entire of the premises demised, even with his landlord's consent, he has no rights under sec. 21. The words "*bond fide*" in sec. 21, cannot be construed to mean "actual" as opposed to "constructive," but means only "in good faith, not colourably or fraudulently." M'CARTHY *v.* SWANTON
[C. A. XVIII. 85

121. —— Ss. 15, 58 (2)—*Action to recover possession of land—Previous decree for possession—Effect—Sub-tenant—Estoppel—Town-park—Residence in town.*] The plaintiff was tenant of certain lands, near a town, to the S. Company. He resided in the town, but sub-let portion to the defendant, who did not reside in the town. The defendant served an originating notice, and had a fair rent fixed as against the plaintiff. Subsequently the S. Company served a notice to quit on the plaintiff, and (the lands being held to be town-parks) obtained a decree for possession in the County Court. The present defendant took defence to this ejectment. Possession was taken under the decree, but a few days afterwards the defendant went back into possession. The S. Company then re-let to the plaintiff the portion formerly in the occupation of the defendant, and he accordingly brought the present ejectment:—*Held*, that the decree in ejectment terminated all interests in the holding, including the defendant's statutory term; that the decree was conclusive against him, he having been served with the process, and having taken defence; and that, although he might bring a cross ejectment alleging a tenancy created by the 15th section of the Act between himself and the S. Company on the termination of

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the plaintiff's interest, yet it was not open to him in the present action to set up this title by way of defence, as the same defence was available to him in the previous ejectment in the County Court. Decision of the Common Pleas Division affirmed. ALLEN *v.* DERBY - C. A. XIX. 47

123.——Ss. 17, 58 (3)—*Separate lettings of arable land and pasturage—Rents of both amalgamated in landlord's receipts.*] Where originally a distinct letting was made of an agricultural farm at a fixed rent, to which subsequently a right of grazing in an enclosed plantation of the landlord was added, under a distinct and separate contract of tenancy at a fixed rent, which right was exclusively exercised by the tenant; but, the rents of both were afterwards amalgamated in the landlord's receipts; and a notice having been served to fix fair rents of the entire as one holding, the tenant having previously served notice in respect of the agricultural portion only, which, after being heard, was by leave withdrawn:—*Held*, that the right of grazing was not a mere profit *à prendre* appurtenant to the letting of the arable land, but constituted a distinct pastoral letting which should accordingly be excluded from consideration. Ex parte *Hutchinson: Re Irish Land Commission* (XVII. 27), distinguished. M'WILLIAMS *v.* GERVAIS - L. Sub-C. XIX. 23

123.——S. 20 (1)—*Present tenancy—Sheriff's sale—Purchase by agent of landlord—Transfer of tenancy.*] When the interest of a present tenant is sold under a *fi. fa.* and purchased by the landlord's agent, who without entering into possession subsequently accepts the full rent and all costs due from the execution debtor (who continues in occupation and pays the rent), the execution debtor is entitled to have a fair rent fixed as transferee of the interest in the tenancy. LEWIS *v.* KEENAN [L. Sub-C. XXVII. *M.* 136

124.——S. 21—*Agreement for a lease.*] A tenant who alleged that he held from year to year, applied to have a judicial rent fixed. An agreement signed by both parties to pay an increased rent, and that there should not be a revaluation for 21 years, was produced:—*Held*, that the tenancy continued to be a yearly one, and that the case should be heard. CUTHBERT *v.* YOUNG - - L. Sub-C. XVI. 58

125.——S. 21—*Agreement for a lease not signed—Specific performance—Commencement uncertain—Date omitted.*] Where there is a dispute between the landlord and tenant as to the terms of a parol agreement for a lease, alleged to be followed by part performance, the Court will not dismiss the originating notice to fix a judicial rent, but will adjourn the application, in order to enable the landlord to enforce specific performance of the agreement, with liberty to either party to apply subsequently. RUTLEDGE *v.* FARRELL L. C. XVI. 48

126.——S. 21—*Agreement for lease—Date from which term to commence not specified—Statute of frauds.*] An agreement for a lease omitted to specify the date from which the term should run:—*Held*, not to be a valid agreement within the Statute of Frauds. *Wyse* v. *Russell* (XVII. 31), followed. DREW *v.* BRABAZON - - - L. C. XVII. 75

127.——S. 21—*Agreement for a lease—Statute of frauds.*] An agreement dated 2nd November, 1863, provided that the "tenant on paying £20 sterling is to get possession and also a lease for 21 years":—*Held*, that the agreement, though not a "present" demise, was an agreement for an executory demise by lease, the commencement of the term of which was fixed with sufficient certainty by reasonable inference from the language used and by the references to the document itself. *Phelan* v. *Tedcastle* (15 L. R. Ir. 175), followed. *Marshall* v. *Berridge* (19 Ch., D. 223), distinguished. ERSKINE *v.* ARMSTRONG - - Q. S. XIX. 27; L. C. XXI. 15

[This was affirmed on appeal. 20 L. R. Ir. 296.]

128.——S. 21—*Bonâ fide occupation—"Shrinkage."*] Where, through the result of an arrangement between landlord and tenant, portion of a leasehold has been surrendered or re-demised to the landlord, the tenant can still be treated as in

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bonâ fide possession of the holding within s. 21, and entitled to have a judicial rent fixed. (Fitzgibbon, L.J., *diss.*) NAGLE *v.* GALBRAITH - - - - - C. A. XXV. 33

129.——S. 21—*Expiration of lease on death of lessee for life—Lessee in bonâ fide occupation—Right of personal representative to be deemed a present tenant from year to year.*] Lands having been demised to a lessee for his own life, he died after the passing of the Land Law Act, 1881, while in possession under the lease. His nephew thereupon entered into possession, and took out letters of administration to the lessee, after an action to recover possession of the lands as on the termination of the tenancy had been brought by the lessor; and the lessee's nephew having taken defence to the action:—*Held*, that the deceased lessee was in *bonâ fide* occupation of the lands at the expiration of his lease, and was to be deemed at that moment a tenant from year to year, within the meaning of the 21st section; and that, as this tenancy had not been determined, the plaintiff was not entitled to recover possession. The judgment of the Common Pleas Division reversed. ROE *v.* COONEY [C. P. D. XVIII. 11; C. A. XVIII. 80

130.——S. 21—*Home farm.*] The landlord of a holding, containing 4a. 0r. 8p. Irish plantation measure, having served notice of his intention to apply, under sec. 21, for an order to entitle him "to resume possession for the purpose of occupying same as a home farm in connexion with his residence," and being himself in occupation of a house and 3½ acres (Irish) adjoining:—*Held*, that he was not entitled to obtain the order for resumption of possession, as neither his own part of the holding alone, nor it with the tenant's holding combined, answered to the statutable character of a "home farm." HILL *v.* MILLAR - - - - L. C. XIX. 51

131.——S. 21—*Lease—Covenants, unfair or unreasonable—Yearly tenancy—Threat of eviction or undue influence—Evidence—Jurisdiction.*] The landlord of a tenant from year to year, holding at a rent of £40 per annum, having informed him that he should take a lease at an increased rent of £30 per annum, the tenant, after refusing at first to do so, assented, as he was informed by the landlord that others were offering as much rent, or more, and that he would take advantage thereof. The lease, executed accordingly, contained covenants against keeping dogs on the farm, and requiring the tenant to preserve the game from being poached upon, with a proviso for forfeiture on breach, or that the landlord might exact an increased rent of £1 per acre:—*Held* (without deciding whether a great increase of rent would bring the case within the Land Law Act, 1881, s. 21), that the lease should not be declared void, as it contained, within the meaning of the enactment, no unfair or unreasonable covenants, nor was it procured by threats of eviction or undue influence. BLIGH *v.* KIRWAN [L. C. XVI. 49

132.——S. 21—*Lease—Yearly tenancy.*] A tenant held under an agreement for a yearly tenancy, containing the following clauses: "In the event of his (the tenant) wishing to give up possession of said farm he is to be at liberty to do so on giving the usual six months' previous notice to quit, in writing, of his intention of giving up same. . . . And in case the said (landlord) wishes to take up possession of said farm he is to be at liberty to do so on giving the said (tenant) eight years' previous notice of such his intention":—*Held*, to be an agreement for a yearly tenancy only, and within the exception mentioned in sec. 21, and the holding to be one within the terms of sec. 8, in which the Court was empowered to fix a judicial rent. WEIR *v.* TORNEY - L. C. XIX. 41

133.——S. 21—*Lease made since* 1870—*Unfair and unreasonable terms—Threat of eviction—Terms taken in their entirety—Rent—Clause in lease not specifically referred to in originating notice—Practice—Power of amendment and absence of formal pleading entitled Court to regard such clause.*] If the terms of a lease, taken in their entirety, are unreasonable and unfair to the tenant, having regard to the provisions of the

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Act of 1870, and the rights of the tenant within that Act, such a lease may come within the class which the Court is empowered to set aside. By empowering the Court to annul the lease and to enable the tenant to have a fair rent fixed, the Legislature has shown that the lease in its entirety, rent as well as everything else, is to be considered. Even though a clause be not specifically referred to in the originating notice to set aside a lease, the fact that there are no formal pleadings and that the Court has ample power of amendment, will enable the Court to take such clause into consideration. *Per* Litton, Q.C. The reservation of an exorbitant rent is in itself a term of the lease which the Court is bound to regard, and which may be unfair and unreasonable having regard to the provisions of the Act of 1870. EWART *v.* GRAY - **L. C. XVI. 23**

134. —— **S. 21**—*Lease—Made after termination of tenancy—Rent.*] The Court of Appeal (reversing the Land Commission) refused to set aside a lease which had been made after a decree for possession on the expiration of a notice to quit, as the status of the tenant, as tenant from year to year, had then ceased to exist. *Per* Morris, C.J. The amount of rent reserved by a lease is no ground for setting it aside as containing terms unreasonable or unfair to the tenant. SULLIVAN *v.* BOWEN **[L. C. & C. A. XVII. 40 note**

135. —— **S. 21**—*Lease made since* 1870—*Originating notice to set aside—Originating notice to fix fair rent.*] An application to fix a fair rent cannot be entertained at the same time with one to set aside a lease. The lease must first be set aside, and then the lessee as a present tenant can apply to have a fair rent fixed. COOPER *v.* DUIGENAN - **L. C. XV. 101**

136. —— **S. 21**—*Lease of agricultural holding expiring after* 1881—*"Lessees" bonâ fide in occupation of holding—Subdivision of holding—Lessees including assignees—Estoppel—Judgment by default in ejectment for overholding against lessees in occupation.*] Where in an action for recovery of land, brought to recover possession of a *part* of a leasehold, held under a lease which expired in April, 1882, and in which the plaintiff had a limited interest, it appeared that on the determination of the lease judgment in ejectment on the title was obtained by the landlord against all those then in occupation, including the now plaintiff, for the *entire* holding, and possession thereof was taken by the landlord under a writ of *habere*; and it further appeared that a part of the holding was, at the expiration of the lease, in the occupation of an undertenant, and not of any "lessee," and the only defendant in the present action though formerly owner of an interest under the lease held at the commencement of the action the part of the lands claimed, under a new letting made to him by the landlord subsequent to the eviction, and not as in any way representing the former leasehold:—*Held*, that the plaintiff was not entitled to recover possession of the land, having regard to the subletting and to the judgment obtained in the ejectment. *Quære*, as to the effect of the 21st sec. of the Land Law Act, 1881, in the case of subdivision by the lessee of a holding? O'CONNOR *v.* SHEIL - - **C. A. XVII. 97**

137. —— **S. 21**—*Lease made since* 1870—*Unfair or unreasonable terms—Excessive rent—Forfeiture of right to compensation—Covenant against claiming benefit of Act of* 1870.] On an application to have a lease declared void, under s. 21, as having been obtained by undue influence and threat of eviction, and as containing clauses unreasonable or unfair to the tenant, having regard to the provisions of the L. & T. Act, 1870, it appeared that the tenant had previously held under a lease for 21 years, up to May, 1873, at a rent of £112, after which he held on as tenant from year to year, until induced by wishing for the protection of a lease, he yielded to advice given by a gentleman (who was acting as his solicitor, and as agent of the landlord to convey to him a threat of eviction if he did not consent to an increase of rent which had been resolved on), and accepted a new lease at the increased rent of £130, notwithstanding that he had at first objected to such rent as excessive. The lease contained a clause of forfeiture not only upon assignment or subletting, but upon breach of any of the covenants in the lease; and a covenant against claiming the benefit of the L. & T. Act, 1870. But it appeared that the only improvements alleged were buildings made by the tenant's father, not while the tenant held from year to year, but during the currency of the former lease; and that the valuation of the holding amounted to £99:—*Held*, that the lease should not be declared void, as having regard to the 12th sec. of the Act of 1870, the covenant against claiming the benefit of that Act could not, under the circumstances, be deemed unfair or unreasonable: while the clause of forfeiture was unavailing in practical effect, as the tenant could not have claimed compensation for the improvements as the law then stood under the decision in *Holt* v. *Harberton* (VI. 1). *Sullivan* v. *Bowen* (XVII. 40 note), as to whether an exorbitant increase of rent may itself constitute an unfair term, discussed. POWER *v.* TRUSTEES OF FITZGERALD - - - - **L. C. XVII. 39**

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138. —— **S. 21**—*Lessee not bonâ fide in occupation.*] Where A., who derived from B., a lessee under the lease that expired in 1882, but derived by possession only, and not by any deed or written instrument, took out administration to B., after the passing of the L. L. Act, 1881, he is not a present tenant within the meaning of the 21st sec. of the statute. CREAGH *v.* WALLACE - - - - **Q. S. XVII. 95**

139. —— **S. 21**—*Notice of surrender of lease—Possession retained—Present tenant.*] A lease for fourteen years contained a clause providing that it should be lawful for the tenant at the expiration of seven years "to surrender and deliver up the hereby demised premises (to the landlord), and to terminate this present demise, first giving (to the landlord) six months' previous notice of his intention to do so." The notice was served at the proper time, but, on its expiration, possession was not given up, and the tenant, claiming to be a present tenant under the 21st section of the Land Law Act, 1881, served an originating notice to have a judicial rent determined. On a case stated by the Land Commission:—*Held*, that the notice was ineffectual to determine the lease without the actual delivery up of possession, and that the tenant was not a present tenant from year to year of the holding. *Semble*, that it would not be possible for the lessee in any way under such a clause, to determine the lease before its expiration, and to become a present tenant within sec. 21. *Hodges* v. *Clarke* (XVII. 83), distinguished owing to the different terms of the clause of surrender. PERROTT *v.* DENNIS **C. A. XX. 7**

140. —— **S. 21**—*Parol agreement for lease—Part performance—Conflicting affidavits—Specific performance.*] Where the affidavits of the landlord and tenant as to the existence of a parol agreement for a lease, and part performance of the agreement, are of a substantially conflicting character, the Court will not assume the jurisdiction of deciding that there was such parol agreement followed by part performance, as would oust the tenant from his *primâ facie* right to be considered a tenant from year to year, but will adjourn the case for such time as will enable the party to take steps to enforce specific performance of the agreement. BROE *v.* MAUNSELL **[L. C. XVI. 48**

141. —— **S. 21**—*Present tenant—Meaning of "expiration" of lease—Clause enabling determination by tenant—Determination by act of tenant.*] A lease for 31 years contained a clause enabling the tenant to determine it at the expiration of 5, 12, or 20 years, on giving six months' previous notice to the landlord. The tenant gave such notice prior to the expiration of the 12th year; and the landlord having brought an action against him to recover possession:—*Held*, that the defendant was a present tenant, under the Land Law Act, 1881, the termination by him being, in effect, an expiration of an existing lease within the meaning of the 21st sec.; and, that the landlord could not recover possession of the holding. HODGES *v.* CLARKE - - - - **E. D. XVII. 83**

142. —— **S. 21**—*Present tenant—Trinity College Leasing and Perpetuity Act*, 1851—*Omission by tenant to take out grant*

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in perpetuity—Payment of fine and additional rent.] A tenant was in occupation of part of a property held by his landlord under a grant in perpetuity (under Trinity College), and conveyed by the Encumbered Estates Court under the description: "lease dated 20th October, 1841, made by owner to Francis Callaghan of part of the lands of Clea, containing 4a. 3r. 13p., Irish measure, to hold for the term of 13 years from 1st November then next, with convenant for renewal *toties quoties*. The yearly rent is £7 13s. 4d., renewal fine 8s. 1d., and increased rent under Trinity College Act, 1851, is 1s., being the amount stated in rent column and payable since May, 1855. The original lease will be handed to the purchaser." The conveyance was executed in November, 1859. A further sum of 10s. 10d. was added to the rent in 1866 (under the Trinity College Leasing and Perpetuity Act, 1851), and paid by the tenant. No renewal was made to the tenant under the covenant:—*Held*, that the tenant was not entitled to have a fair rent fixed. O'CALLAGHAN *v.* NORTON

[L. C. XXI. 24 note

143.—S. 21—*Present tenant—Agreement for lease not specifying commencement of term—Subsequent lease executed by tenant only—Statute of Frauds—Estoppel.*] In December, 1866, a holding was let by a letter of proposal for a lease and acceptance thereof, without specifying the date for the commencement of the tenancy. In 1874 a lease was executed by the tenant, as lessee, in which the term was stated to be for 21 years from December 2, 1866, but it was not executed by the landlords. The lessee sold the holding in 1876, without any mention of the lease, and the purchaser was accepted as tenant by the landlords. On an application to have a judicial rent determined:—*Held*, that the lease of 1874 and letter of 1866 should be read together, and that the tenancy should be treated as still subsisting under the lease. *Marshall* v. *Berridge*, (19 Ch. D. 233), and *Wyse* v. *Russell* (XVII. 31), discussed and applied. Confirmed on appeal by the Court of Appeal. SIMMS *v.* SINCLAIR - - - - - L. C. XVIII. 60

144.—S. 21—*Resumption of holding.*] In making an order for resumption by the landlord of possession of a holding under sec. 21, the Court must be satisfied that the landlord's intention to resume it is for a residential, not an agricultural holding. SILK *v.* NEWELL - L. Sub-C. XXI. 48

145.—S. 21—*Resumption of land by landlord on expiration of a lease.*] A landlord's intention to make provision for his son, and after some years to build a residence for him on the holding, is not sufficient to entitle him to the resumption of the holding on the expiration of a lease, under the Land Law Act, 1881, sec. 21. The primary and real object must be to provide a residence, and to do so directly and immediately. SHINE *v.* LYNCH - - - - L. C. XVIII. 15

146.—S. 21—*Resumption of holding by landlord—Home farm.*] While, under sec. 21, a landlord will be entitled to claim the resumption of a holding if it be proved, by clear and unequivocal testimony, that he is desirous of resuming it for the *bonâ fide* purpose of using it as a house-farm, that is to say, as a farm occupied for the convenience of, appurtenant to, and in connection with, and for the advantage of, a place of residence of the landlord's, he will not be so entitled if, on the contrary, his purpose in such resumption is to make use of the land as an ordinary agricultural holding, or merely to dispossess a residential tenant, even though the tenant be compensated according to the terms of the statute. *Gamble* v. *Simpson* (XVII. 44), applied. FITZGERALD *v.* COSTELLOE

[L. Sub-C. XVIII. 33

147.—S. 21—*Resumption of holding—Reinstating case struck out of the list of appeals—Mistake.*] The Court will reinstate a case, which had been struck out of the list of appeals owing to the absence of the appellant and his solicitor when the appeal was called, on an affidavit showing that the appellant has a substantial case, and on payment of all costs necessarily incurred by the respondent. WATSON *v.* DALY

[L. C. XIX. 36

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148.—S. 21—*Reversionary lease, what constitutes.*] In construing the exception to the provision of sec. 21, "when a reversionary lease of the holding has been *bonâ fide* made before the passing of this Act," the term "reversionary lease" as distinguished from a concurrent lease or lease of the reversion on the one hand, and from a lease in future on the other hand, is to be interpreted as referring to a lease that is to commence not merely in future but upon the determination of a prior subsisting interest. BOYD *v.* MURPHY

[L. C. XVIII. 70

149.—S. 21—*Setting aside notice to fix fair rent—Present tenant—Determination of lease—"Lessees"* bonâ fide *in occupation—Surrender—Immediate operation—Forthwith.*] The provision of the 21st sec. of the Land Law Act, 1881, that "lessees," if *bonâ fide* in occupation of their holdings on the determination of their leases, shall be deemed to be tenants of present ordinary tenancies from year to year, is to be construed as including not merely the parties to the instrument, but all persons, such as assignees of the lessees, in whom the interest of the lessees was vested at the time of such determination. A surrender, even of a tenancy from year to year, arising after the determination of a lease, cannot be made to take effect *in futuro*. When a notice was served by a tenant stating, "I hereby inform you that I forthwith surrender my house and garden, as I consider the rent demanded too high":—*Held*, that, on the true construction of the word "forthwith," the notice took effect as a surrender *in presenti*, and that it was not permissible to qualify its operation as such by reference to the tenant's alleged intention, in serving it, not to surrender the tenancy, but merely to induce the landlord to lower the rent. NEVILLE *v.* HARMAN L. C. XVII. 86

150.—S. 21—*Statutory tenancy on expiration of lease—Reversionary lease of holding*—Bonâ fide *occupation—Subletting.*] A statutory tenancy under sec. 21 does not arise on the determination of a lease, where a reversionary lease of any part of the holding has been *bonâ fide* made, whether to the lessee himself or to a third party, before the passing of the Act. "Reversionary lease of the holding," within the meaning of that section, is not confined to a reversionary lease of the whole holding; and there is nothing in the Act to deprive of his right to possession a reversionary lessee of any part of a holding, provided this right has been *bonâ fide* obtained before the passing of the Act. *Semble*: the subletting of a very small portion of a holding by a lessee does not necessarily and as a matter of law deprive him of his right to a statutory tenancy on the expiration of his lease, but it is a question for the jury whether or not he is substantially in occupation of the holding, and the portion sublet may be so small and inconsiderable as not to be taken account of by the jury. BEAMISH *v.* CROWLEY - - C. P. D. XIX. 29; C. A. XIX. 45

151.—S. 21—*Tenant holding under agreement for lease—Landlord refusing to grant lease—Judicial rent fixed.*] A landlord persistently refusing to perform his part of a parol agreement for a lease of eight years, will not be permitted to set up said agreement, so practically waived, as a bar to the tenants coming in to claim, as yearly tenants, the benefits of the Land Law (Ir.) Act, 1881. GRIFFIN *v.* HICKSON

[L. Sub-C. XVI. 128

152.—S. 21—*Tenancy for a year certain—Proposal not signed by landlord or his agent—Lease or contract of tenancy—Notice to quit—Landlord and Tenant (Ireland) Act, 1870, s. 69—Landlord and Tenant Act, 1860, s. 4.*] A proposal, by which it was agreed that A. should become tenant to B. for a year certain, signed by the tenant but not by the landlord, though accepted by him, does not constitute a "lease" within the meaning of the Land Law Act, 1881, s. 21, not having been signed by the landlord, or his agent, as required by the L. and T. Act, 1860, s. 4; nor does it amount to a "contract of tenancy" within the meaning of the former enactment, being only for a year certain, for which reason, also, it cannot be considered as creating "a yearly tenancy, or a tenancy less than a yearly tenancy," so as to entitle the tenant to a

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notice to quit, either at common law or under the L. and T. Act, 1870, s. 69, according to *Wright* v. *Tracey* (VIII. 142, I. R. 8, C. L. 485). COLLINS *v.* MANGAN **Q. S. XVII. 94**

153.—— S. 21—*Tenant of present ordinary tenancy from year to year—Holding under deed made by immediate lessee whose lease expired before passing of Act—Assignee—Sub-lessee.*] By a lease dated 1st July, 1833, certain lands were demised by James and Abigail Ryan to Edward Quirk, from 1st November, 1832, for the lives of James and Abigail Ryan, and the life of the survivors of them, or for twenty years, whichever should last the longest at the yearly rent of £70 5s. 2d., payable half-yearly. Abigail Ryan died before the 5th November, 1866, and all the interest of Edward Quirk, the lessee, became vested in Bridget Quirk previous to the 5th November, 1866. By lease of 5th November, 1866, Bridget Quirk demised to Andrew Murphy, all the lands comprised in the lease of 1st July 1833, for the life of James Ryan, the surviving life in that lease, at the yearly rent of £95 5s. By indenture dated October 20, 1877, made between James Ryan, sen., and James Ryan, jun., the former assigned to the latter all the reversion expectant on the determination of the lease of July 1, 1833. James Ryan (the other *cestui qui vie* in the lease of 1832) died on the 5th August, 1883, and thereupon both the leases of 1st July, 1833, and the sub-lease of 5th November, 1866, expired. At the time of the death of James Ryan, the defendant Murphy was in *bonâ fide* occupation of the lands under the indenture of 5th November, 1866. In an action brought by James Ryan, jun., and others against Andrew Murphy and Bridget Quirk:—*Held*, that the plaintiffs were not entitled to recover, Andrew Murphy being a tenant of a present ordinary tenancy from year to year, within the meaning of the 21st section. *Per* O'Brien. J.; Murphy, became an assignee of the original lease of July 1, 1833, and as an assignee came within the meaning of the term "lessee" in the section. *Per* Johnson, J.: Murphy became a sub-lessee of Bridget Quirk, and not an assignee of the original lease, but as tenant to her and in *bonâ fide* occupation of the holding was entitled to the benefit of the section. SEYMOUR *v.* QUIRK - - - **Q. B. D. XVIII. 29**

[This was affirmed on appeal, 14 L. R. Ir. 455.]

154.—— S. 21—*Terms unfair or unreasonable—Fine—Excessive rent—Improvements—Disturbance—Forfeiture of right to compensation—Tenant having equitable estate under deed of trust—Right to apply—Burden of proof as to yearly tenancy.*] A tenant from year to year compelled, by threat of eviction, to accept a lease at an excessive rent and to pay a fine, is entitled to have the lease set aside as containing terms unfair or unreasonable, having regard to the provisions of the Landlord and Tenant (Ireland) Act, 1870. *Quære*, whether the lowness of the rent would be taken into account as counterbalancing terms in other respects unfair to the tenant, *e.g.*, loss of his right to compensation for improvements, and the fact of the tenants having paid a fine, might be counterbalanced by the lowness of the rent? *Semble*, an excessive rent will be regarded as determining the fairness of the other terms in the lease. KELLY *v.* GRIFFITH - **L. C. XVI. 29**

155.—— S. 21—*Undue influence—Threat of eviction—Lease—Unfair or unreasonable terms—Improvements—Compensation—Assignee—Personal representative—Jurisdiction.*] *Semble*, that a covenant by which the tenant agreed to make at his own expense any improvements that might be necessary and desirable, and not claim compensation for them, even though the tenant's valuation empowered him to enter into such covenant, would be unreasonable. *Quære*, whether the Court has jurisdiction to raise a personal representative to a deceased lessee for the purpose of having a lease declared void under section 21. The insertion in leases of declarations, contrary to the fact, that all improvements had been made by the lessor, animadverted on, and their effect discussed? MAGNER *v.* NORREYS - - - - - **L. C. XVI. 33**

156.—— S. 21—*Yearly tenant—Reversionary lease.*] The plaintiff's predecessor in title made a lease for 99 years to L., which expired on 1st May, 1882. L. had, during his term, executed a lease to K. which expired on 1st April, 1882. K. exchanged the lands with his brother, whose widow had come into occupation. In 1854 the plaintiff made a reversionary lease to H., commencing from 1st May, 1882. In an action against K. to recover the lands:—*Held*, that the fact of a reversionary lease having been *bonâ fide* made long prior to the Act, the lease against the landlord expiring within a month of the termination of K.'s lease, the case came within the provision of sec. 21 which excepts from the operation of the Act any holding in reference to which such a reversionary lease had been made. HARTE *v.* KIRKE - **C. P. D. XVII. *M.* 634**

157.—— Ss. 21, 57, 58 (2) (7)—*Dismiss unappealed from—Sub-letting—Town park—Temporary convenience—Landlord and Tenant Act*, 1860, *s.* 18.] A tenant may bring a second originating notice without appealing from a former dismiss on grounds of sub-letting. There may be a present tenancy in lands which had been sub-let at the passing of the Land Act, 1881, contrary to the agreement by which the tenant had been let into occupation in 1865, and which contained a clause against sub-letting, for breach of which the landlord had taken no steps against the tenant. The tenant's valuator put an extra value per acre on the holding (which, in other respects, fulfilled the description of a town park under s. 58 of the Act of 1881), on account of its proximity to a town, and the landlord's valuator gave general evidence that the holding bore an increased value as accommodation land; but no evidence was given that the holding was, in fact, used as accommodation land:—*Held*, that it was not a town park. WATERS *v.* CROSTHWAITE **[Q. S. XVIII. 18**

158.—— Ss. 21, 58 (2)—*Resumption of holding by landlord—Home farm.*] Where a landlady, in possession and occupation of a family residence and of circumjacent lands, comprising 170 acres, partly "demesne" and partly "home farm," applied to the Court for authority to resume a contiguous agricultural holding on the expiration (1883) of the lease thereof, for the purpose of occupying same as a home farm in connexion with her said residence, on which holding the tenant's family had been resident for one or two hundred years:—*Held*, that such application could not be sustained, *Gamble* v. *Simpson* (XVII. 44) and *Shine* v. *Lynch* (XVIII. 15) considered and applied. WESTROPP *v.* O'GRADY - - **L. Sub-C. XVIII. 32**

159.—— Ss. 21, 58 (3)—*Ancient pasture.*] A holding let under lease, which does not contain any covenant against tillage, does not acquire the character of ancient pasture at the expiration of that lease, although it has been, at that time, more than 20 years in pasture, and there was no evidence that it had ever been tilled. A tenancy springing under sec. 21 of the Act, at the expiration of a lease, is not to be regarded as a new letting. GARNETT *v.* HOWTH - **L. Sub-C. XXIII. 80**

160.—— Ss. 21, 58 (7)—*Landlord and Tenant Act*, 1870, *ss.* 15, 69—*Holding for "temporary convenience" or to meet "temporary necessity"—Tenure after termination of Chancery letting—Letting before passing of Act of* 1881—*Practice—Several cases depending on same facts—Affidavits—Costs.*] Leases for seven years pending a minor matter were made in 1873 to several tenants who held on after the termination of the term:—*Held*, that their originating notice to fix a fair rent should be set aside with costs; only one set of costs however to be given, as the facts in the several cases were the same, and one affidavit in one case would have been sufficient, the other cases to be scheduled. JELLIS *v.* SWIFT **[L. C. XVII. *M.* 546**

161.——S. 30—*Practice—Applications to the Land Commission—Consent to sub-division or letting—Apportionment.*] The functions of the Land Commission are twofold—judicial and administrative. Applications of an administrative nature (such as for consent of the Commission to sub-division of a holding under sec. 30) must be made by letter to the Secretary and not by motion. The Land Commission has no power to sub-divide the purchase annuity and apportion it between the dif-

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ferent parts of a sub-divided holding; each part of the sub-divided holding remains subject to the entire annuity. *In the matter of* W. CREAGH HICKIE - **L. C. XXVI. 145**

162. —— **S. 37 (4)**—*Transfer from Civil Bill Court to Land Commission—After time elapsed.*] The Court refused the application of the landlord to transfer a case from the Civil Bill Court to the Land Commission after the time for applying had elapsed, no sufficient ground for doing so having been shown. TAYLOR *v.* REILLY - - - **L. C. XXI. *M.* 588**

163. —— **S. 37 (4)—Rule 52**—*Transfer of proceedings from Civil Bill Court—Right of applicant.*] The 37th section of the Land Law Act, 1881, giving power to transfer a case from the Civil Bill Court, does not give the mere power of doing so where the parties show good and valid grounds therefor, but gives the right to either party to have a transfer made unless it be shown that such transfer would be unjust and unreasonable. SHIELDS *v.* BURROWES **L. C. XV. 112**

164. —— **S. 37 (4), 57**—*Landlord and Tenant Act*, 1870, *ss.* 1, 3, 4, 8—*Jurisdiction—Transfer from Civil Bill Court—Claim under Ulster custom, or in the alternative for compensation—Incorporation of Acts—Construction.*] Claims for compensation for disturbance or improvements will not be transferred from the Civil Bill Court to the Land Commission Court, as the latter is invested with no original jurisdiction to try and determine such cases. The Acts of 1870 and 1881 are to be construed as one Act, but the entirety of the former is not to be taken as incorporated with the latter. KNIPE *v.* ARMSTRONG - - - - - **L. C. XV. 64**

165. —— **S. 37 (6)**—*Expenses of valuer employed by County Court Judge.*] There is no provision in the Acts for the payment of the valuer whom the County Court Judge may employ under sec. 37 (6). BYRNE *v.* BYRNE **Q. S. XVI. *M.* 193**

166. —— **S. 38**—*Application to fix fair rent—Grant of limited administration—Will with executors named—Landlord and Tenant (Ireland) Act*, 1870, *s.* 59.] It is within the discretion of the Court to give a grant of limited administration for the purposes of the Land Acts where a will is in existence in which executors are named, but of which probate has not been taken out. HEATHERTON *v.* WHITE **[L. Sub-C. XXIV. 13**

167. —— **S. 38**—*Limited administration—Will.*] When the deceased tenant has left a will which does not name any executor and has not yet been proved, there being no legal personal representative of the said tenant, the Court has power to appoint such person as it thinks best entitled to be administrator of the said deceased tenant, limited to the purposes of the Act. CLARKE *v.* PRATT - - - **L. Sub-C. XIX. 43**

168. —— **S. 38**—*Minor landlord—Appointment of guardian—No proceedings actually commenced.*] The Court appointed a guardian to act for a minor landlord where no proceedings were actually commenced. CARR *v.* GRAY **Q. S. XXIII. 89**

169. —— **S. 38 (5)**—*Minor landlord—Service of originating notice—Landlord and Tenant (Ireland) Act*, 1870, *s.* 61.] Service of an originating notice to fix a fair rent on a minor landlord being a nullity no order could be made upon it. The guardian should be served; and if there be no guardian, the Court will appoint one under the powers given by the 61st sec. of the L. & T. Act, 1870, which is incorporated with the Land Law Act, 1881, s. 38, sub-s. 5. MARSH *v.* MORELAND - - - - - **L. C. XV. 74**

170. —— **Ss. 38, 48**—Mandamus—*Refusal of Land Commission to state case for Court of Appeal—Discretionary duty—Existence of a different remedy, unavailed of.*] A writ of *mandamus*, to enforce the Court of the Land Commission to state a case for the Court of Appeal, will not be granted when an appeal could have been taken, but was not, from the order of the Land Commission which is complained of; nor will such writ be issued to enforce a mere discretionary duty,

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depending on whether the objections raised are considered by the Land Commission to be frivolous and vexatious. *Ex parte* JOHNSTON **Q. B. D. XX. 76; C. A. XX. 76 note**

171. —— **Ss. 43, 44, 47, 50**—*Land Commission rules, Oct.*, 1881—*Schedule of fees—Sanction of the Treasury—Fixing fair rent by Sub-Commission—Notice requiring a rehearing—Stamp.*] Applications to fix fair rents of present tenancies having been heard and determined by Sub-Commissions, the landlords served notices, pursuant to section 44, requiring the case to be reheard by the Chief Commissioners. The notices were all served before the rule providing that the word "appeal" should include a rehearing had come into force; the rule as to stamping requiring merely that "every notice of appeal shall bear an impressed stamp of one shilling." None of these notices bore a stamp at the time of service, but some of them were stamped subsequently and prior to the rehearing of the cases. A case having been stated by the Commissioners for the decision of the Court of Appeal:—*Held*, that notices requiring a rehearing of cases previously heard by a Sub-Commission were not notices of appeal within the rules, and did not require a stamp. *Quære*, whether the sanction of the Treasury to the scale of fees has been sufficiently given, pursuant to section 50, to render the rule requiring a stamp enforceable in any case—the rules not having been signed by the Lords of the Treasury, and the sanction only having been given by a letter to one of the Secretaries? KIERAN *v.* CARUTH; LEWIS *v.* DARNLEY - - - - **C. A. XIX. 1**

172. —— **S. 47**—*Jurisdiction.*] Until an appeal is taken the Land Commission has no jurisdiction over a case in the Civil Bill Court. MAJOURISK *v.* MACAN **[L. C. XXVII. *M.* 647**

173. —— **S. 47**—*Jurisdiction of Land Commission on appeal from County Court—Compensation for disturbance and improvements—Set-off for mesne rates and deterioration between dates of order of County Court Judge and hearing of appeal—Landlord and Tenant (Ir.) Act*, 1870, *ss.* 16, 24.] The Land Commission, in exercising the appellate jurisdiction, formerly existing in the Judge of Assize under the L. & T. (Ir.) Act, 1870, sec. 24, and now transferred by the Land Law Act, 1881, sec. 47, to the Land Commission, in reference to claims for compensation for disturbance and improvements, cannot deal with matters subsequent to the date of the order appealed from, *e.g.*, a claim by landlord by way of set-off for mesne rates, and in respect of deterioration of the holding and depreciation in value of the improvements during the interval between the date of the order of the County Court Judge and the hearing of the appeal. O'CONNOR *v.* PERRY **[L. C. XXVI. 48**

174. —— **S. 47—Rule 75**—*Leave to appeal after lapse of 9 years—Further evidence—Valuation.*] Notwithstanding the discovery of further evidence, lapse of time between the making of an order dismissing an originating notice, and the date of the application for liberty to appeal, is of itself a ground upon which the Court will refuse the application. JONES *v.* KING - - - - - **L. C. XXV. 27**

175. —— **S. 48—Rules 24, 27, 28, 29**—*Service of originating notice—Land-agent's clerk—Office of agent—Personal service—Right of appeal.*] Service of a notice on a landlord's land-agent, to whom the tenant's rent has been usually paid, under rule 28, need not be effected by serving him in person, but may be effected by leaving a copy for him with any of such persons, including his clerk, as are specified in rule 27. The Court will not, in the exercise of its discretion, set aside proceedings on the ground that a party has not been personally served with an originating notice unless it is distinctly shown that it has not reached his hands. The question as to what constitutes due service pursuant to the rules of the Court is one of practice and procedure, not of law such as is contemplated by the 48th sec. of the Land Law Act, 1881, as being the subject matter of appeal to the Court of Appeal. FALCONER *v.* CRAMSIE - - - **L. C. XVI. 47**

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176.—S. 48 (3)—*Recovery of costs—Order made dismissing landlord's appeal with costs—Costs not paid—Application by tenant's administrator for leave to issue execution.*] When an appeal by a landlord was dismissed with costs, which were taxed, but not paid, and, the tenant having died, an application was made by her administrator for leave to issue execution:—*Held*, that such application can be made *ex parte* on behalf of the legal personal representative of deceased tenant. MORRIS *v.* JOHNSTON - - - **L. C. XXI. 16**

177.—S. 48 (3)—*Evidence of a prisoner*—Habeas corpus—*Commission.*] Where *habeas corpus* proceedings have been taken, but without effect, and the Court is satisfied that the evidence of a person undergoing a term of imprisonment will not be forthcoming at the expiration of the term, and that such evidence is material to the case, a Commission *de bene esse* to take the evidence of such person while in custody will be permitted to issue. M'DONAGH *v.* THE LAND PURCHASE CO. **[L. C. XXV. 67**

178.—S. 48 (3) (d)—*Amendment of originating notice to fix fair rent—Party.*] An originating notice to fix a judicial rent was amended by substituting the name of the purchaser of the interest of the party who himself had been tenant at the date of the service of the notice. *Mullins* v. *Morgan* (M'Devitt 519), distinguished. FULTON *v.* KER **[L. Sub-C. XXIV. 67**

179.—S. 48 (4)—*Practice—Report of independent valuer—Communication of, to litigants—Examination of valuer.*] Where, in determining any question relating to a holding, the Land Commission has directed an independent valuer to report to the Court his opinion on any matter referred to him under sec. 48 (4), such report will be communicated to the litigants, so as to be subject to comment on either side before the Court pronounces judgment. (Mr. Vernon dissenting.) ADAMS *v.* DUNSEATH. SHEPPARD *v.* TENNANT **L. C. XVI. 6**

180.—S. 49—*Jurisdiction—Appeal from order of the Land Commission determining judicial rent—Order of Court of Appeal refusing motion to adduce fresh evidence, but remitting case to Land Commission for further hearing, with leave to adduce fresh evidence.*] After an order, determining the judicial rent of a holding, had been made before a Land Sub-Commission, the landlord served notice of rehearing before the Land Commission, whereupon the order of the Court below was affirmed, it being held that the landlord had failed to give the necessary proof, in support of his contention, to establish that the holding constituted a town-park. The landlord appealed to the Court of Appeal, and also moved for liberty to adduce further evidence on the hearing of the appeal. The Court of Appeal refused the motion to adduce fresh evidence, and the order then proceeded as follows:—"And the Court doth make no rule on the matter of this appeal at present; and doth order that this matter do stand remitted to the Irish Land Commission for further hearing and consideration, with liberty to the landlord and tenants, or either of them, to adduce such further evidence *viva voce* or by affidavit as he or they may be advised." The landlord having thereupon applied on motion before the Land Commission that the case be entered, pursuant to the order of the Court of Appeal, for further hearing and consideration, with liberty to the landlord and tenants to adduce further evidence:—*Held*, that the order of the Court of Appeal, as it stood, even if there had been jurisdiction to make it, could not be complied with consistently under the circumstances, or completely within the limits of the jurisdiction vested in the Land Commission. ST. KYRAN'S COLLEGE TRUSTEES *v.* MUSGRAVE **[L. Sub-C. XVII. *M.* 24; L. C. XIX. 34**

181.—S. 51—*Construction—Retro-active operation.*] A conditional order directing the Taxing Master to tax costs in an action for rent under £20, which was commenced before the passing of the Act, but in which judgment was marked after it was granted. (By Palles, C.B.) KEARNEY *v.* CAHILL **[Vac. J. XV. *M.* 512**

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182.—S. 51—*Construction—Limitation of costs—Action for rent "not exceeding £20."*] In an action for the recovery of a year and a half's rent, which amounts altogether to over £20, the plaintiff is entitled to his costs. (By Palles, C.B.) ROSE *v.* KELLY - - **Vac. J. XV. *M.* 505**

183.—S. 52—*Right of land agent to conduct a case.*] A land agent can put questions to a witness through the Court. ANON. - - - **L. Sub-C. XXVI. *M.* 611**

184.—S. 57—Bonâ fide *occupation—Tenant working holding by third party.*] A person may be considered to be in *bonâ fide* occupation of land which is being worked by another who renders an account of the profits and losses, and has no legal claim to the possession. RICE *v.* REILLY **[L. Sub-C. XXVII. *M.* 136**

185.—S. 57—*Determination of judicial rent—Definition of tenant—Sub-letting without landlord's consent—Evidence of value—Tenant's valuators uncontradicted—Independent valuation by Assistant Commissioners* ultra vires.] A tenant who has sub-let portion of his holding, and delivered over the occupation thereof, under circumstances which did not amount to a default up to the passing of the Act, but in the exercise of the right incident to his tenure at the time of the passing of the Act, is not precluded from applying to the Court to have a judicial rent determined, notwithstanding the definition of tenant given in section 57, with the clause thereto added, with reference to sub-letting, which provision is not to be construed as retro-active. Where no evidence of value is given save by the tenant's valuators, there being no conflict of testimony, the Assistant Commissioners are not obliged and ought not to go beyond the evidence so adduced, and should not make an independent valuation of the lands upon their own judgment for the purpose of determining the judicial rent. SMITH *v.* COLLEY **[L. Sub-C. XVI. 8**

186.—S. 57—*Amendment of originating notice to fix fair rent—Separate holdings.*] Where a holding was divided into two and in respect of one part thereof the landlord and the tenant came to an arrangement for fixing a fair rent, and on the tenant of the other portion applying to the Sub-Commissioners to have a fair rent fixed, the landlord raised the objection that the whole of the holding should be included, in which the other tenant refused to join:—*Held*, that the landlord's contention was wrong, and the case was remitted to have a fair rent fixed for the other part. HANNA *v.* MACARTNEY **[L. C. XVII. *M.* 650**

187.—S. 57—*Future tenancy.*] A tenant who held for many years, prior to the passing of the Act of 1881, in or about 1889, with the consent of the landlord, sub-divided his holding:—*Held*, that the portion he retained constituted a future tenancy. FOX *v.* THOMPSON **Q. S. XXVII. *M.* 496**

188.—S. 57—*Occupation—Deasy's Act, s. 18—Evidence of consent by landlord to a sub-letting—Agent putting his name to sub-lease as witness—Sub-lease signed by one of two joint tenants.*] Two joint lessees of a farm agreed to assign the interest of one of them to a third party, and the joint lessee whose interest was assigned was to be allowed to hold part of the demised land as sub-tenant of the assignee. The instrument containing the agreement was signed by the joint lessee whose share was being assigned, and not by the assignee, and was subscribed by a person proved in evidence to be the agent of the landlord; the subscription, however, included the word "witness":—*Held*, that the evidence of consent to the sub-letting did not satisfy s. 18 of Deasy's Act, and that the tenant was not in occupation for the purposes of the Land Law (Ir.) Act, 1881, s. 57. SMYTH AND DONAGHEY *v.* EDIE **C. A. XXVII. 86**

189.—S. 57—*Specific performance—Alleged proposal, in writing, for a lease—Unstamped—Illiterate tenant—Covenants—Clause against alienation—Void for uncertainty—Transfer of possession—Tenant in occupation.*] The landlord alleged that the former tenant had put her mark to an unstamped informal proposal for a lease of her holding for 31 years, with

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"Mr. White's (landlord's) covenants." The former tenant denied ever having so signed the proposal. The expression "Mr. White's covenants" was stated to refer to leases made by the landlord's father many years before on a different estate, containing clauses against alienation, but no explanation of this was given at the time of the alleged signature, and no copy of the proposal was given to the tenant signing it. The former tenant subsequently assigned the holding to the present tenant:—*Held*, that the Court could fix a fair rent. CRONIN *v.* WHITE - - - L. Sub-C. XXVII. *M.* 211

190.—S. 57—*Present tenancy—Sub-letting—Dismiss unappealed from.*] There may be a present tenancy in lands which were sub-let at the passing of the Act of 1881, provided that the sub-tenant has surrendered before the application to have a fair rent fixed. A tenant may institute a second originating notice without appealing from a former dismiss on the grounds of sub-letting. MORRISSEY *v.* HUMBLE [L. Sub-C. XVIII. 18

191.—S. 57—*Present tenancy—Tenancy subsisting at time of passing of Act, but determined by notice to quit before application to fix a fair rent.*] A tenant whose tenancy was subsisting at the time of the passing of the Land Law Act, 1881, but who had been served in March, 1882, with a notice to quit on September 29, 1882, and who did not apply to have a fair rent fixed until January, 1883, was not on that date a tenant of a present tenancy within the meaning of the Act, so as to entitle him to make such application, there being no saving clause in the Act as regards expiring or determined tenancies. MORIARTY *v.* QUINLAN - - Q. S. XVII. 95

192.—S. 57—*Tenant, definition of—Landlord—Mortgagee—Possession—Occupation—Subsisting tenancy—Merger.*] Where a landlord as mortgagee enters into possession of a holding in which a present tenancy subsisted, such possession does not cause a merger of the tenancy; but though the tenancy subsists notwithstanding such possession, the tenant, as he is not in occupation of the holding, is not a tenant as defined in the 57th sec. of the Land Law Act, 1881, and therefore is not entitled to have a fair rent fixed. The landlord in such a case has a right to have an originating notice to fix a fair rent dismissed. FARRELLY *v.* DOUGHTY L. C. XV. 100

193.—S. 57—*Landlord—Not known—Originating notice.*] It is not sufficient to set out the name of the landlord by a descriptive phrase in the title part of an originating notice, as the representatives of a deceased landlord. HOWARD *v.* CONEVAN'S REPRESENTATIVES - L. C. XV. 101

194.—S. 57, 58 (3) (4) (6)—*Temporary convenience—Written agreement for three years for grazing and depasturage—L. and T. Act*, 1870, *s.* 15 (4).] By an agreement of letting, the tenant was to hold 66 acres for three years, for grazing and depasturage; he was to reside on them, and might till 4 acres, and the landlord was to pay all taxes and the tenant to give up possession at the end of the term. On an application to determine a judicial rent, under the Land Law Act, 1881:—*Held*, that the tenancy came within the Act, not being excluded as for a "temporary depasturage" under sec. 58 (6), nor being for "temporary depasturage" under sec. 15, sub-s. 4, of the L. and T. Act, 1870. CONNELL *v.* SKEHAN [Q. S. XVI. 129

195.—Ss. 57, 58 (4) (7)—*Fair rent—Letting for temporary convenience—Creation of present tenancy—Pasture letting—Meaning of words "ordinarily used."*] A holding excluded at the time of the passing of the Act as let for temporary convenience may subsequently be converted into a present tenancy and be brought within the fair rent clauses of the Act. A holding worked in common with a holding in which the tenant resides is "ordinarily used" therewith within the meaning of sec. 58 (4). YOUNG *v.* GILL [L. Sub-C. XXVI. *M.* 390

196.—S. 58 (1)—*Agricultural or pastural holding—Farm taken as residence only.*] On an application to fix a fair rent of a holding in Ardress East, County Armagh, containing

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8a. 1r. 20p., statute measure, let at a rental of £28 per annum, consisting of a farm and cottage thereon, the tenant, a bookkeeper in a mill concern two miles distant, having admitted that he took the place as a residence merely:—*Held*, that the holding was within the meaning of sec. 58 (1) of the Land Law Act, 1881, and accordingly that the notice should be dismissed with costs. WILSON *v.* ENSOR - L. Sub-C. XVI. 36

197.—S. 58 (1)—*Agricultural holding—Mill and thirty acres of land.*] Where land was held under an agreement in writing for a yearly tenancy, and the premises where set out as "all that and those, the mill, kiln, and mill-farm," and where the acreage was not more than thirty acres and the rent £63:—*Held*, that the holding was not an agricultural holding within the meaning of the Land Law Act, 1881, and that the application must be dismissed. M'CURDY *v.* HEIGATE [L. Sub-C. XVI. 36

198.—S. 58 (1)—*Agricultural holding, what constitutes—Market gardens.*] Lands along the Liffey, known as the "Strawberry Beds," which were used for the growing of strawberries, potatoes, &c., were held to be agricultural holdings. WEST *v.* ANNALY - - [L. Sub-C. XVII. *M.* 23

199.—S. 58 (1)—*Agricultural or pastoral holding.*] A holding containing 29a. 3r. 15p. statute measure in occupation of a tenant whose predecessor and himself had used the land in connection with a private asylum for insane people erected by themselves on the ground:—*Held*, not to be a holding either agricultural or pastoral in its character, and, therefore, to be exempt from the Act. ALLEN *v.* COPE [L. Sub-C. XVIII. 44, 99

200.—S. 58 (1)—*Agricultural or pastoral holding—Residential farm—Letting to tenant in capacity of parish priest—Determination of judicial rent—Fixing value of tenancy—True value, what, and when to be determined.*] In 1869 the Rev. Mr. Kearney, parish priest of Bohermeen, became tenant from year to year, under Mr. Coddington, of twelve Irish acres of land, and a dwelling-house and offices thereon, which at that time were in the landlord's possession, at the rent of £45 per annum, afterwards reduced to £40, the Poor Law Valuation being £28 10s. The dwelling-house and offices, which could not now be built for less than £400 or £500, were valued at £13 (included in the £28 10s.), and would be unsuitable for a person living by agriculture alone and occupying a farm of that extent, while the house was even rather larger than the average residence of Catholic clergymen. Built about seventy years ago, it had ever since been occupied by the successive priests of the parish, except during a short interval when it was occupied by a medical doctor. The land had been originally demised in 1798 as an agricultural holding, since when the house had been built by one of the clergymen in occupation:—*Held* (Mr. Foley, Q.C., *diss.*), that the holding was not agricultural or pastoral, within the Land Law Act, 1881, sec. 58. KEARNEY *v.* CODDINGTON [L. Sub-C. XVI. 123

201.—S. 58 (1)—*Pastoral letting.*] A holding which was all in grass at the time, and which could not, consistently with good husbandry, be meadowed to any substantial extent, situated in a grazing district and not near any town, and let under a lease, which contained a covenant not to erect any buildings other than "cattle sheds," to a person having no other holding in the vicinity on which he could erect farm buildings:—*Held*, to be let for the purposes of pasture, although the lease did not contain any covenant prohibiting or restricting tillage. *O'Brien* v. *White* (XVIII. 24), applied. EIVERS *v.* HAMILTON [L. Sub-C. XXV. 79

202.—S. 58 (1)—*Residential holding—Element to be considered—Negotiation—Intention of the parties—Extent of holding—Proportion between value of house and lands.*] Even though the holding be held to be an agricultural holding, the Court may, in estimating the rent, put on a house its full commercial rent as a residence for a gentleman. CRAWFORD *v.* EGMONT - - - L. C. XVIII. 15

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203 —— S. 58 (1)—*Residential holding—Original letting for purpose of erecting a dwelling-house on holding.*] A holding of nine and a-half acres of land, without buildings of any kind, was taken by a parish priest for the purpose of erecting on it a dwelling-house, which house became the property of a subsequent tenant, who applied to have a fair rent fixed:—*Held*, to be a residential holding and excluded from the Act. O'NEILL *v.* GREENE - - - - L. Sub-C. XXII. 99

204. —— S. 58 (1)—*Residential holding—Tests to be applied—Most appropriate use.*] Where the nature and extent of the property, the object for which the tenancy commenced, and the use to which the holding had been put pointed to its being a residential holding, the Court refused to fix a fair rent. MOONAN *v.* CONYNGHAM L. Sub-C. XXVII. *M.* 308

205 —— S. 58 (1)—*Residential holding—Tenant from year to year—Antecedents of holding—Intention of tenant at time of letting.*] Though the holding was not let under a formal agreement as a residence, yet the Court may imply such from the past history of the holding and intention of the parties at the time of letting. *Crawford* v. *Egmont* (XVIII. 15), considered. *Carr* v. *Nunn* (VII. 26), and *Doyne* v. *Campbell* (VIII. 101), applied and followed. CULLINAN *v.* USSHER [L. Sub-C. XVIII. 34

206 —— S. 58 (1)—*Character of a plot of ground adjoining a dwelling-house in a village.*] The fact that the defendant in an ejectment had served a notice to have a fair rent fixed on a piece of ground adjoining his dwelling-house in a village, which he used for a cow, is not sufficient to prevent a decree in the ejectment being granted. COLLINS *v.* FINNUCANE [Q. S. XXVI. *M.* 646

207. —— S. 58 (1)—*Shop and buildings.*] Where a shop and buildings were the dominant portion of a holding, the application for a fair rent was dismissed with costs. O'MALLEY *v.* CLEMENTS - - L. Sub-C. XXVII. *M.* 359

208 —— S. 58 (2)—*Demesne lands—Acquisition by tenant of small plot adjoining his demesne.*] A tenant of a demesne held a small plot of land from another landlord; and this plot was enclosed by the demesne wall, the entrance to the demesne being in it:—*Held*, that the plot was demesne. LITCHFIELD *v.* GASGILL - - Q. S. XXVI. 140

209 —— S. 58 (2)—*Demesne lands—User as ordinary farm—Cesser of character as demesne.*] Land within the ambit of a mansion-house demesne may, when it has long been let to tenants and has been used by them as an ordinary farm, cease to constitute "demesne land" within the meaning of the exemption contained in sec. 58 (2), although the tenancy was not under lease. *Hill* v. *Antrim* (V. 70), applied. CLEARY *v.* DUNSANDLE - - - L. Sub-C. XVIII. 84

210 —— S. 58 (2)—*Demesne lands—Holding not agricultural or pastoral in its character, or partly agricultural or pastoral.*] The tenant was owner of the demesne of Slaney Park, from which the holding in question was divided by the high road. A handsome gateway, corresponding to the gateway of the demesne opposite, was erected on the holding, and a belt of trees planted on it along the road; otherwise it was tilled in the usual way. The rent was over £5 an Irish acre:—*Held*, that the holding was not agricultural or pastoral in its character, or partly agricultural or pastoral; but had been taken to improve the appearance and add to the amenity of the demesne and residence of Slaney Park. ALLEN *v.* GROGAN [L. C. XXVII. 55

211 —— S. 58 (2)—*Demesne lands—Demise containing description of the subject-matter in the term demesne lands—Covenant that the lessee shall reside on the lands and personally inhabit the dwelling-house.*] A. demised to J. lands containing 60 statute acres, described in the lease "demesne of Kilmore." for a term of 31 years, the rent reserved being £80 per annum. The lease contained a covenant to put the dwelling-house and all the buildings in repair, also a covenant restrictive of cultivation, and covenants that the lessee shall use the place for his own residential purposes, that he will personally inhabit

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the dwelling-house; also a covenant not to assign or sub-let or part with the possession of the demised premises or any portion thereof:—*Held*, that the lands were demesne lands, and let as such, and accordingly that the order fixing a fair rent must be discharged. SHEKLETON *v.* JONES [L. C. XXVI. 127

212. —— S. 58 (2)—*Home farm.*] A landlord having, upwards of thirty years ago, resumed possession of about 77 acres of land near his residence, and kept them in his own hands as his own farm for many years, had let parts of them in 1856 to yearly tenants, who held them till 1859, when the landlord again resumed possession, and laid down the entire in grass. In 1866 the house, demesne, and these particular lands were all let to another tenant, who gave all up in November, 1868; and about a month afterwards the present tenant took a lease for seven years of 17½ acres of these 77 at a rent of £35. On the termination of the lease he continued to hold on as a yearly tenant:—*Held*, that the holding formed part of the home farm attached to the landlord's residence, and that notwithstanding the dealings since 1856 with these lands, they still retained the character of a home farm, and were therefore excluded from the operation of the Land Law Act, 1881, by virtue of sec. 58 (2). STOTHERS *v.* NICHOLSON - - - L. Sub-C. XVI. 35

213 —— S. 58 (2)—*Home farm.*] An agricultural tenant holding 34 acres of land, with a dwelling-house thereon, under a fee-farm grant, demised a portion of the land by a sub-lease for years. The sub-lessee, on whose holding there was no dwelling-house, resided on another farm held under a different landlord; while the sub-lessor continued to occupy the dwelling-house held under the fee-farm grant, and still cultivated a portion of the farm:—*Held*, that the portion so sub-let, and not used in connection with the dwelling-house, did not constitute a "home farm" within the meaning of the Land Law Act, 1881, sec. 58 (2). GAMBLE *v.* SIMPSON [C. P. D. XVII. 44

214 —— S. 58 (2)—*Town park.*] Newport, Co. Mayo, with a population of 688, held to be a town, within the meaning of the Land Law Act, 1881, *s.* 58 (2). M'MANNION *v.* O'DONEL - - - - L. Sub-C. XXII. 48

215 —— S. 58 (2)—*Town park.*] The question whether land is a town park or not is for the Sub-Commission to decide, and no directions are necessary to guide a party raising the question in giving notice thereof to the opposite party. MOORE *v.* LAWLER - - - - - L. C. XV. 65

216 —— S. 58 (2)—*Town park—Accommodation land—Sale by previous tenant—Holding described in lease as "park or field."*] A tenant in 1864 purchased a holding, within the town boundary of Ballyshannon, not generally known as or ordinarily called in the locality a town park, but described in a lease of 1838 as a "park or field." The land was used as accommodation land by the tenant, a butter merchant, living in the town:—*Held*, a town park within section 58 (2). BIGGER *v.* SHEIL [L. Sub-C. XVI. 13

217 —— S. 58 (2)—*Town park—Accommodation land—Tenant holding other land equally convenient.*] A holding which bears an increased value by reason of the proximity to a town is not deprived of the character of "accommodation land" within the Land Law Act, 1881, sec. 58 (2), in consequence of the tenant holding other lands equally convenient and more than capable of sufficing as accommodation land for the tenant's town residence. Kilbeggan, Co. Westmeath, containing about 1,300 inhabitants, constitutes a "town" within the meaning of the section. PALMER *v.* LAMBERT [L. C. XVII. 47

218. —— S. 58 (2)—*Town park—Accommodation land—User—Sale by tenant under Ulster custom.*] A business man purchased the tenant's interest in a farm, knowing at the time that the rent was about to be increased, paying a considerable sum of money for it:—*Held*, that the rent which was subsequently fixed should be the fair rent. SPEER *v.* SMILY [L. Sub-C. XV. 116; L. C. XVII. *M.* 21

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219 —— S. 58 (2)—*Town park—Accommodation for tenant's residence.*] A farm of land within one mile of Strabane was held to be "town-parks," although present tenant purchased the interest of his predecessor in it, and had a house on an adjoining farm, and did not wholly use it for accommodation of his house in Strabane. *Killeen* v. *Lambert* (XVII. 1), applied and followed. SIMMS *v.* ABERCORN
[L. Sub-C. XVII. *M.* 26; L. C. XVIII. 13

220 —— S. 58 (2)—*Town park—Accommodation land—Onus of proof of increased value—Proximity to town.*] A fair rent was fixed on holdings about half a mile from the town of Tipperary, which were used as dairy farms, the tenant living in the town. FREWEN *v.* SMITH-BARRY (No. 1)
[L. Sub-C. XXVII. *M.* 292

221 —— S. 58 (2)—*Town park—Grazing farm—Estoppel.*] Where a holding let as a town park had been subdivided, and the landlord consented to a fair rent being fixed on one portion, and offered to do the same with respect to the other, he was held to be estopped from alleging that the other portion was town park. RUANE *v.* GOUGH
[L. Sub-C. XXVII. *M.* 645

222. —— S. 58 (2)—*Town park—Suburb.*] The "suburbs" of a city or town comprise the rows of houses or streets which are not part of the city or town proper, but are off-shoots thereof. M'MAHON *v.* CARUTH
[L. Sub-C. XXVII. *M.* 271

223. —— S. 58 (2)—*Town park—Accommodation land—Letting for purpose—Change of tenancy—Residence of tenant.*] Land three-quarters of a mile from Kilkenny, which in 1843 was occupied as ordinary agricultural land, and in which there was no change in the rent, or any new letting from the landlord since then to the present time, was held to be excluded from the Act. ST. KIERAN'S COLLEGE TRUSTEES *v.* MUSGRAVE - - - L. Sub-C. XVII. *M.* 24

224. —— S. 58 (2)—*Town park—Accommodation land—Evidence of value as such—Amount of rent paid.*] Land in the vicinity of Carlow, held by a butcher who resided in the town, for which an accommodation rent was paid:—*Held*, to be a town park. NOLAN *v.* O'REILLY L. Sub-C. XVII. *M.* 46

225. —— S. 58 (2)—*Town park—Accommodation land—Increased value—Town, what constitutes.*] A fair rent was fixed on land adjoining the town of Mitchelstown, the landlord having failed to prove its use as accommodation land. O'BRIEN *v.* KINGSTON - - - L. Sub-C. XXVII. *M.* 87

226. —— S. 58 (2)—*Town park—Accommodation land—Letting for purpose of—Change in tenancy.*] Land which bears an increased value as accommodation land for a time, and which is treated as a town park, the tenants surrendering it without compensation, is excluded from the Act. M'LAUGHLIN *v.* ROSSMORE - - - L. Sub-C. XVII. *M.* 23

227. —— S. 58 (2)—*Town park—Accommodation land—User—Purposes of trade or business.*] Land in the vicinity of Carlow, held by a butcher residing in the town, and used by him in connection with his trade:—*Held*, to be a town park. BYRNE *v.* MITCHELL - - L. Sub-C. XVII. *M.* 46

228. —— S. 58 (2) —*Town park—Accommodation land—Agricultural holding.*] Land which was let to the owner of an hotel—who farmed also 50 acres—and which was proved not to have been taken by him as accommodation land for the hotel (which was opposite), was held not to be excluded from the Act. ROCHFORD *v.* HELY - L. Sub-C. XVII. *M.* 25

229. —— S. 58 (2)—*Town park—Accommodation land—Holding to have been let and taken for that purpose.*] In order to constitute a town park, within the Land Act, 1881, sec. 58, sub-s. 2, it must appear that the holding was originally taken as accommodation land. DUNNE *v.* CLARKE. BERMINGHAM *v.* CLARKE - L. Sub-C. XV. 123; L. C. XVII. *M.* 22

230. —— S. 58 (2)—*Town park—Accommodation land—Increased value—Rent receipts—Office books.*] A tenant, a retired

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grocer, who farmed over 200 acres, held lands adjoining the town of Donegal, but in a different townland. He lived in the town and used the land for grazing cattle brought from his other farms. The words "park" and "town park" had appeared, under protest from him, in the rent receipts since 1871. The lands were described as town parks by means of a pencil entry in the rental dated November 1st, 1857:—*Held*, that, there being no sufficient evidence that the lands bore any increased value as accommodation lands over and above the letting value of an ordinary farm near the town, the holding was not a town park within section 58 (2). DAVIS *v.* ARRAN
[L. Sub-C. XVI. 12

231. —— S. 58 (2)—*Town park—Designation as such—User as agricultural holding.*] Lands which were not proved to have been designated as town parks, and which were used as ordinary agricultural holdings, and not taken as accommodation land for residences in the town, were held not to be excluded from the Act. SWEENEY *v.* BARNARD
[L. Sub-C. XVII. *M.* 24

232. —— S. 58 (2)—*Town park—Designation as such—Accommodation land—Increased value—Amount of rent paid.*] Land half a mile from Maryborough, the former tenant of which resided in that town and carried on business there, and in 1877 sold it for £20, the principal portion whereof was paid for improvements, and the purchaser of which likewise resided and carried on business in Maryborough, and paid a rent which was equal to an accommodation rent, was held to be a town park, although never so called. BURKE *v.* CLARKE
[L. Sub-C. XVII. *M.* 45

233. —— S. 58 (2)—*Town park—Designation as such—Increased value as accommodation land—Holding subject to Ulster custom—Town.*] A holding may constitute a town park, within the Land Law Act, 1881, s. 58 (2) although it is subject to the Ulster tenant-right custom, if it otherwise conforms to the statutory conditions; but, if it were doubtful in other respects whether the holding possessed the character of town park, the circumstance that a tenant-right interest attached to it would form an element of consideration, as tending to show that the holding did not constitute a town park. In order that the holding should be deemed to bear an increased value as accommodation land, such enhancement of value must not be owing merely to the circumstance of proximity to a town. Competition by townspeople for such a holding, when to let, may furnish a test of such increased value. Aughnacloy, Co. Tyrone, which in 1841 possessed a population of 1,841 inhabitants, constitutes a town within the meaning of the enactment, although the population has declined to 1,300. The object of Legislature in exempting town parks from operation of Land Law Act, 1881, suggested. *Williamson* v. *Antrim* (VII. 157), discussed and applied. SMYTH *v.* MOORE - - - - - L. C. XVIII. 57

234. —— S. 58 (2)—*Town park—Dimensions—Buildings on holding—User as dairy farm—Adjoining holding worked in conjunction—Landlord and Tenant (Ireland) Act, 1870, s. 15.*] A holding of 27a. 1r. 4p., statute, with buildings upon it, and used as an ordinary dairy farm, held not to be a town park; and a holding of 4a. 3r. 28p., statute, adjoining, worked in conjunction with the first holding, and between which and the first holding the fences have been obliterated, and which it would require outlay to constitute into a separate holding, held also not to be a town park. HANLY *v.* COOPER
[L. Sub-C. XXII. 80

235. —— S. 58 (2)—*Town park—Holding divested of its character of town park—Change of residence by tenant—Status of occupier at passing of Act.*] A holding which possessed the characteristics of a town park at the period of the original letting may afterwards be divested of that character, and its exception from or inclusion in the benefits of the Land Law Act, 1881, depends on the status of the occupier at the date of the passing of the Act of 1881. HILLIARD *v.* DE MOLEYNS
[L. Sub-C. XXII. 34

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236. —— **S. 58 (2)**—*Town park—Increased value as accommodation land—User.*] On an application by a tenant to have a judicial rent determined, where the landlord contends that the holding comes within the exceptions specified in sec. 58, as being a town park, the onus lies upon the landlord to establish, by evidence, that the lands bear, as accommodation land, an increased value over and above the ordinary value of land occupied as a farm. While it is not enough to show that the rent paid for the lands is in excess of their value as ordinary farm land, the amount of such rent, if proportionally high, beyond what would be paid for the lands for farming purposes, will create a presumption in favour of the position that the lands bear an increased value as accommodation land. Even if it be shown that the particular user of the lands by the tenants was not for the accommodation of their town residences, but for other purposes, such as selling the produce, still, if it be proved that there was a demand in the town for the lands as accommodation land, and that, by reason of such demand, they bore an increased value as accommodation land over and above the ordinary letting value of land in the same situation occupied as a farm, the holding will not be deprived of the character of town park. Clonakilty, Co. Cork, constitutes a town within the meaning of the enactment. HELLEN *v.* JONES - - - - - L. C. XVIII. 6

237. —— **S. 58 (2)**—*Town park—Residence in a town.*] The tenant, G., purchased a holding in the vicinity of Cootehill, in the year 1875, by public auction from the landlord for £109 4s. The holding comprised about 11 acres. There was no mention made at the auction that it was a town park. G., when he purchased the holding, was a Presbyterian minister at Cootehill, but in August, 1880, he left Cootehill and went to reside in Lisburn, of which town he was appointed minister. At the time of the purchase, G., in right of his wife, was, and he still continued, proprietor of house property in Cootehill, and a druggist's business was now carried on for him there by a person named C., but G. continued to reside in Lisburn:—*Held*, that the continuous residence of the tenant since 1880 in another town, prevented the holding from being a "town park," although it bore an increased value as accommodation land. *Talbot* v. *Drapes* (V. 143), followed. GAMBLE *v.* SMITH'S TRUSTEES - - L. Sub-C. XVIII. 112

238. —— **S. 58 (2)**—*Town park—Residence of tenant.*] At the time of the passing of the Act the tenant resided in the town of Kells, but in 1882 he went to live in one of the holdings which would have been held to be town parks under the Act, and in 1884 he served an originating notice to have a fair rent fixed:—*Held*, that the notice should be dismissed. NELSON *v.* HEADFORD - - - - C. A. XXI. *M.* 67

239. —— **S. 58 (2)**—*Town park—Tenant residing in house on farm within municipal boundaries.*] Where a tenant resided in a house on the farm (which was within the municipal boundaries of a town), the farm was held not to be a town park. GALBRAITH *v.* HYNES - L. Sub-C. XVII. *M.* 26

240. —— **S. 58 (2)**—*Town park—Tenant resident on farm—Town park added to holding not such.*] Where the tenant resided on the farm it was held not to be a town park. Where a tenant who resided on a farm took a town park in addition to that farm, he was held entitled to have a fair rent fixed. NEILL *v.* COLLUM - - L. Sub-C. XVII. *M.* 27

241. —— **S. 58 (2)**—*Town park—Tenant residing on holding.*] A holding of 9¾ acres of land, upon which a tenant resides, and by which he supports himself and family, is not, though situate within a half-a-mile of the town of Killarney, a town park within the meaning of sec. 58 (2) of the Land Law Act, 1881. BURNS *v.* HEUSON [L. Sub-C. XVII. 117

242. —— **S. 58 (2)**—*Town park—Tenant residing on holding within municipal boundaries—User—Market garden.*] Where the tenant resided on the holding, which was partly within the municipal boundaries of Carlow, and lived on the proceeds of the farm, using part of it as a market garden:—*Held*, that it was not a town park. CONNORS *v.* M'DOWELL [L. Sub-C. XVII. *M.* 45

243. —— **S. 58 (2)**—*Town park—Town.*] Kircubbin, with a population of 605, is not a town within the meaning of the Act. M'MASTER *v.* M'KELVEY L. Sub-C. XVII. *M.* 153

244. —— **S. 58 (2)**—*Town park—Town.*] Sneem, in the County of Kerry, with a population of 431, is not a town within the meaning of the Land Law Act, 1881, s. 58. DOWNING *v.* BLAND - - L. Sub-C. XVII. 117

245. —— **S. 58 (2)**—*Town park—Town—Commercial importance of locality.*] The commercial character of a town is to be taken into consideration in determining whether a town is capable of having town parks attached. The number of the population in a locality is not, *per se*, a sufficient test. M'MANUS *v.* COLLINS - - L. Sub-C. XVII. 64

246. —— **S. 58 (2)**—*Town park, what constitutes—Occupation of, by person living in adjoining town or suburbs thereof—Tenant living in holding itself, within suburbs—Agricultural holding, what constitutes—Market gardening.*] Holdings within about a mile of the City of Limerick, some within and others without the borough boundaries, and varying in extent from one to over three statute acres, were resided on by the tenants, who there brought up and supported their families by the produce of the lands, one or two of the tenants also working on the railway and in the docks:—*Held*, that though they were adjoining the city, or within the suburbs and might bear an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, the lands, on which the tenants so lived, were not in the occupation of persons living in the city or suburbs, within the meaning of the Land Law Act, 1881 (44 & 45 Vic., c. 49), sec. 58, so as to constitute them town parks, the statute contemplating rather the case of persons residing off the lands, in the city or suburbs, and requiring land contiguous thereto for purposes of accommodation. The lands (beginning at the town, and stretching out into the country, without any intermixture of town houses or villa residences) were every year highly manured by natural or artificial manure brought thereto. They were sown with early potatoes and cabbages, to which succeeded turnips, cabbages, parsnips, and sometimes late potatoes or oats; and the tenants also house-fed from one to three milch cows. The produce was disposed of in Limerick market, or else retailed through the streets and sold in the very smallest quantities:—*Held*, that the holdings were agricultural within the meaning of the Land Law Act, 1881 (44 & 45 Vic., c. 49), sec. 58. MULLALLY *v.* MOORE [L. Sub-C. XV. 82; L. C. XVII. *M.* 22

247. —— **S. 58 (2)**—*Town park, what constitutes—Denomination of holding as town park—Accommodation land—Increased value as such—User of land—Joint tenants of holding, having separate town residences—Town, what constitutes.*] The words "ordinarily termed town parks" are not an essential part of the definition of the holdings excepted thereunder from the operation of the Act, but are merely descriptive of such holdings as being such as properly would be ordinarily so termed. "Accommodation land," within the Act, means land held by a townsman for the supply, convenience, and accommodation of his residence:—(*Per* Fitzgibbon, L.J.) Where lands near a town are so held, they necessarily bear an "increased value as accommodation land over and above the ordinary letting value of land occupied as a farm," if the town is large enough to create the demand for such accommodation, and if the lands are sufficiently near and suitable to serve the purpose, the question of such "value" being so determined, not as a rule of law, but as a natural inference from the facts specified:—*Per* Law, C., and Fitzgibbon, L.J.—agreeing with the dictum of Fitzgerald, B., in *Christy* v. *Gordon* (XIII. 79), with which, so understood, *Dunally* v. *Hodgins* (VII. 181), is not inconsistent. The amount of rent paid for a holding, if proportionately high, in excess of the tenement valuation, will

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furnish *primâ facie* or almost conclusive proof that the land bears an increased value as accommodation land if in other respects it fulfils the conditions necessary to constitute a town-park. The enactment must frequently apply to land used for agriculture; and in order that a holding, by a person requiring land for the accommodation of his town residence, should constitute "accommodation land" within the meaning of the Act, it is not necessary to show that it has been used or cultivated in any particular way: it may, for instance, be used by the tenant for the culture of green crops, potatoes, or turnips, or to agist market cattle, or feed his own horses and cows, or he may supply his house with its produce, or utilise the land for any other purpose he thinks fit, while using the land and his residence more or less as one establishment:—(*Per* Deasy and Fitzgibbon, L.JJ.) Whether a holding constitutes a town park within the Act is a question of fact (while forming a subject of appeal), the decision on which by the Court below should not be disturbed unless clearly erroneous:—(*Per* Deasy L.J.) Claremorris, Co. Mayo, a Quarter Sessions, where fairs and markets are held, and possessing a population of over 1,000 inhabitants, and an amount of business likely to create a demand for, and so to enhance the value of, neighbouring lands, suitable for use as accommodation land, constitutes a town within the meaning of the enactment. KILLEEN *v.* LAMBERT - - - - - **C. A. XVII. 1**

248. —— **S. 58 (2)**—*Town park, what constitutes—User—Pasture—Plantation of cabbages and potatoes—Agricultural holding—Accommodation land.*] In order to constitute a town park within the meaning of the Land Law Act, 1881, sec. 58 (2), it is not necessary that the holding should be used as pasture, if it is held as an accommodation to, and accessory of, the tenant's town residence. A tenant who resided in a house in Dungarvan occupied an adjoining plot of land under another landlord, which he used for the cultivation of potatoes and cabbage for consumption by his family. The land had been held to constitute "an agricultural holding" within the meaning of the L. and T. Act, 1870, by Dowse, B. On an application by the tenant to have a judicial rent fixed under the Land Law Act, 1881:—*Held*, that, even though the holding were to be treated as an agricultural one, it was a town park within the meaning of the Land Law Act, 1881, s. 58 (2), as it was held solely as accommodatory and accessory to the tenant's town residence, for the purpose of supplying his family with cabbages and potatoes. *Taylor* v. *Dowden* (VIII. 83; Don L. R. 517), discussed. FITZGERALD *v.* SHANAHAN - - **Q. S. XVI. 37**

249. —— **S. 58 (2)**—*Town park, what constitutes—Letting as agricultural holding—Rent receipts describing as town park.*] Where land was situated three-quarters of a mile from Enniskillen, which the tenant had purchased from the outgoing tenant in 1869, for which since 1876 receipts were given as a "town park" (against the tenant's protest), and which was used for tillage and grazing purposes, it was held not to be a town park. HAREN *v.* COLLUM - - **L. C. XVII. *M.* 23**

250. —— **S. 58 (2)**—*Town park—Town, what constitutes—Agreement to take as town park.*] Ederney, Co. Fermanagh, is not sufficiently populous to constitute a town within the meaning of the Land Law Act, 1881, s. 58 (2). Designating a holding as "town park" in the agreement under which it is to be let is of no avail to constitute the holding a town park if in other respects it appears not to possess the characteristics contemplated by the statute. M'MORROW *v.* IRVINE **[L. Sub-C. XVI. 110**

251. —— **S. 58 (2)**—*Town park, what constitutes—Town—Holding partly used for agricultural purposes.*] The fact that holdings near a town of 5,000 inhabitants, and which in other respects are within the definition of town parks, are used partly for agricultural purposes, does not prevent their being town parks. DOYLE *v.* BOLAND **Q. S. XVI. *M.* 193**

252. —— **S. 58 (2)**—*Town park, what constitutes—Accommodation land—Holding not let for that purpose—User as such.*] In order to constitute a town park within the meaning of section 58 (2) it is not necessary that it should be shown by affirmative evidence that the holding was originally let and taken *qua* accommodation land, provided that the actual user of the holding was as accommodation land. *Dunally* v. *Hodgins* (VII. 181), and *Chism* v. *Beatty* (X. 93), discussed. *Wilson* v. *Antrim* (VIII. M. 501), applied. M'GOWAN *v.* CLEMENTS. ALGEO *v.* CLEMENTS - **L. Sub-C. XVI. 11**

253. —— **S. 58 (3)**—*Determination of judicial rent—Classes of tenancies excluded from the Act*—Onus probandi—*Principal and agent.*] Where the landlord resists a claim by the tenant to have a fair rent fixed on a holding, on the ground that the holding was let to be used wholly or mainly for the purpose of pasture, and is excluded by sec. 58, sub-sec. 3, of the Land Law Act, 1881; and where the tenant was at the date of the letting the agent of the landlord, and the holding formed part of the subject matter of the agency:—*Held* (reversing the decision of the Land Commission), that the onus lies upon the tenant as such agent to satisfy the Court as to what were the terms of the letting accepted by him from his principal. DOUGIAS *v.* ALLEN - - - **C. A. XXVI. 41**

254. —— **S. 58 (3)**—*Pasture holding.*] Where, of a holding containing 176 acres (Irish), the tenant was not at liberty to break up more than 20 acres (Irish), or to sell hay, &c., off the land:—*Held*, that it was let mainly for the purpose of pasture. KENNEDY *v.* TIGHE **L. Sub-C. XVIII. 84**

255. —— **S. 58 (3)**—*Holding let to be used wholly, or mainly for purpose of pasture*—23 & 24 *Vic., c.* 4, *s.* 9.] Principles which will guide the Court in determining whether a holding has been let to be used wholly or mainly for the purpose of pasture considered. A certified copy of field notes relating to town land and valuation not admissible to prove the description or character of the land valued. TAAFE *v.* FRENCH **[L. C. & C. A. XXVII. 56, 57 note**

256. —— **S. 58 (3)**—*Pasture holding—Indorsement on lease—Effect of on letting.*] Where the terms of a lease, under which a holding was let, show that the letting was one mainly for the purpose of pasture, a subsequent indorsement not under seal cannot be taken into consideration with a view to altering the terms of the original contract. SLATTERY *v.* MULCHINOCK **[L. Sub-C. XXII. 35**

257. —— **S. 58 (3)**—*Pastoral holding.*] Whether a farm is let "wholly or mainly for the purposes of pasture" within the meaning of sec. 58 (3), depends on the intention of the parties in each particular case, and cannot be decided merely by the relative number of acres which it is agreed shall be under tillage and pasture respectively; for the amount of capital and attention which it is necessary to devote to an acre of tillage being so much greater than what is necessary for the same amount of pasture, a farm need not be mainly pastoral even though only a small part of it is allowed to be tilled. Where a tenant held 195 acres under a written agreement that he was not to till or break up more than 40 acres or meadow more than 30 acres each year, and that all hay, straw, and green crops growing on the land should be consumed thereon:—*Held*, that the holding was within the Act, and not excluded as being "mainly for the purpose of pasture." *Harper* v. *Davies* (XVI., M. 339), distinguished and approved of. DROUGHT *v.* STUBBER - - - **C. A. XVIII. 37**

258. —— **S. 58 (3)**—*Pastoral holding.*] Where the agreement of letting of 463 acres bound the tenant to consume on the holding all hay, &c., grown thereon, and only ten acres were in tillage at any time, the holding was held to be mainly for the purpose of pasture, and exoluded from the Act. CLEARY *v.* GASCOIGNE **[L. C. XVIII. 26 note**

259. —— **S. 58 (3)**—*Pastoral holding—Absence of agreement precluding meadowing or removal of products—Amendment of originating notice.*] Where the agreement for a letting contained a covenant by the tenant not to break up more than 40 statute acres (out of 161), and contained nothing precluding meadowing or removing of hay:—*Held*, that the holding was

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not a pasture holding. The Court amended the name of the tenant from the executors of D. to J., the party to the agreement. MOLONEY *v.* COOPER - **L. Sub-C. XVII. 88**

260. — **S. 58 (3)**—*Pastoral holding—Letting for purpose of pasture—Implied contract—Incapacity for other use.*] In order to exclude a pastoral holding from the operation of the Land Law Act, 1881, it must have been let to be used wholly or mainly for the purpose of pasture, either by an express agreement to that effect, or by a contract implied according to the recognised principles of law, notwithstanding that it cannot, in the ordinary course of things, be used except for pasture. O'BRIEN *v.* WHITE **[L. Sub-C. XVII. 15; L. C. XVIII. 24**

[Decision of L. C. reversed on appeal, 16 L. R. Ir. 15.]

261. — **S. 58 (3)**—*Pastoral holding.*] Where the agreement for the letting of a holding of 172 acres contained a provision that the tenant was not to break up more than eight acres, and not to remove, or allow to be removed, any hay, the holding was held to be a pastoral holding. HARPUR *v.* DAVIES **[C. A. XVI. *M.* 339**

262. — **S. 58 (3)**—*Land let for purposes of pasture.*] Where, under an agreement of tenancy of a holding consisting of 328a. 3r. 27p. (statute measure), the tenant was prohibited from breaking up or converting into tillage any portion of the land, except 15 acres (Ir.), but was not thereby distinctly bound to devote the remainder to purposes of pasturage, nor to consume on the farm any hay grown thereon:—*Held*, that the holding was not "let to be used wholly or mainly for the purposes of pasture," within sec. 58 (3) of the Land Law Act, 1881. *Westropp* v. *Elligott* (XVIII. 61), followed. GLYNN *v.* BLOSSE - - - - **L. C. XVIII. 72**

263. — **S. 58 (3)**—*Land let to be used for pasture.*] Where the tenant, a grazier, held his lands under the terms of an expired lease, which, though it contained a covenant on the part of the lessee not to till at any time more than four acres, yet did not contain any covenant that the land was "let to be used wholly or mainly for the purpose of pasture," and did not contain a description of the land either as "pasture land," as "meadow land," or as "arable land":—*Held*, that grazing was the purpose for which the land was let to the grazier to be used, and, that being so, the holding was excluded from the operation of the Act by virtue of sec. 58 (3). KELLY *v.* D'ARCY **[L. Sub-C. XIX. 24, 44**

264. — **S. 58 (3) (4)**—*Holding let to be used wholly or mainly for purpose of pasture—Onus of proof—Question, how far affected by custom and course of good husbandry.*] Grass land, let under a lease which does not contain any clause or covenant prescribing how the land is to be used by the tenant, is not, in the absence of any evidence of a custom to maintain such land as pasture, or of its being contrary to the course of good husbandry to break up or meadow such land, a "holding let to be used wholly or mainly for the purpose of pasture," within sec. 58 (3) (4). The onus of proof lies upon the party desiring to bring land within the exception contained in these sub-sections to show that such land has been "let to be used wholly or mainly for the purpose of pasture." Certain lands were let under lease containing covenants, on the part of the tenant, that he would till and use the lands in a good and husbandlike manner, and in due and regular course of good husbandry, and that he would not, without the consent of the landlord, break up or have in tillage in any one year more than a proportion equivalent to above one-fifth of the whole. On the expiration of the lease the landlord brought an action of ejectment, relying upon the provisions of sec. 58 (3) of the Land Law Act, 1881, on the ground that the land was "let to be used wholly or mainly for the purpose of pasture," and that the defendant was thereby precluded from availing himself of that statute as a defence. At the trial evidence was given that the lands had always during the lease been used as a pasture-farm; that not more than about one-fifth had ever been broken up at one time; that the tenant had frequently meadowed about 20 acres of the lands and sometimes sold the hay, and that he had used the farm as a dairy-farm. The judge having on this evidence directed a verdict for the defendant:—*Held* (Lord Fitzgerald *dubitante*), affirming the decision of the Court of Appeal and of the Divisional Court, that the verdict was rightly directed, inasmuch as there was nothing either in the words of the demise, or in the custom of the locality, or in the requirements of a due and regular course of good husbandry, to prevent the demised lands being meadowed, such non-excluded use of the whole lands as meadow-land showing that the land was not "let to be used wholly or mainly for the purpose of pasture." *Per* Lord Fitzgerald:—The onus of showing that the case came within the exception in sec. 58 (3) lay on the plaintiff, and the plaintiff having failed to sustain this issue it was proper that the defendant should succeed on his possession. *Sed semble*, there was evidence to go to the jury as to whether the land was let wholly or mainly for the purpose of pasture, and that question ought to have been submitted to them. *O'Brien* v. *White* (XVIII. 24); *Cleary* v. *Gascoigne* (XVIII. 26 note); and *Harpur* v. *Davies* (XVI. M. 339), discussed. WESTROPP *v.* ELLIGOTT **[C. P. D. XVII. *M.* 152; C. A. XVII. *M.* 451; H. L. XVIII. 61**

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265. — **S. 58 (4)**—*Holding for purpose of pasture under original letting—Subsequent user for purpose of tillage.*] Where it appeared that the holding of a tenant, who sought to have a judicial rent fixed, had been originally let to the tenant's husband for grazing purposes, and had not been tilled or meadowed by her husband without the original landlord's consent; but afterwards, since 1875, when the present landlord entered on the inheritance, his consent was not asked, and a portion of the lands were of late years kept in tillage:—*Held*, that, in the absence of evidence of any new arrangement or alteration of the original letting having been made by the present landlord, the holding came within the Land Law Act, 1881, s. 58 (4), as being let to be used wholly or mainly for the purposes of pasture; and that the application to fix a judicial rent should be refused. MOLONY *v.* DELANDRE **[Q. S. XVI. 38**

266. — **S. 58 (4)**—*Holding for pastoral purposes—Contract of letting—Implied terms.*] Though a holding may not have been let under a formal written agreement for "pastoral" purposes, the Court will imply such a term if the acts of the parties clearly indicate such a contract. What will be held to constitute such an implied contract considered? DUNLOP *v.* LITTLE - - - **L. Sub-C. XVIII. 17**

267. — **S. 58 (4)**—*Pasture holding—Two holdings worked together.*] Where the tenant held under different landlords two islands which he worked together, a fair rent was fixed, following *Healy* v. *Cloncurry*. (Mac D. R. 162.) O'SULLIVAN *v.* DEVONSHIRE - - **L. Sub-C. XXVII. *M.* 112**

268. — **S. 58 (5)**—*Labourers' or servants' holdings.*] A tenant of a forge and house, at a rent of £2 5s., had privileges on the landlord's farm, and did the ironwork thereon for a certain payment. Some of the privileges were given up and a field was given to the tenant at a rent of £2:—*Held*, that the tenancy came within the exception in sec. 58 (5). M'CARTHY *v.* COLEMAN - - - **L. Sub-C. XXIV. *M.* 560**

269. — **S. 58 (7)**—*Letting for temporary convenience—Power to resume portion for building purposes.*] M. was tenant of 65 acres under a lease containing a covenant enabling the landlord to resume any portion (not exceeding 5 acres) of the holding for building purposes:—*Held*, that, as the portion affected by the covenant did not comprise a substantial part of the holding, the tenant was entitled to have a judicial rent determined. The fact that no definite portion of the holding is indicated by the covenant must be taken into consideration. *Butterly* v. *Carrol* (26 L. R. Ir. 93) and *Leonard* v. *St. Leger Barry* (Mac D. 240) distinguished. MOONEY *v.* WILLCOCKS **[C. A. XXV. 31**

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LAND LAW (IRELAND) ACT, 1881—*continued.*

270. —— **S. 58 (7)**—*Letting during continuance in any office, appointment, or employment.*] Upon an application by the widow of a tenant who had been successively coachman and land steward of the landlord during the entire term of his tenancy, to fix a fair rent on the holding so held by her deceased husband, who died in October, 1883, the widow offered no evidence as to the terms of the letting to her husband, but the landlord swore that there was a verbal agreement that "if at any time the tenant left his service he would give him up the land and house":—*Held*, that the late tenant held his holding during his continuance in an office, appointment, or employment, and that his widow, not having been accepted as tenant after her husband's decease, was not tenant within the meaning of the Act. MOONEY v. MADDEN **L. Sub-C. XIX. 43**

271. —— **S. 58 (7)**—*Letting for temporary convenience or to meet temporary necessity.*] An agreement for two years certain contained a clause enabling the lessor to resume possession on a six months' notice after that time, if for any reason he wished to have the lands again in his possession. A notice to fix a fair rent was served by the tenant, and a cross-notice to resume possession was served by the landlord:—*Held*, that the letting was within the exception to sec. 58 (7), and the notice to fix fair rent was dismissed. The notice by the landlord to resume possession was also dismissed. CRAWFORD v. TAGGART - - - - - **L. Sub-C. XVIII. 42**

272. —— **S. 58 (7)**—*Letting for temporary convenience.*] A declaration in a lease or agreement that the letting "was made to meet the temporary convenience of the landlord" will not operate as an estoppel in a case, where the tenant challenges the truth and *bona fides* of such a recital; and parol evidence as to circumstances attendant on the execution of the instrument will then be admitted. GOUDY v. MATTHEWS **[Q. S. XXII. 54; L. C. XXIV. 105**

273. —— **S. 58 (7)**—*Letting for "temporary convenience or to meet temporary necessity of tenant."*] A holding, formerly portion of glebe lands, taken by tenant as incoming incumbent of parish, from the outgoing incumbent, who had shortly previously purchased the fee, was held to be within the exception of sec. 58, sub-sec. 7. HUTCHINGS v. CROSSLEAGH **[L. Sub-C. XVIII. 92**

274. —— **S. 58 (7)**—*Letting for temporary convenience—New arrangement by parol since passing of Act.*] A holding containing 2a. 1r. 16p. statute was set to a tenant by written agreement for a term of 5 years certain, at £6 per annum. On the termination of the term the tenant was allowed to remain on at £5 a year, pursuant to a verbal arrangement by which he bound himself to give up the holding to the landlord at any time required:—*Held*, that the arrangement of 1882 was not a "new" letting since passing of Act, which sec. 58 (7) required to be in writing, but had relation to the original letting of 1877, which was one for temporary convenience of landlord; and that, accordingly, under sec. 58 (7), notice to have fair rent fixed in respect of holding could not be entertained. CLARKE v. STEELE - **L. Sub-C. XX. 18**

275. —— **S. 58 (7)**—*Letting for temporary convenience—Chancery letting—Sub-tenancy, determination of.*] Where, pending a Chancery cause, the Court makes a letting of a holding to a tenant from year to year, of which the tenant makes a sub-letting, such sub-tenancy determines with the tenancy on the termination of cause; and a sub-tenant's application, pending the cause, to have fair rent fixed, should therefore be dismissed. SHEA v. M'GILLICUDDY **L. Sub-C. XVII. 104**

276. —— **S. 58 (7)**—*Letting for temporary convenience—Tenancy from year to year by way of mortgage.*] Where tenancies from year to year were created in consideration of certain sums of money being advanced to the landlord; and, under agreements in writing, it was provided that the tenancies might be determined at any time on six months' notice being given by either party; and on repayment of the sums so advanced, but not otherwise:—*Held*, that the tenants were in occupation merely as mortgagees, and were not entitled to have fair rents fixed or statutory terms established in the holdings. CUNNY v. MEAGHER. BRITTON v. MEAGHER **[L. Sub-C. XVIII. 8; L. C. XIX. 35**

277. —— **S. 58 (7)**—*Letting for "temporary convenience"—"Yearly tenancy"—Setting aside originating notice—Right of appeal.*] Within a couple of months after the expiration of the last of a series of leases, and while the tenant continued to overhold, the landlord stated that he required the land for building purposes, but the tenant having urged that if possession were resumed he would be a heavy loser, as he had highly manured the land, the landlord replied that he might keep the land until he had exhausted the manure. The amount of the rent to be payable was not fixed, the landlord requiring more and the tenant less than the amount under the lease. The tenant, with the landlord's consent, continued in possession thus for three years, and from time to time, after two years, paid various sums as and towards rent, but still without any settlement of what should be the amount. On appeal from an order of the Land Commission, refusing to set aside an originating notice to fix a fair rent for the holding:—*Held*, that, whether a yearly tenancy had been created or not, the letting was for "the temporary convenience" of the landlord or tenant within the meaning of sec. 58 (7) of the Land Law Act, 1881 (44 & 45 Vic., c. 49). *Per* Fitzgibbon, L.J.: The temporary convenience or temporary necessity which excludes a tenant's claim may be existing "for a time" compatible not only with a tenancy at will, or a tenancy less than a tenancy from year to year, under sec. 69 of the L. and T. Act, 1870, but also under both that Act and the land Law Act, 1881, subject to the restriction as to written evidence with a tenancy from year to year or for life or lives. Though circumstances were here shown which, if unexplained or unqualified by the other facts, might afford presumptive evidence of a tenancy from year to year, they had been so explained and qualified, and there was no sufficient evidence to sustain the finding of the Court below that a tenancy from year to year existed in the holding; nor was the Court debarred, under the circumstances, from reversing the decision as being upon a question of fact, the question largely depending on legal considerations. *Montgomery* v. *Montgomery* (XIV. 1), applied. EIFFE v. M'KENNA - - - - - **C. A. XVI. 39**

278. —— **S. 58 (7)**—*Temporary convenience—Fair rent—Non-agricultural holding*—Onus probandi.] Where an agreement in writing for a yearly letting executed in 1878 contained covenants by the tenant to cultivate the holding of three acres in a husbandlike way, and a covenant not to claim any of the benefits of the Landlord and Tenant (Ireland) Act of 1870, and on the hearing of the tenant's application to have a fair rent fixed under the Land Law (Ireland) Act, 1881, where the landlord alleged that at the date of the letting he verbally instructed the tenant, who was then his solicitor, to prepare an agreement for a letting for a temporary convenience, which evidence was not expressly contradicted by the tenant:—*Held*, that the onus lay on the tenant as such solicitor, notwithstanding the covenants in the agreement, to satisfy the Court that the holding was within the provisions of the Land Law (Ir.) Act, 1881. *Held*, also, that three acres, cultivated and worked by the tenant in connection with other lands of six acres, but on which three acres he did not reside, were not within the provisions of the Land Law (Ir.) Act as a holding agricultural or pastoral, or partly agricultural and partly pastoral. *Douglas* v. *Allen* (XXVI. 41), followed. CROOKSHANK v. LAW **[C. A. XXVII. 2**

279. —— **S. 58 (7)**—*Temporary convenience—Covenant in lease entitling landlord to resume possession for building purposes—Incident of subsequent tenancy from year to year.*] A lease, which expired in 1870, contained a covenant entitling the landlord to resume possession of the holding or any part thereof during the term for building purposes:—*Held*, that the subsequent tenancy from year to year was not subject to the condition as to temporary convenience, and that a fair rent should be fixed. M'AULAY v. BROWN **[L. Sub-C. XXVII. 271**

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LAND LAW (IRELAND) ACT, 1881—*continued.*

280. —— **S. 58 (9)**—*Glebe lands.*] A. granted to B. and his successors, as Archdeacon of the Cathedral Church, 20s. (Irish), part of certain lands of H., to be held by him and them for ever as the glebe of the parish. B.'s successor let the lands to C., who served an originating notice to fix a fair rent. Subsequently the lands vested in the Irish Land Commission, against whom the proceedings were continued:—*Held*, that the lands were glebe lands within s. 58 (9), and that C. could not have a fair rent fixed. JORDAN *v.* IRISH LAND COMMISSION **[L. C. XXVII. *M.* 647**

281. —— **S. 60—Rule 29**—*Landlord a minor—Guardian not served—Recording of notice—First occasion of sitting of the Court.*] Where the guardian of a minor landlord was not served with the originating notice, leave to treat the case as a recorded case was refused. BETHELL *v.* WADDELL **[L. C. XVIII. *M.* 40**

—— **S. 5 (5)**—Right to game - - **XXV. 36**
See GAME. 4.

—— **S. 5 (5)**—Summons by landlord for trespass **XXIV. 5**
See GAME. 6.

—— **S. 5 (5)**—Turbary—Soil - - - **XVI. 30**
See LANDLORD AND TENANT—EASEMENT. 2.

—— **Ss. 5, 8 (3)**—Deduction of Grand Jury cess **XVII. 85**
See LANDLORD AND TENANT (IRELAND) ACT, 1870. 207.

—— **S. 8 (6)**—Specific performance of agreement **XXIV. 44**
See SPECIFIC PERFORMANCE. 7.

—— **S. 8 (10)**—Fine - - - **XXVI. *M.* 432**
See REDEMPTION OF RENT (IRELAND) ACT, 1891. 9.

—— **Ss. 8, 13, 60**—Application to stay order for final judgment **[XV. 90**
See PRACTICE—JUDGMENT. 20.

—— **Ss. 8, 21**—Lease for lives—Evidence of existence of *cestui que vie* - - - - - **XVIII. 111**
See EVIDENCE. 6.

—— **S. 21**—Present tenant - - - **XXI. 48**
See LANDLORD AND TENANT—EJECTMENT—OVERHOLDING. 7.

—— **S. 21**—Agreement for a lease—Part performance **[XVII. 76**
See FRAUDS, STATUTE OF. 2.

—— **S. 22**— - - - - - **XXVI. *M.* 512**
See GRAND JURY—CESS. 7.

—— **S. 24**—Purchase by tenants - - **XXIII. 86**
See LAND PURCHASE ACTS. 1.

—— **S. 51**—Costs - - - - **XVII. 73**
See LANDLORD AND TENANT (IRELAND) ACT, 1870. 162.

—— **S. 57**—Present tenant - - - **XVI. 57**
See EVIDENCE. 7.

LAND LAW (IRELAND) ACTS, 1881, 1887.

1. —— **Act, 1881, ss. 2, 21, 57—Act, 1887, s. 1**—*Sub-letting—Consent in writing—Assignment contrasted with sub-letting—Effect of assignment recognising sub-tenancies—Leave under Sub-letting Act—Waiver in accordance with statute—New sub-lettings and re-sub-lettings—Grouping of sub-tenancies—Triviality.*] The tenant who was assignee of a lease made in 1828 for thirty-one years or two lives, served an originating notice to fix a fair rent. There were seven sub-tenants on the holding. Three of these were sub-tenants in occupation at the time of the assignment in 1878. Three others were new tenants, to whom the assignee had sub-let portions that were in sub-tenancies in 1878, and one sub-letting was new in all respects. The assignment recognised the sub-letting then subsisting:—*Held*, that the originating notice should be dismissed on the ground of the tenants not being in *bonâ fide* occupation of the holding. WAKEFIELD *v.* ROBINSON **C. A. XXVI. 109**

2. —— **Act, 1881, ss. 2, 58 (1)—Act, 1887, ss. 1, 4**—*Sub-letting—Triviality—Mountain—Pastoral holding—Ordinary agricultural farm.*] Land taken for "agricultural purposes" is within the Act. A holding consisted of 781 acres, of which 45 acres were arable; and of these 45 acres 7 acres 3 roods were sub-let:—*Held*, that the application to fix a fair rent should be dismissed. BAKER *v.* BAKER **[L. Sub-C. XXVII. *M.* 269**

3. —— **Act, 1881, ss. 4, 8, 21, 22, 57—Act, 1887, s. 1**—*Lease made between 22nd August, 1881, and January, 1883, of holding in which tenancy existed at former date—Right of lessee to apply to have fair rent fixed—Amendment of originating notice—What amounts to contract which will exclude tenant from benefit of Act of 1881—Present tenant.*] The tenant of a holding, the Poor Law value alone of which is not less than £150 per annum, who has by writing under his hand entered into an agreement for a lease, between the 22nd of August, 1881, and the 1st of January, 1883, and in which holding a tenancy existed on 21st August, 1881, is not entitled to apply to the Court to have a fair rent fixed under the Act of 1881, where the agreement contains covenants by the tenant inconsistent with such an application. A covenant to pay a fixed rent for thirty-one years is inconsistent with an application to the Court to fix the rent:—*Semble*, there may be a "present tenant" who is not entitled to have a fair rent fixed: and a tenant who has contracted himself out of some of the provisions of the Act of 1881 may be a present tenant and entitled to apply to the Court to establish his right, as such, to any benefits conferred by that Act, from which he has not shut himself out by the provisions of his contract. RONALDSON *v.* LA TOUCHE - - - - **C. A. XXIII. 21**

4. —— **Act, 1881, ss. 5, 21—Act, 1887, s. 1**—*Leaseholder—Present tenant—Determining judicial rent—Resumption of holding by landlord as residence for himself.*] Where there were applications by the tenant, who held under a lease, to have a judicial rent determined, and by the landlord for resumption of the holding as a residence for himself:—*Held*, on the construction of the Acts, that the landlord's application should be refused. HANLEY *v.* CARROLL **[L. Sub-C. XXIII. 48**

5. —— **Act, 1881, s. 7—Act, 1887, s. 1**—*Judicial rent—Improvements—Predecessor in title—Purchaser of tenancy from year to year accepting lease—Improvements specified in demise.*] The case of *Adams* v. *Dunseath* (XVI. 59), has not decided that the taking of a lease by a tenant precludes him, in having a a judicial rent determined, from being regarded as having an interest in buildings or other improvements previously made by him or his predecessor in title. Whether the tenant in such a case has given up his right to improvements is a matter to be determined by considering the transactions and circumstances appearing in the particular case. WALSH *v.* LIMERICK - - - - - **L. C. XXIII. 17**

6. —— **Act, 1881, s. 8—Act, 1887, s. 1**—*Receiver's fees payable under lease.*] Where, in addition to rent, a further sum is reserved by lease as and for receiver's fees, and not as a penalty, upon a judicial rent being fixed by the Land Commission upon the holding such judicial rent is the total rent payable by the lessee, and no additional claim can be made for receiver's fees. (By Andrews, J.) PAKENHAM *v.* WILLIAMSON - - - - - **XXVI. *M.* 304**

7. —— **Act, 1881, ss. 8, 21—Act, 1887, s. 1**—*Effect of fair rent order on agreement in lease by tenant to pay interest on improvements—Landlord and Tenant (Ir.) Act, 1870, s. 1.*] A landlord executed some improvements on the holding of his tenant, who held under a lease, and the tenant covenanted to pay interest on the sum expended during the continuance of the lease. On a fair rent being fixed:—*Held*, that the fair rent order placed a rent on the improvements and precluded the landlord from claiming compensation therefor. (By Johnson, J.) BLOOD *v.* SHEEHY **[N. P. XXVII. 22**

8. —— **Act, 1881, ss. 8 (1), 57—Act, 1887, s. 4**—*Lease for lives expiring in March, 1881—Occupation in lieu of emblements—Agreement for lease prior to 1st Jan., 1883, not executed till April, 1884.*] A., holding under lease for three lives which

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LAND LAW (IRELAND) ACTS, 1881, 1887.—*continued*

expired in March, 1881, continued in occupation, and, in September, 1882, entered into an agreement for a new lease for thirty-five years from March, 1881. The lease was not executed till 2nd April, 1884, when two-and-a-half years' rent was paid by A. in respect of his prior occupation. A. served his originating notice under the Act of 1887:—*Held*, (1) that as the making of the lease of April, 1884, was not deferred with the object of defeating the provisions of the Act of 1881, A. was not entitled to have a fair rent fixed under the Act of 1887; (2) that A. could not maintain an originating notice under the Act of 1881, inasmuch as no tenancy existed in the holding on the 22nd August, 1881, his occupation being in lieu of his right to emblements under 23 & 24 Vic., c. 150, s. 34. M'Cullagh *v.* Batt

[L. C. XXIV. 52

9. —— **Act, 1881, s. 8 (6)—Act, 1887, s. 29**—*Fixing fair rent by agreement—Period when fixed—Date of agreement, or of its being filed.*] Where an agreement between a landlord and a tenant in accordance with the provisions of sec. 8 (6) of the Land Law (Ir.) Act, 1881, was executed in 1885, and filed in Court in 1886, the rent is to be taken as fixed in 1885, and not as fixed in 1886, so that the tenant may claim the benefit of the statutory reduction of rent so fixed, conferred by the 29th sec. of the Land Law (Ir.) Act, 1887. (By Palles, C.B.). Church *v.* M'Poyle - - Cir. Cas. XXII. 85

10. —— **Act, 1881, ss. 8 (6), 40—Act, 1887, s. 29**—*Agreement to refer question of fair rent to arbitration—Filing award in Court—Statutory abatements on judicial rents—Estoppel* in pais—*Specific performance.*] Tenants agreed with their landlord to submit the question of "fair rent" on their holdings to arbitration, such rent to be the rent for fifteen years as if it were a judicial rent, and an agreement and declaration fixing such rent to be filed in manner defined in the Act of 1881. The award was published, but no agreement and declaration was filed. The landlord was not asked for, but did not allow, the statutory abatements under section 29 of the Act of 1887. In 1889 the tenants served originating notices to have fair rents fixed:—*Held*, that the fact that such statutory abatements had not been allowed, went, with other acts of the landlord, to preclude him from now relying upon the submission and award in opposing the originating notices. Woodside *v.* Massey C. A. XXV. 69

11. —— **Act, 1881, s. 8 (10)—Act, 1887, s. 1**—*Fine.*] Where a tenant has paid a sum of money as a fine to the landlord on taking out a lease of the holding, he is entitled to consideration for such payment when applying to have a fair rent fixed. Noble *v.* Brady - L. Sub-C. XXVI. *M.* 348

12. —— **Act, 1881, ss. 8, 60—Act, 1887, s. 29**—*When rent fixed.*] A notice to have a fair rent fixed, recorded under sec. 60 of the Act of 1881, was heard before the Sub-Commission in January, 1883, and by the Land Commission in June, 1884:—*Held*, that for the purpose of sec. 29 of the Act of 1887, the rent was "fixed" by order of the Sub-Commissioner, and the tenant was entitled to the abatement appropriated to that year under the gazette notice. (By Holmes, J.) Law *v.* Sinnamon - - - - Cir. Cas. XXIV. 9

13. —— **Act, 1881, ss. 15, 21—Act, 1887, s. 1**—*Determination of judicial rent—Sub-demise by lessee.*] Where a tenant held under a lease dated 1803, which was executed to a former tenant, who in 1879 executed a sub-demise of two roods to N. for the same term for which the sub-lessor held it:—*Held*, that the tenant was entitled to have a fair rent fixed. Brown *v.* Crommellin - - L. Sub-C. XXII. *M.* 544

14. —— **Act, 1881, s. 21—Act, 1887, s. 1**—*Resumption by landlord as residence for son—Notice served after expiration of lease.*] The final clause of sec. 1 of the Act of 1887 does not apply to a case where the lease has already expired, prior to the service of notice of intention to resume possession; and where the Court is satisfied that the intention is *bonâ fide*, an order for resumption can be made. Mehaffey *v.* Pollock

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LAND LAW (IRELAND) ACTS, 1881, 1887—*continued.*

15. —— **Act, 1881, s. 21—Act, 1887, s. 1**—*Lease for term of more than 99 years determinable on a death—Chattel real—Meaning of "expiring within 99 years"—"Lease for life or lives."*] A lease existing in 1881, for a term however long, which is determinable on the demise of a life or lives then in being, is within sec. 1 of the Land Law Act, 1887. A tenant was lessee "for the full term of 150 years, provided the lives of A. B. and C., or the life of any of them, so long continue, and from and after the decease of the survivor for and during so much as may then remain unexpired of the term of 31 years"—A. being still alive:—*Held*, that the phrase "leases expiring within 99 years" means leases which may expire, or are capable of expiring, not such as must expire, within 99 years; and that the lease in question was a lease "expiring" within the meaning of the phrase. *Per* Barry, L.J. The lease in question, though in name technically different, is "a lease for a life or lives existing in 1881, without a concurrent term" within the meaning of sec. 1 of the Land Law Act, 1887. Bangor *v.* Fitzsimons

[C. A. XXV. 2

16. —— **Act, 1881, s. 21—Act, 1887, s. 1**—*Application by lessee to fix fair rent—Subsequent bankruptcy of lessee*—Bonâ fide *occupation.*] The assignees of a lessee, who, after his application to have a fair rent fixed had been made, but before it was heard, was adjudicated a bankrupt, can have it fixed. Cummins (assignees of) *v.* Porter L. C. XXVI. *M.* 420

17. —— **Act, 1881, s. 21—Act, 1887, s. 1**—*Lease by life tenant for his own life—Application to determine judicial rent.*] The effect of sec. 1 of the Act of 1887 is merely to ante-date or anticipate the point of time at which the application to have a judicial rent determined could be made by a lessee, who (save for the fact that his lease would not expire within the limited period) would be entitled to the benefits of sec. 21 of the Act of 1881. Where a tenant for life made a lease of lands for his own life, and the lessee (the lessor being still alive) served an originating notice to have a judicial rent fixed under sec. 1 of the Act of 1887:—*Held* (reversing the decision of Bewley, J.), that the lessee could not, at the expiration of his lease, be deemed to be a tenant of a present ordinary tenancy within the meaning of the Act of 1881, and that, therefore, he was not entitled to have a judicial rent fixed. *Massy* v. *Norse* (20 L. R. Ir. 57, 464), followed. *Roe* v. *Cooney* (14 L. R. Ir. 243); and *Seymour* v. *Quirke* (XVIII. 29), considered. Moylan *v.* Finch

[L. Sub-C. XXII. 99; L. C. XXV. 43; C. A. XXVI. 2

18. —— **Act, 1881, s. 21—Act, 1887, s. 1**—*Covenants in lease—Deposit as security for payment of rent and performance of covenants—Yearly tenancy.*] A covenant in a lease to deposit a sum of money with the lessor, as security for the due and punctual payment of the rent and performance of the several covenants contained therein, is a condition of the lease which is applicable to a tenancy from year to year; and after a "fair rent" has been fixed under 50 & 51 Vic., c. 33, s. 1, the lessor is entitled to retain the money so deposited, on the same conditions as he held it under the lease, notwithstanding that the agreement under which it was deposited provides that, upon the determination of the lease, it is to be repaid to the lessee, or credit allowed for it out of the last gale of rent. *Bolton* v. *Barry* (12 L. R. Ir. 158), applied. Wilson *v.* Smyth

[Q. B. D. XXIII. 7

19. —— **Act, 1881, ss. 21, 57—Act, 1887, s. 1**—*Reversionary lease made* bonâ fide *before passing of Act of* 1881—*Present tenancy.*] R. held lands, as assignee of the lessee, under a lease dated 29th September, 1866, expiring on 1st November, 1881. On 27th June, 1881, the landlord granted to him a reversionary lease for 15 years from 1st November, 1881, at a different rent. On 13th October, 1887, R., as lessee under the lease of 27th June, 1881, served an originating notice to have a judicial rent determined:—*Held*, Palles, C.B., *diss.*: That reversionary leases whether to the occupying tenant or to a stranger, are excluded from the operation of sec. 21 of the Act of 1881, and that the lease of June, 1881, was not a lease which, at the date of the passing of the Act of 1881, governed the contract of tenancy, and that the originating

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notice should be dismissed. *Per* Palles, C.B. : The lease of June, 1881, being made to the tenant in occupation, the tenant must be taken as holding, at the date of the passing of the Act of 1881, substantially under a contract compounded of the leases of 1866 and 1881; the reversionary lease merely regulated the terms of the contract, and was not within the exception in sec. 21 of the Act of 1881; and, therefore, the tenant was entitled to have a judicial rent determined under the Act of 1887. SPROULE *v.* RAMSAY - **C. A. XXVI. 4**

20. —— Act, 1881, s. 21—Act, 1887, s. 1—*Right of resumption by landlord—Notice to fix a fair rent—Rules (Dec., 1883) 132.*] A lessee having served an originating notice to fix a fair rent under the Land Law (Ir.) Act, 1887, s. 1, the landlord cannot resume possession under that section until the end of fifteen years from the lease becoming a present tenancy. CONNOLLY *v.* TYRRELL - - - **C. A. XXVII. 41**

21. —— Act, 1881, s. 21—Act, 1887, s. 1—*Arbitration and further lease clause.*] A covenant in a lease provided that in consideration of the buildings erected by the tenant, it should be lawful for him at the termination of the lease to recover from the landlord such amount of money as should be fixed by arbitrators as the then existing and continuing value of the buildings, but not exceeding £400; and also that the landlord might, in lieu of such payment, grant a further lease to the tenant, thereby extinguishing all claim for the payment on account of buildings:—*Held*, that a fair rent should be fixed on the basis of all the buildings being the tenant's. BEAMISH *v.* SHANNON - .- **L. Sub-C. XXVII.** *M.* **358**

22. —— Act, 1881, ss. 21, 57—Act, 1887, ss. 1, 4—Bonâ fide *occupation—Triviality of a sub-letting—Proportional rent of sub-let part.*] Where the rent payable by the lessee was £30, and portion of the premises had been sub-let by him at a rent of £20:—*Held*, that the sub-letting was not trivial, and the originating notice was dismissed. BUTSON *v.* BERRY **[L. C. XXVI. 120**

23. —— Act, 1881, ss. 21, 57—Act, 1887, s. 4—Bonâ fide *occupation—Sub-letting—Trivial sub-letting—Consent on part of landlord—Non-enforcement of covenant against sub-letting—Tenant not* bonâ fide *in occupation at the date of the originating notice.*] In 1873, E., by lease, demised lands, on which there stood six houses, to K., at a rent of £300 13s. 0d. The lease contained a covenant against sub-letting without the consent in writing of the lessor, and a covenant to repair and rebuild the houses existing on the lands. The houses were rebuilt by K., pursuant to the covenant, and re-let, without consent in writing, to sub-tenants other than those in occupation at the date of the lease. The lessor had knowledge of those sub-lettings, but took no steps to enforce the covenant. One of the houses was a public-house. The total rent of the sub-lettings at the date of the hearing of the case was about £18. At the date of the service of the originating notice there was also a sub-tenant in occupation of two acres, at a rent of £8 yearly, who gave up possession to the tenant one week before the application was heard in the County Court:—*Held*, (1) that the sub-lettings were not of a trivial character; (2) that mere negative inaction on a landlord's part in reference to sub-letting cannot be construed into active consent; and (3) that if a tenant is not in *bonâ fide* occupation of his holding when the originating notice of application to determine a judicial rent is served, he cannot subsequently acquire an occupation to satisfy the Act of 1881. *Per* Fitzgibbon, L.J.: In *Keating* v. *Bolton* (22 L. R. Ir. 143), the dealings between the landlord and the tenant precluded the former from denying his consent to the sub-letting. KENNEDY *v.* ESSEX - **C. A. XXVI. 7**

24. —— Act, 1881, ss. 21, 57—Act, 1887, s. 4—*Lease*—Bonâ fide *occupation—Lease operating as lease of reversion as to portion of lands demised.*] Notwithstanding that the lessee was not in actual occupation of the entire holding, by reason of a letting made by the landlord prior to the execution of the lease:—*Held*, that the lessee was entitled to have a fair rent fixed. *Flannery* v. *Nolan* (20 L. R. Ir. 537), distinguished. M'MASTER *v.* BETTY - - - **L. C. XXIV. 36**

[This was affirmed on appeal. 28 L. R. Ir. 176.]

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25. —— Act, 1881, ss. 21, 57—Act, 1887, s. 4—Bonâ fide *occupation—Sub-letting—Triviality.*] In deciding whether a sub-letting is trivial or not, all the circumstances, the class of house and its condition, its locality and situation, the security for the rent and the like, must be taken into consideration. *Kennedy* v. *Earl of Essex* (XXVI. 7), commented on. O'CALLAGHAN *v.* CROOK **L. Sub-C. XXVII.** *M.* **21**

26. —— Act, 1881, ss. 21, 58 (1)—Act, 1887, ss. 1, 34—*Lease by tenant for life—Application to determine judicial rent—Estoppel.*] Where leases have been made by a tenant for life for his own life and for the term of thirty-five years respectively:—*Held*, that the respective lessees were entitled to have judicial rents determined. RYAN *v.* FINCH. LOOBY *v.* FINCH - - - - **L. Sub-C. XXIV. 94**

[This was affirmed by the Court of Appeal. 30 L. R. Ir. 568.]

27. —— Act, 1881, ss. 21, 58 (2)—Act, 1887, s. 1—*Leaseholder deemed present tenant—Resumption of holding by landlord—Suspension of right—Commencement of period—Home farm—Amendment.*] In cases where, during the currency of a lease, a lessee is declared a present tenant under sec. 1 of the Act of 1887, the landlord's right to resume possession is suspended for fifteen years under the final clause of that section, and such period of suspension begins to run from the date of such adjudication, and not from the commencement of the statutory term. In order to exempt a holding, as constituting a home farm, from the operation of the Act, as to fixing a fair rent, it must be proved to have been of that character at or prior to the time of the original letting; it is not sufficient to prove it was such at the passing of the Act of 1881. An amendment of a notice will not be made by the Court when the effect would be to give applicant a *locus standi* inconsistent with the Acts and rules. BAILEY *v.* SMILEY **L. C. XXIV. 107**

28. —— Act, 1881, s. 22—Act, 1887, s. 1—*Right of tenant holding under lease of Nov.* 1881, *to have a fair rent fixed.*] A tenant, who held under a lease prior to 1881, took from the landlord, in November, 1881, and while his old lease was unexpired, a new lease for three lives or 31 years, at £20 a year rent. After the passing of the Land Act, 1887, the tenant having served an originating notice to have a fair rent fixed:—*Held* (1), that sec. 1 of the Act of 1887 did not apply to his case; (2), that he was a present tenant under the Act of 1881, and as such had the right to have a fair rent fixed, any provision in his lease inconsistent with such right being void under sec. 22 of that Act. DALY *v.* GARDINER **[L. Sub-C. XXV. 47**

29. —— Act, 1881, s. 22—Act, 1887, s. 1—*Lease—Assignment—Conditions—Inconsistent with fixing fair rent—Application by assignee to have fair rent fixed.*] On an application to have a judicial rent determined, it appeared that the applicant was assignee of a lease dated 18th December, 1877, of lands valued at £203 10s. per annum, which contained a covenant against assignment without previous written consent of lessors. An assignment was executed between the lessee and assignee dated 17th October, 1885, in consideration of £800, and expressed to be "with the consent in writing of (the lessors) given, in consideration of the said John Moore undertaking to strictly observe, perform, and be bound by all the covenants, conditions, and provisos in the said lease mentioned, and to pay the rent reserved by the said lease regularly upon the days and times specified, and testified by the said (lessors) subscribing their names at the foot of these presents." At the foot was the following indorsement signed by the lessors:—"We, the undersigned, being the lessors of the lease herein expressed to be assigned, do hereby consent to the above-mentioned assignment on the conditions mentioned therein":—*Held*, that the terms of the assignment and indorsement did not constitute a new contract between the assignee and the lessors, by which the assignee undertook to pay the rent reserved for the term, apart from his obligation to do so as assignee of the lease, and a judicial rent was determined accordingly. MOORE *v.* IRVINE - - - - **L. Sub-C. XXIV. 27**

30. —— Act, 1881, s. 44—Act, 1887, s. 29—*Reduction—Time of fixing judicial rent.*] A rent was fixed by the Sub-

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Commissioners in 1883, and their decision was confirmed by the Land Commission on 11th January, 1887:—*Held*, that the tenant was not entitled to any reduction under sec. 29 of the Act of 1887. MOORE *v.* M'CAUGHAN - **Q. S. XXIII. 36**

31. —— **Act, 1881, s. 57—Act, 1887, s. 1**—*Lease for lives—Present tenancy.*] Where a tenant held under a lease for three lives or 31 years, and was entitled on its expiration to have a further lease for one other life:—*Held*, that he was a present tenant under the Act, and entitled to have a fair rent fixed. POWELL *v.* HANNAN **L. Sub-C. XXVI. *M.* 661**

32. —— **Act, 1881, s. 57—Act, 1887, s. 1**—*Landlord's consent to sub-letting.*] A clause in a lease, giving liberty of turbary and cutting and saving turf on the bog to the tenant and his cottiers and tenants resident on the lands demised, cannot be regarded as amounting to active consent to sub-letting. LA TOUCHE *v.* BROWNRIGG - - **L. C. XXVI. *M.* 421**

33. —— **Act, 1881, s. 57—Act, 1887, s. 1**—*Sub-letting at time of lease—Sub-letting with landlord's consent—Demise of lands partly in landlord's and partly in tenant's occupation—*Bonâ fide *occupation.*] Where a tenant takes and a landlord lets a farm, which at the time of the letting is to any substantial degree in the occupation of sub-tenants, the entire holding cannot be deemed to be in the occupation of the tenant, and he cannot, therefore, maintain an application to have a fair rent fixed in respect of said holding. *Buchanan* v. *Cowell*, (XXVI. 24), followed. NOLAN *v.* DEVERY **[L. C. XXVI. *M.* 419**

34. —— **Act, 1881, s. 57—Act, 1887, s. 1**—Bonâ fide *occupation—Receiver appointed over and in occupation of a tenant's interest—Application by receiver to have a fair rent fixed in name of tenant.*] Where a petition for sale was presented in the Land Judge's Court, and a receiver appointed, the receiver by order was directed to enter into and take up the occupation of a tenant's holding, who, however, was allowed to remain in possession of the dwelling-house and curtilage. The receiver, pursuant to an order of the Court, served an originating notice to have a fair rent fixed, in the name and on behalf of the tenant:—*Held*, by Litton, J., that the tenant, having been removed from the occupation of the holding by the receiver acting under the order of the Court, was not in *bonâ fide* occupation within the meaning of the 1st section of the Act of 1887, and a fair rent could not be fixed while the occupation of the receiver continued. By Mr. Commissioner Fitzgerald: The occupation of the receiver was the occupation of the tenant, who was accordingly entitled to fix a fair rent as in *bonâ fide* occupation of the holding. MOIRE *v.* BLACKER **[L. C. XXIV. 77**

[Judgment of Mr. Commissioner Fitzgerald affirmed on appeal. 26 L. R. Ir., 375.]

35. —— **Act, 1881, s. 57—Act, 1887, s. 1**—*Sub-letting discontinued after dismissal of notice—Second notice.*] A lessee served an originating notice to fix a fair rent in 1890, which was dismissed on account of sub-letting. Having obtained a surrender of the sub-lease:—*Held*, that he was entitled to serve a second originating notice. BUTLER *v.* HUTCHINSON. **[L. C. XXVII. *M.* 623**

36.—**Act, 1881, s. 57—Act, 1887, s. 1.**] G., a lessee, re-let her holding to her landlord, against whom judgment was recovered in ejectment for non-payment of rent, and he was served with a caretaker notice. Subsequently, and before the period for redemption had expired, G. served an originating notice to fix a fair rent:—*Held*, that the caretaker's occupation was his lessor's, and that G. was in *bonâ fide* occupation of the holding. GARNETT *v.* GARNETT **[L. C. XXVII. *M.* 623**

37.—**Act, 1881, s. 57—Act, 1887, s. 4**—*Sub-letting without consent—Lease containing a restraint on sub-letting.*] A covenant in a lease not to sub-let without the written consent of the landlord does not deprive a tenant of the benefits of section 4 of the Land Law (Ir.) Act, 1887, who has sub-let without such consent, where the sub-letting is trivial or is to a labourer *bonâ fide* employed on the holding. *Bowman* v. *Catherwood* (28 L. R. Ir., 572), considered. BOWERS *v.* POWER - - - - - **L. C. XXVII. 109**

38. —— **Act, 1881, s. 57—Act, 1887, s. 7 (3)**—*Reinstatement—Waiving statutory forfeiture.*] A tenant, who had been evicted, was allowed to continue in the holding as a caretaker. The landlord having died, his successor's agent received rent from the tenant, not only from the date when his principal's title arose, but also for a period of two months, during which his predecessor was living:—*Held*, that this was a waiver of forfeiture and amounted to reinstatement. THOMPSON *v.* TEMPLETOWN - - **L. C. XXVII. 55**

39. —— **Act, 1881, ss. 57, 58 (5)—Act, 1887, s. 4**—*Fixing a fair rent—Herdsman—Tenant paying rent by services—Sub-letting—Triviality*—49 & 50 *Vic., c.* 59.] Where the widow of an evicted under-tenant became herd to the tenant applying to have a fair rent fixed, and it was arranged between her and the applicant that she should have five acres, as under-tenant, at £12 10s. yearly rent, as long as she continued to act in the capacity of herd:—*Held*, that this was a sub-letting, that it was not of a trivial character, and that, therefore, the tenant applying not being in occupation of his entire holding (87a. 1r. 34p.) within the meaning of the Land Law (Ireland) Acts, a fair rent could not be fixed. *Kenna* v. *Nugent* (Ir. R. 7, C. L. 464), distinguished. O'KEEFE *v.* O'BRIEN **[L. Sub-C. XXVII. *M.* 35**

40.—**Act, 1881, s. 58 (1)—Act, 1887, s. 1**—*Agricultural or pastoral holding, what constitutes.*] A holding consisting of 21a. 2r. 25p. statute measure, with a moderate-sized two-storeyed house thereon, situated about five miles from Belfast, was demised in 1867 by lease for thirty-two years to a Presbyterian minister named Martin, at the yearly rent of £65. In the lease it was described as "all that and those, that farm, tenement, or parcel of land, being part of the townland, &c., commonly called or known by the name of Bessmount." The lease was in 1882 assigned to the present tenant, who carried on business as a tea-merchant in Belfast:—*Held*, that the holding was not agricultural or pastoral, and that the tenant was not entitled to have a fair rent fixed under the Land Act (Ir.), 1887, s. 1. LEPPER *v.* POOLER **C. A. XXVI. 121**

41. —— **Act, 1881, s. 58 (1)—Act, 1887, s. 1**—*Lease—Letting mainly for purpose of pasture—Lease of two farms—One holding.*] Two farms, five miles apart, were let together on lease; one of them, containing 138 acres, was to be used and treated as a grass-farm; as to the other, containing 40 acres, there was given "liberty to break up the entire of it as shall be deemed advisable," and it was stipulated that the lessee should "consume on said lands all hay that may grow on all said lands":—*Held*, that the lessee was not entitled to have a fair rent fixed. FLANAGAN *v.* CROFTON **[L. C. XXVI. 128; C. A. XXVI. 129 note**

42.—**Act, 1881, s. 58 (1)—Act, 1887, s. 1**—*Agricultural holding—Mill holding.*] Where the main feature in the subject of a demise is a mill and water-power in connection therewith, it cannot be treated as an agricultural holding, so as to entitle the Court to fix a fair rent on it. JOHNSTON *v.* CHAMBERS' REPRESENTATIVES **L. Sub-C. XXIV. 54**

43. —— **Act, 1881, s. 58 (1)—Act, 1887, s. 1**—*Holding of which a mill was a substantial part.*] By lease, 62a. 0r. 27p. were demised for thirty-one years, at a yearly rent of £260; the premises were described in the lease as "all that farm of land, with the dwelling-house and out-offices, mill, and kiln thereon, known as the 'Mill Holding.'" The mill itself and the mill race occupied but a small portion of the holding, the rest of the letting was agricultural land. The lease contained a covenant against alienation, and a proviso enabling the lessor to resume possession of a portion of the premises known as the "Calf Park." The lease contained also several clauses relating to the maintenance and working of the mill, and a covenant by the lessee to thrash all oats and other grain of the lessor for sixpence a bushel; also a proviso that in case the mill should be destroyed by fire or damaged, the rent

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should be reduced by £80 until the mill should be restored by the lessor:—*Held*, that a substantial part of the letting was outside the Land Law (Ir.) Act, 1881, and that a fair rent could not be fixed for the holding. BOYLE *v.* FOSTER [C. A. XXVII. *M.* 9

44.——Act, 1881, s. 58 (1)—Act, 1887, s. 1—*A holding not within the meaning of the Land Law (Ir.) Act*, 1881—*Incorporeal hereditaments as part of a demise—Tolls and customs—Triviality.*] Where a tenant occupied under a lease which demised, along with a certain portion of agricultural land, the tolls and customs of a town:—*Held* (affirming the Land Commission's order, which had reversed the order of the Sub-Commission), that the originating notice to fix a fair rent must be dismissed, as such a holding was not within the operation of the Land Law (Ir.) Act, 1881. WALL *v.* EYRE [C. A. XXVII. 87

45.—— Act, 1881, s. 58 (1)—Act, 1887, s. 1—*Purpose of the letting—User corresponding with character of the holding—Residential lettings—Relative valuation of the lands and the buildings thereon—The dominant characteristic.*] Where a tenant had been in the habit of letting the residence on the holding for the summer season to persons taking it on account of its being situated near the sea-shore, the residence being adapted to such purposes, and where the tenant's father, who had preceded him in the occupation of the holding, had devoted it to a similar purpose, there being no evidence of agricultural user at any time, and the valuation of the buildings being considerably in excess of that of the land, and the season's rent for the house being much higher than the rent paid for the land attached thereto:—*Held*, that under these circumstances the Land Commission was right in dismissing the originating notice, and that the appeal must be disallowed. WALLACE *v.* BOGGS - - - - - C. A. XXVII. 105

46.—— Act, 1881, s. 58 (1)—Act, 1887, s. 1—*Residential holdings—Clause in a lease partly excluding Ulster custom under Landlord and Tenant (Ir.) Act*, 1870—*Relative valuation on buildings—Physical aspects of the holding—The terms of the contract.*] The tenant held under a lease from the landlord, of date 1876, a dwelling-house and 24 acres of land, which consisted of a lawn, garden, and orchard, for a term of 31 years. At the same time the tenant took from the landlord, for a term of ten years, an adjoining holding of 22 acres, on which a fair rent had been already fixed. There were no agricultural buildings on the premises. The lease contained a covenant by the tenant that he would not claim compensation under the Act of 1870 in respect of buildings erected without consent in writing of the landlord, but without prejudice to any claim he might have for unexhausted tillages and manures:—*Held*, reversing the Land Commission, that the holding was residential notwithstanding the clause in the lease as to compensation under the Act of 1870:—*Held*, that such a clause was not sufficient to take the particular case out of the exceptions of the Land Law (Ir.) Act, 1881, having regard to the physical aspects of the holding. STOTT *v.* CRAMSIE C. A. XXVII. 57

47.—— Act, 1881, s. 58 (1)—Act, 1887, s. 1—*Residential holding.*] Where the use of a holding by successive tenants was for the purpose of residence, the Court dismissed an application to fix a fair rent. WALKER *v.* ARDILAUN [L. Sub-C. XXVII. *M.* 373

48.—— Act, 1881, s. 58 (2)—Act, 1887, s. 1—*Demesne.*] Where the lease was not an ordinary farm lease, but one intended to preserve the residential character of the holding, which was styled therein and in the agreement for it as demesne, the Court refused to fix a fair rent. WELDON *v.* COOTE [L. C. XXVI. *M.* 420

49.——Act, 1881, s. 58 (2)—Act, 1887, s. 1—*Home farm—Definition.*] Forty-nine acres of land which, together with the use in common with the landlady of a yard and a pump, demised for 21 years by the widow of the former landlord, who had, during his life, himself farmed them, were held not to be a home farm. FITZGERALD *v.* MERRITT [C. A. XXVI. 118

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50.—— Act, 1881, s. 58 (2)—Act, 1887, s. 1—*Demesne—Part of holding.*] Where part, containing 52 acres, of a holding of 90 acres, was let as demesne lands, and described as such in documents, an originating notice to fix a fair rent was dismissed. M'CRAITH *v.* BURGESS - C. A. XXVI. 113

51.—— Act, 1881, s. 58 (2)—Act, 1887, s. 9—*Town parks—Agricultural holdings.*] Three small lots of land near a town, the tenant being a shopkeeper residing in the town, were held to be agricultural farms. MINTERN *v.* BABINGTON [L. C. XXV. 28

52.——Act, 1881, s. 58 (2)—Act, 1887, s. 9—*Town park—Statutory requirements—Onus of proof—Increased value—Nature of letting.*] As to town parks the onus of proving the first three of the four statutory requisites lies on the landlord; they are, (1), the situation of the land as regards the town; (2), whether it possesses an increased value as accommodation land; (3), whether it is occupied by a person living in the town or suburbs thereof; and (4), the character of the letting and nature of the user, regard being had to the future development of the town. LONSDALE *v.* LIVINGSTONE [L. Sub-C. XXVI. *M.* 682

53.——Act, 1881, s. 58 (2)—Act, 1887, s. 9—*Town park—Burden of proof.*] Where a holding is brought within the definition "town parks" in sec. 58 of the Act of 1881, the onus lies on the tenant of showing that it has been let and used as an ordinary agricultural farm, so as to bring it within the provisions of sec. 9 of the Act of 1887. M'GROWN *v.* KNAGGS - - - L. Sub-C. XXIV. 114

54.——Act, 1881, s. 58 (2)—Act, 1887, s. 9—*Town park—Agricultural holding.*] Holdings near Ballymoney, which, under the Act of 1881, would have been held to be "town parks," were treated as agricultural holdings on which a fair rent should be fixed, by virtue of the Act of 1887, s. 9, because they were taken and had been used as agricultural holdings, and used in conjunction with other agricultural holdings occupied by the tenant under the same landlord. THOMPSON *v.* ANTRIM - - - L. Sub-C. XXIV. 15

55.——Act, 1881, s. 58 (2)—Act. 1887, s. 9—*Town parks—Meaning of "Let and used as an ordinary agricultural farm"—Are pastoral holdings excluded from town parks?*] Where the lands in question are shown to have been used by the lessee, a person residing in a town in the immediate vicinity of which the lands are situate, for the purpose of letting as con-acre every second year, and used for crops for himself in the intervening years, and afterwards used by the present tenant, an assignee, as a sheep-run:—*Held*, that the letting was not within the exception introduced by section 9 of the Land Law (Ir.) Act, 1887, in the words "ordinary agricultural farm," and that as pastoral holdings are not expressly excluded from the definition of town parks as given in section 58 of the Land Law (Ir.) Act, 1881, the letting in question, having regard to the evidence of user, must be considered within the class town park, and therefore a fair rent could not be fixed. MACNAMARA *v.* MACNAMARA [C. A. XXVII. 2

56.—— Act, 1881, s. 58 (2)—Act, 1887, s. 9—*Town-park—Fair rent—Ordinary agricultural farm—Publican—User of holding*—Onus probandi.] Where leasehold lands near a town were formerly held by a cattle dealer (who lived in the town) for grazing purposes, and the present tenant was a publican in the town:—*Held*, that the case did not come within the exception in s. 9 of the Land Act of 1887. The *onus* of bringing the case within that exception lies on the tenant. In deciding such a question the substantial physical use the farm receives during the whole term must be taken into consideration, as well as the personality of the tenant. *Nelson* v. *Headfort* (XXI. M. 67) commented on. DALY *v.* WRIGHT [C. A. XXVII. 65

57.—— Act, 1881, s. 58 (2)—Act, 1887, s. 9—*Accommodation land.*] The Court refused to fix a fair rent on a holding adjoining a convent, and in the occupation of the ladies of the convent, and within the municipal boundaries of Sligo, on the ground that it was taken for their accommodation. CARR *v.* VERNON - - - L. Sub-C. XXVII. *M.* 64

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58. —— **Act, 1881, s. 58 (3)—Act, 1887, s. 1.**] By lease dated 25th March, 1840, H. demised to B. a farm of land, 35a. 1r. 4p., for 61 years, at a yearly rent of £158. The lease contained a covenant not to sub-let and not to sub-divide to two or more persons: also not to break up more than two acres; but the lessee might assign to one person. The holding consisted of grazing land in a grazing district. The Assistant Commissioners in their report described the holding as a good grazing farm, and stated that it could be used for nothing else; they also apportioned the acreage under certain classifications, such as second-class fattening land, first-class store pasture, second-class store pasture:—*Held*, reversing the Land Commission, that the farm was let to be used mainly for the purpose of pasture. BYRNE *v.* HILL - **C. A. XXVI.** *M.* **674**

59. —— **Act, 1881, s. 58 (3)—Act, 1887, s. 1**—*Pastoral or agricultural holding—Covenant in lease.*] A lease, dated in 1872, was granted in consideration of a fine of £300, to a tenant who had prior thereto held under a tenancy from year to year. The tenant was not prohibited from using the lands for hay, which was sold, but could not plough the lands:—*Held*, that a fair rent could be fixed. IRWIN *v.* IRWIN
[L. Sub-C. XXVII. *M.* **6**

60. —— **Act, 1881, s. 58 (4)—Act, 1887, s. 1**—*Pasture holding.*] Where the tenant was not prohibited by his lease, dated 1873, from meadowing or tilling his holding, which was surrounded by an adjoining demesne, on which he lived, the Court fixed a fair rent. ST. GEORGE *v.* BROWNE AND ST. GEORGE
[L. Sub-C. XXVII. *M.* **527**

61. —— **Act, 1881, s. 58 (7)—Act, 1887, s. 1**—*Letting for temporary convenience—Power to resume portion for building purposes.*] Where a lease contained a covenant that the lessor could take up any portion of the demised premises, coloured green on the map, for building purposes:—*Held*, that the originating notice to fix a fair rent should be dismissed. WHISKER *v.* DELACHEROIS **C. A. XXV. 34**

62. —— **Act, 1881, s. 58 (7)—Act, 1887, s. 1**—*Letting for temporary convenience.*] A covenant in the lease enabling the lessor to resume any part of the holding for building or other purposes mentioned therein does not necessarily import that the letting was for temporary purposes. HUGHES *v.* DOYNE - - - - - **L. C. XXVII. 37**

63. —— **Act, 1881, s. 58 (7)—Act, 1887, s. 1**—*Letting for temporary convenience.*] A provision in a lease of lands enabling the lessor to resume possession of the dwelling-house thereon and garden does not necessarily imply that this portion of the holding was let for temporary convenience. FRENCH *v.* HUTCHINSON - - - - **L. C. XXVII. 11**

—— **Act, 1881, s. 57—Act, 1887, s. 1** - **XXVI. 24**

See REDEMPTION OF RENT (IRELAND) ACT, 1891. 21

LAND LAW (IRELAND) ACT, 1887.

1. —— **S. 1**—*Application by lessee to fix fair rent—Exemption from rent on account of buildings erected by lessee—Condition against compensation for improvements at end of term.*] The 1st section of the Land Act, 1887, merely anticipates future rights under the 21st section of the Land Act, 1881, for the benefit of tenants who, on the expiration of leases existing at the passing of the Act of 1881, would have the right to be deemed tenants of present ordinary tenancies from year to year. It being the rights of such tenants into immediate possession, when the necessary conditions exist, but does not enlarge them. By lease dated the 13th of April, 1880, A. granted to B. a holding for thirty-five years, with the condition that, if the lease determined within twenty-four years, all claims by the tenant should be satisfied by a payment of £1,100—to be reduced by £110 for every year after the twenty-four, if the lease determined at any time subsequent to that period, so that at the expiration of the term the lessee should not be entitled to any compensation whatever. The lessee applied on the 25th March, 1889 (when only nine years of his term had expired), to have a fair rent fixed; and on the 10th July, 1891, it was fixed at £210, compensation being allowed in respect of buildings erected by him. A. having

LAND LAW (IRELAND) ACT, 1887—*continued.*

required a re-hearing before all three Commissioners:—*Held*, that the intention of the parties was that, at the expiration of the term of thirty-five years, the lessee should not be entitled to any compensation for improvements; and that, as the Land Act of 1887, s. 1, merely anticipated the rights which the tenant would have at the expiration of his lease, but did not enlarge them, the tenant was not entitled to compensation for buildings although only nine years of his term had elapsed. *Moylan* v. *Finch* (28 L. R. Ir., 595) and *Barton* v. *Atkinson* (unreported) followed. CLEMENTS *v.* TIGHE
[L. C. XXVI. 100

2. —— **S. 1**—*Lease for years renewable.*] Where a lease is made for a term of years which would expire within 99 years after the passing of the Land Law Act, 1881, a covenant for renewal does not exclude the lessee from the provisions of sec. 1 of the Act of 1887. The Court has power to extend the time for an application under Rules, Sept. 13, 1887. MONTGOMERY *v.* DUNCAN - - - **L. C. XXII. 33**

3. —— **S. 1**—*Lease by a tenant for life for 35 years, if he should so long live.*] A lessee who might "at the expiration of his lease be entitled to be deemed the tenant of a present ordinary tenancy from year to year" is not the same as a "lessee who would be entitled." BARTON *v.* ATKINSON
[L. Sub-C. XXIV. 26

4. —— **S. 1**—*Lease containing covenant to effect improvements.*] Where a lease contained a covenant by the lessee to expend a sum of £300 in effecting improvements, which were effected in pursuance thereto:—*Held*, that the improvements could not be regarded as the property of the landlord for the purpose of having rent now assessed on them as against the tenant, who came in under sec. 1, to have a fair rent fixed. *Mullin* v. *Lavins* (XVI. 13), distinguished. Section 1 does not involve the cancellation of a lease, but only the modification of the rent reserved by it. HUNTER *v.* COEY'S TRUSTEES
[L. Sub-C. XXIV. 55

5. —— **S. 1**—*Lease for 31 years—Term commencing from antecedent date—Improvements—Landlord and Tenant (Ireland) Act, 1870, s. 4 (3).*] A lease dated 28th September, 1870, to hold for 31 years from the 25th of March preceding:—*Held*, not to be a lease for a term certain of not less than 31 years, within sec. 4 (3) of the Landlord and Tenant (Ireland) Act, 1870. A tenant under such a lease is entitled to have his improvements taken into consideration when having a judicial rent determined. KEPPLE *v.* PIKE - **L. C. XXIV. 54**

6. —— **S. 1**—*Lease by life tenant for his own life—Application to determine judicial rent.*] The effect of sec. 1 of the Act of 1887 is merely to ante-date or anticipate the point of time at which the application to have a judicial rent determined could be made by a lessee, who (save for the fact that his lease would not expire within the limited period) would be entitled to the benefits of sec. 21 of the Act of 1881. Where a tenant for life made a lease of lands for his own life, and the lessee (the lessor being still alive) served an originating notice to have a judicial rent fixed under sec. 1 of the Act of 1887:—*Held* (reversing the decision of Bewley, J.), that the lessee could not, at the expiration of his lease, be deemed to be a tenant of a present ordinary tenancy within the meaning of the Act of 1881, and that, therefore, he was not entitled to have a judicial rent fixed. *Massy* v. *Norse* (20 L. R. Ir. 57, 464), followed. *Roe* v. *Cooney* (14 L. R. Ir. 243); and *Seymour* v. *Quirke* (XVIII. 29), considered. MOYLAN *v.* FINCH
[L. Sub-C. XXII. 99; L. C. XXV. 43; C. A. XXVI. 2

7.——**S. 1**—*Leases—Sub-Lettings.*] Where two tenants under two leases made cross sub-lettings to each other of small portions of their holdings, to which the landlord gave his consent:—*Held*, on an application by one to have a fair rent fixed, that it should be fixed upon the tenant holding under the lease. MULCAHY *v.* PENNEFATHER
[L. Sub-C. XXVII. *M.* **418**

8. —— **S. 1**—*Leaseholder—Expiration of lease before hearing of application to have fair rent fixed—Application.*] A leaseholder, serving an originating notice to have a fair rent fixed, is

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LAND LAW (IRELAND) ACT, 1887—*continued.*

not debarred from proceeding with his application owing to the expiration of the lease between the service of the notice and the hearing in Court. IRVINE *v.* IRVINE
[L. Sub-C. XXII. 88

9. —— S. 1—*Leaseholders' applications to be deemed present tenants—Sub-division of premises demised by lease—Surrender of lease by act of the parties—Amendment of originating notices.*] Where a leasehold, of which a term is yet unexpired, has been sub-divided and converted into separate holdings by the act of the parties, the tenants are entitled to apply to have fair rents fixed on their respective holdings, as tenants from year to year. The Court may amend an originating notice in which the tenure is wrongly stated, where the error was made in good faith, and was caused by the course of dealings between the parties. BOYLAND *v.* WRIGHT. FLOOD *v.* WRIGHT
[L. Sub-C. XXIV. 14

10. —— S. 1—"*Prescribed manner*"—*Service of originating notice—Rules of 27th Aug.* 1887.] The service of an originating notice is the "prescribed manner," in which applications to the Court under sec. 1 are to be made: and the status of a present tenant of a tenancy from year to year is acquired by a leaseholder by virtue of the application, and not by virtue of any order of the Court. SMYTHE *v.* MOORE
[L. C. XXVI. 66

[This was reversed on appeal, 32 L. R. Ir., 129.]

11. —— S. 1—*Present tenancy—Leaseholder*—Bonâ fide *occupation of holding*—"*Application.*"] A leaseholder is not entitled to have a judicial rent determined under sec. 1 unless he was *bonâ fide* in occupation of the holding at the date of the service of the originating notice, the "application" mentioned in that section meaning the service of such notice, and not the actual hearing of the case. FOGARTY *v.* MEREDITH
[L. Sub-C. XXII. 68

12. —— S. 1—**Rules, Sep., 1887—Form 79**—*Amendment of originating notice—Unsigned agreement for lease—Part performance—Statute of Frauds.*] Where a tenant holds under an unsigned agreement for a lease, and there has been part performance sufficient to constitute the tenant a lessee within meaning of the 1st sec. of the Land Law Act, 1887, and where the Land Commission has previously so decided, the Court will refuse to allow the tenant to amend an originating notice which was in the form prescribed by the Land Law Act, 1881, for present tenants, by stating that the lands are held by the tenants, as "lessees," in order to bring the application within the terms of the Act of 1887. The Court will refuse to amend an originating notice in an essential matter. They will not amend the statement of the tenure which confers the right to apply under the Act of Parliament. A different order might be made where the right to apply under the Act was debarred altogether. The Court refused to state a case because there was no question of law to go to the Court of Appeal, but allowed an appeal from the order. O'NEILL *v.* WILLIS
[L. C. XXII. 97

13. —— S. 1—*Statute of Limitations—Effect upon title of applicant to have a fair rent fixed.*] The lessee of a freehold lease dying intestate, his widow entered into and remained in undisturbed possession for over thirty years, and having applied under sec. 1 to have a fair rent fixed:—*Held*, that the applicant's title to the interest under the lease was good, under the Statute of Limitations. FARRELL *v.* SMITH
[L. Sub-C. XXIII. 88

14. —— S. 1—*Sub-division of holding with consent.*] In 1864 the lessee of a holding, with the consent of his landlord indorsed on his lease, divided his holding between his two sons; and each undertook to pay half the rent. One of the brothers applied to have a fair rent fixed:—*Held*, that he was not a lessee within s. 1. MURPHY *v.* WHEATLEY
[L. C. XXVI. *M.* 545

15. —— Ss. 1, 3—*Present tenant—Expiration of lease—New agreement with tenant continuing in occupation—Making of lease deferred to defeat provisions of Land Law (Ireland) Act*, 1881.] A lease was made in 1810, and expired on the 14th March, 1881, and upon the 18th October, 1881, the landlord obtained a decree in ejectment; pending the execution thereof, the tenant served an originating notice to have a fair rent fixed, which was dismissed by the Sub-Commission, and their order was affirmed by the Land Commission. The ejectment decree was executed in March, 1882, and the tenant never being out of occupation, a written agreement was signed by him for a tenancy from year to year on the 20th March, 1882:—*Held*, that, under the sections 1, 3, of the Act, the tenant was entitled to have a fair rent fixed. WILGAR *v.* CROMMELLIN'S TRUSTEES - - L. Sub-C. XXII. *M.* 543

16. —— Ss. 1, 5—*Present tenancy—Leaseholder—Expiring of lease after service and before hearing of originating notice*—"*Application.*"] The "application" mentioned in sections 1 and 5 refers, not to the actual hearing of a claim to have a judicial rent determined, but to the service of the originating notice in such case; and where the tenant was *bonâ fide* in the occupation of his holding at the dates of the service and hearing, but the lease under which he held expired since the service and before the hearing, he is still a present tenant entitled to have a judicial rent determined. CARNEY *v.* ARRAN
[L. Sub-C. XXII. 88

17. —— S. 2—*Agreement to take lease—Specific performance.*] On the expiration, in the year 1879, of an old lease, an agreement for a new lease for 999 years at a rent of £18 was entered into, and a fine of £150 paid. The new lease was prepared but never executed, and it appeared from the evidence that the term, rent, and other provisions of the lease were agreed to, and that the only dispute was in reference to the amount of fine to be paid by the tenant, which amount was subsequently arranged:—*Held*, that there was no evidence to show that the acceptance of the lease was procured by threat of eviction within the meaning of sec. 2, and a decree for specific performance was granted. (By Chatterton, V.C.) MACFARLANE *v.* DUNNE - - - Cy. Ct. A. XXIV. 17

18. —— S. 2—*Setting aside perpetuities.*] The Land Commission have power to set aside perpetuities, executed since 1st January, 1869, and the acceptance of which by the tenants was procured by inequitable means. CLINTON *v.* LANYON
[C. A. XXIV. *M.* 585

19. —— S. 3—*Action for debt—Motion for judgment—Stay of execution—O. XIII., r. 1—O. XLI.*] On a motion for final judgment for rent the tenant by his affidavit deposed to his inability to pay, relying on sec. 30, but without showing that it did not arise through his own conduct, act, or default. The Court granted the motion, with a stay in execution to enable the tenant to make such application under the section as he might be advised. (By Palles, C.B.) SUTTON *v.* GALLAGHER
[Vac. J. XXI. 56; XXI. *M.* 569

20. —— S. 4—*Sub-letting to labourer—Power of Court with respect to rent paid by sub-tenant.*] Where a sub-tenant is found on a holding, the judicial rent of which is being fixed, the Court having regard to the character of the holdings may fix the rent to be paid by the sub-tenant without formal application on his behalf. CONNORS *v.* BUNBURY
[L. Sub-C. XXII. 80

21. —— S. 4.]—A covenant in a lease not to sub-let without the written consent of the landlord does not deprive a tenant of the benefits of sec. 4 of the Land Law (Ir.) Act, 1887, who has sub-let without such consent, where the subletting is trivial or is to a labourer *bonâ fide* employed on the holding. BOWERS *v.* POWER L. C. XXVII. *M.* 307

22. —— S. 4—Bonâ fide *occupation—Sub-letting—Triviality—Consent—Statutory limitations—Continuance of tenancy.*] A. in 1863 demised certain lands to M. for three lives. At the time of the demise A.'s agent insisted that G.—who was in occupation of 4a. 3r. 30p. (Irish) of the said lands and paying rent therefor to M., should be "taken on" as subtenant to M. at £4 10s. rent. G. died in 1870. No administration was taken out to G. G.'s only son had a fair rent fixed:—*Held* (Sir Peter O'Brien. C.J., *diss.*), that what took place in 1863 when the lease was made was a consent to the

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sub-tenancy of G.; and that the Statute of Limitations did not operate to create a new tenancy in G.'s son so as to override that consent. *Per* Sir Peter O'Brien, C.J.:—that the Statute of Limitations created in favour of G.'s son a new sub-tenancy under M.; that there was no consent thereto by the landlord, and that the sub-letting was not trivial within s. 4 of the Act of 1887. *Jackson* v. *M'Master* (28 L. R. Ir. 176), discussed. MULCAIRE *v.* LANE JOYNT **[C. A. XXVII. 121**

23. —— **S. 4**—*Sub-letting—Triviality.*] The circumstances under which a sub-letting will be considered "trivial." HUGHES *v.* PATTON - - - - - **L. C. XXVII. 117**

24. —— **S. 5**—*Amendment of originating notice—Leaseholder under misapprehension serving notice in Form 27 under Land Law (Ireland) Act, 1881—Appeal—Discretion of Court.*] Where a leaseholder, believing that, as his lease was unstamped and undated, he was a yearly tenant, had served an originating notice to have a fair rent fixed in Form 27 as a yearly tenant under the Land Law (Ir.) Act, 1881, but on finding out his mistake, had applied for leave to amend his notice into one under the Land Law (Ir.) Act, 1887, he was allowed to so amend, notwithstanding s. 5 of the Land Law (Ir.) Act, 1887, under which the judicial rent runs from the gale day next after service of the originating notice. *O'Neil and another* v. *Willis* (XXII. 97), distinguished. Leave to appeal to Her Majesty's Court of Appeal from an order allowing such an amendment will not be granted, as the making of such an order is in the discretion of the Court. ST. GEORGE *v.* ST. GEORGE - - **L. C. XXV. 42**

25. —— **S. 5**—*Deduction from rent—Difference between judicial and former rent—Remainderman not claiming through previous owner—Rent paid pending proceedings to determine judicial rent—Account—Set-off.*] In an action for rent a tenant may not deduct from rent payable to a remainderman the difference between the judicial rent and the old rent which the tenant, subsequently to the service of the originating notice, had paid to a previous limited owner. (By FitzGibbon, L.J.) BURRELL *v.* FARMER - - - **Cir. Cas. XXIV. 92**

26. —— **S. 5**—*Ejectment for non-payment of rent—Abatement—Payment—Deduction from amount of judicial rent—Excess paid above amount of judicial rent.*] A tenant, who made application before the gale day next following the passing of the Act, to have a judicial rent fixed on his holding, may not deduct from the amount of judicial rent payable by him the amount of an abatement allowed out of that gale by the landlord, such allowance not being a payment within the meaning of section 5. (By O'Brien, J.) M'CARTAN *v.* MURRAY **[Cir. Cas. XXIV. 79**

27. —— **S. 7**—*Notice in lieu of execution—Address on registered letter.*] The posting of a registered letter addressed to "the representatives of (naming the tenant), deceased" is a sufficient compliance with the 7th section, where no legal representation has been taken out to a deceased tenant. FINEGAN *v.* SHIRLEY - - - **L. Sub-C. XXIV. 26**

28. —— **S. 7—Rules, 8th Sept., 1887**—*O. LVII., r. 6—Extension of time.*] The Rules under the Land Law Act, 1887, having been made in pursuance of the Judicature Act, 1877, the Court has power, under O. LVII., r. 6, to extend the time prescribed by these Rules for doing any act. BANDON *v.* HURLEY - - - **Q. B. D. XXIII. 7**

29. —— **S. 7**—*Ejectment for non-payment of rent—Notice of execution—Posting of summary of notice—District.*] In section 7, providing that a summary of the notice of execution in ejectment for non-payment of rent shall be posted "on a police barrack or court-house in the district," the meaning of the term "district" is not confined to the Petty Sessions District. Posting the summary upon the principal Quarter Sessions Court-house of the County Court Division, erected in the chief market-town and post-town of the district in which the tenant resides and the lands are situate, and being virtually the Court-house of the Petty Sessions District in which the lands are situate, constitutes a sufficient compliance with the enactment, whether

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"district" is interpreted as meaning Quarter Sessions District or any place deemed to be reasonably within the vicinity to the lands; and, *semble*, "district" does not necessarily mean Quarter Sessions District only. BERMINGHAM *v.* TURNER **[C. A. XXIII. 37**

30. —— **S. 7**—*Expiration of caretaker's notice—Remedies of landlord.*] On the expiration of the period of redemption, a landlord can recover possession by ejectment on the title, and is not confined by sec. 7 of the Act to his remedy before the magistrates. (By Holmes, J.) KEMMIS *v.* BYRNE **[Cir. Cas. XXIII. 44**

31. —— **S. 7**—*Ejectment by the landlord—Non-payment of rent—Writ of* habere.] A writ of *habere*, in an ejectment for non-payment of rent, where the valuation of the premises recovered is under £100 per annum, cannot be issued unless a copy of the notice prescribed by the 7th sec. of the Land Law Act, 1887, has been sent in a registered letter addressed to the tenant as required by that section. If the address of the tenant is unknown, sub-tenants being in occupation of the lands, it is a sufficient compliance with the section to address the notice to the tenant upon the lands. TEULON *v.* DENNEHY - - - - - **Q. B. D. XXII. 49**

32. —— **S. 7**—*Practice—Caretaker notice—Civil bill appeal—Service—Time—Exclusion or day on which judgment obtained.*] In reckoning the forty-two days prescribed by the Land Law (Ir.) Act, 1887, s. 7, the day on which the judgment was obtained is not to be included. (By Gibson, J.) RAYCROFT *v.* WALSH - - - - **Cir. Cas. XXVII. 137**

33. —— **S. 7**—*Redemption—Tender.*] S. was served by H. with a writ of summons for non-payment of one and a-half year's arrears of rent, to recover possession of certain lands. Judgment was marked in the Queen's Bench Division, and on 3rd March, 1892, the defendant received the statutory notice under the Land Law (Ir.) Act, 1887, determining the tenancy. The defendant's wife alleged that she tendered amount of rent without costs to plaintiff on 24th August, 1892, but this was refused. The defendant on 26th August, 1892, sent postal orders for the amount to the Clerk of the Queen's Bench Division, who returned the same on the 29th August, 1892. On 8th September, 1892, six days after the time for redemption expired, the defendant served notice of motion to obtain a writ of restitution, offering to pay amount due on the judgment, together with rent subsequently accrued due:—*Held*, that no tender was in fact made within the time allowed for redemption, and that the sending of the money to the Clerk of the Queen's Bench Division was not a lodgment in the Superior Court in which the ejectment was brought, nor was there any fatality within the authorities which excused the non-compliance therewith. SMITH *v.* HOGG **C. A. XXVII.** *M.* **360**

34. —— **S. 7**—*Landlord and tenant—Ejectment for non-payment of rent—County Court decree—Notice—Amount payable for redemption—Place or places where payable—Form of schedule to Act.*] A notice under the Land Law (Ir.) Act, 1887, s. 7, founded on a County Court decree in ejectment for non-payment of rent, stated the amount of rent and costs as in the decree mentioned, and that the person desiring to redeem should pay "to the said plaintiff or lodge with the Clerk of the Peace for said county" the rent, arrears, and costs:—*Held*, that the notice was valid in stating the amount of rent and costs as in the decree, but invalid in not stating the place or places where the amount payable for redemption might be paid or tendered to the plaintiff. ARTHUR *v.* M'GEADY **[Q. B. D. XXVII. 114**

35. —— **S. 7 (2)**—*Notice substituted for execution of ejectment—Service.*] Where a writ of *habere* has been issued and lodged with the sheriff before the passing of the Act, notice of execution cannot be served till the *habere* has been returned. (By Palles, C.B.) GREEN *v.* CULLEN **Vac. J. XXI.** *M.* **569**

36. —— **S. 7 (3)**—*Ejectment for non-payment of rent—Writ of restitution—Time for application—Landlord and Tenant (Ireland) Act, 1860, ss. 70, 71.*] Where an agricultural holding has been evicted for non-payment of rent, and the notice

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under sec. 7 of the Act has been duly served, an order for a writ of restitution may be made if the amount of the rent due, and costs, is lodged within six months of the date of the service of the notice, even though the application for restitution is not made until after that period has elapsed. (By Palles, C.B.) FITZMAURICE *v.* HAUGHNEY

[Cir. Cas. XXVI. *M.* 511

37. —— Ss. 7, 30 (4)—*Setting aside execution—Judgment recovered and executed before passing of the Act.*] Where a judgment in an action to recover land for non-payment of rent has been executed before the passing of the Act, the Court has no power to grant the tenant relief under sec. 30. MACGILLICUDDY *v.* DOYLE - - C. A. XXI. 73

38. —— Ss. 7, 30 (4)—*Application to restore a tenant to his holding—Execution by written notice after passing of Act—Setting aside execution after Nov.* 23, 1887.] The Court has no power to set aside an execution and restore a tenant to his holding after the three months limited by sec. 30 (4) have expired. (By Palles, C.B.) SHAFFREY *v.* TIERNAN

[Cir. Cas. XXII. 33

39. —— S. 8 (1) (8)—*Surrender by middleman—Time for serving notice of surrender.*] Where the rent received by the middleman is reduced by the Court, the middleman is entitled to surrender his holding under sec. 8, notwithstanding that at the time of the passing of the Act such rent was already less than the rent he paid the head landlord. The time for the service of the notice of surrender under sec. 8, sub-sec. 8, is nine months from the date of the Sub-Commission order, notwithstanding that the rent fixed by the Sub-Commission was increased by the Head Commission on appeal. (By Andrews, J.). M'CORKELL *v.* REID Cir. Cas. XXV. 65

40. —— S. 8 (2) (9)—*Surrender by middleman—Meaning of "holding"—Lease for 999 years—Part of holding sub-let—Judicial rent fixed in case of one of four sub-tenants.*] A lease for 999 years is a holding capable of being surrendered by a middleman under sec. 8. Where only one of four sub-tenants has had a judicial rent fixed, the middleman may apply under s. 8 (2) (9), to have a fair rent fixed with a view to surrender his holding, and the fact that he has sub-let without the consent of his landlord is immaterial. MALCOMSON *v.* CONOLLY - - - - Q. S. XXII. 77

41. —— S. 8 (8)—*Surrender of farm—Judicial rents of tenants reduced—"Sanction of Court."*] Rents which are reduced by judicial agreements are under "the sanction of the Court"; and leave to surrender a farm under the section was given where there was no collusion between the middleman and the tenants. MAYNE *v.* WRIGHT

[L. Sub-C. XXVI. 140

42. —— S. (9) — *Conacre — Ordinary agricultural holding.*] The onus of proving that lands, let in conacre by a tenant residing in the town, were not only used as an ordinary agricultural farm, but were let as such, lies upon the tenant. GILLESPIE *v.* ERNE - - L. Sub-C. XXVII. *M.* 309

43. —— S. 29—*Fixing fair rent—Re-hearing—Schedule of abatements.*] When a judicial rent is determined by the Land Sub-Commissioners in one year, and confirmed on re-hearing by the Land Commission in a different year the rent, for the purpose of abatement under sec. 29, is to be regarded as having been fixed in the year in which the case was re-heard. *Per* Palles, C.B. : On a re-hearing the Land Commission are under an obligation to take into account the state of prices subsequent to the original hearing before the Land Sub-Commission. CONYNGHAM *v.* GALLAGHER

[E. D. XXIII. 10

44. —— S. 29—*Half-yearly rent usually paid yearly.*] A tenant, who had held under a lease which reserved a rent payable by half-yearly gales in May and November, and had on the expiration of his lease continued on as tenant from year to year, had a judicial rent fixed under the Land Law (Ireland) Act, 1881. His rent was usually paid yearly, and up to the November in each year, and on being sued for a year

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and a-half's rent to May, 1888, he claimed to deduct the Gazette abatement for the entire year due to November, 1887:—*Held*, that notwithstanding the fact that for convenience the rent had been paid and received yearly, the tenancy was still one with two half-yearly gales, and that the tenant was only entitled to an abatement for the half-year due November, 1887. (By Murphy, J.). TREVOR *v.* GELSTON - - - - Cir. Cas. XXIV. 10

45. —— S. 30—*Setting aside execution—Retrospective operation of Act.*] The Court has power to set aside an execution and to reinstate a tenant on terms, where the original decree was made before the Act passed. LAMPHIER *v.* CORMACK

[Q. S. XXI. *M.* 578

46. —— S. 30—*Staying execution—Action for debt—Inability to pay—O. XLI., r.* 15.] Where a plaintiff moves for leave to enter final judgment, the defendant, in order to avail himself of the equitable provisions of sec. 30, should serve a cross-notice of motion for a stay of execution, specifying the terms as to payment that he proposes to offer. In order that there should be an inability to pay within the section, it is not necessary that it should appear that all a tenant's property, including his farm, or all his property except his farm, is insufficient to enable him to pay; but there is such inability if payment would deprive him of reasonable means of working the farm, and, as incidental thereto, of supporting himself. Mere inability to pay, apart from its being otherwise shown that injustice would be worked, does not constitute a ground for restraining execution under O. XLI., r. 15. NEWTON *v.* NOLAN

[E. D. XXII. 25

47. —— S. 30—*Stay of execution—Payment by instalments—Period extended over more than a year from date of decree in civil bill ejectment for non-payment of rent—Statute—Repeal by implication—*14 & 15 *Vic., c.* 57, *s.* 139.] A County Court Judge, when granting a decree on a civil bill ejectment for non-payment of rent, or a Judge of Assize, on appeal, has jurisdiction under the Land Law Act, 1887, sec. 30, to extend payment of the rent by instalments beyond the period of one year from the date of the decree, notwithstanding the provisions of 14 & 15 Vic., c. 57, sec. 139, and to stay execution in the meantime; and if default is made in complying with the order for the payment of the first or any subsequent instalment, the decree may be executed in the prescribed form, notwithstanding that more than a year has elapsed from the date of the decree. DRAPERS' COMPANY *v.* BRADLEY

[Q. B. D. XXII. 70

48. —— S. 30 (2)—*Stay in execution of decree—Payment by instalments—Default—Redemption—Lapse of six months since decree recovered—Decree not executed.*] A civil bill decree in an ejectment for non-payment of rent was obtained against a tenant, but with a stay of execution until default in payment of the rent by instalments specified. Default was made in the payment; and more than six months elapsed since the recovery of the decree. The tenant having applied to have a judicial rent determined:—*Held*, that on the construction of the Land Law Act, 1887, sec. 30, sub-section 2, the tenancy had not been determined, as the decree had not been executed, though six months had elapsed from its recovery. O'DONNELL *v.* THE EDUCATION COMMISSIONERS OF IRELAND

[L. Sub-C. XXII. 98

49. —— Ss. 30 (3), 34—*Stay of execution—"Holding"—Chancery letting.*] The defendant was tenant of two farms, one of which exceeded the valuation of £50 a year, held under a Chancery letting for seven years. The second farm was below the annual value of £50. The plaintiffs having obtained judgment against the defendant, and issued a writ of *fi. fa.*, and the defendant having applied for a stay of execution as regards his interest in the second farm:—*Held*, that the motion must be refused, as the aggregate of the "holdings" of the defendant amounted to more than £50 a year, and he was consequently excluded from the benefit of sec. 30 by the effect of sub-section 3. BANK OF IRELAND *v.* WATKINS

[Q. B. D. XXIV. 81

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LAND LAW (IRELAND) ACT, 1887—*continued.*

50. —— **S. 30 (4)**—*Cross notice.*] In the case of a motion for a final judgment, a defendant who intends to avail himself of the equitable provisions of the 30th section must serve a notice on the plaintiff of his intention so to do. NEWTON *v.* BYRNE - - - - - - - **Q. B. D. XXI. 82**

51. —— **S. 30 (4)**—*Restoration to possession—Judgment executed before passing of Act.*] Where a judgment in an action to recover land for non-payment of rent has been executed prior to the passing of the Act, section 30 (4) does not apply. BARLOW *v.* CAROLAN - - - **Q. B. D. XXI. 64**

52. —— **Ss. 33 and 34**—*New scale of costs in ejectment for non-payment of rent—Non-agricultural holding—Heading of schedule.*] The scale of costs in civil bill ejectments for non-payment of rent drawn up by the County Court Judges pursuant to s. 33 of the Land Act of 1887, does not apply to an ejectment decree for a holding which is neither agricultural nor pastoral. Anonymous (XXIV. M. 373), followed and approved. (By Palles, C.B.) EARL OF ROSSE *v.* SYLVESTER **[Cir. Cas. XXVII. 109**

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See LANDLORD AND TENANT ACT, 1860. 7.

—— **S. 16** - - - - - **XXVI. 115**
See LAND PURCHASE ACTS. 27.

LAND LAW (IRELAND) ACTS, 1887, 1888—Act, 1887, s. 1—Act, 1888, s. 1—*Lease dated Nov. 18th, 1826, assigned in 1828 without landlord's consent—7 Geo. IV., c. 29.*] The rent for land, held under a lease dated 18th November, 1826, which had been assigned in 1828 without the landlord's consent, was received by the landlord from the assignee direct from 1858, and the receipts were given to him in his own name: —*Held*, to be such a consent to an assignment by the landlord as under the Land Law (Ireland) Act, 1888, s. 1, entitled the present occupant to have a fair rent fixed, notwithstanding the provisions of 7 Geo. IV., c. 29, had not, prior to 1832, been complied with. STEWART *v.* WRAY - **L. Sub-C. XXIV. 16**

LANDLORD AND TENANT.

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LANDLORD AND TENANT—AGREEMENT.

1. —— *Lease—Preparation of lease and tender for execution.*] Where an agreement is entered into for the execution of a lease, within a given period, without stipulating as to by whom the draft lease is to be prepared and tendered for execution, it is the duty of the intended lessor to prepare the draft and to tender it to the intended lessee for execution. Therefore where, to an action by the intended lessee for breach of such an agreement by non-execution of the lease the intended lessor pleaded that he had refused to execute it (1) because the stipulated period for its execution had elapsed; (2) because a draft lease had not been tendered to him by the intended lessee for execution:—*Held*, that the defences were bad on demurrer. CANTLEY *v.* POWELL **[Q. B. X. 91**

2. —— *Provision for clergyman's residence—Erection of huts for evicted tenants—Waste.*] The erection of huts, not built into the ground, but being substantial structures lying on the land and intended as dwelling-houses, was held inconsistent with the purpose and trust for which, under an informal agreement, land was demised to a Roman Catholic Bishop, "to provide suitable" residence and holding for the Roman Catholic officiating clergyman. KEHOE *v.* LANDSDOWNE **[H. L. XXVII. *M.* 473**

3. —— *Stamp—Receipt for rent paid in advance—Receipt stating terms of tenancy—Stamp Act*, 1870.] Where a tenant before entering into possession of a house paid half a year's rent in advance, and required a receipt from the landlord, stating the terms of the tenancy, it was held that this document was an agreement for a tenancy within the provisions of the Stamp Act, 1870, and was insufficiently stamped with an ordinary receipt stamp. M'KAY *v.* KEEFE **Q. S. X. 8**

4. —— *Tenancy—Stamp.*] A receipt on which is endorsed "the tenancy to be determinable at the end of each year," is an agreement, and must be stamped before being produced in evidence. SIMMONDS *v.* NESS **Rec. C. X. *M.* 325**

—— For a lease.
See SPECIFIC PERFORMANCE. 1, 2, 8, 9.

—— For a lease—Part performance - **XVII. 76**
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LANDLORD AND TENANT—BANKRUPTCY OF TENANT.

1. —— *Ejectment on the title—Parties to the action*—20 & 21 *Vic., c.* 60, *ss.* 268, 271—*Insolvent—Lease vesting in assignees—Election.*] Chattel interests in land remain vested in a bankrupt or insolvent until his assignees have elected to take same; and until such election the assignees need not be joined with the bankrupt or insolvent as parties in an ejectment on the title for the land. HANWAY *v.* TAYLOR - **E. VIII. 98**

2. —— *Execution against goods of tenant—Sheriff paying year's rent to landlord—Bankruptcy of tenant—Notice of act of bankruptcy.*] The Sheriff, who was about to sell goods seized under an execution against the tenant, on the morning of the sale received a notice of the tenant having committed an act of bankruptcy; he sold them nevertheless, and paid a year's rent to the landlord. The tenant was afterwards adjudicated a bankrupt:—*Held*, that the Sheriff should have declined to sell till he saw the result of the notice, and that he must bring the purchase-money to the assignees. *Re* KENIREY **[B. VIII. *M.* 449**

3. —— *Irish Bankrupt and Insolvent Act*, 1857, *s.* 321—*Right of landlord to distrain for rent accrued due after bankruptcy.*] The 321st section of the Irish Bankrupt and Insolvent Act of 1857 applies only to rent accrued due before the bankruptcy. The landlord has a right to distrain for rent accrued due after bankruptcy. *Re* DAVID ALLEN, a bankrupt. **[B (local). XXVII. 104**

LANDLORD AND TENANT—CHANGE OF TENANCY.

1. —— *Change of tenant's name in the rent receipts—Evidence—New tenancy—Transfer of previous rights.*] The mere alteration in the form of receipt for rent by the landlord does not constitute evidence from which the Court would infer a change of tenancy, or a transfer of legal rights by survivorship, where it is not shown that the allocation is assented to by parties interested. BOURKE *v.* BOURKE **[C. P. VIII. *M.* 502**

2. —— *Death of tenant—Tenant from year to year dying intestate—Widow remaining in possession—Service on her of*

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LANDLORD AND TENANT—CHANGE OF TENANCY—*continued.*

notice to quit before administration taken out—Subsequent appointment of administrator—Ejectment on the title.] After the death of a tenant from year to year intestate, his widow remained in possession of the lands, and before administration was taken out to the deceased the landlord served her with notice to quit. On the expiration of the time specified in the notice to quit, the landlord let the lands to a new tenant. Subsequently administration to the deceased was taken out by his son, who thereupon brought an ejectment on the title to recover the lands which were then in the possession of the new tenant under his agreement:—*Held* (Fitzgerald, B., *diss.*), that the landlord, in the absence of a personal representative to the deceased, was entitled to serve the notice to quit on the widow, she being in possession, and so that the administrator could not recover, as the estate had been legally determined. SWEENY *v.* SWEENY - - - - - - - **E. X. 101**

LANDLORD AND TENANT—DISTRESS.

1. —— *Goods removed from demised premises to evade distress—9 & 10 Vic., c.* 111.] A plea justified a seizure of goods under the 15 Geo. II., c. 8 (Ir.), because the goods had been removed clandestinely, but did not aver compliance with 9 & 10 Vic., c. 111, which applies expressly to all cases of distress:—*Held*, on demurrer, that 9 & 10 Vic., c. 111, applies to distresses made under 15 Geo. II., c. 8 (Ir.), and that the defence was bad. M'CLEARY *v.* DAVIS - - **C. P. II. *M.* 150**

2. —— *Lease giving power to distrain when rent in arrear for a fixed time—Common Law right to distrain—Breaking open outer door—Pleading—Demurrer to separate paragraphs of statement of claim.*] A provision in a lease that, if the rent be in arrear for a space of time therein named, the landlord may enter and distrain, does not displace the landlord's Common Law right to distrain the day after the rent is due. Section 3 of the L. and T. (Ir.) Act, 1860, does not alter the relation of landlord and tenant, its effect is merely to maintain that relation with its known incidents (save where these have been expressly altered) as founded upon contract, and although there be neither a reversion, nor tenure, nor service, which would formerly have been necessary to support it. To a statement of claim, complaining of trespass on certain demised premises, and that defendant broke open the outer door thereof, the defendant pleaded by one paragraph of the statement of defence, a traverse of the trespass and breaking open of the outer door, and, by another paragraph, in justification of the entry on the premises to distrain for rent, averred that said entry was the breaking and entering of the premises, and the alleged breaking open of the outer door thereof mentioned, and that said entry was peaceable and quiet, and was made without any unnecessary noise or disturbance. On demurrer to the latter paragraph:—*Held*, that said paragraph amounted to an attempt to justify the breaking open of the outer door for the purpose of distraint, and that the defence was therefore bad; nor could the previous traverse be referred to in order to show that there was no admission that the outer door had been broken open. *Nathan* v. *Batchelor* (W. N., 1876, p. 172), distinguished. GORDON *v.* PHELAN - - - - - **E. D. XV. 70**

3. —— *Notice.*] Notice of distress in a process in replevin where the plaintiff held under a yearly tenancy to the defendant, which stated the distress for 6 months at 1s. 9d. per week, implied a weekly tenancy and was invalid. FRAZER *v.* WILLIAMS - - - - - **Q. S. I. *M.* 477**

4. —— *Pleading—9 & 10 Vic., c.* 111.] In an action for trespass in breaking and entering the plaintiff's house and carrying away his goods and disposing of them, the defendant pleaded that the plaintiff held the house as his tenant at a weekly rent, and that the defendant entered and distrained for the arrears of rent. The plaintiff replied that the defendant has not distrained the goods as alleged:—*Held*, that the replication was embarrassing, and should have been more specific if it relied upon the requirements of 9 & 10 Vic., c. 111. NAGHTEN *v.* KELLY - - - - - - **C. P. I. *M.* 504**

LANDLORD AND TENANT—EASEMENT.

1. —— *Right of turbary—Contract not under seal—Revocation of voluntary parol license.*] A right of turbary, being a *profit à prendre*, cannot be validly created save by a contract under seal; a votuntary parol license is revocable. ANCKETTELL'S ESTATE; *Re* M'KENNA - **L. J. XVII. *M.* 99**

2. —— *Turbary—Reclaimed lands not included in ambit of holding—Right of landlord to soil after turf cut away—Admission of estate rentals in evidence.*] Where a portion of land covered with turf was adjacent to the original holding of the tenant, though not comprised in the ambit of the holding, and the tenant possessed a right of turbary over such land:—*Held*, that the tenant possessed no right to the soil after the turf was cut away, but that the soil remained vested in the landlord subject to the easement on the part of the tenant of cutting turf. The rentals of estates are admissable in evidence in cases before the Court. OATES *v.* STONEY **[L. Sub-C. XVI. 30**

LANDLORD AND TENANT — EJECTMENT — BREACH OF CONDITION.

1. —— *Death of tenant after commencement of Sessions—Jurisdiction.*] A chairman cannot make a decree in an abated suit. *Quære*, does an ejectment lie on the Civil Bill Courts for forfeiture? (By Fitzgerald, J.) BEAMISH *v.* M'CARTHY **[Cir. Cas. II. *M.* 574**

2. —— *Jurisdiction—Civil Bill Court.*] An ejectment for a forfeiture incurred by breach of condition cannot be brought in the Court of Quarter Sessions. (By Keogh, J.) M'CARTHY *v.* BEAMISH - - - **Cir. Cas. III. *M.* 350**

LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT.

1. —— *Amendment of indorsement on writ—Striking out part of premises named.*] In an action of ejectment for non-payment of rent where the defendant had allowed judgment to go by default, the plaintiffs applied for liberty to strike out portion of the indorsement of the writ of summons which specified premises other than those in the actual occupation of the defendant, this error having been corrected in the statement of claim:—*Held*, that the amendment could not be made; but the plaintiffs could amend the writ, and re-serve it. DUBLIN SOUTH CITY MARKETS CO. *v.* VICARS **[E. D. XV. *M.* 23**

2. —— *Arrears of rent "due"—Landlord and Tenant (Ir.) Act*, 1860, *ss.* 54, 60, 61, 65, 70—*Certificate of the Clerk of the Peace—Indorsement on the warrant for possession—Caretaker's notice—Land Law (Ir.) Act*, 1887, *s.* 7—*Real Property Limitation Act*, 1874, *s.* 42—23*rd G. O.* (1890).] In an ejectment for non-payment of rent, the judge is directed by the 54th section of the Act of 1860, "to ascertain the amount of rent then due":—*Held*, that the word "due" in this section means "recoverable at law." *Held*, also, that in a suit for redemption, arrears recoverable at law are alone contemplated in the provision that the tenant must first pay or lodge "the rent and arrears thereof." TWYBILL *v.* M'GRANAGHAN **[Q. S. XXVII. 63**

3. —— *Averment that defendant holds as tenant to plaintiff—Meaning and proof of averment.*] In an ejectment for non-payment of rent, averring that the defendant held as tenant to the plaintiff, it appeared that the plaintiff held for a term of years under a lease made in 1773, out of which a woman named Felton was the owner of a term created by sub-demise made in 1793, for rent due under which the action was brought. Seward, a defendant, was the owner of a term created by sub-demise out of the last-mentioned term, and the defendant Arnold, the only defendant named in the writ, was in possession as tenant to Seward. The writ was addressed to "all persons concerned." Seward, who alone took defence, pleaded that Arnold did not hold as tenant to the plaintiff as alleged:—*Held*, that the averment on the writ means holds immediately from or under the plaintiff; that it is in that sense material and

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LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT—*continued.*

traversable; and as issue had been taken upon it, the averment should be proved in that sense which, not having been done, a verdict should be entered for the defendant. BILLING *v.* ARNOLD - - - - - **E. VIII. *M.* 450**

4. —— *Away-going crops — Levy under* fi. fa. — *Purchase at auction—Action by landlord—Writ of* habere *executed—Title paramount—Landlord and Tenant (Ireland) Act*, 1870, *s.* 8.] M. recovered judgment against K. for £20, a writ of *fi. fa.* was issued, and the sheriffs seized crops on the ground and growing on the land of K., and sold them by auction to M. Subsequently K.'s landlord brought an action for recovery of the land for non-payment of rent in respect of rent accrued in May. No appearance was entered, and judgment was marked, and a writ of *habere* issued on September 2nd. Possession was given to the landlord under the writ of *habere*, and on September 4th the landlord served notice upon the Sheriff and the judgment creditor that a year's rent was due. M. entered the lands and took away the crops. In an action by the landlord against M. for taking away the crops:—*Held*, reversing the Queen's Bench Division, that the property in the growing crop passed to M. under the sale to him, having thus been constructively severed by operation of law, before the plaintiff recovered judgment; and further, under sec. 8 of the Landlord and Tenant (Ireland) Act, 1870, the tenant was entitled on eviction to away-going crops; on the latter ground Deasy and Fitzgibbon, L.JJ., declined to pronounce an opinion. RUSSELL *v.* MOORE - - - - - **C. A. XV. *M.* 139**

5. —— *Civil Bill—Signature by clerk of plaintiff's solicitor—Amendment of amount claimed.*] The Court has power to amend the amount claimed in civil bill process of ejectment for non-payment of rent, but it is not sufficient that it should be signed by the plaintiff's solicitor's clerk, as signature by the solicitor is necessary. DUNNE *v.* MULRONEY **[Q. S. XV. *M.* 118**

6. —— *Civil bill—Payment by instalments—Appeal—Simple affirmance with variation in amount*—50 & 51 *Vic.*, *c.* 33, *ss.* 4, 7, 30—*Land Law (Ireland) Act*, 1881, *ss.* 5, 13—*County Courts Act*, *s.* 133.] A County Court decree in ejectment for non-payment of rent was made payable by instalments, one of which was due and had not been paid. The affirmance of that decree by the Judge of Assize made no mention of the payment by instalments, but the decree was simply affirmed with a slight variation in the amount:—*Held*, that the plaintiff was entitled to immediate possession, and was not liable to an action of trespass for so doing, although no notice had been served under the Land Law (Ireland) Act, 1887, s. 7. *R.* v. *Magrath* (24, L. R. Ir. 391), followed. HEANEY *v.* LURGAN **[E. D. XXIV. 91**

7. —— *Cost of service by posting.*] Where it appeared that owing to the disturbed state of the district service of an ejectment process for non-payment of rent was made by posting, the plaintiff was held entitled to the extra costs of the posting. (By Morris, C.J.) PALMER *v.* LOCKE **[Cir. Cas. XXI. 32**

8. —— *Costs—Rules, Sept.*, 1887, *sched.—Holding not within the Land Law (Ireland) Acts*, 1881 & 1887.] The schedule of fees under the rules of 9th September, 1887, does not apply to any holding which does not come within the Land Law (Ireland) Acts, 1881 and 1887. (By Murphy, J.) ANON. **[Cir. Cas. XXIV. *M.* 373**

9. —— *Demurrer.*] A demurrer to an ejectment for non-payment of rent was heard and overruled, it not being contended that a demurrer did not lie. GRAY *v.* LAUDER **[Q. B. VIII. 148 note**

10. —— *Deserted premises.*] A motion under the 57th sec. of the Landlord and Tenant Act, 1860, for liberty to enter judgment in ejectment for deserted premises was granted, the usual postings having been made. WALLACE *v.* MORROW **[E. VII. *M.* 161**

LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT—*continued.*

11. —— *Devisee of lands appointed executor—Landlord and Tenant Act*, 1860, *s.* 52.] A devisee of lands, who is also executor of the will of the devisor, cannot maintain an action of ejectment for non-payment of rent unless a year's rent shall have accrued due subsequently to the death of the devisor. *Murtagh* v. *Adamson* (II. M. 170), disapproved of. (By Palles. C.B.) STAPLES *v.* BELL - - - **Cir. Cas. XXI. 28**

12. —— *Embarrassing defence.*] To an ejectment for non-payment of rent, against Philip O'Hare and others, a person not named in the plaint pleaded this defence: "Thomas Campbell, one of the defendants, and tenant from year to year of part of the dwelling-house and premises in the writ, &c., mentioned, appears and takes defence, and says that the said Philip O'Hare does not hold the said dwelling-house and premises as tenant to the plaintiff as alleged, and therefore, &c."—*Held*, that this defence should be set aside as embarrassing. ELGEE *v.* O'HARE - **C. C. III. *M.* 468**

13. —— *Embarrassing defence—O. XVIII., r.* 8.] In an action for recovery of land for non-payment of rent, the defendant cannot plead, under O. XVIII., r. 8, by way of defence that he is in possession by himself or his tenant. HEWSON *v.* COFFEY - - - - - **C. P. D. XV. 54**

14. —— *Indorsement on writ of summons*—23 & 24 *Vic.*, *c.* 154, *s.* 60—*Entry of appearance—Judgment in default of appearance—O. XII. rr.* 7-8.] The writ of summons in an action for the recovery of the possession of land, for non-payment of rent, must contain the indorsement required by sec. 60 of Deasy's Act (23 & 24 Vic., c. 154), that, if the amount claimed, together with a sum for costs, be paid to the plaintiff or his solicitor within ten days from the service of the writ, all further proceedings in the action will be stayed. In such actions the plaintiff will not be allowed to sign judgment in default of appearance until after the expiration of ten days from service of the writ; but after the lapse of eight days from such service, the defendant cannot enter an appearance except by leave of the Court or a judge under O. XII., r. 8. LAWE *v.* MURPHY - - **E. D. XII. 68**

15. —— *Executor—Pleading.*] In an action of ejectment for non-payment of rent the defendant pleaded that he held the lands as executor of D. This defence was set aside, and liberty was given to the plaintiff to amend the writ of summons and plaint by striking out the description of the defendant as executor. CALDBECK *v.* BERGIN - **E. VII. *M.* 303**

16. —— *Infant plaintiff—Acknowledgment by sub-tenant—Registry Acts—Sale in Landed Estates Court.*] In 1817 D. made to N., his heirs and assigns, a lease for lives renewable for ever. C., the heir of N., died in March, 1847. The plaintiff in this ejectment was C.'s heir, and was born in June, 1847. In 1840 D. took the premises for three years from C., at a rent of £8 a year; and dying in 1841 he left the property to his widow for life, with remainder to his son W., a defendant, who, as his mother's agent, and until her death, received the rent for her, and afterwards for himself. The rent of £8 was paid for May, 1846, but not since; but in 1848 W. refused to pay it, because the plaintiff had not then a guardian who could give a receipt for it. In 1851 the last life in the lease of 1817 dropped. In 1856 W. demised the premises for 100 years to B. The lease was registered in the same year. B's interest was sold in the Landed Estates Court to X., whose tenant was Y., a defendant:—*Held*, that the relation of landlord and tenant continued to exist reciprocally between the plaintiff and W. *Held*, also, the 6 Anne, c. 21 (Ir.), did not apply, as the plaintiff's interest in 1856, being only a tenancy from year to year, was not capable of being registered. *Held* also, that the Landed Estates Court conveyance, as it did not warrant the lessor's title, did not affect the case. NIXON *v.* DARLEY - - - - - **C. P. II. *M.* 282**

17. —— *Leave to tenant in possession to appear and defend.*] Leave was given to a tenant in possession, who had been served with a writ, but not named as a defendant, to appear and defend in an action of ejectment for non-payment of rent. HENNESSY *v.* HENNESSY - - **E. D. XII. *M.* 49**

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LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT—*continued.*

18. —— *Monthly tenancy*—23 & 24 *Vic.*, *c.* 154, *s.* 52.] An ejectment for non-payment of rent does not lie in the case of a monthly tenancy. *Semble*, an ejectment for non-payment of rent cannot be maintained in the case of any tenancy less than one from year to year. The provisions of 23 & 24 Vic., c. 154, sec. 52, do not apply to any tenancy for a less period than one from year to year. *Dale* v. *Conolly* (XXII., 53) overruled. O'SULLIVAN *v.* AMBROSE **Q. B. D. XXVII. 45**

19. —— *Motion to stay proceedings on lodging money in Court.*] A lessee held by a lease which contained a proviso for forfeiture in case of judgment being marked against him: it was marked against him and the sheriff sold his interest to W., who, in an action of ejectment by the landlord, applied under sec. 64 of the Landlord and Tenant Act, 1860, that the proceedings might be stayed, he having lodged the rent and costs in Court. The Court granted the motion. BESSBOROUGH *v.* FEEHY - - - - - **C. C. VII. *M.* 367**

20. —— *Motion to set aside defence.*] A defence which amounted to the general issue, in averring that the defendant did not owe the rent claimed, was set aside. O'FARRELL *v.* CLORAN - - - - - **C. C. VII. *M.* 608**

21. —— *Notice to quit—Judgment for possession—Redemption by mortgagee—Judgment in action of ejectment and for mortgage debt by mortgagee—Judgment in action of ejectment by the landlord for overholding—Notice not given to mortgagee—Judgment set aside.*] A landlord served a notice to quit on his tenant, and afterwards commenced an action for recovery of the lands for non-payment of rent, in which judgment was entered. A mortgagee of the tenants' interest redeemed the tenancy. The landlord then commenced an action of ejectment for overholding, on which judgment was entered up, and no notice of which proceedings was served on the mortgagee:—*Held*, that the mortgagee was entitled to notice of the proceedings, and that the judgment should be set aside. LISTOWEL *v.* KELLY - **C. P. D. XVI. 4**

22. —— *Parties—Averment of contract in the process*—23 & 24 *Vic.*, *c.* 154. *s.* 53.] In a civil bill ejectment for non-payment of rent, although it is only necessary to serve the persons in actual occupation of the lands, still the process must name as the defendant the person between whom and the plaintiff the contract of tenancy is alleged to exist. *Campion* v. *Campion* (VIII. 147), distinguished. BAGWELL *v.* KENNEDY **[Q. S. XVIII. 35**

23. —— *Payment by bank draft—Computation of time—Sunday—Landlord and Tenant Act*, 1860, *sec.* 60—*C. L. P. Act*, 1853, *sec.* 232.] On a motion to set aside a judgment in an action of ejectment for non-payment of rent, the summons and plaint in which was indorsed as prescribed by the Landlord and Tenant Act, 1860, s. 60, on the grounds that the rent and costs had been previously paid by the sending of a bank draft to the plaintiff's attorney within the ten days prescribed, and that a tender of the amount in cash had also been made, but refused, within such period, Sunday not being included in the computation thereof:—*Held* (1), that in the construction of sec. 60 of the Landlord and Tenant Act, 1860, the 232nd section of the Common Law Procedure Act, 1853, should be deemed incorporated by implication, so as to exclude Sunday in the computation of time for payment or tender. (2) By Keogh and Lawson, JJ. (Morris, C.J., *hesitante*), that the sending of the bank draft operated as a "payment" within the meaning of the Landlord and Tenant Act, 1860, sec. 60. O'REARDON *v.* REARDON - - - - - **C. P. XI. 9**

24. —— *Penal rent.*] Ejectment does not lie for non-payment of penal rent. ANNESLEY *v.* ROONEY **[Q. S. XVIII. 100**

25. —— *Plea of possession.*] The plea of possession cannot be set up in an action of ejectment for non-payment of rent. MONTGOMERY *v.* HENNESSY - **C. A. XVIII. *M.* 39**

LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT—*continued.*

26. —— *Pleading—Landlord and Tenant Act*, 1860, *s.* 24.] In an action to recover possession of land for non-payment of rent, brought by a person who claims to be landlord by devolution of title from the original lessor, the plaintiff, in order to obtain the benefit of the Landlord and Tenant Act, 1850, sec. 24, should merely state the devolution of title generally without more particularly setting out the intermediate steps by which the estate of the lessor became vested in him. Subject to this qualification the rules of pleading applicable to actions for the recovery of land are the same as in all other actions. BEATTY *v.* LEACY - - **E. D. XVIII. 89**

[This was affirmed on appeal. 16 L. R. Ir. 132.]

27. —— *Posting—Vacant possession.*] It appearing that the tenant of part of lands the subject of the ejectment was a woman who had been absent from the premises for 12 months, and copies of the writ had been posted on the door of the premises, and the church and chapel, the service was deemed good. LATRIFF *v.* LATRIFF - **C. C. VII. *M.* 366**

28. —— *Redemption.*] On an application for redemption made under 23 & 24 Vic., c. 154, sec. 70, nine months after the issuing of the writ, the defendant not knowing that he had only six months, the Court held he was too late. WYBRANTS *v.* CRAWFORD - - - - - - **C. C. I. *M.* 156**

29. —— *Redemption—Lodgment of rent and costs*—23 & 24 *Vic.*, *c.* 154, *s.* 70.] A petition by a tenant evicted for non-payment of rent was filed one day before the six months for redemption expired, praying for an account of the profits of the land from the date of the execution of the decree for possession, and of the amount due for rent and arrears. The rent payable and the costs of the ejectment had not been lodged in Court:—*Held*, that the petitioner's rights were governed by 23 & 24 Vic., c. 154, s. 70, which declares that if the rent and costs are not lodged within the time limited the defendant in the ejectment shall be debarred from all relief or remedy at law, or in equity; and so the petition was dismissed. PRENDERGAST *v.* IZOD - - **C. I. *M.* 260**

30. —— *Service by posting—Civil bill—Supplemental Rule*, 11*th May*, 1882—*County Courts Act*, 1877—"*Transmission effected.*"] The posting of a civil bill process, duly addressed, fifteen clear days before the opening of the sessions, is a sufficient compliance with the Supplemental Rule of 11th May, 1882, under the County Courts Act, 1877. VANDALEUR *v.* M'GRATH - - - **Q. B. D. XXI. 61**

31 —— *Set-off.*] To an action of ejectment for non-payment of rent the defendant pleaded a set-off, which reduced the amount claimed to a sum less than one year's rent. On a demurrer:—*Held*, that the plea was bad. CAHILL *v.* KEARNEY **[C. P. II. *M.* 244**

32. —— *Set-off—Part payment to head landlord—Absence of compulsion.*] To ejectment for non-payment of rent the defendant pleaded that one year's rent was not in arrear, because the plaintiff's claim against the defendant in respect of the rent was subject to a deduction, or set-off, of £2 15s. 8d., paid by the defendant before, &c., to the landlord under whom, &c., and to whom the plaintiff was indebted in respect of the said rent in a sum exceeding the sum paid by the defendant to the landlord at his request and, as aforesaid, the particulars, &c.:—*Held*, that the defence should be set aside. SULLIVAN *v.* ROBERTS - - - - **C. C. III. *M.* 514**

33. —— *Set-off.*] In an action of ejectment for non-payment of rent the defendant sought to set off a debt due by the plaintiff to him, and defend the ejectment by showing that there was not a year's rent due:—*Held*, that he could not set off a debt to defend the ejectment. (By Keogh, J.) DALTON *v.* BARLOW **[Cir. Cas. I. *M.* 490**

34. —— *Setting aside proceedings—Abuse of process of Court—Action brought after rent tendered—*23 *&* 24 *Vic.*, *c.* 154, *sec.* 62 *—Costs—Letter before writ.*] A tender of rent after the gale day is not a defence to an action of ejectment for non-payment of

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LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT—*continued.*

rent. The 5th sec. of 11 Anne, c. 2, providing that if a tenant should, at any time before the trial of an action of ejectment for non-payment of rent, pay or tender the rent and costs, all further proceeding should cease, having been repealed by 23 & 24 Vic., c. 154, the tenant instead of so tendering rent due, should proceed as provided by sec. 62 of the latter Act. Where a tenant had tendered rent *post diem*, the Court refused to stay or set aside the proceeding in an action of ejectment, subsequently brought for non-payment of the rent, the right to tender having ceased to exist at the time when it was made. *Semble*, that an attorney of a creditor, retained to demand a debt, has no right to insist on payment of any cost of his letter demanding his debt, previously to issuing a writ of summons and plaint. ALLEN *v.* O'CALLAGHAN [E. X. 131

35. —— *Setting aside defence of set-off.*] To an action for non-payment of rent the defendant pleaded a set-off of money due to him by the plaintiff for work and labour done, services rendered, and money due. This defence was set aside. PATTERSON *v.* KILLEEN - - - C. C. X. *M.* 404

36. —— *Stay of execution of decree—Exorbitant rent—Disturbance—Landlord and Tenant (Ireland) Act*, 1870, *sec.* 9. *—Rules* 1877, *O. XV., r.* 96.] An application was granted to stay execution of civil bill decrees in ejectments for non-payment of rent, under the County Court Rules, 1877, O. XV., r. 96, where it was proposed to claim compensation for disturbance, by reason of such ejectments, under section 9 of the Landlord and Tenant (Ireland) Act, 1870. REVINGTON *v.* KELLY - - - - - - - Q. S. XIV. 34

37. —— *Traverse of tenancy—C. L. P. Act*, 1853, *secs.* 194, 195—*Landlord and Tenant Act*, 1860, *sec.* 53.] A summons and plaint in ejectment for non-payment of rent, directed to "W. L. Campion and others, defendants," averred that E. Stack held the lands as tenant to the plaintiff under a contract of tenancy. W. L. Campion having demurred, on the grounds that no contract of tenancy between him and the plaintiff was disclosed, or was it alleged in terms that he was a tenant in possession:—*Held*, that the writ was good in law, and complied with the requirements of C. L. P. Act, 1853, s. 195. *Billing* v. *Arnold* (Ir. R. 7, C. L. 529); *Keene* v. *M'Blaine* (17 Ir. C. L. 654), commented on. CAMPION *v.* CAMPION [C. P. VIII. 147

38. —— *Unoccupied premises—Service of writ by posting.*] Ejectment for unoccupied premises. The writ was posted on the door of the house, and on the gate, and also on the places on which notices were usually posted in the nearest market town:—*Held*, good service. SHAW *v.* WARMINGTON [C. C. III. *M.* 136

39. —— *Weekly tenancy.*] An ejectment cannot be brought for non-payment of rent in the case of a weekly tenancy, although more than a year's rent is due. WYSE *v.* LYONS [Q. S. XXI. 48

40. —— *Weekly tenancy*—23 & 24 *Vic., c.* 154, *s.* 52.] A civil bill ejectment for non-payment of rent lies in the case of a weekly tenancy when a year's rent is due. *Wyse* v. *Lyons*, (XXI. 48), overruled. (By Andrews, J.) DALE *v.* CONOLLY [Cir. Cas. XXII. 53

41. —— *Writ of possession—O. XLVII., r.* 1.] In an ejectment by the landlord a writ of *habere* was issued in July, returnable in September. Owing to negotiations the writ was out of return. A writ of possession was ordered under O. XLVII., r. 1. CLAYTON *v.* HALL - C. P. D. XII. *M.* 58

42. —— *Writ of restitution by a judgment creditor.*] A judgment creditor who, after the *habere* was executed, registered his judgment as a mortgage against the defendant in the ejectment for non-payment of rent, was put into possession by a writ of restitution under the 23 & 24 Vic., c. 154, s. 71. CAULFIELD *v.* WALSH - - C. P. II. *M.* 168

LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT—*continued.*

43. —— 23 & 24 *Vic., c.* 154, *sec.* 52—*Outstanding legal estate —Trustee for plaintiff.*] The plaintiff bought lands in the Landed Estates Court, subject to the tenancy of the defendant. After lodgment of the purchase money, but before execution of the conveyance, a gale of rent became due. After the execution of the conveyance another gale became due, and the purchaser brought this civil bill ejectment for non-payment of rent:—*Held*, that under 23 & 24 Vic., c. 154 sec. 52, the plaintiff was entitled to maintain the ejectment though the vendor was legally entitled to the first gale of rent. MURTAGH *v.* ADAMSON - - - - - Q. S. II. *M.* 170

—— Amendment of civil bill process - - I. *M.* 524

See PRACTICE—CIVIL BILL COURT—AMENDMENT. 5.

LANDLORD AND TENANT — EJECTMENT — NOTICE TO QUIT.

1. —— *Agricultural holding—Death of yearly tenant intestate —Administration not taken out—Notice to quit—Service on person in possession only*—39 & 40 *Vic., c.* 63, *s.* 4.] Where administration has not been taken out to a tenant of an agricultural holding, who has died intestate, a notice to quit served only on a person who had remained in possession, paying rent and managing the farm, is sufficient to determine the tenancy; and it is not compulsory on the landlord in such case to direct and serve the notice in conformity with the provisions of sec. 4 of Sir Colman O'Loghlen's Act (39 & 40 Vic. c. 63). ROWLAND *v.* HOLLAND Q. B. D. XIII. 143

2. —— *Alternative dates.*] A notice to quit was in the alternative form, and the ejectment was brought before the second term had expired:—*Held*, that the defendant was entitled to a verdict. FERGUSON *v.* DALY [E. VII. *M.* 596

3. —— *Alternative dates.*] A notice to quit served in April, in the alternative form, the tenancy being a May tenancy, was held insufficient. DEEVY *v.* BANNON Q. S. XI. *M.* 42

4. —— *Alternative dates.*] A notice to quit, dated 27th October, 1874, and served 1st November, demanded possession of the lands "on the 1st of May next ensuing the date hereof, provided your tenancy originally commenced in May, or, otherwise, that you deliver up possession of the said premises at the end of the year of your tenancy, which shall expire a year from the time of your being served with this notice." The tenancy was proved to be a May tenancy:—*Held*, that the notice to quit was good. (By Whiteside, C.J.) FLOOD *v.* JUDGE - - - - - Cir. Cas. X. *M.* 186

5. —— *Alternative dates.*] A notice, served in April, 1876, to quit the November following, if that should satisfy the terms of the tenancy, but otherwise to quit in May 1877, was held sufficient to terminate a May tenancy from year to year. KING *v.* BERMINGHAM - - - Q. S. XI. *M.* 41

6. —— *Alternative dates—Tenancy created after passing of Act.*] Where a tenancy created subsequently to the passing of the L. & T. Act, 1870, commenced in March, a notice to quit served in September, to quit in March following, if the tenancy then commenced, "and if otherwise, then at the end of the year of the tenancy which shall expire next after the end of the half year from the time of the service of this notice," is a good notice to terminate the tenancy in September following. *Lord Fitzwilliam* v. *Dillon* (IX. 106), discussed. O'NEILL *v.* NAUGHTEN - - - - - - Q. S. X. 9

7. —— *Alternative dates.*] In an ejectment on the title, to recover land held from year to year, commencing on March 25, it appeared that the notice to quit, on which the action was brought, and which had been served on behalf of the landlord previously to the 25th March, 1872, was a notice to quit and deliver up possession on the 29th of September, provided the tenancy originally commenced on the 29th September, or otherwise to quit at the end of the year of the tenancy

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LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT—*continued.*

expiring next after the end of six calendar months from the date of the notice. The action was brought before the 25th of March following, and the writ claimed title from October. The Court held that the action was premature, as the notice did not determine the tenancy until March 25, 1873, which had not arrived at the date of bringing the ejectment. FERGUSON *v.* DALY - - - - - - **E. VIII. *M.* 501**

8. —— *Authority of agent to sign notice—General or particular authority—Signature of agent to notice.*] A notice to quit may be signed in an agent's own name, without reference to the landlord, provided the agent's authority is general; but where the authority of the agent is special, such special authority must appear on the face of the notice itself. MAGUIRE *v.* ROGERS - - - - - **E. D. XXVII. 19**

9. —— *Commencement of tenancy—Entry in broken gale.*] An agreement, dated 12th March, 1866, to take lands "for one year certain, and for one year only, from the date hereof, and, after the expiration of such one year, for such longer time as both parties shall agree, or until the expiration of a six month's notice to quit, which shall at any time be given by either of the said parties to the other of them for leaving the said premises." The gale days were the 1st of May and the 1st of November. A notice to quit was served on the 16th of March, 1867, requiring possession to be delivered up on the 1st of November, provided the tenancy commenced at that time of the year, otherwise at the end of the year of the tenancy, which would expire next after the end of half-a-year from the time of service of the notice:—*Held*, that the notice should have been served for the 13th of March. MALONE *v.* LENNON **[Q. S. II. *M.* 170**

10. —— *Death of tenant from year to year intestate—Legal personal representative subsequently raised—To what parties notice to quit addressed—Determination of tenancy at what time—Fair rent fixed pending currency of notice.*] A tenant from year to year died intestate in 1866. His widow continued in occupation with her infant children. From 1866 to 1870 she paid the rent and received the receipts in the name of the representative of her late husband. From 1870 until 1879, when she died, she received the receipts in her own name. After her death her children continued in occupation and paid the rent. On the 28th of April, 1882, the landlord served a notice to quit on the parties in possession, addressed to the representatives of the widow. On the 25th of October, 1882, the eldest son served an originating notice on the landlord to have a fair rent fixed under the Land Law Act, 1881. On the 16th of January, 1883, the civil bill ejectment came on before the County Court Judge, and on the same day the son took out representation to his father. The plaintiff obtained a decree with stay of execution. The defendant appealed:—*Held*, on case stated, that the notice to quit was bad, as the widow was never tenant of the holding; that 39 & 40 Vic., c. 63, only enabled the person in possession to be treated as assignee while actually in possession, and did not make him so for any other purpose. *Semble*: A notice to quit does not determine a tenancy until it expires, and a fair rent being fixed after the service of the notice prevents it having any operation. *Tayleur* v. *Wilden* (L. R. 3, Ex. 303) not followed. M'NEILL *v.* M'LAUGHLIN - - - **E. D. XVII. 58**

11. —— *Demesne lands*—33 & 34 *Vic., c.* 46, *s.* 58—39 & 40 *Vic., c.* 63, *s.* 1.] Demesne lands are not excluded from the operation of the 58th section of the Land Act of 1870 as amended by Sir Colman O'Loghlen's Act. A stamped six months' notice for the last gale day of the calendar year is necessary to determine a yearly tenancy of demesne lands created before the 15th August, 1876, in the absence of special agreement in writing. WILKINSON *v.* SULLIVAN **[Q. S. XXIV. 16**

12. —— *Ejectment for overholding—Waiver—Service of second notice.*] The service of a second notice to quit is a waiver of the first notice. MAY *v.* GORMAN **Q. S. X. *M.* 20**

LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT—*continued.*

13. —— *Executor—Probate.*] An executor of a will can serve a notice to quit before he has obtained probate. FAGAN *v.* MANGAN - - - - - **Q. S. I. *M.* 477**

14. —— *Landlord and Tenant (Ireland) Act*, 1870, *ss.* 58, 69—"*Less*" *than a tenancy from year to year.*] By a contract in writing, entered into after the passing of the L. & T. Act, 1870, lands were let "for a time certain, that is to say, from July 30, 1873, until May 1, 1874":—*Held* (Fitzgerald, B., *diss.*), that the letting created a tenancy "less than a tenancy from year to year," and so that the tenant on quitting his holding was entitled to notice to quit under the 69th sec. of the L. & T. Act, 1870. BREW *v.* CONOLE - - **E. IX. 46**

15. —— *May tenancy.*] A tenancy commencing in May cannot be ended on the 1st November. COFFEY *v.* CONNELL **[Q. S. X. *M.* 74**

16. —— *May tenancy—Ejectment in November.*] A decree for possession was granted on a notice to quit served for November, where the tenancy commenced in May. PRATT *v.* MAHER - - - - - - **Q. S. XI. *M.* 7**

17. —— *May tenancy—Notice served in March to quit in November—Determination of tenancy.*] A notice served in March, to quit in November, is sufficient where the tenancy commences in May. *Shearman* v. *Kelly* (XII. M. 98), followed. GRAHAM *v.* O'LOGHLEN - **C. P. D. XII. *M.* 295**

18. —— *May tenancy—Notice to quit served in October—Alternative periods.*] Under the Landlord and Tenant (Ir.) Act, 1870, s. 58, tenancies from year to year, no matter at what period of the year commencing, can only be determined by the landlord by six months' notice to quit, to terminate (unless there have been an express term of the contract of tenancy to the contrary) on the last gale day of the calendar year, and this section is retrospective. The agreement implied at common law, in every tenancy from year to year, that the tenancy must be determined at the same time of year as it commenced is not an "agreement to the contrary" within the 58th section. Where it is doubtful at which of two periods the tenancy is determinable (as where it is uncertain whether the period was fixed by express agreement) a notice calling on the tenant in the alternative to quit, at either period, and specifying the times of quitting, will determine the tenancy. A notice to quit, served October 26th, 1870, to determine a tenancy from year to year (which commenced May 1st, 1869) demanded possession from the tenant "on May 1st, 1871, provided your tenancy originally commenced on May 1st, or otherwise at the end of the year of your tenancy which shall expire next after the end of half a year from the date of notice." An ejectment on the title having been brought in January, 1872, laying the demise on May 2nd, 1871:—*Held* (Monahan, C.J., *diss.*), that the notice to quit might be construed as a notice for the first of November, 1871. *Per* Monahan, C.J.:—The notice did not take effect to determine the tenancy in November, because the clause to determine the tenancy then was made, by the terms of the notice, contingent on the tenancy not being commenced on 1st May, and that event was disproved. The notice should call on the tenant to quit on the day on which the landlord had power to determine the tenancy (*i.e.* November 1st,) and on no other day before or after. ASHTOWN *v.* LABKE - - - **C. P. VI. 140**

19. —— *Mortgagor and mortgagee—Signature by mortgagor.*] A notice to quit on a tenant from year to year, signed by the mortgagor of the lands demised to the tenant before the mortgage, and to which notice the mortgagee was no party, is defective. (By Hughes, B.) PEYTON *v.* CONNELL **[Cir. Cas. I. *M.* 104**

20. —— *Mortgagor in possession—Leasing power*] A notice to quit signed by a mortgagor without the authority of the mortgagee after the day for the payment of the mortgage money has passed will not determine a tenancy from year to year created before the mortgage, though the mortgagor be in

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LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT—*continued.*

receipt of the rent, and the mortgage deed contains a leasing power to the mortgagor while in possession or receipt of the rent. The mortgagee joining in an ejectment on a notice to quit signed by the mortgagor in possession is not a sufficient adoption of it to determine the tenancy. MILES *v.* MURPHY
[Q. B. V. 174

21. —— *Period of quitting—Effect of withdrawal of—Proof of service—Landlord and Tenant (Ireland) Act, 1870—Agricultural and pastoral tenancies.*] The process server who had served notices to quit having died before the trial of ejectments:—*Held*, that his indorsements of service upon the unstamped copies were sufficient proof of actual service, in the absence of satisfactory evidence by the defendant to the contrary. A notice to quit, in May, house property, the tenancy of which commenced in May was held sufficient, and the tenancy not within the Land Act, 1870, requiring notices to quit to be served for November. Notices to quit agricultural or pastoral tenancies must, under the Land Act, 1870, be served for November, irrespectively of the period of the commencement of such tenancies. The withdrawal of notices to quit, in May, agricultural and pastoral holdings, and the service of new notices for November:—*Held*, not to create new tenancies. *Tayleur* v. *Wildin* (L. R. 3 Ex. 303), distinguished. (By Deasy, B.) BLOSSE *v.* NALLY
[Cir. Cas. VII. 50

22. —— *Plaintiff insolvent.*] In an action of ejectment on notice to quit, where the landlord was insolvent, but his assignees had not taken any steps with regard to his interest in the property, he was held to be entitled to maintain the action. (By Keogh, J.) O'BRIEN *v.* CLOHANE
[Cir. Cas. I. *M.* 524

23. —— *Power of tenant for life to serve—Change of rent—New tenancy.*] A tenant for life can serve a notice to quit, and the reversioner can bring an ejectment relying on such notice, notwithstanding the death of the tenant for life during its currency. The service of a notice to quit by one of the parties *per se* operates to determine the tenancy when the particular time mentioned in the notice has elapsed. A surrender of portion of the lands, and a decrease in the amount of rent by an arrangement during a year of tenancy, do not *per se* put an end to the old tenancy and create a new one. *Inchiquin* v. *Lyons*, 20 L. R. (Ir.) 474, followed. (By Palles, C.B.) CROE *v.* GORDON - - - - Cir. Cas. XXVI. 95

24. —— *Public-house—Stamp.*] A public-house situated in a village with an acre of land attached, held at an annual rent of £17, of which from £1 to £1 5s. represents the letting value of the land, is not "agricultural or pastoral" in its character, so as to come within the provisions of the L. & T. (Ir.) Act, 1870, and a notice to quit such tenancy need not be stamped. SPUNHAM *v.* WALSH - - - - Q. S. VIII. 27

25. —— *Separate holdings.*] Separate notices to quit should be served for separate holdings held by the defendant from the plaintiff. M'DONNELL *v.* CORBETT E. D. XII. *M.* 296

26. —— *Service—Legatee.*] V. bequeathed premises, to recover which this ejectment was brought, and which he held as tenant from year to year, to three trustees, and named two other persons as his executors. The notice to quit was served on one trustee, C., but not on the others, or on either of the executors. After service of the notice the will was proved. C. refused the legacy; never received the executor's assent thereto; and refused to and never did act in the trusts of the will:—*Held*, that service on C. was insufficient, as he had not then any estate in the premises, and had also refused the legacy. (By Morris, J.) HERTFORD *v.* CLARKE
[Cir. Cas. II. *M.* 153

27. —— *Service on one of two joint tenants—Service of land claim—Non-estoppel from disputing validity of notice.*] A defendant was served with a notice to quit, and brought a land claim founded thereon, which was defeated at the Land Sessions. An ejectment being brought on this notice, the tenant denied the validity of the notice to quit, on the ground that he was one of two tenants of one entire holding, and that the notice was directed to him alone and served on him alone and related only to the portion in his occupation:—*Held*, that the notice was bad and that the tenant was not estopped from questioning it by the proceedings under the land claim. (By FitzGibbon, L.J.) BIGGAR *v.* PYERS
[Cir. Cas. XIII. 127

28. —— *Service—Sufficiency of.*] In an action of ejectment on the title, the tenant (a person of weak intellect) had not been served personally with notice to quit, which however, had been served on his daughter resident with him in his house, and upon the lands, which she together with her two brothers managed. The process-server did not read it to her or tell her to give it to her father, who was incapable of comprehending any business whatever. She threw the notice aside and afterwards burned it. No question of the agency of the sons and daughter for the father having been raised, the jury found that the notice had neither reached or become known to the defendant, whereupon the Judge before whom the action was tried, being of opinion that that service was good, directed a verdict for the plaintiff:—*Held* (by the Queen's Bench), that the verdict should be set aside for misdirection:—*Held* (by the Exchequer Chamber) that the judgment of the Queen's Bench should be reversed. NICHOLSON *v.* TANHAM
[Q. B. IV. *M.* 473; E. C. VI. 126
[The judgment of the Exchequer Chamber was affirmed on appeal by the House of Lords. W.N. 1872, p. 101.]

29. —— *Signature of copy served—Agent's clerk.*] The stamped notice to quit served upon the tenant by the landlord's agent, under a power of attorney authorising the agent to serve such notices in his own name, was signed by a clerk in the agent's name and with the agent's authority. The notice to quit retained by the agent was signed by himself:—*Held*, that the signature was sufficient. (By May, C.J.) M'MULLEN *v.* TUTE - - - - - - - XI. 64

30. —— *Signature of ejectment—Solicitor's clerk.*] An ejectment, which was not signed by the solicitor, but by his clerk, under a general authority, was dismissed. BRIDGES *v.* DOYLE
[Q. S. XIX. 63

31. —— *Stamp—Die.*] A notice to quit was held invalid, it being shown that a new die had been provided for the stamps on notices to quit, and the notices had not been stamped with it. WINDER *v.* M'GRETTIGAN
[Q. S. XI. *M.* 207

32. —— *Stamp — Town park — Original letting as such—Town park or holding as such—Purchaser not resident in town—Agricultural holding.*] A notice to quit a holding which was held by the County Court Judge to be treated by the parties as a town park, was held, on appeal, to be liable to be stamped. (By Palles, C.B.). PRICE *v.* ROBB
[Cir. Cas. XVII. *M.* 438

33. ——*Stamp—Town parks.*] A notice to quit town parks need not be stamped; and the lands in the vicinity of Newry, the tenant of which was a shop-keeper in Newry, were held to be town parks. TRUSTEES OF KILMOREY *v.* ANDERSON
[Q. S. VIII. *M.* 109

34. ——*Tenancy from year to year—Notice to quit—Gale days.*] A tenancy from year to year with gale days Nov. 1 and May 1 commenced in 1852. In 1853 the gale days in the receipt were altered to 25th March and 29th September, which the defendant tacitly adopted. In 1866 a notice to quit on Nov. 1, 1866, was served on the defendant and an ejectment was brought against him in January, 1867:—*Held*, that the receipt of rent showed the adoption of new gale days and that the plaintiff was not entitled to recover. BOND *v.* MURRAY
[Q. S. I. *M.* 178

35. —— *Tenancy from year to year, commencing in March—Notice served in March to quit in September.*] In order to determine a tenancy from year to year, commencing in March,

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LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT—*continued.*

a six months' notice to quit served for the last gale day of the calendar year is sufficient in the absence of express agreement to the contrary under the 58th section of the Landlord and Tenant Act, 1870. HORNE *v.* HOARE, **Q. S. IX. 38.** LLOYD *v.* GRIFFIN - - - - - - **Q. S. IX. 39 note**

36. —— *Tenancy from year to year, commencing in March—Time of bringing ejectment upon.*] In order to recover possession of a tenancy from year to year, commencing on the 25th March, an ejectment founded on a notice to quit, served for the last gale day of the calendar year, need not be postponed until after the 25th of March following. ESMOND *v.* PRICE **[Q. S. IX. 10**

37. —— *Waiver.*] A landlord having served a notice to quit upon a tenant who held as tenant from year to year, subsequently served him with another notice to the effect that the notice to quit had been served with the object of enabling the landlord to enforce a fair rent, and that the landlord had no intention to disturb the tenant in case the latter agreed to pay such fair rent:—*Held*, that the second notice did not operate as a waiver of the first notice to quit. (By Fitzgerald, B.) M'GROUGH *v.* GRAY - - **Cir. Cas. VI. 64**

38. —— *Weekly tenancy—What length of time necessary.*] Where a weekly tenancy began on a Thursday, and notice was given on Thursday to quit "on or before" the following Friday week:—*Held* (*per* O'Brien and Johnson, JJ.) (*diss.* Gibson, J.), that the notice was good. (*Per* O'Brien, J.) Notice to quit in case of a weekly tenancy should be at least a week's notice. (*Per* Johnson, J.) It should be reasonable notice. (*Per* Gibson, J.) It should be a week's notice, and should expire at the end of some week of the tenancy. COPELAND *v.* HARVEY - - - **Q. B. D. XXVI. 105**

39. —— *Withdrawal of ejectments—Costs.*] Where the landlord withdrew ejectments, which had been adjourned pending the decision of an action (which had not then been decided), as the period for serving fresh notice to quit would expire before the next sessions, costs were given to counsel and solicitors for the tenants. BUCKLEY *v.* KEILLY **[Q. S. XI.** *M.* **20**

——Served by tenant—Stamp - - **XXIV. 48**
See LAND LAW (IRELAND) ACT, 1881. 104.

—— Signature by tenants in common - **VIII. 136**
See TENANT IN COMMON. 2.

—— Stamp duty on - - - - - **VI. 18**
See LANDLORD AND TENANT (IRELAND) ACT, 1870. 198.

—— Tenant from year to year—Landed Estates Court conveyance—Ejectment on the title - **I.** *M.* **119**
See EJECTMENT ON THE TITLE. 24.

—— Whole of holding sub-let - - - **XXVII. 60**
See LAND LAW (IRELAND) ACT, 1881. 106.

LANDLORD AND TENANT — EJECTMENT — OVERHOLDING.

1. —— *Attornment to person who had no title.*] The fact that a tenant attorns to a person as landlord, who has no title, does not estop him from relying on the want of title in an action of ejectment. M'EVOY *v.* LALOR **Q.S. XI.** *M.* **20**

2. —— *Construction of agreement—Weekly tenancy—Freehold tenure—23 & 24 Vic., c. 154, s. 3—Contract not to disturb so long as rent paid.*] In an ejectment for overholding, it appeared that the defendant had entered into possession under the following written agreement: " I hereby agree to let the house and yard, No. 7 William-street, Drogheda, to Michael Rorke at the weekly rent of 3s. 3d. per week, and will not disturb him as long as he pays the rent.—E. Harrison." A notice to quit having been served, notwithstanding that the rent had been duly paid:—*Held*, that even regarding the agreement as passing merely a weekly tenancy at law, it amounted in equity to a contract on the part of the landlord not to dispossess the tenant as long as the rent was punctually rendered, and that the ejectment should be dismissed accordingly. HARRISON *v.* RORKE - - **Q. S. XII. 107**

LANDLORD AND TENANT—EJECTMENT—OVERHOLDING—*continued.*

3. —— *Demand of possession—Evidence—Form of civil bill—23 & 24 Vic., c. 154. ss. 53, 72, 103—Sched. A., Form No. 3.*] A civil bill ejectment in the form No. 3, sch. A, annexed to the Landlord and Tenant Act, 1860, founded upon a notice to quit, and averring that possession had been subsequently demanded, was brought against an overholding tenant, under sec. 72. No evidence having been given that the plaintiff had demanded possession after the determination of the tenancy:—*Held*, that the landlord was entitled to maintain the ejectment without proof of such demand, the tenant having neglected to give up possession after the tenancy had been determined. MALTON *v.* MAGUIRE - - - - - **C. N. P. XI. 49**

4. —— *Equitable defence—What constitutes, within 23 & 24 Vic., c. 154, s. 59.*] Facts, sufficient to entitle a defendant to a perpetual injunction in equity, may be sufficient to constitute an equitable defence within the meaning of the 59th section of the 23 & 24 Vic., c. 154, although the injunction granted might be clogged with conditions. A. assigned to B. and C. her interest in a leasehold for a term of years, of which 11 were then unexpired. A. held under the Ecclesiastical Commissioners, and the lease contained a covenant for perpetual renewal. Four years before the expiration of the 11 years, B., without the knowledge of C., obtained from the Ecclesiastical Commissioners a renewal for himself of the entire holding for 21 years. At the expiration of the 11 years, B. demanded from C. possession of the portion of the holding occupied by him from the date of the assignment, claiming under the renewal obtained four years before. C. refused to recognise any right in B. under the renewal by him secretly obtained, and remained in possession. C. was bedridden, and his wife and only son, D., the present defendant, managed all his business; and, without C.'s knowledge, D. accepted for himself a lease from B. of a term of 17 years of a smaller portion of the holding, and at a decreased rent. In this lease there was no covenant on the part of B. to renew, but on the back was his receipt to D. for £ his share of the renewal fine paid to the Ecclesiastical Commissioners four years before by B. In 1872 B. obtained a grant in perpetuity of the entire holding from Church Temporalities Commissioners. In 1873 B. died, devising his interest to his two sons, who in 1874, upon the expiration of the lease for 17 years to D., brought an ejectment against him as an overholding tenant:—*Held*, that these facts disclosed a good equitable defence within the meaning of the 59th sec. of the 23 and 24 Vic., c. 154. (By Fitzgerald, J.) NOLAN *v.* DOWD - - - - **Cir. Cas. IX. 182**

5. —— *Motion for security—Landlord and Tenant Act, 1860, sec. 75.*] On an application for security under the Landlord and Tenant Act, 1860, sec. 75, it is sufficient to serve the principal defendant, and it is not necessary to serve his assignees in insolvency. BOWEN *v.* MEEHAN **[Q. B. I.** *M.* **337**

6. —— *Parties.*] A Judge, on appeal, cannot give a decree against a party struck out at the hearing before the chairman in an ejectment against an overholding tenant; the tenant must be a party though not in occupation. (By O'Hagan, J.) SHEA *v.* JOHNSTONE - - - - **Cir. Cas. II.** *M.* **575**

7. —— *Premises being portion only of premises demised—Consent to sub-letting—Land Law (Ireland) Act, 1881, s. 21.*] A civil bill ejectment can be brought for the recovery of portion of premises demised, on the expiration of the lease. The landlord's consent to sub-letting must be proved affirmatively by the tenant, so as to make him a present tenant under sec. 21 of the Land Law (Ireland) Act, 1881. KING-HARMAN *v.* ARMSTRONG - - - - **Q. S. XXI. 48**

8. —— *Presumption of grant.*] The plaintiffs in an ejectment claimed under a lease dated 1781 for three lives and 31

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LANDLORD AND TENANT—EJECTMENT—OVERHOLDING—*continued.*

years from the dropping of the last life. The lessee's interest in this lease became vested in E. in 1845, who, in 1846, leased part of the lands to M. for 21 years, and subsequently conveyed his estate and interest in the premises to C.:—*Held*, that C. was entitled to recover. (By Fitzgerald, B.) CORRIGAN v. MOORE - - - Cir. Cas. II. *M.* 574

9. —— *Security for costs—Landlord and Tenant Consolidation Act*, 1860, *sec.* 75.] Under the 75th sec. of the Landlord and Tenant Consolidation Act, a defendant holding under a lease will not be required to give security for mesne rates and costs, unless the plaintiff discloses a *primâ facie* title to the possession, by his affidavits in support of the motion. ARMSTRONG *v.* MASSY - - - C. P. V. 136

10. —— *Service.*] The rule of practice in the County Courts is that where there is an immediate tenant who does not occupy the lands, which are all in the possession of the undertenant, the immediate tenant shall be made a party to the ejectment. HERBERT *v.* EGAN - Q. S. II. *M.* 7

LANDLORD AND TENANT—LEASE.

1. —— *Building covenant—Private dwelling-house—Penalty—Injunction—Acquiescence.*] A lease was made which contained a covenant that the tenement intended to be built adjoining the lessor's house was to be built fit for a private family, and no other, under a penalty of £10 yearly additional rent, unless the lessor should convert his house to any public use. The lessee built a private house immediately adjoining the lessor's house, and the defendant became his sub-tenant, and converted it into a public-house. On another portion of the ground demised by the lease the lessee had built another house, and had, with the lessor's assent, used it as a public-house. In an action for an injunction in respect of the first house the Court held that the covenant in the lease intended keeping the house as a dwelling-house—that the £10 was a penalty and not liquidated damages; and that the plaintiffs were not obliged to sue for it, but were entitled to proceed in equity to restrain a breach; and that allowing the second house to be used as a public house did not amount to such acquiescence as to disentitle the plaintiff to the relief prayed for. BRAY *v.* FOGARTY - - - - - - - V. C. V. 3

2. —— *Construction of—False description of premises.*] P. D. being possessed of two sets of premises adjoining one another under two leases, pursuant to a covenant contained in one of them, built a dwelling-house upon the lands demised by it, but built the offices belonging to it, and laid out a portion of the demesne upon the premises adjoining. To the house and demesne he gave the name of H. Pursuant to an agreement with M. to demise "that part of said lands and premises comprised in said hereinbefore in part recited lease (*i.e.*, the lease containing the covenant) and dwelling-house and office thereon, known as H., and now, or late, in the occupation of Dr. M.," P. D. executed a lease which, after reciting the premises comprised in his own lease as containing 3a. 1r., demised "all that and those part of the town and lands of C. called and known by the name of H., as now or late in the occupation of Dr. M., containing 3a. 3r., together with the dwelling-house and out-offices erected and built thereon by the said P. D." Subsequently P. D. made a lease to another person which, after reciting the other of the two leases under which he held, "demised all that and those part of the land of C. containing, by estimation, 1a. 0r. 20p., formerly in the possession of P. D., and now and lately in the occupation of R. R. P. J. F., &c.":—*Held*, that M. was entitled to retain possession of the entire of the premises known as H. *Re* HANLY'S ESTATE [L. E. C. VI. 145

3. —— *Continuance of tenant after expiration of lease—Character of possession—Tenancy—Question for jury.*] The defendant purchased the interest of a tenant who held for three lives, and was allowed by the landlord to remain in possession after the expiration of the lease. The landlord

LANDLORD AND TENANT—LEASE—*continued.*

received half a year's rent at the former rate. The landlord brought an ejectment on the title against the defendant, without serving a notice to quit:—*Held*, that a question should have been left to the jury as to what was the character of the defendant's possession from the expiration of the lease. If he held as a tenant from year to year, he was entitled to a notice to quit; but if he only held pending the negotiations for a new tenancy, he was not a tenant from year to year. CAULFIELD *v.* PARR - - - - - C. P. VII. 165

4. —— *Covenant—Action for money paid to defendant's use—Implied request—Compulsion of law—Sub-letting in violation of clause in lease.*] Where a lessee, holding under a lease which contains a clause prohibiting sub-letting, without the written consent of the landlord sub-lets to another without such consent, although no tenancy is thereby created, the intended tenant has lawful possession of the lands; and if, in order to save himself from eviction, he pays rent due by the lessee to the landlord, he is entitled to recover the amount as money paid by compulsion of law to the use of the lessee. RYAN *v.* BYRNE - - - - - E. D. XVII. 102

5. —— *Covenant against mortgaging or parting with lease or premises—Equitable mortgage by deposit of lease—Evidence—Copy of registry memorial showing execution by depositee alone—Penal rent—Proviso for acceptance of reduced rent—Covenants and conditions performed—Tender* ad diem—*Intention—Repugnancy.*] The construction of covenants depends upon intention, and if to give to the words of a covenant what, if taken by themselves literally, might seem to be their meaning, would be inconsistent with the general purview of the deed, the intention apparent from the instrument as a whole should control the construction of the particular covenant. Covenants and conditions in leases in restraint of assignment and sub-letting should be construed strictly, and the lessee is not to be deprived of his common law power of alienation except by words clearly apprising him of the Act which is to cause a forfeiture of his interest. A lessee covenanted not to "mortgage, sell, assign, or otherwise part with this present indenture of lease, or the premises hereby demised, or any part or parcel thereof," and also covenanted against sub-letting. He afterwards, as security for a debt, made a deposit of the lease, accompanied by a letter of agreement that the depositee should hold the said lease, and have a lien thereon "by way of equitable mortgage," which agreement was registered under the Registry Acts. But, in an action in which the lessor relied on this equitable mortgage as constituting a breach of the covenant, the only evidence of the letter of deposit, or of its execution, given at the trial, and admitted without objection, was an office copy of the memorial under the Registry Acts, executed by the depositee alone. A verdict having been directed (in favour of possession) for the lessee, leave being reserved for the lessor to move to have it changed into a verdict for him:—*Held*, that the word "mortgage" in the covenant should not be construed in a sense that included an equitable mortgage by deposit of title deeds, any more than the word "assign" would include an agreement for an assignment of the lease, while, neither was the deposit a "parting with" the lease or premises contrary to the covenant; and that what was contemplated was such a transaction as (*per* Ball, C.) would impose a new tenant on the lessor; (*per* Palles, C.B.) would amount to an assignment of the legal estate absolutely or by way of mortgage; (*per* Deasy, L.J.) would occasion a change in the possession of the premises. *Held*, further (*per* Palles, C.B.), that, in the absence of any admission (or conduct of the cause equivalent thereto) that the office copy of the memorial should be treated as the original instrument, or be deemed sufficient evidence thereof, the evidence offered was insufficient to prove the equitable mortgage; and though it was not open to the defendant to object to its admissibility, as it was admitted without objection at the trial, it was but secondary evidence for the reception of which no foundation had been laid, and so the verdict was rightly directed for the defendant. By a lease made in 1853, reserving the yearly rent of £556 2s. 6d., payable half-yearly on every 1st May and 1st November, above all

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LANDLORD AND TENANT—LEASE—*continued.*

taxes (quit rent and Crown rent, and landlord's proportion of poor rate only excepted), with the usual power of distress, the lessee covenanted to pay said rent "upon the days appointed for the payment thereof" (without any deduction other than those above specified). The lease excepted and reserved to the lessor mines, minerals, and other matters, including the right to hunt, hawk and fowl. There were convenants by the lessee to do suit and service at the courts of the manor; to manage the lands in a husbandlike manner; to keep the dwelling-house, &c., in repair; against cutting timber, or taking more than two grain crops in succession; and otherwise regulating the tillage of the land. There was power to the lessor to resume three acres; but the reservations, exceptions, powers, provisos, covenants, and agreements were to continue the same notwithstanding, the rent, however, to be proportionally abated; and there was also a covenant by the lessee against alienation. Performance of the covenants was enforced by a proviso of re-entry in case the said yearly rent should be in arrear for thirty-one days after any of the days appointed for payment, or in case the lessee should not perform and keep "all and singular the conditions, covenants and agreements" on his part. And, lastly, there was a proviso that, if the lessee "do and shall from time to time, and at all times hereinafter during the continuance of this demise, well and truly perform, fulfil and keep the several covenants, clauses, conditions, reservations, and agreements thereinbefore contained, and on his part to be performed and kept," the lessor should every year "accept the yearly sum of £278 1s. 3d. in full satisfaction of the aforesaid yearly rent of £556 2s. 6d. hereinbefore reserved, anything hereinbefore contained to the contrary thereof notwithstanding." Up to 1866 the lessee paid the lower rent (which was the true and letting value of the land), and it was accepted without objection or demand of the higher rent; but having failed to pay or tender any rent on the appointed days in 1877, an action of ejectment was brought against him by the lessor, for non-payment of the higher rent; and the defendant having lodged the lower rent in Court:—*Held*, that, although the words of the covenant for acceptance of the lower rent would, if taken literally, include the covenant to pay the higher rent, *ad diem*, and the reservation thereof, this construction would involve such repugnancy and inconsistency with the apparent intention of the instrument that it should be rejected; and therefore that the tender of rent *ad diem* was not necessary in order to entitle the lessee to the benefit of the proviso for the acceptance of the lower rent. (*Per* Ball, C.):—The higher rent should be regarded as being a penal rent. M'KAY *v.* M'NALLY **C. A. XIII. 130**

6. —— *Covenant—Lease—Joint or several—Liability of representatives of several covenantor for breaches occurring after his decease.*] A demise by a lessor to A. and B. as tenants in common contained covenants whereby A. and B. covenanted for themselves, their executors, administrators, and assigns, that they, the said A. and B., or some or one of them, their executors, administrators, or assigns, would during the demised term pay to the lessor, his executors, administrators, or assigns, the rent reserved, and would well and sufficiently support, maintain, and keep the premises in good tenantable order, repair and condition. B. died in the lifetime of A. The representatives of the lessor having brought an action against the executors of B. for breaches of these covenants, which occurred subsequent to the death of B.:—*Held* (reversing the judgment of the Court of Appeal, and affirming that of the Common Pleas Division), that these covenants were joint only, and not several; that therefore the liability of B. upon these covenants ceased at his death in the lifetime of A., and that no action would lie against B.'s estate for any subsequent breaches of the convenants. *Per* Lord Halsbury, C.: If two persons covenant generally for themselves without any words of severance, or that they or one of them shall do such thing, a joint charge is created, which shows the necessity of adding words of severalty where the covenantor's liability is to be confined to his own acts. *Per* Lord Fitzgerald: The meaning of the covenants being plain and unambiguous, the fact of the limitation of the demise being to the lessees as tenants in common, could not prevail so as to override the express provisions of the covenants creating a liability joint only. WHITE *v.* TYNDALL **H. L. XXII. 37**

7. —— *Covenant against alienation—Conacre letting—Construction of document—Question for the jury.*] A., who held under a lease containing a covenant against assignment on pain of forfeiture, made an agreement with B. that B. might take and enjoy from and out of the land fifteen successive conacre or other crops, and under the agreement he gave B. entire possession:—*Held*, that it was properly left to the jury to say whether or not the letting was in conacre, with a direction if they found that question in the negative to find for the plaintiff. *Held*, further, that the covenant against assignment was broken, and the lease forfeited, as a letting in conacre did not apply to cases where the entire possession was parted with. EVANS *v.* MONAGHAN - **E. VII. 59**

8. —— *Covenant against alienation — Consent of lessor.*] Equitable mortgagees of a lease belonging to a bankrupt applied for leave to have the premises sold. The lease contained a clause against alienation, but the lessor wrote to say that "she was willing to waive the covenant, having the selection of purchasing tenant":—*Held*, that the fact should be inserted in the advertisements for sale that the lessor was to have the approval of the intending purchaser. *Re* CORMAC **[B. IV. *M.* 703**

9. —— *Covenant against alienation—Ejectment on the title—Notice to licensed mortgagee.*] The previous tenant of lands had obtained the landlord's consent to assign his interest in the lease of the holding to mortgagees; the tenant's interest was subsequently purchased by the defendant, who obtained the landlord's permission to let the lands to one solvent tenant; the defendant made several lettings, giving each of the sub-tenants leases for the residue of his own term. In an action by the plaintiff to recover the lands for breach of the covenant against alienation contained in the lease, which had been assigned to the defendant:—*Held*, that the legal estate being in the mortgagees, the acts of the defendant could not work a forfeiture as against the mortgagees without giving them notice, and that the plaintiff was not entitled to recover. HELY *v.* PERRY - - - **C. P. D. XII. *M.* 295**

10. —— *Covenant against alienation—Forfeiture—Waiver—Surrender by operation of law—Judgment by default against some of several defendants in ejectment.*] By lease of 1854 the plaintiff demised premises to the defendant. The lease contained a covenant against alienation without the written consent of the lessor. In 1863 an assignment was made by the defendant to a third party without consent, and the plaintiff received rent under it from the assignee. In 1868 the assignee applied for the plaintiff's consent to an assignment to S., which was withheld; subsequently the assignee assigned to S. In an ejectment S. took defence, but the original lessee and the assignee did not: *Held* (following *Troy* v. *Kirk*, Alc. & Nap, 326, and *Butler* v. *Smith*, 16 Ir. C. L. R., 213), that no estate passed under the assignment of 1863, but that the assignment, though void, would cause a forfeiture of the lease (*lessee, Montgomery* v. *Graham*, 5 Law Rec., N.S., 23), if the breach was not waived. *Held*, also that the clauses as to waiver of breach of covenant against alienation in the sub-letting Acts being repealed by the Landlord and Tenant Act 1860, which only deals with leases after the Act, the case rested on Common Law, and, therefore, the receipt of rent by the plaintiff prevented him from relying on the assignment of 1863. *Held*, further, that there was no surrender by operation of law and creation of a yearly tenancy in the assignee; that the attempted assignment of 1868 did not work a forfeiture, and that S. had a right to rely on the outstanding estate in the lessees, though they allowed judgment to go by default against them. CLIFFORD *v.* REILLY - - **C. P. IV. *M.* 66**

11. —— *Covenant against alienation—Purchase of reversion—Ejectment on title by assignor.*] In 1867 Lord L. demised

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LANDLORD AND TENANT—LEASE—*continued.*

lands to P. M., subject to a proviso for forfeiture on alienation, without the landlord's consent. P. M., in 1869, assigned his interest to J. M. without having obtained the consent of the landlord or his agent; and in 1873, the reversion of Lord L. became invested in J. M. and others as joint tenants. In 1874, J. M., by way of mortgage, conveyed his interest in the lands to H., who, on default of payment, entered into possession. P. M. subsequently brought an ejectment on the title against H., but H. after the writ had been served procured the written assent of J. M. to the assignment of 1874:—*Held*, that as, when the writ was served, J. M. had both the reversion and the particular estate in himself the 10th section of the L. and T. (Ir.) Act, 1860 (23 and 24 Vic., c. 154), did not apply, and that P. M. was not entitled to recover. MOYNEHAN *v.* HICKEY - - - - - - **Q. B. X. 98**

12. —— *Covenant against alienation—Sub-letting Acts—Devise—Demand of possession.*] Lessees for life covenanted that they would not, without the lessor's written consent, "grant, set, sub-let or let, alien, assign, convey, or dispose of the lands," and there was a proviso for re-entry in case the lands were, without such consent, dealt with so. One lessee died, leaving the other, J., his heir-at-law, who devised the lands in trust for his infant child, and if the child died in its mother's life, to her sole and separate use for life, and on her death to the plaintiff. The child survived J. only by a few months, and J.'s widow went into possession, married the defendant, and died. After her death the defendant remained in possession and paid rent:—*Held*, that even if the devise by J. was a breach of the covenant, the lease was not avoided until the lessor took advantage of the breach; and that on the widow's death the legal estate vested in the plaintiff, and that no demand of possession was necessary. BUY *v.* FITZSIMONS. **[E. II. *M.* 283**

13. —— *Covenant by tenant to pay all taxes—Local Act—Water rate—Money paid.*] Where under the provisions of a local Water Act the owner, instead of the occupier, has been rated in respect of the premises, the rateable value of which is under £8, he may recover the amount the taxing body has compelled him to pay, in an action for money paid against the occupier, holding under a lease with the usual covenant on the tenant's part to pay rent over and above all taxes SARGENT *v.* MORRISSEY - - **Q. S. XXII. 78**

14. —— *Covenant running with land—Lessor and lessee—Condition precedent—Breach of duty.*] A canal company demised a mill and a yard for three lives renewable for ever, and covenanted that the lessee, his heirs, and assigns, might, during the term, use a certain overfall and conduit, made for conveying waste and superfluous water (if any) to the premises, and to use such water (if any) for their own use:—*Held*, that the covenant ran with the land, but that it was not the duty of the company to use all reasonable care and skill in managing the canal and surplus thereto, so that there should not, by reason of unskilfulness and negligence, be a deficiency of superfluous water to flow through the conduit. ATHOL *v.* MID. G. W. RAILWAY CO. **Q. B. III. *M.* 210**

15. —— *Covenant running with land—Rent charge—Effect of Landed Estates Court conveyance—Equitable relief.*] M. by deed granted to D. an annuity or yearly rent-charge, charged upon certain lands, of which M. was then in possession and which were subsequently, by a Landed Estates Court conveyance, assigned to E. subject to the rent-charge. In an action brought by D. against E. to recover arrears of this rent-charge (which had accrued due while E. was in possession of the lands charged therewith), D. in his statement of claim averred the liability of E., as assignee of the lands, to pay the annuity. E. having demurred to the statement of claim on the ground that it was not thereby shown that he was bound to pay the annuity since a covenant to pay the sum did not run with the lands, but was personal, and that the only person liable to pay it was M. if living, or his personal representative if he was dead:—*Held*, that the demurrer did not lie, inasmuch as E., as assignee of the estate of M. in the lands in

LANDLORD AND TENANT—LEASE—*continued.*

question, was liable to pay the annuity. *Held*, further, that a new estate was not created by the Landed Estates Court conveyance, but that it operated as a transfer of the previously existing estate which was in M. *Thomas* v. *Sylvester*, (L. R. 8, Q. B. 368), and *Sir W. Leving's case* (26 Edw. III., 64) followed. DAWSON *v.* DAVIS - **E. D. XIII. 125**

16. —— *Covenant to renew—Sub-lease of college lands—Meaning of the words "Provided the interest of (the lessor) should so long continue."*] A lessor, holding under a college lease, renewable by custom, made a lease to a lessee, containing the words—"Provided the interest of (the lessor) in the premises should so long continue":—*Held*, that they were inserted to guard against the risk of non-renewal, and not to limit the lessee's interest to the term of the lessor's life. *Re* CONOLLY'S ESTATE - - - - - **L. E. C. III. *M.* 569**

17. —— *Covenant to renew—Action of ejectment on title—Sub-lease—Land Law (Ir.) Act*, 1881.] A tenant under a lease for a life or a term of 31 years without any covenant for renewal, sub-let a portion of the premises to an under-tenant for the remainder of his own term. The sub-lease contained a covenant that, if the tenant got a renewal of his own lease or any extension of the term created thereby, the sub-lease should be renewed or extended for the term so obtained. After the presumed determination of the tenant's lease he got a fair rent fixed for a term of 15 years by the Land Commission under the Act of 1881:—*Held*, that this was not an extension of the term within the meaning of the sub-lease, and that the tenant was not bound to renew the sub-lease. (By Holmes, J.) READ *v.* FLOOD - **N. P. XXVII. 96**

18. —— *Covenant to repair—Destruction of subject matter of demise—Tortious act of landlord combined with act of God.*] In an action for non-payment of rent of premises situated on the sea shore, and for breach of covenant to repair certain buildings erected thereon: the defendant pleaded, on equitable grounds, that at the time of the letting the premises were useless, and could not be rendered of any value unless a rampart were erected on the foreshore of which the plaintiff was owner, to keep out the sea, and unless the foreshore were suffered to remain undisturbed so as to protect such rampart; that the defendant, accordingly, erected such a rampart, but that the plaintiff removed sand from the foreshore, and thereby undermined the rampart erected by the defendant, which, together with the premises in respect of which the rent was payable, were consequently swept away by the violence and encroachment of the sea on the happening of a great tempest:—*Held*, that the defences were bad on demurrer. EARL OF MEATH *v.* CUTHBERT - - - - - **C. P. X. 145**

19. —— *Covenant to repair—Breach—Impossibility of performance—Forfeiture—Lessee—Assignee—Conveyancing Act*, 1881, *s.* 14.] Section 14 of the Conveyancing and Law of Property Act, 1881, requires a certain notice to be served on a lessee before any proceedings are taken by the landlord to recover possession by reason of a forfeiture for breach of any covenant or conditions contained in the lease; and by the same section "lessee" is declared to include "assignee." Where a lessee under a lease containing a covenant to repair, and another against assignment, died intestate, and no legal personal representation was raised to him but his son remained in possession, and paid the rent under the lease:—*Held*, on the authority on *Sweeny v. Sweeny* (X. 101, Ir. R. 10 C. L. 375) that he must be considered as assignee for the purposes of this section, and that service of a notice upon him was a sufficient compliance with the terms of the section. When there is a covenant to do something in regard to some subject-matter, and by common consent of both parties that subject-matter ceases to exist, the covenant thereupon ceases to operate, on the grounds that it is impossible to perform it, and the landlord cannot take advantage of it to enforce a forfeiture of a lease. *Semble*, sec. 43 of the L. and T. Act, 1860, applies merely to a waiver of a covenant generally. And a receipt of rent after breach of a covenant, with the knowledge of it, still amounts to a waiver of all rights of the landlord arising from that particular breach. FOOTT *v.* BENN **[E. D. XVIII. 90**

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LANDLORD AND TENANT—LEASE—*continued.*

20. —— *Covenants to be inserted—Clause of forfeiture—Vendor and Purchaser Act*, 1874.] Where a contract for a lease is an open one, as to covenants to be inserted, the lessor is not entitled to a clause of forfeiture on breach of the covenant to repair. *Re* AUSTIN AND BROWN **V. C. XIV. 11**

21. —— *Injunction—Waste—Improvements—Changing identity of premises.*] The respondent was assignee of a lease for 999 years, which contained covenants by the lessee to give up the premises with all improvements, in repair. Alterations made by the respondent destroyed the identity of the premises. On motion for an injunction:—*Held*, that the respondent might make improvements such as would not destroy the identity of the premises. JOHNSON *v.* BROCKLEBANK **[C. II. *M.* 90**

22. —— *Forfeiture—Clause of bankruptcy—Arrangement with creditors—Forfeiture of lease at election of lessors—Action to recover land.*] A lease contained a provision that in case the lessee should become bankrupt or insolvent, or effect a composition with his creditors, or fail to pay his rent, the lease should become void at the election of the lessors, the plaintiffs. He allowed a year's rent to fall in arrear, and presented a petition for arrangement with his creditors. The plaintiffs brought an action to recover the premises, naming a venue other than a local one:—*Held*, that the petition to arrange was a breach of the covenant in the lease; that the bringing of the action was sufficient election by the plaintiffs to treat the lease as void: and that the venue need not be a local venue. KILKENNY GAS CO. *v.* SOMERVILLE **[C. P. D. XII. *M.* 241**

23.——*Forfeiture on alienation—Consent of lessor—Indorsement on duplicate sub-lease retained by sub-lessor—Rent accrued before ratification—Confirmation after sub-lease evicted.*] An indorsement on a lease of consent of the lessor to a sub-lease takes effect from the moment it is made, and does not relate back, and it will not revive a lease which has been already evicted. BURMISTON *v.* QUIGLEY. (By Dowse, B.) **[Cy. Ct. A. XII. *M.* 297**

24. —— *Land Judge—Rent payable to receiver*—8 & 9 *Vic.*, *c.* 106, *s.* 5.] A lease by the Land Judge contained a covenant whereby the defendants covenanted with the Judge and the receiver for the time being to pay the rent:—*Held*, that the covenant was one respecting hereditaments and premises within 8 & 9 Vic., c. 106, s. 5, and that the Judge and the receiver were entitled to sue the defendants on foot of the covenant. MONROE AND DARLEY *v.* PLUNKET - **E. D. XXIII. 76**

25. —— *Landlord granting a lease for a longer period than he had himself.*] A special case came before the Court for damages for the ejectment by the head landlord of a lessee who was given a lease of lives renewable for ever, by the immediate landlords, who had only a 99 years' tenure, though they had the power of acquiring the fee. Judgment was given in favour of the immediate landlord. BRADY *v.* DUBLIN CORPORATION - - - - **Q. B. VII. *M.* 314**

26. —— *Non-execution by lessor—Liability for rent accrued due after assignment—Real contract between parties.*] The principle that when the lessor does not execute the lease, the tenant (though he has executed it) is not bound at law by the covenants to pay rent or to repair, because he has not got the consideration on which these depend, does not extend to a case where the dealing of the parties shows that they have acted on the assumption of the validity of the lease and of its containing the true and real contract between them. The plaintiff, in March, 1884, made a lease of premises to the defendants, for a term of 31 years, at the yearly rent of £60, payable quarterly. The lease contained a covenant by the defendants with the plaintiff to pay the rent, and was executed by the defendants. The defendants went into possession under the lease, and paid two quarters' rent up to 29th September, 1884. The lease was not executed by the plaintiff, but remained in his possession. The defendants subsequently applied to the plaintiff to accept a surrender of the lease, which the plaintiff refused to do. They then notified their intention

LANDLORD AND TENANT—LEASE—*continued.*

of assigning to one Power, and asked to be discharged from further liability under the lease. This proposition was rejected by the plaintiff, but he agreed that the lease should be altered, making the rent payable in advance. It was re-engrossed and executed by the defendants on the 11th of December, 1884, purporting to bear date the 18th October, 1884. The defendants executed an assignment of the same date to Power. Power paid rent up to 25th March, 1885. The plaintiff credited the payments against the rent due, but no receipts were given. The lease was not executed by the plaintiff till 26th April, 1886. An action was brought by the plaintiff to recover the year's rent, due up to 25th March, 1886, sued for on a covenant to pay the rent contained in the lease of 18th Oct., 1884, and in the alternative for the same rent due from the defendants as yearly tenants. By their statement of defence, the defendants denied (1) the execution of the lease to them by the plaintiff; (2) that the indenture was delivered to them. They also relied on a surrender by operation of law, and averred that the covenant sued upon was contained in an intended indenture of lease to them which was not executed by the plaintiff. The jury found that the plaintiff had not agreed to discharge the defendants from all liability to rent accruing due after the assignment to Power; and that the alteration in the lease, by which the rent was made payable in advance, was made with Power's consent. On these findings, the judge having directed a verdict for the plaintiff:—*Held*, that the direction was right. BABINGTON *v.* O'CONNOR - - - - **Q. B. D. XXI. 41**

27. —— *Pleading—Action on lease to recover arrears of rent and possession of premises under condition of re-entry—Embarrassing defence and counter-claim—Reliance on correspondence prior to lease, as showing that rent was not payable till three months after gale days—Judicature Act*, *s.* 27 (2) (3) (7).] Under a lease reserving a yearly rent payable half-yearly in advance, the lessee convenanted to pay same without demand, it being provided that in case the rent should be in arrear the lessor might re-enter, without prejudice to remedies for recovery of the rent. The lessor, alleging that a half-year's rent had not been paid, sued to recover same, with mesne-rates, and possession of the premises. The lessee having, by way of defence, relied upon written correspondence prior to the execution of the lease, by which he alleged he had been induced to believe he was to be allowed three months from each gale day for payment of the rent, and by reason of which he alleged it would be inequitable for the plaintiff to seek to avail himself of the conditions of re-entry before the expiry of that period; and having, by way of counterclaim, claimed that if the Court should be of opinion that he was bound to pay the rent on the days prescribed by the lease, he should be relieved from the condition of forfeiture on the terms of paying the rent and costs of suit:—*Held*, that the statement of defence and counterclaim should be set aside, and that the plaintiff should have judgment for the rent and possession of the premises. MALONE *v.* MANTON **[C. P. D. XIII. 144**

28. —— *Repugnancy—Exception from grant.*] A lease demised "all that part of the lands of Garvaghy described, etc., containing twenty-seven acres of green pasture and improvable ground, and thirteen acres of bog, reserving and excepting, etc., the said thirteen acres of bog and all ways," etc.:—*Held*, that the exception of the thirteen acres of bog was repugnant to the grant and void. COCHRANE *v.* M'CLEERY **E. III. *M.* 388**

29. —— *Right reserved to landlord to kill game and rabbits—Grant by lessee to lessor of a* profit à prendre*—Destruction of rabbits necessary for proper cultivation.*] By an indenture of lease, lands containing 200 acres were demised for a term of 31 years. In this lease there was a clause excepting and reserving to the lessor, his heirs and assigns, out of the demised premises, all and all manner of game and rabbits, with liberty to take, kill, or destroy the same by such ways and means as he or they should think fit. Another clause permitted the lessee to cultivate 40 acres of the demised premises, and in the due exercise of this right he tilled 23 acres, seven of which formed

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LANDLORD AND TENANT—LEASE—*continued.*

part of a field containing 45 acres, in which, immediately adjoining the seven acres so broken up, there were several rabbit burrows, and in the ditches and hedges surrounding it. The tenant having closed these burrows, the landlord claimed an injunction restraining the tenant from destroying any rabbits on his farm:—*Held*, that the tenant should be restrained from destroying any rabbits on the demised premises, except such as were necessarily destroyed for the proper cultivation thereof within the meaning of the terms of the lease. *Gearns* v. *Baker* (L. R. 10 Ch. App. 355) and *Jeffryes* v. *Evans*, (19 C. B. N. S. 246), followed. FETHERSTON-HAUGH *v.* HAGARTY - - - - - **R. XII. 141**

30. —— *Tenant holding over after expiry of lease—Negotiations for a new lease—Demand of possession—Tenancy at will.*] An action was brought to recover possession of lands which the defendant held after the expiry of his lease, during the negotiations for a new lease. The parties not agreeing to terms, the plaintiff by letter demanded possession:—*Held*, that the demand put an end to the tenancy at will, and that the plaintiff was entitled to recover. WILKINSON *v.* MORRIS **[C. P. D. XVII. *M.* 153**

—— Application to sell premises discharged from it **[I. *M.* 157**

See PRACTICE—LANDED ESTATES COURT—TENANCIES, &c. 3.

—— Covenants—Liability of Administrator—Inquiry in Administration under the Court - - **IX. 186**

See EXECUTOR—LIABILITIES. 1.

—— New Lease—Graft

See Cases under GRAFT.

—— Promise of lease beyond leasing powers — Specific performance - - - - - **I. *M.* 745**

See SPECIFIC PERFORMANCE. 12.

—— Rent over and above all taxes, charges, and impositions whatsoever - - - **XXVII. *M.* 470**

See GRAND JURY—CESS. 13.

LANDLORD AND TENANT—MESNE RATES.

1. —— *Caretaker's notice*—50 & 51 *Vic.*, *c.* 33, *s.* 7—33 & 34 *Vic.*, *c.* 46—23 & 24 *Vic.*, *c.* 154.] The service of a caretaker's notice, under sec. 7 of the Land Act, 1887, does not secure the person so served from being liable for mesne rates. WALSH *v.* FITZGERALD - **Q. S. XXVII. 104**

2. —— *Ejectment for non-payment of rent—Writ of* habere—*Land Law* (*Ir.*) *Act*, 1887, *s.* 7.] The plaintiff was awarded compensation for improvements, and the money was lodged in Court:—*Held*, that the landlord was entitled to have the amount of mesne rates due from the time of issuing the writ of *habere* until he was put into possession of the holding deducted from the amount of compensation lodged in Court. O'CONNOR *v.* PERRY - - - - - **Q. S. XXVII. *M.* 135**

3. —— *Overholding by sub-tenant—Liability of tenant's administrator—Mesne rates.*] J. H., holding as tenant from year to year, to the plaintiffs, sub-let a portion of the premises, and died in October, 1879, whereupon the defendant took out letters of administration, and entered into possession of the premises, subject to the sub-tenancy, in her administrative capacity. The plaintiffs having served a notice to quit, which expired on February 1, 1880, demanded possession. The defendant was unable to give up possession of the sub-let portion, as the sub-tenant refused to leave, his term not having expired; but the defendant offered possession of the remaining portion, which the plaintiffs declined to accept, and the defendant thereupon, on the expiry of the notice to quit, abandoned the premises, having derived no profits therefrom. Possession was subsequently recovered by the plaintiffs, in an action of ejectment against the defendant,

LANDLORD AND TENANT—MESNE RATES—*con.*

and the sub-tenant. On demurrer to a Statement of Defence based on those facts, in an action brought by the plaintiffs against the defendant substantially in the form of an action of trespass for mesne rates:—*Held*, that the defendant was not liable for the damages caused by the overholding of the sub-tenant, having entered into possession solely as administratrix (in which capacity she was not sued), and having done nothing to bring herself into privity with him, while she had in fact abandoned possession of the premises from the moment when the plaintiffs' right to it occurred, and had derived no profit therefrom. LONDON AND NORTH-WESTERN RAILWAY COMPANY *v.* HILL **[Q. B. D. XVII. 70**

LANDLORD AND TENANT—RENT.

1. —— *Abatement of rent reserved in lease—Notice to tenant of intention to exact full rent—Surrender—Evidence.*] Definite notice of his intention to exact the rent reserved in a lease must be given by a landlord who seeks to enforce payment of it, after having accepted from the tenant an abated rent for 29 years and given him receipts in full each year. (By Deasy, L.J.) AMBROSE *v.* KEOHAN - **Cir. Cas. XVII. 7**

2. —— *Action for—Set-off.*] A sub-tenant who pays head rent to a head landlord in settlement of an action for rent brought against him as the person in occupation of which no notice was given to the immediate tenant, can set it off against his rent. KELLY *v.* FLEMING **Q. B. I. *M.* 423**

3. —— *Action for rent against heir—Assignment of lease—Estate of less value than rent.*] The defendant in an action against him, as assignee of a lessee, for rent which had accrued due subsequent to his going into possession, pleaded that he was in only as heir, and that the estate was of less value than the rent reserved:—*Held*, that the defence was bad on demurrer, as, even if the defendant were entitled to plead that he was in only as heir, he should have averred that down to the time of action brought the estate had continued to be of less value than the rent. DE LA POER *v.* KIRWAN **C. P. X. 143**

4. —— *Action for rent—Payment of rent under judgment—Estoppel.*] Where a defendant has paid rent on being served with a writ for same, and has paid the amount of a judgment entered for same, he is not thereby afterward estopped from denying that he is tenant of the lands. (By Lawson, J.) LEADER *v.* MANNING - - - **N. P. XX. 55**

5. —— *Action to recover land for non-payment of rent—Tenant's right to account for profits received by landlord while in possession—Set-off—Defence of eviction.*] W., as landlord, brought an action against B., to recover possession of lands for non-payment of a year's rent due and ending March 25th, 1888. W. had previously recovered judgment for possession of the same lands in an action to recover possession for non-payment of the year's rent due March 25th, 1887, and the same was executed by writ of possession on August 23rd, 1887. B. redeemed on September 26th following, and then was put into possession, W. accepting the amount of rent and costs out of Court. No claim was at the time made for an account of the profits received by W. while in possession:—*Held*, that B. was not entitled to set-off the amount of the profits received by W. during his possession against the year's rent, and that the same being due the plaintiff was entitled to judgment. *Held*, further, that the redemption so effected out of Court must be deemed to have closed the account and precluded any claim for profits in an independent proceeding. *Per* O'Brien, J.:—A person entering on lands under lawful authority, such as an *habere*, does not thereby cause an eviction, so as to suspend or annul the engagements of the tenancy when revested. *Per* Gibson, J.:—The liability of the defendant to the rent revived on his resuming possession under the settlement with his landlord of the rent and costs. *Per* O'Brien, J.:—The right of a tenant to have an account of the profits received during the time he was out of possession does not amount to a substantive cause of action, capable of being

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LANDLORD AND TENANT—RENT—*continued.*

asserted as a defence in an action of ejectment for non-payment of rent. *Beasley* v. *D'Arcy* (2 Sch. & Lef. 403), distinguished. WILSON *v.* BURNE

[Q. B. D. & C. A. XXIII. 59 ; XXIII. 66 note

6. —— *Deduction from rent—Special sanitary rate—Public Health (Ireland) Act*, 1874.] A tenant is entitled, unless precluded by contract from so doing, to deduct from the rent payable to his landlord a proportion of special sanitary rates assessed in rural districts under the Public Health (Ireland) Act, 1874. A tenant holding under a lease reserving rent "over and above all taxes, charges, assessments and impositions whatsoever, ordinary or extraordinary, now charged, or hereafter to be charged, on the demised premises or any part thereof, by Act of Parliament or otherwise, quit rent and Crown rent alone excepted," or adding to the exception "landlord's part of poor rate and income tax," is entitled to deduct from his rent a proportion of special sanitary rates assessed in rural districts on the lands, or the occupiers thereof, pursuant to the provisions of the Public Health (Ir.) Act, 1874 (37 & 38 Vic., c. 93). MALTON *v.* WEST - - - - - E. XII. 6

7. —— *Money paid—Voluntary payment of head rent by sub-tenant—Subsequent adoption by mesne landlord—Statute of Limitations*—23 & 24 *Vic., c.* 154, *ss.* 21, 48.] A payment of head-rent by a sub-tenant to a head landlord, who had not distrained or threatened to take proceedings for its recovery, is a voluntary payment, in respect of which the sub-tenant would not have a present right of action against his mesne landlord; but if the mesne landlord, deriving the benefit, subsequently adopts the payment, an action will lie against him for money paid to his use. In such case the Statute of Limitations begins to run, not from the time of the payment in fact, but from the time of its adoption by the mesne landlord. AHERN *v.* M'SWINEY - - - - Q. B. IX. 26

8. —— *Non-payment of head-rent by mesne landlord—Eviction—Redemption and payment by sub-tenant—Charge on estate—Decree for sale of mesne interest*—23 & 24 *Vic., c.* 154, *ss.* 20, 21.] A sub-tenant redeeming lands, evicted by reason of the default of the mesne landlord in not paying the head rent, is entitled to the extent of the sum paid for the purpose of such redemption to rank as a salvage creditor in respect of the lands so redeemed, and to a decree for sale of the mesne interest for the repayment of his demand and interest on it. (Christian, L.J., *dubitante.*) AHERN *v.* M'SWINEY

[R. VIII. 172; Ch. A. IX. 13

9. —— *Penal rent—Ejectment for non-payment—Relief in Equity—Acquiescence—Surprise.*] In the reddendum of a lease a yearly rent of £50 was reserved under the name of a penalty rent; it was subsequently provided that, in case the lessees should thereafter observe the several covenants the lessor would accept £25 as the yearly rent instead of £50; and in several parts of the lease the lesser rent was called the real rent. A gale of the reduced rent was not paid *ad diem*, but afterwards, at the usual time for payment of that gale, was tendered to and rejected by the lessor, who for over 20 years had received the reduced rent after the gale day, without any objection, and who had not previously cautioned the lessee against allowing the rent to remain unpaid after the actual gale day, under the peril of the larger rent being enforced. Upon an ejectment for non-payment of the larger rent:—*Held*, that the larger rent was a penal rent, and therefore not within the scope and policy of the ejectment statutes; but that, even were that otherwise, the larger rent was a mere penalty of which, by reason of acquiescence and surprise on the part of the lessor, he should, under the equitable jurisdiction of the Court, be disallowed to take advantage. MASSY *v.* NEILL - - Q. S. XI. 19

10. —— *Rates and taxes—Poor Rate.*] A written contract of tenancy provided that the premises should be held at a rent of £90, including all rates and taxes:—*Held*, that the landlord was liable to pay the tenant's half of the poor rate. (By Dowse, B.) BARCROFT *v.* WELLAND

[Cy. Ct. A. XVII. *M.* 126

LANDLORD AND TENANT—RENT—*continued.*

11. —— *Paid by receiver—Right of action.*] A receiver paid a sum of money on account of rent for a tenant, and subsequently brought a civil bill against him to recover the amount so paid, which was dismissed. CLARKE *v.* DALY

[Q. S. I. *M.* 406

—— Deduction of cess.

See GRAND JURY—CESS. 7, 8, 9, 17, 18.

—— Payable at a future date—Garnishee XIII. *M.* 372

See PRACTICE—GARNISHEE. 5.

—— Payable to trustees—Garnishee - XVIII. 13

See PRACTICE—GARNISHEE. 16.

—— Pleading - - - - - VII. *M.* 479

See PRACTICE—COMMON LAW—PLEADING. 26.

LANDLORD AND TENANT—SURRENDER.

1. —— *Bankruptcy—Covenant in lease against carrying on chandlery—Infringement of covenant—Effect upon tenancy of disclaimer by assignee in bankruptcy of mesne tenant—"Surrender" statutable and at Common Law—Estoppel*—35 & 36 *Vic., c.* 58, *s.* 97—8 & 9 *Vic., c.* 106, *s.* 9—*G. O.* (*B. A.*) 1872, 114.] A surrender of a lease by assignees in bankruptcy does not affect the position of under-tenants of the bankrupt, further than to render the immediate sub-lessee of the bankrupt the tenant of the owner of the reversion next expectant upon the termination of the lease; and that owner can take advantage of powers contained in the lease to treat it as void, on the violation of such sub-lessee of its covenants. A covenant against the carrying on of (*inter alia*) the trade of "chandler, or any other noisy or offensive trade," is violated by the sale of candles, though forming but one item of a miscellaneous store. A proceeding by the head landlord to enforce a forfeiture does not determine the tenancy and put an end to derivative interests, so as to destroy the right or title of a mesne tenant to take advantage of a sub-tenant's breach of covenant, inasmuch as such proceeding only operates by way of estoppel *inter partes*. O'FARRELL *v.* STEPHENSON

[E. D. XIII. 161; C. A. XIII. 165

2. —— *Operation of law—Change of possession—Transfer as security for a loan of money—Lender entered in estate books as tenant—Statute of Frauds.*] In order to constitute a surrender of a yearly tenancy by operation of law, it is not enough, in the absence of an actual change of possession, that it should have been verbally agreed upon between the parties, as security for a loan of money, that there should be a transfer of the tenancy, same to be entered, and being in fact entered at their request, in the estate books by an agent of the landlord. *M'Cracken* v. *Ross* (XX. 65, 73), discussed. ANDERSON *v.* ANDERSON

[Q. S. XXI. 35; Cir. Cas. XXI. 36 note

3. —— *Operation of law—Change of possession—Transfer as security for repayment of money—Evidence—Entries in estate books—Rent receipts—Statute of frauds.*] A. being tenant from year to year of a farm in Ulster, it was proposed that he should sell the same to his son, B., who gave a promissory note for the purchase money, in which note C. joined as surety. For the purpose, *inter alia*, of securing the surety, C.'s name, pursuant to arrangement, was entered into the estate book as tenant of the farm, A.'s name being expunged therefrom, with his consent. B. thereafter worked the farm and paid the rent out of the produce apparently; but, though not paid by C., the rent receipts were given to B. in C.'s name, he being recognised as the tenant by the landlord, who, however, afterwards sued both B. and C. for arrears. The jury having found that C., with the consent of A., had been accepted as tenant by the landlord; that C., with the consent of A., became tenant in possession; and that B. was in possession of the land on behalf of C.:—*Held* (*diss.* O'Brien, J.), that C. was entitled to the tenancy, having acquired under a valid surrender by

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LANDLORD AND TENANT—SURRENDER—*continued.*

operation of land, for which purpose there was sufficient evidence of an actual change of possession from A. to him. Affirmed on appeal. M'CRACKEN *v.* ROSS
[Q. B. D. XX. 65; C. A. XX. 73

—— Evidence - - - - - - VIII. 7

See EJECTMENT ON THE TITLE. 1.

LANDLORD AND TENANT—USE AND OCCUPATION.

1. —— *Assignment.*] In an action for use and occupation the plaintiff proved payment of rent by the defendant up to 1864, and after that rent was received from S., but receipts were given in the defendant's name. The defendant proved an assignment to S. and that the plaintiff was aware of it. The Court upheld the direction of Judge who tried the case that the plaintiff was entitled to recover. SHINE *v.* DILLON
[E. I. *M.* 298

2. —— *Evidence—Invalid contract—Statute of Frauds.*] In an action for use and occupation the jury found that the defendant had entered into possession under a verbal contract for sale, and had paid a sum of money, not as rent, but as purchase money. The Judge directed a verdict for the defendant, holding that a contract for sale, although not valid under the Statute of Frauds, was good evidence to rebut the implication of a contract for use and occupation. The Court confirmed this view. CORRIGAN *v.* WOODS E. I. *M.* 102

3. —— *Lease for life—Rent payable after death of last life.*] When the last life of a lease drops, both parties being ignorant of it, the actual profit made by the tenant of the lands, and not the rent reserved, is payable for the period during which the tenant held on after the lease actually determined. HURLEY *v.* HANRAHAN - - - - - Q. B. I. *M.* 349

LANDLORD AND TENANT.

—— Fine—Ecclesiastical lease.

See ECCLESIASTICAL LEASE. 3, 4.

—— Fixture—Removal—Compensation - I. *M.* 489

See PRACTICE—LANDED ESTATES COURT—COMPENSATION. 9.

——Pleading - - - - - VII. *M.* 367

See PRACTICE—COMMON LAW—PLEADING. 67.

—— Quarry—Right to open and take stones from
[XXVII. 93

See QUARRY.

—— Repairs—Pleading - - - VI. 28; X. 65

See PRACTICE—COMMON LAW—PLEADING. 8, 31.

—— Repairs—Pleading - - - - XIII. 92

See PRACTICE—JUDGMENT. 2.

LANDLORD AND TENANT ACT, 1860.

1. —— **Ss. 8, 18**—*Tenancy—Under-tenant—Middleman accepting a new lease which prevents sub-letting—Effect on sub-tenant's interest.*] A tenancy from year to year under a middleman whose own interest in the premises is derived under a lease for lives, does not, where the middleman has obtained a new lease, terminate without notice to quit, upon the death of the last surviving life, even though the new lease contains a clause against sub-letting—23 & 24 Vic., c. 154, sec. 8, preserves intact the interest of a sub-tenant when his immediate landlord obtains a new head lease. HAYES *v.* FITZGIBBON - - - - - - - E. V. 7

2. —— **S. 9**—*Assignment of tenant's interest by informal document.*] A document, in order to amount to an assignment under sec. 9, must, even though no particular form of words is required, purport to transfer the estates. DORAN *v.* KENNY
[R. III. *M.* 174

LANDLORD AND TENANT ACT, 1860—*continued.*

3. —— **Ss. 20, 21**—*Non-payment of head-rent by mesne landlord—Eviction—Redemption and payment by sub-tenant—Charge on estate—Decree for sale of mesne interest*—23 & 24 *Vic., c.* 154, *ss.* 20, 21.] A sub-tenant redeeming lands, evicted by reason of the default of the mesne landlord in not paying the head rent, is entitled to the extent of the sum paid for the purpose of such redemption to rank as a salvage creditor in respect of the lands so redeemed, and to a decree for sale of the mesne interest for the repayment of his demand and interest on it. (Christian, L.J., *dubitante.*) AHERN *v.* M'SWINEY
[R. VIII. 172; Ch. A. IX. 18

4. —— **S. 57**—*Posting copy writ on empty premises.*] The proper course to adopt under sec. 57 of the Landlord and Tenant Act, 1860, is to apply that services to be made of the writ and order by posting them be deemed good service. JOHNSTON *v.* POYNER - - C. C. VII. *M.* 390

5. —— **S. 76**—*Tenant overholding after written demand—Double rent.*] A tenant of stores under a three months' tenancy served, on expiration of his tenancy, with a demand for possession, and stating intention to make a daily charge for grain stored therein, and to claim damages for the period the premises were overheld:—*Held*, liable to double rent under sec. 76. (By Fitzgerald, B.) BECK *v.* CREGGAN
[Cir. Cas. XIII. 79

6. —— **Ss. 80, 94, 95**—*Landlord and Tenant (Ireland) Act*, 1870, *s.* 69—*Execution of ejectment decree—Occupier.*] A civil bill decree in ejectment cannot be executed, as against the original tenant against whom the decree has been obtained, by the tenant signing an acknowledgment pursuant to sec. 94 of the Act of 1860. The word "occupier" in that section does not include such tenant. Such acknowledgment, however, constitutes a surrender of the tenancy by operation of law, and creates a new tenancy at will between the parties, which tenancy at will is "a contract for the letting of land, made and entered into *bonâ fide* for temporary convenience or to meet a temporary necessity either of the landlord or tenant"; and, accordingly, the notice to quit made applicable to tenancies at will by the 69th sec. of the Act of 1870 is not necessary to determine such a tenancy. CORR *v.* HARRIS
[E. D. XXIII. 82

7. —— **S. 86**—*Demand of possession from caretaker by known agent or receiver—Land Law (Ireland) Act*, 1887, *s.* 7.] Where the known agent of a landlord signed a written demand of possession, and also authorised in writing a bailiff to serve the same and take possession of the lands and premises thereunder on behalf of the landlord, and the said notice was personally served on the caretaker:—*Held*, that the same was a sufficient demand of possession and compliance with sec. 86. MASSEREENE *v.* BELLEW - - Q. B. D. XXIV. 74

—— **S. 3** - - - - - - XV. 70

See LANDLORD AND TENANT—DISTRESS. 2.

—— **S. 3** - - - - - XII. 107

See LANDLORD AND TENANT—EJECTMENT—OVERHOLDING. 2.

—— **S. 10** - - - - - - X. 98

See LANDLORD AND TENANT—LEASE. 11.

—— **Ss. 20, 21** - - - - - IX. 13

See LANDLORD AND TENANT—RENT. 8.

—— **Ss. 21, 48** - - - - - IX. 26

See LANDLORD AND TENANT—RENT. 7.

—— **S. 24**—Ejectment for non-payment of rent XVIII. 89

See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 26.

—— **S. 34** - - - - - XXIV. 52

See LAND LAW (IRELAND) ACTS, 1881, 1887. 8.

—— **S. 35**—Waste—Turf - - - XXI. 31

See TURF. 1.

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LANDLORD AND TENANT ACT, 1860—*continued.*

—— S. 43 - - - - - - - XVIII. 90
See LANDLORD AND TENANT—LEASE. 19.

—— S. 52.
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 11, 18, 40, 43.

—— S. 53.
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 22, 37.

—— Ss. 53, 72, 103 - - - - - XI. 49
See LANDLORD AND TENANT—EJECTMENT—OVERHOLDING. 3.

—— S. 54 - - - - - - - XXVII. 63
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 2.

—— S. 57 - - - - - - - VII. *M.* 161
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 10.

—— S. 60.
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 14, 23.

—— S. 62 - - - - - - - - X. 131
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 34.

—— S. 64 - - - - - - - VII. *M.* 367
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 19.

—— S. 70.
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 28, 29.

—— Ss. 70, 71—Writ of Restitution.
See Cases under WRIT OF RESTITUTION.

—— Ss. 70, 71—Writ of Restitution - XXVI. *M.* 511
See LAND LAW (IRELAND) ACT, 1887. 36.

—— S. 71 - - - - - - - II. *M.* 168
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 42.

—— S. 75.
See LANDLORD AND TENANT—EJECTMENT—OVERHOLDING. 5, 9.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

1. —— *Rules* 4 (2), 12—*Claim for improvements—Time—Discretion of County Court Judge.*] A claim for improvements where judgment had been marked against the claimant in May, 1887, and the *habere* executed in June, 1887, and the claim was not served till June, 1888, and nothing had been done meanwhile to keep the claim alive, was held to be late. BOYLE *v.* WATERFORD - - - - - L. S. XXII. 76 note

2. —— *Rules* 4 (e), 12—*Claim for improvements—Time—Discretion of County Court Judge.*] Where a writ of *habere* was executed on November 17th, 1887, and a claim for improvements served in August, 1888, claimant meanwhile having taken no steps to keep alive his claim:—*Held*, that no "sufficient excuse" existed under the 12th Rule of the Judges, 1870, and that therefore the case could not be heard. *Walsh* v. *Fitzgerald* (XXI. 82), distinguished. SHANAHAN *v.* WATERFORD - - - - - - - L. S. XXII. 76

3. —— *Rules* 9 *and* 12.] A tenant cannot rely upon the non-expiration of the calendar month between the service of notice of his claim and the first day of the land session; no objection being made on the part of the landlord to the irregularity. MEERIHY *v.* STACKPOOL - - L. S. V. 15

4. —— *Rule* 13.] Where the tenant has not complied with the rule requiring one week's notice to be given of setting down the cause for hearing, the landlord's time for serving notice of dispute will be extended. CARROLL *v.* DOYLE [L. S. V. 54

LANDLORD AND TENANT (IRELAND) ACT, 1870—*continued.*

5. —— *Rule* 20—*Practice—Service of second notice of claim for compensation for disturbance after the previous notice was nilled.*] A second notice claiming compensation for disturbance under the L. & T. (Ir.) Act, 1870, is not maintainable where a previous notice in respect of the same claim has been served by the tenant and "nilled" by the chairman. GANNON *v.* GRAHAM - - - - - L. S. VII. 176

6. —— *Rule* 22, *part I.—Unrepresented interests.*] Where the interests of persons not represented before the chairman appear to be involved, the Judge of Appeal will remit the case to the County Court Judge, whose duty it is to direct what notice shall be given to such unrepresented persons. (By *Fitzgerald, B.*) Notice having therefore been given, the party appeared at the next land sessions, and an order was made that he should appear at the then next sessions, and make such a claim as he should be advised. FITZSIMONS *v.* CLIVE [Cir. Cas. XII. 85

7. —— *Rule* 24, *part I.—Costs.*] The Court cannot give any other fees than those comprised in the schedule for any proceedings in the course of the claim and dispute, except witnesses' expenses and costs of making maps, surveys, and copies of documents for the use of the Court. STEWART *v.* HART - - - - - - - - L. S. VI. 36

8. —— S. 1—*Ulster custom.*] *Semble:*—A tenant is entitled to compensation under the Ulster tenant usages on leaving his holding voluntarily, if the landlord refuses him permission to dispose of his holding to a proper tenant. DICKEY *v.* DICKEY - - - - L. S. VI. 87

9. —— S. 1—*Ulster custom—Absence of evidence of usage on estate—Inadmissibility of evidence as to neighbouring estate.*] When no evidence is forthcoming of the existence of the Ulster tenant-right custom on the estate of which the tenant's holding forms part, evidence of its existence on a neighbouring estate is inadmissible. *Austin* v. *Scott* (Donnell's Rep. 234), not followed. (By Fitzgerald, B.). M'LAUGHLIN *v.* LYLE [Cir. Cas. X. 178

10. —— S. 1—*Ulster custom—Acquiring tenant right—Letting without incoming payment by landlord in possession.*] Lands anciently subject to the Ulster tenant-right custom, part of an estate on which the custom was denied from 1851 to 1860, were, in the famine years, surrendered by the tenants, who left while owing arrears of rent, and were assisted by the landlord to emigrate. The lands remained unlet for several years, and were in 1857 re-let to a tenant who made no incoming payment, and who afterwards, being in arrear of rent, surrendered the lands to the landlord. They were subsequently, in 1859, re-let by the landlord, who had occupied them in the interval, to a tenant who undertook to erect a dwelling house on the lands:—*Held*, that the re-letting was subject to the Ulster tenant-right custom. (By Fitzgerald, J.) MAGEE *v.* MARQUIS OF BATH Cir. Cas. VIII. 219

11. —— S. 1—*Ulster custom—Adjoining estates—Construction of Act.*] The Land Act should be construed as a remedial Act, so as to most effectually meet the beneficial ends in view and prevent the failure of the remedy. The custom of the estate being a restriction to so much per acre, will not regulate the value of the tenant-right in a particular holding, if the custom of the district be unrestricted, and affords a higher compensation. WRIGHT *v.* PARKER - L. S. V. 87

12. —— S. 1—*Ulster custom—Assignment contrary to custom—Joint claim by assignor and assignee.*] Where an assignment of the tenants' interest in a holding, subject to the Ulster tenant-right custom is made contrary to the custom, and without the consent of the landlord, who is not shown to have violated the custom, neither assignor nor assignee is entitled to claim under sec 1. of the L. & T. Act, 1870. (By Fitzgerald, J). WADDELL *v.* RICE Cir. Cas. X. 152

13. —— S. 1—*Ulster custom—Clause of surrender at termination of lease.*] The ordinary clause in a lease for sur-

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LANDLORD AND TENANT (IRELAND) ACT, 1870—*continued.*

render at the expiration of the term does not destroy the tenants' right to claim for compensation under the 1st section of the Land Act.—*Quære*, can a restricted tenant-right established since 1848 cut down the ancient usage in the case of a tenant who entered as far back as 1794? (By Monahan, C.J.) AUSTIN *v.* SCOTT - **L. S. & Cir. Cas. V. 172, 173**

14. —— **S. 1**—*Ulster custom—Compensation—Custom on the estate.*] The tenant of seven different holdings, at separate rents, on an estate upon which the Ulster custom prevailed, sub-divided five of the said holdings and the aggregate rent of the same into eight lots with separate rents, and sold some of said eight lots and the two undivided holdings to purchasers. It was against the custom prevailing on the estate to sub-divide a holding, and notice of this was given to the purchasers:—*Held*, on an application by the original tenant against the landlord for compensation under the Ulster custom, that (1) as regards the two undivided holdings sold, he could not claim under the custom, he having parted with his right by a sale to the persons whom he had put into possession; (2) as regards the portion of the five mutilated holdings retained by the original tenant he could not claim, the custom on the estate being only to claim in respect of a holding, and not in respect of part of a holding; (3) that he could not claim in respect of the portion of the five holdings improperly sold, having parted with his interest in same to purchasers, nor could the purchasers with notice of the breach of custom claim under it. Section 26 (4) of the Land Law (Ireland) Act, 1881, does not apply, the applicant's tenancy having been determined by his own act, and not by that of the landlord. SCOTT *v.* CONYNGHAM - - **L. S. XXVI.** *M.* **389**

15. —— **S. 1**—*Ulster custom—Compensation for disturbance—Extinguishment of custom—Acquisition by landlord—Resumption of possession of holding—Re-letting by written agreement with parol stipulation against alienation.*] A holding was, under the Ulster tenant-right custom, subject to a usage whereby a tenant in occupation, whether under a lease or yearly tenancy, if about to be evicted by his landlord, was entitled to recover from him the value of the tenant's interest or tenant-right, subject to certain payments; and had been held under a lease which had been determined upon the execution of a conveyance of the estate by the Incumbered Estates Court to Charles Deazley, after which the lessee, however, continued in possession for more than thirteen months. Possession of the holding was then taken by William Deazley on behalf of Charles Deazley, not with a view to retention thereof by the landlord permanently, but only until such time as a new tenant should be substituted. After the holding had so remained in the landlord's clear possession for some months it was let to Richard Lendrum as yearly tenant, under a written agreement, the said Richard Lendrum assenting to a contemporaneous verbal stipulation against alienation by sale or sub-letting; and on his death, John Lendrum, his son, got possession and held as yearly tenant until served with a notice to quit, on which a civil bill ejectment decree was obtained against him. John Lendrum having thereupon claimed compensation under section 1:—*Held*, that on the letting to the claimant the holding was subject to the tenant-right custom; and that, on the authority of *Stevenson* v. *the Earl of Leitrim* (VII. 34), the stipulation that there was to be no sale or sub-letting did not disentitle him from claiming the benefit of the custom. *Per* Ball, C. (Deasy, L.J., *acc.*): Where a landlord resumes possession from a tenant, not with a view to retention thereof permanently, but only until such time as a new tenant should be substituted, and without agreement with anyone else to extinguish the application of the Ulster tenant-right custom to the holding, he does not "acquire" such custom from the tenant within the meaning of sec. 1, and same will continue to attach to the holding. *Per* Fitzgibbon, L.J.: Where a landlord resumes clear and absolute possession from a tenant, he "acquires" the tenant-right custom along with the tenant's interest within the meaning of the section, but upon a re-

LANDLORD AND TENANT (IRELAND) ACT, 1870—*continued.*

letting the custom will again attach to the holding, unless the parties exclude it expressly or by necessary implication. LENDRUM *v.* DEAZLEY - - - **C. A. XIII. 111**

16. —— **S. 1**—*Ulster custom—Consent to sale before and after the Act.*] If before the Landlord and Tenant (Ir.) Act, 1870, the custom of an estate required that the landlord's consent should be obtained previously to the sale of the tenant-right, and the tenant, after the Act, sells without asking or obtaining the landlord's consent, neither the tenant nor the purchaser is entitled to compensation. The effect of the Act is to legalise the custom, and if the tenant does not comply with it the landlord's obligation is discharged. LAFFERTY *v.* HEYGATE. CRAYNOR *v.* HEYGATE - **L. S. VII. 86**

17. —— **S. 1**—*Covenant in lease inconsistent with Ulster custom—Incumbered Estates Court title—Evidence of usage.*] A tenant from year to year, who held on the terms of a lease to him, which had expired, and which contained a covenant by the lessee not to sell without the consent in writing of the lessor, claimed compensation under the Ulster custom. There was no evidence that in such a state of facts, the custom relied on attached to the holding, or of the existence of a usage that a tenant (such as the claimant), who had not purchased from a former tenant or paid a fine to his landlord, was entitled to sell his interest in his farm:—*Held*, that the claimant was not entitled to compensation. BREEN *v.* HUTTON **[L. S. VII. 22**

18. —— **S. 1**—*Ulster custom—Disturbance—Reductions of rent as set-off.*] A tenant, served with a notice to quit and ejectment, on foot of which a decree for possession had been obtained against him, may claim compensation under the Ulster tenant-right custom, notwithstanding that he has not attempted to exercise his right of sale under the custom, or been deprived of its benefits. Reductions made in hard times, of rent under an expired lease, claimed with interest thereon as set-off, were disallowed. FIELD *v.* ALLEN - **L. S. XI. 28**

19. —— **S. 1**—*Ulster custom—Estate rule subject to exceptions.*] By the usage of an estate the incoming payments receivable by an outgoing tenant were limited to 10 years' rent, except in extreme cases of building improvements, when the amount of incoming payments was to be left to arbitration. On a notice to quit being served:—*Held*, that it is for the Court to decide whether the case was of this exceptional character, and, if so, to assess the amount of compensation. *Colbert* v. *Stewart* (Don. Land R. 490), followed and explained. GILMORE *v.* STEWART - - - **L. S. XI. 65**

20. —— **S. 1**—*Evidence of Ulster custom—Previous decrees against same respondent—Estate rules.*] A previous decree in a claim for compensation under the Ulster tenant-right custom in respect of a holding, portion of the respondent's estate, is evidence that such custom prevails on the estate, unless shown that there were special circumstances in such decided case to distinguish it from the generally prevalent custom on such estate. (By Palles, C.B.) ALLENS *v.* MACGROUGH **[Cir. Cas. X. 171**

21. —— **S. 1**—*Ulster custom—Existing lease.*] A lessee, who got leave to dispose of his farm, claimed the benefit of the Ulster custom:—*Held*, that during the existence of the lease a claim for tenant-right could not be established. LOWREY *v.* DUFFERIN - - - **L. S. XI.** *M.* **193**

22. —— **S. 1**—*Ulster custom—Increase of rent—Jurisdiction of Court to fix rent.*] Where a tenant of a holding subject to the Ulster custom is served with a notice to quit in order to enforce payment of an increased rent, the Court has only power to determine whether the proposed increase is reasonable, and cannot, without the consent of both parties, fix what is a reasonable increase. If the proposed increase is proved to be unreasonable, compensation must be awarded. (By Palles, C.B.) CLARKE *v.* ROTTEN - **Cir. Cas. IX. 95**

23. —— **S. 1**—*Ulster custom—Increase in the amount of rent.*] A reasonable increase in the rent is not inconsistent with the

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Ulster tenant-right. But when the landlord insists on a higher increase than is reasonable the tenant is entitled to compensation. The right to an increase of rent under the custom depends on the intrinsic value of the land, irrespective of the value of improvements effected by the tenants. Amount of compensation awarded to the tenant in respect of an unreasonable increase of rent. CARRAHER v. BOND [L. S. VI. 19

24. —— **S. 1**—*Ulster custom—Leasehold interests—District usage.*] The Ulster custom attaches to leasehold interests; where the estate is small the district usage will prevail. NELSON v. CALDWELL - - - - - L. S. V. 116

25. —— **S. 1**—*Leasehold tenant-right—Evidence—Custom of adjoining estates.*] The Ulster tenant-right custom comprehends several usages, each of which must have the essential characteristics of the custom, but may have something additional. A claim of a lessee at the expiration of his lease, before a new tenancy is created, to tenant-right, is a claim to sell a yearly tenancy, or to receive its value, and involves something more than the essential characteristics of the custom. This usage must be proved as a matter of fact; and such proof is not afforded by evidence of sales with the landlord's consent at the expiration of leases, subject to the new rent imposed by the landlord. General evidence of the custom alleged at the expiration of leases is not admissible, but particular instances should be given and the leases proved. Evidence from adjoining estates which never formed part of the respondent's estate is inadmissible. (By Fitzgerald, B.) BLAKELY v. GRAY L. S. XI. 26; Cir. Cas. XI. 79

26. —— **S. 1**—*Ulster custom—Presumption of its existence—Proof of, on small estate—Computation of value of tenant's interest—Flax mill on farm—Increase of rent, what unreasonable.*] On a small estate, held in fee farm, and surrounded by a large estate of the owner of the fee-farm rent, on which latter estate the Ulster custom prevailed unlimited, a farm of 13a. 0r. 22p., Irish plantation measure, was taken by a claimant as tenant in 1868, and he thereupon entered into possession, but without having paid any "in-put":—*Held* [following *M'Cann* v. *M'Cann* (XIII. 120), and *Moore* v. *Mowbray* (XIV. 33),], that the custom attached to the claimant's holding, and that the fact of the claimant having gone into possession without having paid any in-put did not deprive him of the benefit of the custom. *Held*, further, that in computing the value of the tenant-right interest regard should be had to the existence on the farm of a small flax-mill. *Lindsay* v. *Kennedy* (XI. 58), followed. M'CORMICK v. COCKBURN [L. S. XIV. 89

27. —— **S. 1**—*Ulster custom—Proof of small estates.*] On an estate of eleven acres, held in fee-farm, and surrounded by a large estate of the owner of the fee-farm rent, on which latter estate the Ulster tenant-right custom prevailed, a holding of one and a-half acres, which the claimant and his predecessors out of memory had occupied, was held presumptively subject to the custom. *Noble* v. *Turner* (Donn. Rep, 496), approved of. (By Fitzgibbon, L.J.) M'CANN v. M'CANN [Cir. Cas. XIII. 120

28. —— **S. 1**—*Proof of Ulster custom—Small estate held in fee-farm and originally portion of estate on which custom existed.*] Sixteen acres of land, which had formed portion of an estate on which the Ulster custom prevailed, were demised to the predecessors of the respondent in 1805, under a lease for lives renewable for ever, subsequently converted into a fee-farm grant. The respondent and his predecessors had themselves retained possession of the lands until the letting to the claimant, who contended that the custom thereupon re-attached or became grafted on from the adjacent residue of the estate:—*Held*, that the custom attached to the claimant's holding. *M'Cann* v. *M'Cann* (XIII. 120), followed. (By Deasy, L.J.) MOORE v. MOWBRAY - Cir. Cas. XIV. 33

29. —— **S. 1**—*Proviso against alienation—Compensation for disturbance.*] A tenant of lands on which an Ulster custom prevailed having been served with notice to quit in 1867, entered into an agreement with his landlord to take the land as tenant from year to year, determinable by six months' notice to quit, with a clause that he should not assign, sub-let, let in conacre or for a crop, or subdivide for grazing, or part with the possession of the land or any part thereof, and that on breach he should pay an additional rent, recoverable as the rent reserved; and clauses that he should not be entitled to any compensation for any building or improvement, unless previously stipulated for by agreement in writing, signed by both parties, and that tenancy should cease on the bankruptcy or insolvency of the tenant. The landlord determined the tenancy by a notice to quit:—*Held*, that the tenant was entitled to compensation for disturbance. (*Diss.* Chatterton, V.C. and Morris, J.) A contract, though inconsistent with the custom, will not deprive a tenant of his right to compensation; it can only be discharged by a distinct agreement. (*Per* Lawson, J.) STEVENSON v. EARL OF LEITRIM [L. C. R. VII. 34

30. —— **S. 1**—*Ulster custom—Purchaser in Landed Estates Court.*] A purchaser in the Landed Estates Court buys subject to the tenant-right prevailing on the estate and legalised by the Irish Land Act, 1870. *Semble*, bad cultivation by the tenant should be taken into account in determining the compensation. (By Monahan, C.J.) PATTON v. JOHNSTON [L. S. V. 101; Cir. Cas. V. 159

31. —— **S. 1**—*Purchaser of tenant's interest with notice that he would not be accepted.*] On an estate when the custom is that the sale should be with the consent of the landlord or his agent who fixes the price and selects the incoming tenant, a tenant sold to an adjoining tenant, notwithstanding notice by the agent that the sale would not be permitted:—*Held*, that neither the outgoing nor incoming tenant could sustain a claim under sec. 1 of the L. & T. (Ir.) Act, 1870. (By Fitzgerald, J.) LAPPIN v. COOTE. [L. S. VIII. 92; Cir. Cas. IX. 72

32. —— **S. 1**—*Ulster custom—Restriction—Office rules.*] Where it appeared that the agent of an estate exercised complete control over the sales under the Ulster custom, the usual amount per acre which was given to an outgoing tenant was awarded. (By Deasy, L.J.) EATON v. ARCHDALE [Cir. Cas. XIV. 34

33. —— **S. 1**—*Ulster custom—Sale by auction—Evidence of usage to permit sale—Violation of custom—Refusal of landlord to accept purchaser—Purchaser refusing to pay increased rent—Claim for compensation though no notice to terminate tenancy served.*] In 1869 M'G. became the purchaser of property of which, for over forty years previous, the trustees of M. had been proprietors. In 1871 M'G. served notice to quit on H., a yearly tenant of a farm held at a rent of £20 1s., and a claim for compensation having been lodged, arbitration was agreed on, and the rent was fixed by arbitration at £23 19s., which was afterwards paid till 1874. In 1875 the tenant, without communicating with her landlord, put up the farm to auction, when the highest bidder was M'K., who was a stranger to the landlord, and had not been a tenant on the property. The landlord, on being informed of the sale, stated that he would require a rent of £27 12s. 1d., which had been fixed by his valuator (the ordnance valuation of the lands, exclusive of buildings thereon, being £25), but M'K. said that he would not take the farm, except at the present rent; and the landlord's attorney afterwards wrote that M'K. would not be accepted as tenant, nor the sale permitted to him. Any other sales by auction during the last forty-five years had taken place without the landlord's previous knowledge, and had been made to other tenants on the estate. No notice to terminate the tenancy of H. was served by either landlord or tenant. H. having served a claim for compensation under the L. and T. (Ir.) Act, 1870, s. 1, contending that she was disturbed in the exercise of her tenant-right by the acts of the landlord in respect of the sale to M'K., while admitting by her claim that her right under the usage relied on to sell her

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tenant-right, on desiring to quit the holding, was to sell subject to the existing rent or such altered rent as might be settled from time to time:—*Held* (1) That no usage sufficient to sustain the claim upon the facts proved had been shown to exist on the estate; (2) That such claim upon the facts proved, even if the usage alleged had been shown to exist on the estate, did not come within the meaning of the Ulster tenant-right custom or within the provisions of the L. and T. Act, 1870. HART *v.* M'GEOGH - L. S. IX. 183

34. —— S. 1—*Ulster custom—Sale by auction—Sheriff's assignment—Violation of custom—Arrear of rent received by landlord from tenant.*] The acceptance by a landlord, under the Ulster custom, of a new tenant purchasing the outgoing tenant's tenant-right, operates as a surrender of the interest of the original tenant and the creation of a new tenancy between the landlord and the incoming tenant. An execution creditor sold by public action under a *fi. fa.* the interest of the execution debtor, in a farm held under a yearly tenancy, on an estate where sales by auction were never permitted, and where tenant-right was permitted to be disposed of by private sale, but the landlord exercised the right of selecting the purchaser, subject only to the obligation of so exercising the right as not to prevent the fair value of the tenant-right being obtained:—*Held*, a violation of the custom, and, that consequently the purchaser, on being evicted, was not entitled to compensation. A question of fact, as to the nature of the Ulster tenant-right usage prevailing on an estate, is not a fit subject of "a case stated" for the Court for Land Cases Reserved. (By Palles, C.B.) HILLOCK *v.* COPE. GLASS *v.* COPE
[L. S. IX. 36; Cir. Cas. IX. 77

35. —— S. 1—*Sub-division of farm contrary to rule of the estate.*] A tenant on an estate subject to the Ulster tenant-right custom died in 1865, leaving two sons, M. and D. M. was recognised as tenant, but the father had in his lifetime made a division of the farm between his sons. Sub-division was contrary to the rule of the estate, the rule being, when sub-division took place, to require the person who came in to sell his interest to the other occupier; and if the parties did not agree as to the price, a person was appointed by the office to settle the price to be paid to the person going out. In case the parties did not carry out the arrangement, so that the land should be left in the occupation of one tenant, they would be all evicted. Through the neglect of his bailiff, the landlord was not aware of the sub-division until 1871, and evicted M. and D. without requiring them to comply with the usage:—*Held*, that M. was entitled to compensation for disturbance under sec. 1 (*diss.*, Whiteside, C.J., and Morris, J.). *Per* Whiteside, C.J., and Morris, J.: (1) The tenant should state his claim for compensation under sec. 1, and prove the particular custom of the estate on which he holds. If he states a general right to sell, and proves a qualified one, the claim should be dismissed. (2) In this case the tenant could claim compensation for half the holding only. (3) The case should be remitted to the chairman, to allow the claimant to amend his claim and to ascertain as a fact if the claimant was required to get the holding in his possession as one occupier before eviction. FRIEL *v.* THE EARL OF LEITRIM
[L. S. V. 187; Cir. Cas. VI. 86; L. C. R. VII. 1

36. —— S. 1—*Ulster custom—Sub-division of holding—Consent of landlord.*] *Semble*, the consent of the landlord to the sub-division by the tenant of his holding is an essential incident of the Ulster tenant-right custom. (By Hughes, B.) ARMSTRONG *v.* ELLIS - - Cir. Cas. VI. 63

37. —— S. 1—*Sub-letting—Consent of landlord.*] Sub-letting without the express consent of the landlord is inconsistent with the Ulster usages, and disentitles a tenant to compensation. Strict evidence will be required of the landlord's consent, which will not be inferred from ambiguous acts. SHAW *v.* WARD - - - L. S. VI. 87

38. —— S. 1—*Ulster custom—Tenancy expired before the passing of the Act.*] To entitle a claimant to the benefit of the Ulster tenant-right custom it is not necessary that he should have been legally a tenant at the time of the passing of the Act. CHARLEMONT *v.* DEVLIN - L. S. V. 160

39. —— S. 1—"*Tenant under the Act*"—*Ulster custom.*] A tenant against whom an ejectment decree was obtained in March 1870, against which he appealed, and who was allowed, in order to get his crops, to remain in possession until after the Act came into force, and who had been sued for use and occupation at present sessions, is not "a tenant under the Act." M'ILHATTON *v.* MONTGOMERY - L. S. V. 73

40. —— S. 1—*Compensation for disturbance—Ulster custom sale of tenant's interest—Public auction—Reasonable objection to purchaser—What constitutes unreasonable conduct of tenant.*] Under the Ulster custom, where the tenant wishes to sell his tenant-right, and to procure the necessary consent of his landlord to such sale, as being one to which no reasonable objection can be made on the landlord's part, it is to be considered that the tenant is entitled to a fair and reasonable price; that the landlord is entitled to have in the proposed purchaser a solvent tenant, to receive fair increase of rent, and to have an arrangement effected beneficial to his estate in a moderate and reasonable point of view respecting it; and that the incoming tenant is entitled to the same right as the former tenant, to hold the premises at a moderate rent, not encroaching on the custom. Conduct of a tenant held not so unreasonable as to warrant the disallowance of a claim for compensation for disturbance under the Ulster custom. BOLLAND *v.* PORTER.
[L. S. VIII. 93

41. —— S. 1—*Ulster custom—Compensation for disturbance—Increase of rent.*] It is legitimate, according to the Ulster custom, that a revision in the valuation and alteration in the rent of the demised premises should take place on special occasions; but, the tenant should not be called on to pay increased rent for his land in respect of improvements made by him, except in so far as they have increased the productive power of the land relatively to its condition as originally demised, and it is not desirable that such changes in the rent reserved should be brought about by the service of notices to quit—the frequent habit of serving which is inconsistent with the Ulster custom. BENNETT *v.* JONES L. S. VIII. 94

42. —— S. 1—*Ulster custom—Expiration of lease.*] A lessee on the expiration of his lease cannot claim the benefit of the Ulster custom without showing that there is a special custom recognising it. LINDSAY *v.* REID
[L. S. XII. *M.* 204

43. —— S. 1—*Ulster custom—Evidence—Usage on adjoining estates—Expiration of lease—Improvements.*] A plaintiff had held under a lease which expired in 1872; in 1873, without the consent of the defendant, he put up his interest in the lands for auction and bought it in himself. He was a grocer by trade and did not reside on the lands. Evidence of the existence of the custom on adjoining estates was given:—*Held*, that there was no evidence of its existence on the defendant's estate, which was only 30 acres. On the plaintiff being allowed to go into evidence under sec. 3, only one year's compensation was allowed. LYTTLE *v.* SMITH - - L. S. XII. *M.* 203

44. —— S. 1—*Tenant-right at expiration of lease.*] Proof must be given by a tenant evicted on the termination of his lease that the Ulster custom applies to such a case, in order to support his claim. *Quære*, Does the Ulster tenant-right custom apply to lands held under lease? (By Lawson, J.) ELLISON (ALLISON) *v.* MANSFIELD
[L. S. VI. 37; Cir. Cas. VI. 133

45. —— Ss. 1, 3—*Ulster custom—Double claims—Election.*] It is competent for a tenant to claim in the alternative, under the Ulster tenant-right, or under the 3rd section; and he is not bound to elect in the first instance under which portion of the Act he will proceed. FEGAN *v.* WARING - L. S. V. 39

46. —— Ss. 1, 3—*Dual claim—Election—Form of claim under sec.* 1.] The tenant may serve a dual claim under the

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Ulster custom and in the alternative under secs. 3 and 4, and he will not be called on to elect until the case is heard. THOMPSON *v.* KILMOREY'S TRUSTEES - - - - **L. S. V. 117**

47. —— **Ss. 1, 3, 4**—*Election—Dual claim—Improvements suitable to the holding.*] A claimant must elect at the outset of his case, whether he will proceed with his claim under the Ulster custom, or under the 3rd and 4th sections of the Act. A consideration of the classes of improvements suitable to an agricultural holding of about ten acres. M'COMISKY *v.* CARTER - - - - - - - **L. S. VI. 15**

48. —— **Ss. 1, 3, 4**—*Rules of Court*, 1870, 4, 12—*Claim not served within prescribed time—Judicial discretion.*] It is not a sufficient excuse, within the 12th Rule of Court, 1870, for the non-service of a notice of claim under the Act within one calendar month, as prescribed by the 4th Rule of Court, after the tenant was deprived of possession by his landlord, that the tenant was advised by an attorney, who represented him in an ejectment under which he was evicted, that no claim would lie for compensation; and where the tenant under such circumstances, was not taken unawares, the time for service will not be enlarged, and the claim will be dismissed. HAWTHORNE *v.* CRAWFORD - - - **L. S. XI. 139**

49. —— **Ss. 1, 3, 4, 13**—*Limitation to Ulster custom, when binding—Acquisition of tenant right—Sheriff's sale under* fi. fa. *—Assignment without consent—Disturbance—Improvements.*] In order to render a limitation of the Ulster tenant-right custom compulsory and valid, there must be a general acquiescence by the tenants, an express agreement by the tenants at large to surrender the old custom and adopt a new and restricted one; and no proof of dealings between the agent, though entered in his estate book, of agreements or restrictions as between him and a few tenants, can, in law, derogate from or cut down the custom now by law established, as to others who are no parties to such agreements. The respondent's father having broken up and rendered arable part of his demesne lands, let them to a tenant. On their being surrendered they were, for some years, farmed by the landlord, and subsequently let to another tenant. Being surrendered a second time, they were, after a third occupation by the landlord, let to K. Each letting was at an ordinary occupation rent, without fine; and on the occasion of every surrender, no compensation was paid to the tenant. K. handed the lands over to his two sons in succession, and the second son's interest was ultimately sold by the sheriff under a writ of *fi. fa.* to the claimant, whom the respondent, objecting to the sale, refused to accept as tenant:—*Held*, that although the Ulster tenant-right custom prevailed generally upon the estate, these lands were not subject to it, and if they had been, the tenant-right would have been acquired by the landlord. A sheriff's sale under a writ of *fi. fa.* is within the operation of the 13th section, so as to oust that of sec. 3 of the L. and T. (Ir.) Act, 1870. *James* v. *Earl of Rosse* (VII. 12), and *Loughnane* v. *Charteris* (VII. 184), followed. M'LAUGHLIN *v.* LYLE - - - - - - **L. S. X. 176**

50. —— **Ss. 1, 3, 4, 59**—*Dual claim—Compensation—Limited administration.*] A tenant may proceed on a dual claim under the Ulster custom. Claimants who have not taken out administration must do so before the claim is heard. Limited administration under sec. 59 will not be granted except in the case of claims of small amount. MURRAY *v.* M'KIMMEN **[L. S. V. 116**

51. —— **Ss. 1, 3, 15 (1)**—*Compensation for disturbance—Proof of loss sustained—Lands let for purposes of pasture—Demesne lands—Election between claims under ss.* 1 *and* 3.] Where compensation is claimed for disturbance, it lies upon the tenant to prove what loss he has sustained by reason of his quitting his holding, and there is no such presumption, under sec. 3, that the maximum amount is to be awarded, as to cast upon the landlord the onus, in the first instance, of reducing the claim. The term "demesne land" as used in the 15th section, signifies such land as is so described in modern settlements, and which goes with the mansion in a family estate as portion of what is known as the house division, or as being appurtenant to the mansion; and the circumstance that the land may have been broken up in tillage is not enough to deprive it of that character; nor will the fact that the land has been separately let for a number of years, and partly broken up with the owner's consent, be sufficient to deprive it of that character, where the owner in some measure did not allow it to be treated as a common tenant's holding, but always intended to resume it into his own possession as appurtenant to the mansion, and acted consistently with that intention. *Irwin* v. *Buchanan* (X. 22) approved. CRAWLEY *v.* TIPPING - - - **L. S. XI. 82**

52. —— **Ss. 1, 3, 16, 18**—*Ulster custom—Compensation for disturbance—Usage binding landlord to permit sale of tenant-right by auction and to accept purchaser as tenant—Evidence—Refusal of landlord to accept purchaser—Absence of notice to quit or surrender—Judges' rules*, 1870, *r.* 4.] In support of a claim for compensation under the Land Act 1870, s. 1, alleging that the lands were held subject to a usage whereby the occupying tenant was entitled, on desiring to quit his holding, to sell his tenant-right interest therein (subject to the present rent, or such altered rent as might be settled from time to time), at the best rate, to any solvent tenant to whom the landlord should not make reasonable objection, the evidence as to the subsistence of the usage relied on consisted of proof that certain sales of farms on the estate, privately and by auction, had taken place, and that rent had afterwards been accepted from the purchaser by the landlord's agent; but neither landlord nor agent were consulted or knew of the sales until after they had taken place, and they were made to persons who were previously tenants on the estate. The alleged disturbance of the claimant in his tenant-right custom was founded upon his having sold by auction his interest in a farm held under a yearly tenancy to a person who was unknown to the landlord and not previously a tenant on the estate, and whom, it was alleged, the landlord, without reasonable objection, refused to accept as tenant; but it appeared that the purchaser had been asked by the landlord whether, if accepted as tenant, he would be willing to pay the rent which (amounting to an increase of about 2s. per acre) the landlord's valuator had previously put on the farm, and that he refused, and stated that he would not take the farm except at the present rent. No notice to terminate the tenancy was served either by landlord or tenant:—*Held*, that the evidence failed to establish the usage relied on, which, moreover, as sought to be supported, ignored two elements of the Ulster tenant-right custom that have always been recognised and admitted—viz., the right of the landlord to say that the sale should be subject to any reasonable increase of rent that might be made, and his right to select the person to become new tenant, without preventing the fair value of the tenant-right being obtained. *Held*, further, that the power to sell under the Ulster tenant-right custom is a power incident to the termination of the tenancy, and that no yearly tenant can set up his tenant-right for sale, and force the landlord to accept the purchaser as a new tenant, unless a notice to terminate the tenancy has been duly served by either landlord or tenant; and that such a claim for compensation for disturbance—there being, before service thereof, no act on behalf of either party evidencing an intention legally to terminate the tenancy—did not come within the meaning of the Ulster tenant-right custom, or within purview and scope of the Land Act at all. *Hillock* v. *Cope* (IX. 77), *Stevenson* v. *Earl of Leitrim* (VII. 34); and *Burns* v. *Lord Ranfurly* (Don. Rep. 200), discussed and applied. HART *v.* M'GEOUGH - **L. S. XIII. 19**

53. —— **Ss. 1, 4**—*Ulster custom—Agreement not to claim compensation for improvements not inconsistent with it.*] The Ulster tenant-right includes payment for good-will and compensation for improvements, and exists in the case of leasehold interests. An agreement not to make improvements without the written consent of the landlord, or, if so made, not to

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claim compensation therefor, is not inconsistent with, and is therefore subject to, the Ulster tenant-right prevalent in the district. Value of tenant-right. STEWART *v.* HART [L. S. V. 88

54. — Ss. 1, 4—*Disputed custom—Lease—Covenant to surrender at termination of lease—Alternative claim—Remitting case to chairman.*] A tenant, holding under a lease made in the year 1798, for three lives, claimed upon its expiration a right to sell his tenant-right interest under sec. 1, and also claimed in the alternative compensation for improvements under sec. 4. It was admitted by the respondent that tenant-right existed upon his estate in the case of tenancies from year to year:—*Held*, that, in the absence of proof that the Ulster custom prevailed in the case of holdings held under similar leases, the claimant had failed to prove his claim under sec. 1, which was dismissed. By consent the claim under sec. 4, which had not been investigated either before the Chairman or before the Judge, was remitted to the Chairman. A question of fact, the determination of which depends upon conflicting evidence, is not a fit subject of "a case stated" for the Court of Land Cases Reserved. (By Barry, J.) M'NOWN *v.* BEAUCLERC - - - - - Cir. Cas. VII. 185

55. — Ss. 1, 7 — *Ulster custom — Inconsistent modern customs.*] Modern usages introduced within some twenty years past cannot invalidate or override the old Ulster custom. HENRY *v.* PAUL - - - - - L. S. X. 88

56. — Ss. 1, 14.] The 14th section does not apply to cases under the 1st section. (By Keogh, J.) GALLAGHER *v.* LEITRIM. [Cir. Cas. X. 168 note

57. — Ss. 1, 14.] Where the tenant's claim for compensation under the Ulster custom was resisted by the landlord on an allegation that the claimant had frequently cut turf for sale off the lands:—*Held*, that the respondent, in order to acquire the benefits of sec. 14 of the Act, should have specifically averred such cause for eviction when serving notice to quit. REILLY *v.* CORR - - - - - - L. S. XIV. 18

58. — Ss. 1, 15 (1)—*Proof of tenant-right—Pasture lands—Ordinary use of pasture-farm with home-farm.*] Payment made by an incoming tenant to an outgoing tenant, behind the back and without the knowledge of the landlord, is not proof of a tenant-right custom. Payment by an incoming tenant of arrears of rent due by an outgoing tenant to the agent of the landlord, who on subsequently hearing of the transaction repudiates it, is not proof of a tenant-right custom. Proof of the custom on adjoining estates is insufficient to establish the custom on an estate on which there is no evidence of its existence. The absence of incoming payment is not in itself proof of the non-existence of the custom on a particular holding, but taken in connection with the facts, that the landlord had taken up the land from a previous tenant, and was not proved to have permitted tenant-right sales on his estate, it is conclusive. Lands taken for pasture, and not adjoining or ordinarily used with the holding on which the tenant resides, are not subject to the Ulster tenant-right custom. Sending cattle from the home farm to the pasture farm, at occasional times when the tenant could not get sufficient grazing cattle to stock the latter, is not ordinary use thereof with the former. M'GILDOWNEY *v.* M'DONNELL [L. S. X. 184

59. — Ss. 1, 15 (1)—*Town park, what constitutes—Increased value of lands near city or town—Ulster custom—Exceptional state of facts—Onus of proof—Claim when nothing paid for tenant-right.*] The increased value which lands occupied as a farm, near a city or town, bear from this locality, over lands of a similar quality, situate elsewhere, is not "an increased value" within the meaning of the 15th sec. of the L. & T. (Ir.) Act, 1870, but "the ordinary letting value of the land." *Dunally* v. *Hodgens* (VII. 181), followed. Unless an exceptional state of facts, relied upon by the landlord, be inconsistent with the application of a usage, the onus will lie upon

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the landlord to establish the existence of such facts. The existence on an estate of the Ulster tenant-right custom is not inconsistent with an incoming tenant having paid nothing for the tenant-right, although such non-payment may be a fact of great significance where such custom is sought to be established. *Magee* v. *the Marquis of Bath* (VIII. 219) followed. *Irvine* v. *M'Kelvey* (Donnell's L. A. Rep., 380), approved and distinguished. (By Palles, C.B.) CHISM *v.* BEATTY; JOHNSTON *v.* BEATTY - Cir. Cas. X. 93

60. — Ss. 1, 15 (1)—*Ulster custom—Evidence of abrogation of custom—Estoppel—Demesne lands, what constitute—Change of description in valuation books.*] Where a claim for compensation for disturbance under the Ulster custom was disputed on the grounds of the non-existence of the custom, and that the lands were demesne lands and therefore exempt:—*Held*, that the custom, having been proved to have existed down to 1863, was not abrogated because the respondent since that time (when he became entitled to the property) and before the claimant (who had been his agent) became tenant, had, to the claimant's knowledge, expressed himself adverse to such right; and that lands let as a "farm," and used as such, were not demesne lands, and could not be made so by alteration of description in valuation books. MONTGOMERY *v.* STOREY [L. S. XIV. 56

61. — Ss. 1, 15 (1)—*Ulster custom—Town parks—Accommodation land — Sub-letting — Deterioration.*] Twenty-five statute acres within a short distance of the town of Antrim, at a rent of £38 5s. and occupied by a butcher and cattle dealer residing in the town:—*Held*, to be "town parks" within the meaning of the 15th sec. of the L. & T. Act, 1870. Land capable from the size of the town and the proximity of the land to the town, of being used as accommodation land, whether actually so used or not, is "accommodation land" necessarily "bearing an increased value over and above the letting value of the land occupied as a farm." (By Fitzgerald, B.) CHRISTY *v.* GORDON - - - - Cir. Cas. XIII. 79

62. — Ss. 1, 15 (1)—*Ulster custom—Town parks.*] Eleven Irish acres of lands, within a quarter of a mile of Castleblayney, were in 1842 leased at a rent of £23 4s. 2d., and on expiration of the demise in 1871 were held as a tenancy from year to year by a tenant (a banker), residing in the town, who tilled them in the ordinary agricultural way:—*Held*, not to be town parks within the meaning of the 15th sec. (By Lawson, J.) M'MATH *v.* RICHARDS - - Cir. Cas. XIII. 80

63. — Ss. 1, 15 (1)—*Ulster custom—Compensation for disturbance—Town parks.*] Newtonhamilton in the county of Armagh is not a "town" within the meaning of section 15 of the L. & T. Act, 1870, exempting "town parks" from the provisions in respect to compensation for disturbance. The maximum amount of compensation for disturbance should not be awarded except in a case of capricious eviction or harsh conduct on the part of the landlord. FERRAN *v.* KINKEAD [L. S. XII. 11

64. — Ss. 1, 15 (1)—*Ulster custom and town parks.*] The exceptions in sec. 15 apply to all claims for compensation under any of the preceding sections, therefore the tenant of a "town park" is not entitled to compensation under sec. 1. WILLIAMSON *v.* EARL OF ANTRIM - - L. C. R. VII. 157

65. — Ss. 1, 15 (1)—*Ulster custom—Town parks.*] The 15th section of the Land Act does not apply to the Ulster custom. Town parks are subject to the Ulster custom, which may be proved by evidence of the custom in the neighbourhood. M'GAUGHEY *v.* STEWART - - L. S. V. 146

66. — Ss. 1, 15 (1), 18—*Proof of tenant-right—Extinguishment of tenant-right—Pasture holding—Equities.*] The incorporation of the tenant-right custom with a letting made by a landlord, to his land agent, will not be implied where the holding was not previously subject to the custom, and the landlord had no knowledge of the existence of the custom on the estate.

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The fact of a tenant making no incoming payment, *per se*, and deriving no assistance *aliunde*, is not sufficient to extinguish or exclude the application of the custom, but it is a fact of weight and efficacy in determining whether the letting was subject to the custom (per *Chairman*). The taking by a tenant of stranger's cattle to graze on the holding is not "ordinary use" thereof with the holding in which he actually resides (per *Chairman*). An agent taking land from his principal cannot derive a benefit therefrom under the custom, at least, without, at the time of the letting, apprising his principal of the existence of his claim to such benefit (per *Chairman*). Mistreatment of the land will not destroy, though it may diminish, the tenant's claim under the custom (per *Chairman*). *Magee* v. *Marquis of Bath* (VIII. 219); *Johnstone* v. *Beatty* (X. 93), discussed. (By Palles, C.B.) KILLEN *v.* COATES

[Cir. Cas. X. 159

67. —— **Ss. 1, 15 (1), 18**—*Ulster custom—Town parks—Consideration of conduct.*] The Ulster tenant-right exists at the determination of a lease, and applies to town parks equally with other holdings. The chairman may reduce the amount he would otherwise have awarded as the value of the tenant-right for improper conduct of the tenant. WEIR *v.* KNOX

[L. S. VI. 38

68. —— **Ss. 1, 15 (1), 70**—*Rules (part I.)* 27, 28, 38—*Ulster custom—Holding within meaning of Act—Principle of compensation in case of holding partly agricultural and partly manufacturing.*] A lease made in 1820, of 2¾ acres (Ir.) of land, together with the dwelling-house, cottage, or tenement, and all other buildings thereon, at a rent of £5 5s. 9d., expired in 1874. During the tenure the lessee erected buildings, used as a thread-dyeing factory, with workmen's cottages. After its expiration the tenant continued in occupation as yearly tenant, on the terms of the expired lease, but the buildings were not used for other than agricultural purposes. On ejectment, the tenant claimed under the Ulster tenant-right custom £162 10s., and in the alternative five years' rent and compensation for buildings £650, and minor improvements £11 10s.:—*Held*, a holding within the meaning of the Act; but that in assessing compensation under the Ulster tenant-right custom, the ordinary value of the tenant-right of the land apart from expenditure on the premises not requisite for, or unsuitable to, an agricultural holding of that extent, should be regarded. A holding on which the tenant resides is not "town parks" within the meaning of the Act. (By Fitzgerald, B.) MATCHETT *v.* MORTON - **Cir. Cas. XIII. 128**

69. —— **Ss. 1, 15 (1), 70**—*Ulster custom—Town parks—Distinct holding.*] A field near a village in the county of Donegal, in the occupation of a person living in the village, held not to be a town park. Where separate rent-receipts are given by the same landlord to the same tenant in respect of a house and a field, the house, being in a village, is not within the operation of the Land Act, 1870. *Quære*, does s. 15 apply to the Ulster custom? (By Lawson, J.) EARL OF LEITRIM *v.* GALLAGHER - **Q. S. V. 188; Cir. Cas. VI. 133**

70. —— **Ss. 1, 16, 17**—**Rule 4**—*Land Law (Ireland) Act*, 1881, *s.* 13 (5).] A landlord, in April, 1892, served his tenant with a notice to quit on the following November, and the tenant, in July, served a claim under the Landlord and Tenant (Ireland) Act, 1870, for compensation for his tenant-right, as having been disturbed in his holding by the service of the notice to quit. In August the landlord served notice disputing the whole and every part of the tenant's claim; and notice was served on September 5th that the claim would be heard at the following November Land Sessions. On September 26th the landlord served notice withdrawing his notice to quit, and offering to pay the costs incurred by the tenant in service of his claim:—*Held*, that prior to the withdrawal of the notice to quit a dispute as to the amount of the claim for compensation had arisen under sec. 17 of the Act of 1870, which it was necessary for the Court to decide, and that therefore, on the withdrawal of the notice to quit, if it could

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be withdrawn against the wish of the tenant, he was entitled to give up possession and have his claim for compensation decided by the Court. BROLLY *v.* BIGGAR

[L. S. XXVI. *M.* **659**

71. —— **Ss. 1, 16, 23**—**Rule 4**—*Ulster custom—Claim of right to sell—Estate rules.*] A tenant under the Ulster custom quitting voluntarily may claim in respect of a right under the custom, and this without surrender. The prescribed time in such case is before the tenant quits, or within one month afterwards. An estate rule, acquiesced in for a reasonable length of time, is an usage legalised by the Act. A holding, forming part of the town parks of the estate, on which no proof of the custom is given, is not subject to the custom. *Semble*, a rule of a landlord against which the tenants protested would not establish a new custom. KEOWN *v.* DE ROS

[L. S. VI. 52

72. —— **Ss. 1, 18**—*Ejectment, on notice to quit, to recover possession of lands, consequent on tenant's refusal to pay increased rent—Elements of consideration of what is reasonable increase—Unreasonable conduct.*] Where a claim by a tenant under the Ulster custom, for £600 in respect of a farm, originally held under lease which expired a few years previously, was disputed by the landlord, on the ground that the tenant had declined to hold on at a reasonably fair increased rent:—*Held*, that the proposed rent was fair and reasonable; that the tenant's refusal to pay it was unreasonable conduct under section 18; and that the claim should be dismissed with costs. HUGHES *v.* CHARLEMONT

[L. S. XIV. 41

73. —— **Ss. 1, 18**—*Ulster custom—Absence of incoming payments—Improper conduct—Dilapidation of houses—Practice—Dual claims.*] Claimant became tenant, without incoming payment, of four acres, part of forty acres purchased in fee by the respondent sixteen years previously, portion of an estate on which the Ulster tenant-right custom prevailed, and was evicted for using offensive language to the respondent and neglecting some hay of the respondent which it was his duty to attend to:—*Held*, that he was entitled to the benefit of the custom, notwithstanding the absence of incoming payments, and that the improper conduct alleged was not sufficient to deprive him of the benefits of the custom. In estimating the set-off for dilapidation, allowance should be made for ordinary wear and tear and dilapidation through time. M'STAYE *v.* LOVE - - **L. S. X. 183**

74. —— **Ss. 1, 18**—*Ulster custom—Arbitration as to price—Landlord's improvements.*] An usage whereby, on sale of the tenant's interest, the price fixed by arbitration is not an usage inconsistent with the general tenant-right custom. Under such an usage the Judge has a larger equitable jurisdiction than in ordinary cases. In making deduction from the selling value of the farm in respect of landlord's improvements, an equitable principle is to take the reasonable increase of rent which may fairly arise from such an improvement, and to deduct the capitalised value of such increase. (By Fitzgerald, B.) M'GROGGAN *v.* MONTGOMERY

[Cir. Cas. XIII. 77

75. —— **Ss. 1, 18**—*Ulster custom—Tenant offered permission to remain in possession at an increased rent—Period of time at which fairness of proposed increase is to be tested by—Power of Court to suggest, though not to determine, except by consent, what is a reasonable increase of rent.*] Where a claim for compensation made by a yearly tenant of a farm of 84a. 3r. 25p. for £700, under section 1, and in the alternative for improvements and incoming payment, amounting, in all, to £1,383 10s. 3d., was disputed by the landlord, who had demanded to increase the rent from £43 19s. 11d. to £58 4s. 6d.:—*Held*, that the proposed increase was fair and reasonable, and that non-acceptance of it was unreasonable conduct under section 18; that, although the Court had no power to fix the amount, it would suggest a rent which, under the special circumstances, ought to be accepted, or in the alternative would dismiss the claim; and that the value was to

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be taken as at the time when the demand for increase was first made, and not at the time of the hearing of the claim. CLARKE *v.* GOFF - - - **L. S. XIV. 90**

76. —— Ss. 1, 18—*Value of tenant-right—"Unreasonable conduct" under sec. 18.*] Unreasonable conduct in the 18th section of the Act means unreasonable conduct in the relation of landlord and tenant. Therefore in awarding compensation the Court should not take into account collateral circumstances, *e.g.*, alleged equitable claims between parties claiming the tenant's interest. WILLIAMSON *v.* PAKENHAM **[L. S. V. 118**

77. —— Ss. 1, 24—*Appeal from decision of County Court Judge—"Next ensuing Assizes"—Form of notice of appeal—Judges' rules (29th Oct. 1870), rr. 38, 39—Judicature Act, s. 49.*] A claim for disturbance under the Ulster tenant-right custom having been disallowed on July 1st, 1878, by the County Court Judge of the County of Fermanagh, the tenant on July 8th, which was the last day of the Ordinary Sessions, served notice of appeal "to the next Assizes to be held in and for the County of Fermanagh." The Summer Assizes for Fermanagh opened five days afterwards, on the 13th July. The appeal was not set down for hearing then, inasmuch as it is provided by the 39th rule that if the next Assizes are held within ten days of the Sessions from which the appeal is taken, the appeal shall be taken to the second next Assizes. On the appeal being called on at the ensuing Spring Assizes the going Judge treated the notice of appeal as a nullity, on the ground that that was not the Assize mentioned in the notice. On a case stated:—*Held*, that the Judge ought to have heard the appeal, inasmuch as rule 39 determined the Assizes at which it should be heard, and the words in the notice "the next Assizes" were mere surplusage. The appeal was accordingly sent to the ensuing Assizes with a direction that the notice of appeal served should be sufficient for those Assizes. BURNS *v.* COLLUM - - **C. A. XIV. 27**

78. —— Ss. 1, 24, 59—*Claim by administrator with will annexed—Probate insufficiently stamped.*] A claim of £600, under section 1, having been filed by the administrator with the will annexed, of a deceased tenant and letters of administration stamped as of £100 value having been offered in evidence:—*Held*, that the case could not be entertained until the letters of administration were properly stamped, and that sec. 59 did not apply to the case. (By Hughes, B.) M'CREANOR *v.* HERON - - **Cir. Cas. VI. 63**

79. —— Ss. 1, 71—*Ulster tenant-right—Land containing a quarry—Agricultural holding.*] K. having purchased the tenant-right of a farm, there was subsequently ascertained to be a valuable supply of building stone under the surface, and it was agreed that K. should pay an increased rent for the liberty to work the quarry. K. having been evicted:—*Held*, that the holding was agricultural within the meaning of sec. 71: and that, in estimating the value of the tenant-right, the market value of the quarry should be taken into account. (By Lawson, J.) LINDSAY *v.* KENNEDY - **Cir. Cas. XI. 58**

80. —— S. 3—*Act of disturbance—Loss of holding—Nominal compensation for disturbance—Legal representative never in actual occupation—Costs.*] Actual eviction is not necessary to constitute disturbance. The disturbance is complete at all events when the legal title of the claimant is put an end to by the decree. A claimant entitled at law to, though not in fact in, possession, is in possession so as to be entitled to compensation for disturbance; and must be held to have "quitted his holding" within the meaning of the Act, when his interest is extinguished. A claimant, the brother and administrator of a deceased tenant, in accordance with whose wishes, expressed to the landlord before his death, a nephew resident on the farm, has been constituted, so far as the landlord could, tenant, and who has never been an occupier in fact, is only entitled to nominal compensation for disturbance. A respondent disputing the whole claim, must pay costs when a portion of an exorbitant claim (£138 out of £1,125) is allowed. FITZSIMONS *v.* CLIVE - **L. S. XII. 12**

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81. —— S. 3—*Capricious eviction—Maximum amount of compensation.*] A tenant who had originally taken the land on a conacre letting, but had continued in occupation as a yearly tenant, and was capriciously evicted:—*Held*, to be entitled to the maximum amount of compensation prescribed for tenants of his grade in the scale. (By Fitzgerald, J.) M'DONALD *v.* GRANLEES - - **Cir. Cas. IX. 73**

82. —— S. 3—*Compensation for disturbance—Discretion of chairman—Reviewing amount on appeal.*] The Judge of Assize refused to review the amount of compensation awarded for disturbance in the discretion of the chairman, exercised not unwisely or excessively. (By Fitzgerald, J.) MOUNTMORRIS *v.* HAMILTON - **Cir. Cas. VIII. *M.* 486**

83. —— S. 3—*Compensation for disturbance—Mode of arriving at amount.*] Where a person purchased the reversion in certain lands in the possession of a yearly tenant, with the object of becoming the occupier himself, and immediately proceeded to evict the tenant, the Court awarded the maximum amount of compensation for disturbance. A landlord cannot rely on the unsatisfactory conduct of a tenant as grounds for reducing the amount of compensation for disturbance to be awarded to the tenant on eviction from his holding, unless such conduct was the cause of the eviction. In awarding compensation under sec. 3 of the Land Act, 1870, it is not the proper construction of that section to award the maximum amount of compensation to the tenant unless the landlord show why it should be less. The loss sustained by the tenant on quitting his holding is the proper measure of compensation, subject to reduction by any peculiar circumstances affecting the case. (By Palles, C.B.) WALSH *v.* O'KEEFFE **[Cir. Cas. XII. 107**

84. —— S. 3—*Compensation for disturbance—Tenancy in consideration of services.*] A bailiff, who has received a farm for his services, cannot be deprived of possession without reasonable compensation, although his conduct has been such as to annoy his landlord and encourage the tenants in litigation. (By Morris, J.) O'BRIEN *v.* HURLEY **[Cir. Cas. VII. 173**

85. —— S. 3—*Compensation for disturbance—Non-residence.*] The amount of compensation for disturbance was diminished when the claimant did not reside on the holding in question. CONNOLLY *v.* HEMPHILL - - - **L. S. V. 144**

86. —— S. 3—*Compensation for disturbance—Notice to quit held invalid.*] A claim cannot be made for disturbance where the notice to quit has been held invalid. BANNON *v.* DEEVY **[L. S. XI. *M.* 42**

87. —— S. 3—*Compensation for disturbance—Stranger treated as tenant—Amount lodged in Court—Estoppel.*] On the death of a tenant from year to year intestate, C., who derived no title from him, entered into possession and management of his property without taking out administration. A notice to quit having been served on C. personally, and a decree on an ejectment obtained against him, he claimed compensation for disturbance. The respondent disputed the claim, but, at the same time, lodged the amount in Court:—*Held*, that C. was entitled to the amount of compensation so lodged. CHEEVERS *v.* MORGAN - - **L. S. VIII. 33**

88. —— S. 3—*Compensation for disturbance—Waste.*] Where the tenant has permitted waste upon his holding no compensation for disturbance will be allowed. DAMERY *v.* O'CALLAGHAN - - - - **L. S. V. 56**

89. —— S. 3—*Cross claim by landlord for deterioration of holding.*] Cross claim by landlord in respect of deterioration of the holding was allowed. Where the tenant after notice to quit breaks up land and takes a white crop off it, compensation will be largely diminished. KEHOE *v.* CROKER - **L. S. V. 56**

90. —— S. 3—*Holding divided by yearly tenant—Compensation awarded for one moiety only.*] B., a yearly tenant, gave a moiety of his holding to his son, without objection on the part

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of his landlord, who, however, did no act to divide the tenancy, or recognise the son, and, although the latter paid half the rent, it was always received in one sum, and the receipts were given in the name of B. alone. An ejectment having, on B.'s death, been brought against his widow and devisee, and served on the son, and possession recovered of the whole farm:—*Held*, that the widow was entitled to compensation for disturbance only out of the moiety in her possession. BRADY *v.* DROUGHT [L. S. IX. 148

91. —— **S. 3**—*Holding valued under £10—Maximum claim for disturbance—Claim for improvements—Election.*] M., whose holding was valued under £10, claimed the maximum amount for disturbance, and also claimed for improvements other than permanent buildings and reclamation of waste land:—*Held*, that both claims might be gone into in the first instance, the question as to the right to compensation for improvements to be settled after the case had been heard in its entirety. (By Dowse, B.) GORDON *v.* MURPHY [Cir. Cas. VIII. 194

92. —— **S. 3**—*Improving tenant.*] An improving tenant is entitled to the maximum compensation for disturbance of his class in the scale. M'CULLAGH *v.* WEIR - L. S. V. 115

93. —— **S. 3**—*Principles of compensation for disturbance.*] In measuring the amount of compensation for disturbance, the change in the claimant's position in life, and in his family arrangements should be taken into account. An orchard held with other land is not excluded from compensation. MAWHINNEY *v.* MACOUN - - - - L. S. VI. 17

94. —— **S. 3**—*Rule against sub-letting or assignment—Marriage of tenant—Consent.*] A tenant on an estate in which a rule against sub-letting prevailed, having introduced his son-in-law into the farm as manager, without his landlord's remonstrance:—*Held*, that the tenant could not be disturbed in his possession without reasonable compensation. (By Morris, J.) CROSBY *v.* LYNCH - Cir. Cas. VII. 174

95. —— **S. 3**—*Service of second claim for compensation for disturbance after previous claim dismissed—Rules 4 and 20 (1870).*] A claim for compensation for disturbance having been dismissed, on account of the non-appearance of the parties, a second notice of claim was served, after the time prescribed by Rule 4 (1870):—*Held*, that the second claim was an absolute nullity, and that the same should be nilled accordingly. BURKE *v.* TWINAM - - - L. S. VII. 200

96. —— **S. 3**—*Tenant of the Court of Chancery—Maximum amount of compensation.*] The maximum amount of compensation for disturbance should only be given in special cases, as, for instance, where the conduct of the landlord has been vexatious or oppressive, or where a long-continued tenancy has been capriciously put an end to, without any default or misconduct on the part of the tenant. Where the Court of Chancery, at the instance of an incumbrancer, took possession of the estate of the landlord's father, and the tenancy was created, not by the landlord, but by the Court of Chancery, being liable to be determined at any moment by the cesser of the suit:—*Held*, that the maximum amount of compensation should not be given. *Quære*, whether such a case comes within the meaning of the 3rd section of the Act at all? (By Fitzgerald, J.) WARD *v.* WALKER [Cir. Cas. VI. 155

97. —— **S. 3**—*Ulster custom—Compensation for disturbance.*] The 3rd section of the Act is borrowed from the good-will element of the Ulster custom. A non-improving tenant only fourteen years in occupation, ten of them under a lease, and the rent, which was a high one, unchanged, is entitled to compensation for disturbance (three years' rent). DEVINE *v.* HUEY - - - - - L. S. V. 115

98. —— **S. 3, 4**—*Alterations and additions to farm-house—Works suitable to holding—Unexhausted tillages and manures and other like farming works—Meaning of tillages.*] A porch, bow windows, marble chimney-pieces, and the tiling of the hall with Minton's tiles were judged unsuitable to the farm-house of a farm of 101 Irish acres. No allowance was made for dung or farm-yard manure where a green crop and two corn crops had been taken subsequent to the manuring. The cost of clover and grass seeds and the expense of sowing them in the first year of tenancy, held to come within the words "other like farming works" in the definition of "improvements" contained in section 70 of the L. and T. Act, 1870. HOPE *v.* CLONCURRY - - L. S. IX. 58

99. —— **Ss. 3, 4**—*Alterations and additions to farm-houses—ments.*] A notice to quit was served when the tenant became bankrupt, and in his schedule he estimated the farm as not of any value. The house was in a very dilapidated condition, and the claim for inexhausted manures could not be sustained. The claims for compensation were dismissed, there being a large set-off for rent. BRADY *v.* HENDERSON [L. S. XI. *M.* 377

100. —— **Ss. 3, 4**—*Compensation for disturbance and improvements.*] Four years' rent was allowed as compensation for disturbance where there did not seem to be good reason for the disturbance; and compensation was awarded for improvements at less than they were valued by either party. CRANE *v.* STOREY - - - L. S. XI. *M.* 378

101. —— **Ss. 3, 4**—*Compensation for disturbance and improvements—Refusal by tenant to accept a lease depriving him of a claim under sec. 4.*] The fact that a tenant refused to accept a lease with a clause depriving him of the power to claim for improvements under sec. 4 does not disentitle him to compensation for disturbance and improvements. HYNES *v.* GUNNING - - - L. S. VIII. 70 note

102. —— **Ss. 3, 4**—*Compensation for disturbance—Maximum allowance—Tenant not in actual occupation.*] The maximum compensation will not be allowed for disturbance when the tenant is not in actual occupation. (By Keogh, J.) M'NEILL *v.* ADAMS - - - Cir. Cas. VIII. *M.* 501

103. —— **Ss. 3, 4**—*Compensation for unsuitable buildings—Road—Several claimants.*] Compensation was refused for buildings attached to the house, but for the accommodation of the tenant's sons, and which did not add to the letting value of the holding; also for an additional and unnecessary road. The injury to sons living with their father (the claimant) and farming a portion of the land, cannot be taken into consideration in estimating the amount of compensation for disturbance payable to the latter. MAY *v.* WALLACE - L. S. V. 101

104. —— **Ss. 3, 4**—*Devolution of tenancy from year to year—Succession in title—Tenant's conduct, when not unreasonable—Maximum amount of compensation—Several next of kin—Claim by one.*] Every devolution of a tenancy from year to year does not, under the Act, constitute a new agreement, so as to extinguish all claim for improvements made before the devolution. When a claimant is one of a number of next of kin, the Court will pay the entire amount of compensation for disturbance and improvements, due to all, to him, leaving the rest to assert their rights, in the proper manner, to their respective proportions. On the death of J., a tenant from year to year, leaving a son E., T., a brother, and on his death H., another brother, entered into possession. After some years' possession by H., recognised by his landlord, who promised, in writing, not to disturb him so long as he paid his rent and other dues, the landlord tendered him a lease for thirty-one years, subject to the condition that, on his death, the farm should go to E. H. offered to take the lease, but declined to agree to the condition:—*Held*, that his conduct was not unreasonable, so as to disentitle him to compensation for disturbance:—*Held*, also that the landlord's breach of his written promise for quiet enjoyment justified the Court in awarding H. the maximum amount of compensation. MORAN *v.* DROUGHT [L. S. X. 43

105. —— **Ss. 3, 4**—*Dual claims—Election—Incoming payments—Compensation—Improvements.*] A claimant having a

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dual claim need not elect to rely on one claim. He must first proceed with one claim, but if he fails in proving it, he may fall back upon the other. Incoming payments will affect favourably the claim for compensation. Improvements suitable to the holding are improvements suitable to the farm as it was let to the claimant. Set-offs for selling manure and taking two oat crops disallowed. DORAN *v.* CUMMINS [L. S. V. 145

106. —— **Ss. 3, 4**—*Ejectment on the title—Compensation for disturbance and improvements—Date of title in Plaintiff.*] An ejectment on the title, on expiration of a lease, was commenced before the passing of the L. & T. Act, 1870, but the trial did not take place until after its passing, when a verdict was had for the plaintiff, finding title for the plaintiff from a day anterior to the passing of the Act. A claim for compensation was dismissed on the ground that no tenancy existed at the time of the passing of the Act. LEAHY *v.* ELLIS [L. S. VI. 18

107. —— **Ss. 3, 4**—*Proviso to the scale of compensation for disturbance—Set-off.*] A tenant claiming seven years' rent cannot get compensation for minor improvements. The value of turf out in the process of reclamation is not a set-off, but may be regarded in determining the cost of the improvements. HALFPENNY *v.* CARTER - - - L. S. VI. 17

108. —— **Ss. 3, 4**—*Scale of compensation.*] As a general rule the scale of compensation for disturbance provided by the Act is fair and reasonable, particularly when regard is had to the large sums which lands bring when sold subject to the Ulster custom. MORROW *v.* DEVLING - L. S. VI. 36

109. —— **Ss. 3, 4, 8, 9**—*Compensation for disturbance—Compensation for growing crops and tillages—Cutting trees—Improper conduct of tenant.*] A tenant of an adjoining farm took a small farm from a farmer proprietor on the terms of giving it up when required by the owner for his own purposes; and after an occupation of fifteen years, during which time he deteriorated the land by overcropping and the house by want of repairs, and using it as farm-offices, on demand made, consented to give up possession, but finally refused to do so, and sowed crops, which were in the land when ejected under a decree for possession:—*Held*, sufficiently compensated by one year's compensation for disturbance, and that he should not, under the circumstances, recover compensation for the crops sown after the tenancy was determined. (By Palles, C.B.) LOGAN *v.* HILL - - Cir. Cas. X. 175

110. —— **Ss. 3, 4, 8, 9, 18**—*Compensation for disturbance—Refusal by tenant to continue in occupation—"Just and reasonable terms of occupation"—Contracting out of benefit of Act—Improvements—Costs.*] A. having agreed to become yearly tenant to B. of a farm, upon the usual terms prevailing on the estate, B. tendered to him a form of lease, at the same rent, and differing from such usual contract of letting in the following particulars:—It provided that all quarries of stone or slate, all marl clay, gravel and sand, bog and bog timber should be excepted out of the demise; that the lessee should not be entitled to any corn or other crops as a way-going crop, to be sown after the expiration of the demise; that the demise should be forfeited in the event of the tenant assigning, subletting, or sub-dividing the farm, becoming bankrupt or insolvent, or having his interest taken in execution or any judgment decree, or order being registered against it, or an order for the sale of it made by a competent Court. The tenant refused to abandon his former contract and to accept the new one as offered, not receiving under the latter any equivalent for the benefits he was required to forego. He was then evicted; and thereupon claimed compensation for disturbance:—*Held*, that the refusal of the tenant to continue in occupation upon the terms of the new contract of tenancy, as offered, was not unreasonable conduct on the part of the tenant, so as to disentitle him to compensation for disturbance. CONNOLLY *v.* DIGBY - - - - - - L. S. VIII. 68

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111. —— **Ss. 3, 4, 9**—*Capricious eviction—Breaches of covenant by tenant—Disturbance, what constitutes—Notice to quit—Ejectment for non-payment of rent.*] A tenant from year to year was served, on the 20th March, 1874, with a notice to quit on the 29th September following. On the 23rd June, the landlord obtained a civil bill decree in ejectment against him for non-payment of rent which became due on the 25th March. On the 27th June, the tenant served notice of a claim for compensation for disturbance under the notice to quit, and on the 10th July the *habere* was executed. The tenant did not pay the rent and redeem the premises; and the landlord disputed the claim for compensation. The tenant had also neglected to pay a previous year's rent until served with an ejectment process, and then paid it on having acquired the means to do so by letting his land in conacre contrary to agreement; he had also neglected to keep the premises in tenantable repair and suffered them to become deteriorated:—*Held*, that the eviction was not capricious or one for which the tenant would be fairly entitled to compensation. *Semble*, the service of a notice to quit does not, in itself, constitute a disturbance of a tenant, in order to entitle him to compensation under the 3rd section of the L. & T. Act, 1870. FLYNN *v.* VERNON [L. S. VIII. 184; L. C. A. IX. 50

112. —— **Ss. 3, 4, 9, 18, 71**—*Ejectment upon notice to quit—Rent in arrear—Disturbance—Set-off by remainderman for rent due to tenant for life—New tenancy on expiration of lease—Right to compensation for anterior improvements.*] Where a lease has expired, and a new tenancy has been created, either by an agreement in writing, by a new lease, or by payment of rent, such new tenancy extinguishes all right to compensation for improvements made by the tenant under the old tenancy. An ejectment obtained upon a notice to quit is a disturbance under the L. & T. (Ir.) Act, 1870, notwithstanding that it may have been brought solely on account of the rent being in arrear. A decree for possession having been obtained against a yearly tenant, on an ejectment for non-payment for rent for a year and a half, the landlord (a tenant for life) died. Before the succeeding gale day, the trustees of the settlement who had entered into possession (the heir being a minor) served a notice to quit and a decree for possession on an ejectment for overholding was pronounced. The tenant having lodged a claim for compensation for disturbance:—*Held*, that the second ejectment could not be considered as one for non-payment of rent, so as to deprive him of his right to compensation, and that the rent due could not be set off against his claim. BEGLEY *v.* DOWNSHIRE TRUSTEES L. S. IX. 146

113. —— **Ss. 3, 4, 11, 14, 18**—*Compensation for disturbance—Refusal to acquiesce in "squaring" of farms—Unreasonable conduct of tenant—Refusing to take substituted farm at excessive rent—Compensation for improvements—Derivative title of tenant.*] Compensation for disturbance under the Act is to be awarded to a tenant for the actual loss he has sustained by reason of quitting his holding, and the amount is not to be assessed with a view of punishing the landlord, on the one hand, for evicting the tenant; or the tenant, on the other hand, for not acquiescing in all the conceptions of the landlord in regard to the management of his estate. A refusal by a tenant to acquiesce in a "squaring" of farms by the landlord is not an act which will prevent a consequent eviction from being a disturbance, under sec. 14, and cannot be relied on to defeat a claim for compensation thereupon. It is not unreasonable conduct on the part of a tenant, within the meaning of the 18th sec., to refuse to take a lease of a substituted farm, containing about six acres less than his original holding, at £60 a year, where he had been for many years previously in possession of his former holding, and paying only £37 5s. 8d. a year therefor, and the landlord's agent had himself, about five years since, valued the substituted farm at £48 a year, for which it was then offered. The widow of a lessee for his own life, holding on as tenant from year to year, does not take by assignment or operation of law from the preceding tenant, within the meaning of the 11th

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section, so as to entitle her to claim compensation for improvements effected by him. *Darragh* v. *Murdock* (V. 38), followed. M'QUINN *v.* CROSBIE - - **L. S. XI. 180**

114. —— **Ss. 3, 4, 13**—*Claim for disturbance and improvements—Sale by administrator under Court of Chancery—Custom on estate against assignment—Purchase by trustee for benefit of administrator.*] Where administration was taken out to a deceased tenant, and the farm of the deceased was ordered to be sold by the Court of Chancery, the landlord of the estate objected to the sale of the tenant's interest, on the ground that the assignment of the tenant's interest without the consent of the landlord. was forbidden by the custom of the estate; but notwithstanding this the landlord's agent was himself a bidder for the interest of the deceased which was finally sold to the claimant under a secret trust for the administrator. The claimant was ejected by the landlord:—*Held,* that the claimant was entitled to no compensation, having purchased as trustee for the administrator who was still in possession of it. *Semble,* that the custom of the estate could not oust the administrator's right of assigning the farm. PARKINSON *v.* LONGFORD - - **L. S. VIII. 194**

115. —— **Ss. 3, 4, 13, 70**—*Sheriff's sale—Purchase of tenancy under notice to quit, which expired before assignment executed—Compensation for disturbance—Customs prevalent on estate.*] Where, on an estate on which a custom against alienation without the landlord's consent prevailed, a claimant had, before the 29th September, purchased at a sheriff's sale, the interest in a tenancy then under notice to quit expiring on that date, but no assignment was executed until after the notice had expired:—*Held,* that the claimant had a *locus standi* as assignee of the original tenant, but that the proof of the custom of the estate was an answer to the claim for compensation for disturbance. HENEGAN *v.* KENMARE **[L. S. XIV. 120**

116. —— **Ss. 3, 4, 15 (1)**—*Compensation for disturbance and improvements—Land let for purposes of pasture—Evidence.*] In the absence of any evidence, that at the time of the letting of grazing lands there was a contract, express or implied, that the lands were to be used wholly or mainly for pasture, the tenant is not prevented by the 15th section from claiming compensation for disturbance and improvements. FIDDES *v.* MONTGOMERY - - - - **L. S. XII.** *M.* **37**

117. —— **Ss. 3, 4, 15 (1)**—*Town parks—Accommodation land—Deterioration.*] Nineteen acres of land, within a short distance of the town of Bandon, were occupied at a rent of £35, by the head master of Bandon School, residing in the town:—*Held,* that they were town parks within section 15. BROWNE *v.* DEVONSHIRE - - - - **L. S. XV. 22**

118. —— **Ss. 3, 4, 15 (1)**—*Compensation for disturbance—Town park.*] Compensation for disturbance in respect of lands adjoining the town of Glenarm, which were described in the book of a former agent as town parks, was refused. (By Keogh, J.) WILSON *v.* ANTRIM **Cir. Cas. VIII.** *M.* **501**

119. —— **Ss. 3, 4, 15 (1)**—*Town parks, what constitutes—Compensation for unexhausted manure.*] It is not necessary to constitute "town park" that the "town" should be a town corporate. Compensation was given for unexhausted manure, although put into the ground after service of notice to quit. CORBETT *v.* CAREY - - - - **L. S. V. 15**

120. —— **Ss. 3, 4, 15 (2)**—*Hired labourer—Compensation for disturbance.*] The mere payment of rent by labour does not bring a claimant within the exception in sec. 15, sub-sec. 2, which exempts from compensation "any holding which the tenant holds by reason of being a hired labourer." The maximum compensation for disturbance was awarded to a labourer tenant. MARTIN *v.* TRODDEN - - - **L. S. VI. 37**

121. —— **Ss. 3, 4, 15 (1), 18**—*Pasture and tillage farm—Unreasonable conduct — Boundary fences — Unexhausted manure.*] The exemption in the s. 15, sub-sec. 1, of holdings used

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for the purpose of pasture, applies to cases where by contract, express or implied, the farm could be used daily as a pasture farm, not where the tenant has for his own convenience or profit used it as a pasture farm; therefore, where a tenant, originally the assignee of a lease which contained no restriction against tillage continued after its expiration, at an increased rent, in possession as tenant from year to year of the farm, which at the date of his entry as lessee was partly arable and partly pasture, and had so continued till the determination of his tenancy:—*Held,* that he was entitled to compensation for disturbance and improvements. "Unreasonable conduct" in s. 18 means conduct which amounts to some breach by a tenant of his obligations as such, or acts incompatible with the proper management of the estate. Refusal to accede to an increase of rent on the agent's valuation, small in amount, but which would have raised his rent over £100, and have deprived him of a right to compensation under the Act, will not preclude his claim. A tenant is bound to maintain, at his own expense, the boundary fences between his landlord's estate and that of the adjoining proprietors, and is not entitled to compensation in respect of ordinary expenditure for that purpose. A tenant is entitled to compensation for unexhausted manure produced by out-of-door artificial feeding, *e.g.,* mill stuff, by which a larger number of cattle than the farm itself would have otherwise supported were maintained on it. [This was affirmed on appeal by Palles, C.B.] BERGIN *v.* CASEY **[L. S. and Cir. Cas. VII. 154; 156 note**

122. —— **Ss. 3, 4, 18**—*Tenancy from year to year created after passing of the Act—Improvements effected during previous tenancy under a lease—Unexhausted manure—Demand of increased rent—Offer of arbitration—Compensation for disturbance—Unreasonable conduct of landlord and tenant.*] A landlord, upon his having become purchaser of a property, demanded "a fair increase of rent" from a tenant on the land. The tenant had held under a lease, upon the expiration of which he was left in possession under a yearly tenancy, created after the passing of the L. & T. Act, 1870, at the former rent, which, having regard to the increased value of the holding, was inadequate. But the landlord did not specify what increase in rent he would require, and the tenant refused to pay any increase, but insisted on a reduction, and endeavoured to intimidate the landlord. The landlord proposed to leave to arbitration, upon a fair basis, the question by what amount the rent should be increased; but the landlord did not strongly press for arbitration, and the negotiation was broken off by the tenant without sufficient reason. The tenant having been evicted and claiming compensation for disturbance and improvements:—*Held,* that the conduct of both parties was unreasonable within 33 & 34 Vic. c. 46, s. 18, and that the tenant should be allowed only the amount of two years' rent, as compensation for disturbance, besides £22 10s. for unexhausted manures. *Leonard* v. *Smith* (unreported), discussed. KINNERK *v.* HALL - - - - **L. S. VIII. 150**

123. —— **Ss. 3, 4, 18**—*Unreasonable conduct of tenant.*] A tenant who refused to sign any agreement, much less one which was not unreasonable, is not entitled to the full compensation. DOYLE *v.* WALLER - **L. S. XI.** *M.* **577**

124. —— **Ss. 3, 4, 69, 70**—*Tenant for one year certain—Compensation for disturbance and improvements.*] A tenant for one year certain is not within the Act. (By Armstrong, Serjeant, Judge of the Assize.) DOYLE *v.* THACKABERRY **[Cir. Cas. XI. 177**

125. —— **Ss. 3, 4, 70**—*Judgment Mortgage Act, s. 7.*] Where a claim was made by the plaintiff as statutable mortgagee of the interest of a yearly tenant in land, whose tenancy had been determined by notice to quit (and ejectment decree thereon), subsequent to the date of registration of the judgment as a mortgage, the mortgagee never having been in actual possession:—*Held,* that under the operation of section 7 of 13 & 14 Vic., c. 29 (the Judgment Mortgage Act), the judgment mortgagee was a tenant to the lands within

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the definition of tenant in section 70 of the Landlord and Tenant (Ireland) Act, 1870; and as such, was entitled to make a claim under any of the sections of the latter Act applicable to the case. M'AULEY *v.* SAUNDERSON **L. S. XIV. 17**

126. — Ss. 3, 4, 71—*Compensation for disturbance and improvements.*] The claimant held a house situate in a village, used as a grocery shop, and eight acres of land outside it:—*Held*, that compensation could only be given in respect of the land. SIMPSON *v.* BARR - **L. S. IX. 21 note**

127. — Ss. 3, 4, 71—*Compensation for disturbance and improvements—What constitutes agricultural or pastoral holding.*] A holding, consisting of a dwelling-house and 17 acres of land attached, adjoining the town of Kenmare, was taken by a tenant, on his being appointed rector of the parish, at the yearly rent of £16 16s.—£10 thereof being abated in consideration of his keeping in order the walks and hedges, which were very ornate and extensive. The lands were worth £35 and the house £36 a year. The holding had been occupied as a rectory by the preceding incumbents, by whom the land had been laid out in grass, except five acres which were tilled; and, before that, had been used as a nursery for young trees. The rector so becoming tenant, with the expectation of making the rent by farming, tilled four more acres, placed sheep and cattle on the land, and sold butter and milk produce, but did not realise a profit. He resided in the house, which was much superior to that of an ordinary seventeen acre farm:—*Held*, that the tenant was not entitled to compensation for disturbance or improvements, under 33 & 34 Vic., c. 46. ss. 3, 4, as the holding was not agricultural or pastoral within sec. 71. M'CUTCHEON *v.* LANSDOWNE **[L. S. IX. 20**

128. — Ss. 3, 7—*Election—Town parks—Sub-letting town parks.*] A claimant must elect whether he will claim compensation under section 3 or section 7. Where the holder of land originally let as a town park has ceased to reside in the town at the time of the disturbance, the holding loses its character of a town park under sec. 15. Where the tenant of such a holding sub-lets it, the amount awarded by way of compensation for disturbance will be small. TALBOT *v.* DRAPER **[L. S. V. 143**

129. — Ss. 3, 7—*Incoming payments—Compensation for disturbance.*] Money paid to an outgoing tenant who became bankrupt, and for which the incoming tenant received the dividend in bankruptcy, is not incoming payments. A tenant of a small holding suffers more from dispossession, and is entitled to a greater number of years' rent than a larger tenant who gets considerable compensation. M'COEY *v.* RENAGHAN **[L. S. VI. 37**

130. — Ss. 3, 13—*Compensation for disturbance—Acceptance of assignee as tenant—Deduction of rent—Gale accruing before, and falling due after, accepted proposal for purchase—Landlord and Tenant Act*, 1860, *s.* 52.] A. sent in a proposal in October, 1877, to B. for the purchase of land, one of the conditions of which was that he (A.) was to be entitled to the gale of rent to become due on May following from C., the tenant of B., which was accepted, and a conveyance was executed in January, 1878. D. purchased C.'s interest in July, 1878, at a sale under the Court:—*Held*, that A. was entitled to the rent from D. from May, 1877. (By Morris, C.J.) BURKE *v.* MEAGHER - - **Cir. Cas. XV. *M.* 234**

131. — Ss. 3, 15 (1) — *Compensation for disturbance—Demesne lands—Lands let for temporary convenience—Irish Church Act*, 1869—*Incorporation of agreement with Irish Church Representative Body into verbal contract with Irish Church Temporalities Commission.*] Under an agreement dated December 4, 1873, which was headed "Diocese of Killaloe Demesne Lands," a tenant agreed to take from the Irish Church Representative Body "part of the demesne lands late in the possession of the Lord Bishop of Killaloe, until the 1st of November, 1874," with a clause against alienation or sub-letting, an undertaking not to convert into tillage any part then in grass, and not to commit any waste, and a declaration that the agreement was made for the tenant's temporary convenience. On the expiration of that letting, the lands were let from year to year to the same tenant, by the Church Temporalities Commissioners, under a parol agreement, without any expressed stipulation as to the purposes for which the lands were taken; but the Commissioners were about selling the lands, and the appellant intimated to the Commissioners that he wished to hold on as tenant till the sale took place. The lands were originally part of the Bishop's demesne, but there was a wall separating them from the rest of it. The Bishop, after the passing of the Irish Church Act, 1869, had given up the lands firstly above mentioned to the Church Representative Body, from whom they passed, under the provisions of the Church Act, to the Commissioners of the Church Temporalities, the Bishop remaining in possession of his palace and the residue of the demesne lands:—*Held*, that the lands retained their character of demesne lands, and as such were within the 15th sec. of the Land Act, 1870, and that such a letting as the present was, from its nature, for the purposes of temporary convenience, and as such within the 15th sec. (By Fitzgerald, J.) SPAIGHT *v.* IRISH CHURCH TEMPORALITIES COMMISSIONERS **[L. S. XI. 140; Cir. Cas. XII. 47**

132. — Ss. 3, 15 (1)—*Town parks—Waste land.*] The mere fact that the landlord calls land "town parks" and demands an increase of rent for it, does not constitute it a town park. Portglenone, with 800 inhabitants, had a fair; but that does not make waste land near it town parks. ADAMS *v.* JONES **[L. S. V. 74**

133. — Ss. 3, 15 (1)—*Town park—Compensation for disturbance.*] The tenant of a town park is not entitled to compensation for disturbance under the Act. HANLON *v.* HENDERSON - - - - - **L. S. IV. *M.* 661**

134. — Ss. 3, 15 (1)—*Town parks—Claim for disturbance.*] Lands formerly held with a tenement in a town of 2,700 inhabitants, and within the boundary of the Town Commissioners' district, though never regarded as town parks were held town parks. (By Keogh, J.) NEWTOWNLIMAVADY UNION GUARDIANS *v.* TYLER **Cir. Cas. VI. 134**

135. — Ss. 3, 15 (1), 18—*Town parks—Compensation for improvements and disturbance—"Just and reasonable terms of occupation."*] To constitute a town park within the meaning of the Act, the land must have been ordinarily so termed, must adjoin a town or city, have increased value as accommodation land, and be in the occupation of a person living in the city or town. A purchaser in the Landed Estates Court offered the tenants, who had been in possession for periods from 17 to 50 years, and whose rents had been raised to the full letting value three years previously, leases for 15 years, at rents increased so as to realise 5 per cent. on his purchase-money. The tenants refused these terms:—*Held*, that they were entitled to compensation (two years' rent) for disturbance and to compensation for improvements, &c. BOYD *v.* GRAHAM - - - **L. S. V. 102**

136. — Ss. 3, 18 — *Compensation for disturbance—Unreasonable conduct.*] The tenant of a "non-residential" farm, who had over-meadowed it, and who allowed his rent to fall into arrear year after year, and paid it only under legal process, was:—*Held*, disentitled by his conduct to any compensation for disturbance. (By Deasy, L.J.) BUSTARD *v.* COLLUM - - - - - **Cir. Cas. XIV. 16**

137. — Ss. 3, 18—*Compensation for Disturbance—Unreasonable conduct, what constitutes—Refusal to pay increased rent—Ejectment—Demise to another tenant before claim heard.*] Under the last proviso of the 18th section of the Landlord and Tenant (Ireland) Act, 1870, providing that compensation, under the 3rd section shall be disallowed, "if it shall appear to the Court that the landlord has been and is willing to permit the tenant to continue in the occupation of his holding upon just and reasonable terms, and that such terms have been and are unreasonably refused by the tenant," a tenant does not forfeit

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his claim to compensation for disturbance, unless such willingness by the landlord continue, and such refusal by the tenant be persisted in, at the period of the hearing of the claim. Therefore, if a landlord, who has been willing to permit his tenant to continue in occupation upon reasonable terms, which have been unreasonably refused by the tenant, ejects him, and previous to the hearing of the tenant's claim for compensation demises the holding to another for a term of years, the right of the disturbed tenant to compensation is not forfeited by reason of such unreasonable refusal *per se*; but the Court will take into consideration any unreasonable conduct of the tenant prior to the hearing, affecting the matter in dispute, and may, in the exercise of its judicial discretion, reduce or altogether disallow the claim accordingly. What constitutes a reasonable demand by the landlord of an increased rent, and a reasonable refusal by a tenant to pay an increased rent, considered. (By Palles, C.B.) HAYDOCK *v.* RYND

[L. S. IX. 7; Cir. Cas. IX. 9

138. —— **Ss. 3, 70**—*Compensation for disturbance—Tenant in tail succeeding to estate—Liability as "immediate landlord"—Unexhausted manures—Cost of drawing—Costs of claim.*] The party entitled in remainder after the termination of an estate for life is an "immediate" landlord within the meaning of the Landlord & Tenant (Ir.) Act, 1870, so as to render him liable to compensation for disturbance of a tenancy from year to year created by the tenant for life. In awarding compensation for unexhausted manure, the Court will consider the cost of "drawing" the manure to the farm, as well as the actual money price. The question of costs, in the case of unreasonable and extravagant claims by the tenant, discussed and considered. M'GRATH *v.* CONNOLLY - **L. S. IX. 11**

139. —— **S. 4**—*Claim for unexhausted manure—Droppings of cattle—Effect of one year's meadowing.*] A tenant of a grazing farm brought in, for a number of years, annually on his land, to feed his sheep, a small quantity of hay and turnips, and employed men to spread the droppings, but during the last year of his tenancy took a crop of hay off the entire farm:—*Held*, that he was not entitled to compensation for unexhausted manure. *Semble*, the fourth section of the L. & T. Act (Ir.), 1870, does not include the case of unexhausted improvement produced by the droppings of cattle fed on the land. *Kelleher* v. *Jackson* (Kane and Nolan's Landlord and Tenant Acts, p. 391), dissented from. (By Whiteside, C.J.) SWEETMAN *v.* PRATT, PRATT *v.* SWEETMAN

[L. S. VII. 49; Cir. Cas. VII. 96

140. —— **S. 4**—*Compensation for improvements.*] The improvements must be suitable to the holding and calculated to add to the letting value. A claim for unnecessary farm buildings was disallowed. ROBERTSON *v.* BRUCE

[L. S. V. 54

141. —— **S. 4**—*Compensation for improvements—Horse and manual labour—Erecting gates—Making road—Ploughing and draining land—Unexhausted manures.*] Compensation for manual labour and horse labour will not be allowed under a claim for "improvements" nor under a claim for "tillages" if done in the ordinary management and cultivation of the farm for the tenant's own benefit. Under a claim for permanent "improvements" compensation will not be allowed for keeping farm buildings in repair, where the lease under which the tenant held contains a covenant for keeping the demised premises and all improvements on the farm in good order and repair. Compensation will be allowed for making a road through a tillage farm, but a deduction should be made for the tenant's enjoyment of the road during his occupation of the farm. One-third was deducted in this case. Iron gates and stone pillars were given by the landlord to his tenant:—*Held*, there being no evidence of any contract by the tenant to erect them, that the tenant was entitled to compensation for the expense of erecting them. Compensation for ploughing and clearing the land allowed where the tenant derived no benefit from them by reason of the expiration of his lease. Where the lease contains no covenant preventing the tenant from selling the hay, straw, or roots produced on the farm, the tenant is entitled to compensation on quitting the farm for unexhausted farmyard as well as for artificial manures. TRYE *v.* DUKE OF LEINSTER - - - - **L. S. VII. 138**

142. —— **S. 4**—*Compensation for improvements—Predecessor in title—Drainage.*] Under the 4th section of the L. and T. (Ir.) Act, 1870, the words "predecessors in title" signify a succession of ownership, not a succession of possession, and they give to each person claiming by a continuous title a right to inherit the claim of the preceding owner, and transmit that claim to those who may follow him in the chain of title. So, when a middleman claims, on the expiration of his lease, for improvements effected by his under tenants whose interests determined with his, the middleman is not within the meaning of the 4th section of the L. and T. Act, 1870, their predecessor in title, and is not entitled to the benefit of their improvements or compensation in respect of such improvements against the head landlord. Observations as to allowances for compensation claimed, in respect of farm drainage, after ten years' beneficial occupation of the farm. TOWNSEND *v.* KING. FERRY *v.* KING - - - - - - **L. S. IX. 56**

143. —— **S. 4**—*Compensation for improvements—Unexhausted manures.*] Compensation will not be awarded to a tenant under the L. and T. (Ir.) Act, 1870, s. 4, where, though he may have removed stones and used sweating manures, he has wrongfully availed himself of the advantages of those improvements to the landlord's detriment and left the land in a bad condition. (By Morris, J.) DOWNING *v.* WARREN

[Cir. Cas. VII. 173

144. —— **S. 4**—*Compensation for improvements—Improvements made under contract for valuable consideration—Repairs to dwelling-house—Draining and fencing land—Money advanced by landlord in consideration of annuity payable by tenant.*] Upon the treaty for a lease which was afterwards executed, it was agreed that the tenant was to be allowed £16 provided he put the house on his holding into good repair. Instead however of putting it into merely tenantable repair, the tenant effected improvements so considerable as to completely alter the character of the house, but still without rendering it unsuitable for the holding. In 1865 the landlord, at the tenant's request, expended £70 in draining and fencing, and by deed so reciting, the tenant, in consideration thereof, covenanted to pay the landlord an annuity of £3 10s. during the residue of the term, which expired in March, 1877:—*Held*, that the tenant was not disentitled under sec. 4, proviso 1 (c) from recovering compensation for the extra improvements effected with respect to the house; but that he was not entitled to compensation in respect of the draining and fencing. WALPOLE *v.* HERBERT - - - - - - **L. S. XI. 179**

145. —— **S. 4**—*Compensation for improvements—"Predecessors in title"—Yearly tenant taking a lease for years at increased rent.*] A tenant from year to year having taken a lease for years at an increased rent (considerably exceeding the value of the land):—*Held*, that his right to compensation, under sec. 4, for improvements effected by him prior to his becoming a lessee was not extinguished. *Semble*, where a notice to quit is served on a tenant from year to year, but not acted on, and the tenant remains in possession as a yearly tenant, he would not be disentitled to compensation for improvements effected prior to service of the notice. *Tayleur* v. *Wildin* (L. R. 3, Eq. 303), commented on. (By Lawson, J.) MURPHY *v.* MAHONY - - - **Cir. Cas. XIV. 87**

146. —— **S. 4**—*Compensation for improvements—"Demesne lands"—Covenant in lease to deliver up at termination of demise—Appeal.*] A claimant can appeal from a decree of the Land Court in his own favour. Demesne lands are lands within the ambit of the demesne reserved with the mansion house, and used for purposes of pleasure, or for pasture, or sometimes let to dairymen, or let during the minority of the owner. A tenant of demesne lands can claim compensation for improvements, but not for disturbance, and a covenant in a

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lease to deliver up to the landlord all buildings and improvements on the lands at the termination of the demise, does not prevent the tenant claiming it. (By Fitzgerald, J.) HILL *v.* ANTRIM - - **L. S. V. 57; Cir. Cas. V. 70**

147. —— S. 4—*Lease—Assignment—Assignee purchasing fee—Merger.*] F., a lessee for lives, in 1857, leased the lands to B. for the same lives, but at a higher rent. B.'s assignee subsequently assigned all his interest to the owner of the reversion in fee:—*Held*, that the lease to B. (being made before the L. & T. Act, 1860) operated as an assignment, and not as and under-lease; that F. was, therefore, not tenant to B.'s assignee and could not claim compensation under the L. & T. Act, 1870, for permanent building erected by him (F.) FRAYNE *v.* BRYAN - - - - **L. S. VII. 201**

148. —— S. 4—*Lease made before the passing of the Act—Conditional covenant by the lessor to allow for limited improvements—Condition not fulfilled.*] O. held under a lease for his life, or 31 years, made before the passing of the L. & T. Act, 1870, and containing a covenant by the lessor that he would, on the expiration of the lease, allow for such permanent and substantial improvements, to the value of £500, as should be made with his previous consent, to be endorsed on the lease, "and not otherwise." No such consent was ever obtained:—*Held* (reversing the decision of the Chairman), that the covenant did not exclude the operation of the Act, so as to deprive O.'s assignee of his statuable right to compensation. (By Battersby, Q.C., Judge of Assize.) O'MEARA *v.* TRANT **[Cir. Cas. IX. 74**

149. —— S. 4—*Lease for lives renewable for ever—Compensation for improvements—Head landlord not liable for—Measure of compensation.*] The word "landlord" in the 4th section of the Landlord and Tenant (Ir.) Act, 1870, is not restricted in its meaning to the immediate landlord; and, therefore, where a lessee for lives renewable for ever forfeited his interest by reason of his omitting to renew:—*Held*, that his sub-tenant was entitled to claim compensation for improvements from the head landlord. In estimating the measure of improvements, the amount of wear and tear is to be deducted, not from their present cost, but from the actual outlay by the tenant. COMERFORD *v.* SAWREY **[L. S. VIII. 25**

150. —— S. 4, sub-s. 1 (c)—*Compensation for improvements—Continuity in title—Valuable consideration for improvements.*] The purchaser at a sheriff's sale of the interest in lands, held under a lease made in 1832, for a term of years, eight of which were unexpired, entered in 1854 into a new lease of the same lands for a term of 12 years, to commence from 1862 (the date at which the old lease would expire), at an increased rent, payable from 1854. The lease of 1832 contained a covenant by the lessee to expend £100 in building a dwelling-house, under a penalty of £50:—*Held*, that there was a break in the continuity of title in 1854, and compensation was not payable in respect of improvements made prior to that date, and that the covenant to build was a contract entered into for valuable consideration, excluding the right to compensation under sec. 4, sub-sec. 1 (c.) of the L. & T. Act, 1870, in respect of the dwelling-house. MILLIKIN *v.* HARDY - - - - - - **L. S. IX. 79**

151. —— Ss. 4, 9—*Disturbance, what constitutes—Ejectment for non-payment of rent.*] Where a claim for compensation for improvements, and for incoming payment made by a tenant, who had been dispossessed under an ejectment decree for non-payment of one and a-half years' rent, accruing within three years, and who had been offered permission to sell his tenant-right interest, was disputed by the landlord on the ground that there had been no "disturbance," within the contemplation of the Act; and where, in the necessary absence from illness of the respondent on the hearing of the appeal, evidence of permission to sell could not then be given *viva voce*:—*Held*, that there had not been a disturbance under sec. 9, and that the tenant was not entitled to compensation.

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Held, further, that an entry in the County Court Judge's book, in his own writing, that evidence of permission to sell had been given before him by the respondent, in the presence of the claimant, was conclusive, in the necessary absence of the respondent at the hearing of the appeal. (By Lawson, J.) CASSIDY *v.* RICHARDSON **L. S. XV. 13; Cir. Cas. XV. 42**

152. —— Ss. 4, 9, 18—*Land Law (Ireland) Act*, 1881, *ss.* (1), (2), (3), (8), (11), 13—*Claim for compensation for improvements by tenant evicted for non-payment of rent.*] A tenant ejected for non-payment of rent who neglects to avail himself of the power of sale, conferred on him by the Act of 1881, forfeits his claim in respect of compensation for improvements. BYRNE *v.* WILLIAMSON - - - - - **L. S. XXIII. 35**

153. —— Ss. 4, 11—*Compensation for disturbance—Predecessor in title—Temporary convenience.*] Where a lease expired in 1867, under which the tenant held his land, and under which his father had held before him, and a new agreement was entered into with the landlord, the tenant cannot claim compensation for improvements executed by his father, the latter not being his predecessor in title. An agreement on the expiration of a lease to hold for one year certain, under which the tenant was allowed to remain in possession, is not a letting for the "temporary convenience" of landlord or tenant. Principles explained by which the amount of compensation for disturbance is to be ascertained. Affirmed on appeal. (By Fitzgerald, J.) DARRAGH *v.* MURDOCK **[L. S. V. 38; Cir. Cas. V. 69**

154. —— Ss. 4, 11, 70—*Permanent buildings—Sub-leases by tenant—Claim for compensation.*] A lessee for lives having erected permanent buildings upon his holding, his successors in title sub-let separate portions thereof to D. and W., each portion sub-let containing part of the permanent buildings:—*Held* (reversing the decision of the Chairman), that they had not lost their right to compensation for those permanent buildings, and that such compensation could not have been awarded to the sub-lessees. (By Battersby, Q.C., Judge of Assize.) GOUGH *v.* WILLIAMSON - - **Cir. Cas. IX. 159**

155. —— Ss. 4, 70—*Construction—Improvements—Compensation in respect of—Unexhausted manures—Meaning of—Improvements made in pursuance of contract for valuable consideration.*] A., quitting in 1880, a holding held by him under an agreement dated 2nd June, 1865, by which he was bound to consume on the premises all hay mowed therefrom, having during his tenancy fed cattle on the hay, but never having consumed any hay on the lands except what was grown thereon, and not having artificially manured the lands since 1870, claimed under the provisions of the Act compensation for unexhausted manures in the nature of the droppings of cattle:—*Held* (1), that these improvements were excepted from compensation under the provisions of the 4th section, inasmuch as they were made in pursuance of a contract entered into for valuable consideration therefor, because A., being bound by the terms of the agreement to consume on the land all hay which should be mowed off it, could only do so by giving such hay to the cattle on the lands. *Held* (2) (following *Battersby* v. *Darnley*, XI. *M.* 283), that a tenant, in order to entitle himself to compensation for unexhausted manure, must prove these manures to be still unexhausted, and not a mere general improved value of the lands during his holding. *Held* (3), that a tenant is not entitled to compensation for unexhausted manures in the nature of droppings of cattle not produced by artificial food, or food brought in upon the land, where no greater number of cattle had been fed than the land could properly maintain. (By Ormsby, J.) LEINSTER *v.* COOKE **Cir. Cas. XV. 56**

156. —— Ss. 4, 70—*General improved value of the farm.*] The Court cannot give compensation for the estimated increased letting value caused by good farming, high manuring and laying down in grass 10 or 15 years before the claim. (By Morris, C.J.) BATTERSBY *v.* DARNLEY **[Cir. Cas. XI. *M.* 283**

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157. —— **S. 6**—*Predecessor in title—Registration of improvements.*] What should be registered under section 6 of the Land Act are the specific improvements proved to have been executed by the landlord or the tenant and not their original cost, or their value at the time of the registry. The tenant has a right to have all the improvements made by himself or his predecessors in title specified in the schedule, although he may not be entitled to compensation in respect of them on quitting his holding. "Predecessors in title" in section 6 mean the claimant and those holding previous to him under the existing lease. A tenant holding under lease is not entitled to register improvements made by him on the lands prior to the making of the lease. HOLT *v.* HARBERTON

[L. S. V. 141; L. C. R. VI. 1

158. —— **S. 6**—*Registration of improvements.*] An application to file a schedule of improvements in the Landed Estates Court, pursuant to s. 6 of the Landlord and Tenant (Ir.) Act, 1870, was granted, although the Judges of the Court for Land Cases Reserved had not framed rules to regulate the form of procedure to be adopted in such cases, the Judge intimating his intention to acquaint the applicant with any modification effected by the rules when framed. *Re* NESBITT'S ESTATE

[L. E. C. VII. 54

159. —— **Ss. 6, 70**—*Registration of improvements—Suitableness of improvements.*] Improvements to be registered within sec. 6 of the Landlord and Tenant (Ireland) Act, 1870, must consist, as defined by sec. 70, of works which add to the letting value of the holding, and are suitable to it. A dwelling-house was erected, at a cost of £1,400, on a farm of 70 acres, held under a lease for lives; other improvements were also executed, the value of which, taken together with that of the dwelling-house, came to £1,800. Ten years afterwards, the lessee assigned the premises, getting £500 fine and reserving a profit rent of £40 a year. It appearing that the dwelling-house was rather suited as a villa residence than as a farm-house of the ordinary class on such holding, and that the increase in the value of the holding would be disproportionate to the expenditure:—*Held*, that a claim under 33 & 34 Vic., c. 46, s. 6, to register the dwelling-house as an improvement should be disallowed. (By O'Brien, J.) CONNOR *v.* SWEETMAN Cir. Cas. VIII. 103

160. —— **Ss. 6, 71**—*Holding agricultural or pastoral—Registration of improvements—Suitableness of improvements.*] No inflexible rule can be laid down in determining whether a holding is agricultural or pastoral, within the contemplation of the 71st section of the Land Act. Each case must be determined on its own special circumstances, having regard to the nature and extent of the property, the object with which the tenancy commenced, and the use which was made of the holding. Where a tenant claiming to register improvements had taken a house with eight acres of land attached to it as a residence, not intending to employ the eight acres except as ancillary to that purpose, and for the beneficial and ornamental use of the house as such, the claim was disallowed. It is the duty of the Judge before whom the claim to register improvements is made, and he has authority, to inquire whether they were suitable to the holding. The claimant is not entitled as of right to an order to register all the improvements admitted to have been made by him. CARR *v.* NUNN

[Cir. Cas. VI. 156; L. C. R. VII. 26

161. —— **S. 7**—*Compensation in respect of payment to incoming tenant—Tenancy determined by a notice to quit—Offer of permission to sell good-will to incoming tenant—Reasonable terms—Increased rent.*] A landlord who serves a notice to quit can bar the tenant from compensation for an incoming payment under section 7 by offering him permission to sell his good-will to an incoming tenant on reasonable terms. But where the notice was not reasonable the tenant was held entitled to compensation. BARRY *v.* KENMARE

[C. A. XV. M. 116

162. —— **S. 8**—*Ejectment for non-payment of rent—Writ of restitution—Order of reference—Costs—Land Law (Ireland) Act*, 1881, *s.* 51.] Under the ordinary form of order of reference to the Master in applications for redemption by a tenant evicted for non-payment of rent, the landlord cannot be charged with the full value of the crops on the lands at date of eviction. Judgment of Palles, C. B., in *Russell* v. *Moore* (XV. M. 139, 8 L. R. Ir. 332), questioned. Costs of inquiry refused, rent being under £100 per annum. Costs of motion to confirm Master's finding granted. CHESTER *v.* FARRELL

[C. P. D. XVII. 73

163. —— **S. 9**—*Disturbance—Measure of compensation.*] The maximum amount will not be allowed as compensation for disturbance where the claimant has not resided on the holding. MAGUIRE *v.* CLINTON - L. S. VI. 88

164. —— **S. 13**—*Capricious eviction—Yearly tenancy—Landlord's consent to assignment—Costs.*] A tenant from year to year sold her interest in the land for £500 to B., who would have been a suitable tenant. The sale took place, and the purchase-money was paid, with the knowledge of the landlord's agent, who made no objection to the assignment. The landlord, finding by the transaction that the land was of more value than it was let for, then sold it himself for £500 to another purchaser, and in order to secure to himself the money advantage so obtained, subsequently evicted B.:—*Held*, that the landlord's conduct was unreasonable, and the evictions capricious; and that the maximum amount of compensation for disturbance should be awarded. Where a claim and set-off are extravagant in amount, no costs will be given to either party. (By Fitzgerald, J.) MURPHY *v.* DEANE

[Cir. Cas. X. 148

165. —— **S. 13**—*Compensation for disturbance—Custom of estate against assignment—Claim by tenant's assignees in insolvency—Election by assignees, what constitutes.*] Where a yearly tenant of a farm subject to a custom prohibiting assignment without the landlord's consent files a petition to be discharged as an insolvent debtor, the vesting of the tenancy in the assignees (electing to take same under the insolvency) is tantamount to a voluntary act of assignment by the tenant. The landlord is reasonably entitled to refuse to accept the assignees as tenants, and the assignees will not be entitled under the Landlord & Tenant Act, 1870, section 13, to compensation for disturbance by the landlord. JAMES *v.* EARL OF ROSSE - - - - - - L. S. VII. 12

166. —— **S. 13**—*Claim for disturbance—Sheriff's assignment.*] An assignment by the Sheriff under an execution is within the operation of the 13th sec. of the L. & T. (Ir.) Act, 1870. (By Fitzgerald, B.) LOUGHNANE *v.* CHARTERIS

[Cir. Cas. VII. 184

167. —— **Ss. 13 (3), 15 (1)**—*Disturbing landlord—Assignment—Reasonable refusal to accept assignee—Town park, what constitutes.*] A notice to quit having been served on a tenant before its expiration, D. purchased the landlord's interest, and in due time joined with him in bringing an ejectment:—*Held*, to be a disturbing landlord, within the meaning of the L. & T. (Ir.) Act, 1870. A refusal to accept as tenant a solvent and perfectly respectable assignee on the ground that the assignment was made without any previous communication with the landlord, is not a "reasonable refusal" within the meaning of sec. 13, sub-sec. 3. The question of what constitutes a town park is not to be decided conclusively by the vicinity of the land to a civic boundary-line, when such line stretches beyond inhabited regions; therefore, where an ordinary thatched house, with two large four-acre fields, and two smaller ones, containing all the elements of an ordinary farm, were situate outside the civic boundary-line (which was marked on the outer wall of the farm-house, at its nearest point to the city), having in all respects the same general appearance as to the quality of the soil, crops, hedgerows, &c., as the more distant fields for two miles along the road, and such house having been always resided in by the former tenant (a shop assistant in the city), and though not resided in by the claimant, the land having been farmed by him in the ordinary manner:—*Held*,

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not to be town park within the meaning of section 15. *Taylor v. Dowden* (VIII. 83), approved. WALSH *v.* DUNNE [L. S. IX. 160

168. — **S. 14** — *Compensation for disturbance.*] The "right" by reason of the persistent exercise of which by a tenant, contrary to express or implied agreement, eviction by the landlord is, by the 14th section of the L. and T. (Ir.) Act, 1870, declared not to be a disturbance, does not mean or include any particular mode of tillage, cultivation, or uses of the farm (such as meadowing), but a "right" irrespective of either tillage, cultivation, or users, such as right of way, of turbary, of killing game, &c., &c. (By Fitzgerald, B.). HUTCHINSON *v.* MIDDLETON - Cir. Cas. VII. 183

169. — **Ss. 14, 18**—*Ulster custom—Cutting timber without landlord's consent.*] Waste, by a tenant in cutting down timber without the landlord's consent, was held not to be a forfeiture of the tenant-right, but to affect the amount to be awarded under the custom. (By Battersby, Q.C., Judge of Assize). ALGEO *v.* LORD LEITRIM - Cir. Cas. X. 168

170. — **S. 15 (1)**—*Pasture holding—Compensation for disturbance—Non-residence of claimant upon holding.*] The exception in sec. 15 (sub-sec. 1) of holdings "let to be used wholly or mainly for the purpose of pasture" does not apply to a holding which the tenant may farm in whatever way he pleases, although, as a matter of fact, it may be used as a pasture farm. The amount of compensation for disturbance is in the discretion of the Court, which will take into consideration the existence of negotiations for the surrender of a portion of the holding, and the fact that the tenant does not reside on the holding. O'BRIEN *v.* RAE - L. S. V. 86

171. — **S. 15 (1)**—*Pasture—Compensation for disturbance—Lands let for purpose of pasture—New contract of tenancy—Effect of letter written by tenant to landlord.*] Where an original tenancy from year to year existed without any stipulation, written or verbal, as to the lands being used for pasture, and the tenant, after notice to quit had been served on him, wrote to the landlord agreeing to give him up possession of the lands and take them again at a certain rent, and agreeing not to till or meadow any of the land except a certain small portion, this was held to create a new tenancy with an agreement to use the land mainly for the purpose of pasture, and, as such, falling within the exemption from the right to recover compensation enacted by s. 15 of the Land Act of 1870. BROWN *v.* STANDISH - L. S. XII. 86

172. — **S. 15 (1)**—*Town parks—Compensation for disturbance—Amendment.*] In order to satisfy the requirements of sec. 15, sub-sec. 1, of the L. and T. (Ir.) Act 1870, the land which bears an increased value must be held by the occupant of a town for the accommodation of his residence in the town. H. was tenant of a field near C., on which he was in the habit of resting his cattle while transferring them to and from his other farms, and when sending them by rail, there being a railway station at C. The situation of the land thus rendered it very valuable to him. He resided in C.:—*Held*, that assuming C. to be a town, the field could not be considered as coming under the provisions of section 15, sub-sec. 1, of the L. and T. Act, 1870, so as to disentitle H. to compensation for disturbance. H. claimed and was allowed by the Chairman a sum equal to seven years' rent as compensation for disturbance; the landlord having appealed:—*Held*, that H. could not amend his claim by reducing it to five years, in order also to entitle him to claim compensation for improvements. (By Fitzgerald, B.) LORD DUNALLY *v.* HODGINS [Cir. Cas. VII. 181

173. — **S. 15 (1)**—*Town parks—Compensation for disturbance—Unreasonable conduct.*] In order to satisfy the requirements of sec. 15, sub-sec. 1, of the L. and T. (Ir.) Act, 1870, the land which has an increased value as accommodation land must be held by a resident in a town for the accommodation of his town house. A landlord, for the purpose of repairing a mill weir adjoining his tenant's land, raised earth and gravel from a field of the tenant, offering to pay compensation for the trespass. The tenant, however, brought an action against the landlord, which was left to arbitration, and resulted in an award of heavy damages for the mere surface trespass, the landlord also being subjected to the costs of the litigation. Contemplating that it would again become necessary to raise earth and gravel in a like manner, for a similar purpose, and apprehending that the incidental trespass to the surface of the tenant's land would be again made the subject of litigation, instead of having any damages assessed by a less expensive process, the landlord served a notice to quit, and brought an ejectment against the tenant:—*Held*, that the conduct of the tenant was vexatious, and that the amount awarded him in the action should be taken into consideration in estimating his compensation for disturbance; and that the conduct of the landlord was not unreasonable nor was the eviction capricious. TAYLOR *v.* DOWDEN - - - - - L. S. VIII. 83

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174. — **S. 15 (1)**—*Town park, what constitutes—Boundaries of township.*] Where a township has been placed under the provisions of the Towns Improvement Act, its boundaries as defined for the purposes thereof are to be considered as the limits of the town in determining whether lands are "adjoining or near" to such town, in order to be deemed town parks within the L. & T. Act, 1870, s. 15. M'REDMOND *v.* ROSSE [L. S. IX. 37

175. — **S. 15 (1)**—*Town park, what constitutes.*] R. held a farm situated a little more than a mile from a town in which he resided. The rent was not above the usual letting value of the land, which was cultivated as an ordinary agricultural farm, but the land had been leased with a dwelling house in the town of Gorey for a long term, as had been done in other instances on the estate as appurtenant to the house, in order to encourage building in the town:—*Held*, that the land was not town park within the meaning of the 15th section of the L. & T. (Ir.) Act, 1870. (By Dowse, B.) REILLY *v.* DOYLE [Cir. Cas. VIII. 209

176. — **S. 15 (1)**—*Town parks—Compensation for disturbance—Improvements.*] Proximity to a town, high rent, and the fact of the tenant living in the town, are not conclusive as to a holding being a "town park." In the absence of a claim for improvements the Court will, in estimating the amount of compensation for disturbance, take into account the fact of the tenant having improved the holding. FORSYTHE *v.* DARBY - - - - - L. S. V. 35

177. — **S. 15 (1)**—*Town parks—Costs.*] Lands situate near a town occupied by a tenant residing in the town, and bearing an increased value as accommodation lands, though not locally called or known as town parks, are town parks within the meaning of the L. & T. Act, 1870, sec. 15. Costs allowed to the tenant where the landlord disputes the claim and every part thereof, although the amount of the set-off exceeds the amount allowed as compensation. STANLEY *v.* HENRY [L. S. X. 72

178. — **S. 15 (1)**—*Town parks—Land let as accommodation to trader living in a town.*] Land let to a brewer living in a neighbouring town for accommodation of his horses is a town park, irrespective of the amount of rent or the extent of the holding. SAUL *v.* KEOWN - - L. S. V. 35

179. — **S. 15 (2)** — *Rent payable in cash or labour.*] Holding, which the tenant holds with the option of paying in cash or labour, does not come within the exception in sec. 15. MOLONY *v.* GARRIHY - - L. S. V. 15

180. — **Ss. 15, 58**—*Lessee continuing as tenant from year to year—Presumed commencement of yearly tenancy—Tenancy commencing in March—Notice to quit for the last gale day of the calendar year.*] The 58th sec. of the L. and T. (Ir.) Act, 1870, is retrospective in its operation. That sec. is not affected by sec. 15, which applies only to cases of compensation for disturbance. After the termination of a lease commencing in

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March, the lessee continued to hold as tenant from year to year, but at a different rent:—*Held*, that the tenancy from year to year should be taken to have commenced in March. In order to determine a tenancy from year to year, commencing in March, a six months' notice to quit served from the last gale day of the calendar year is, under the 58th sec. of the L. and T. (Ir.) Act, 1870, a proper and sufficient one in the absence of agreement to the contrary. DUNNE *v.* M'DONALD [L. S. IX. 40

181. —— **Ss. 15 (1), 70**—*Demesne lands—Claim for disturbance and improvements—Estoppel—Costs.*] The term "demesne land," as used in the 15th section of the 33 & 34 Vic., c. 46, should receive a popular rather than a technical description, and it signifies not the *terræ dominicales* of the feudal system, but lands occupied with a mansion house, and used in connection with it by the owner for the purpose of residence and personal enjoyment. Agricultural operations which would be deemed "improvements" within the meaning of the 70th section of the Act, if expended on ordinary agricultural holdings, are not necessarily "improvements" if they are expended on "demesne land," and there is no evidence to show that the letting value of the lands as a demesne was increased, although they may improve its agricultural value. When the claim was for £240 for disturbance, and £204 for improvements, and nothing was allowed on the former and £50 on the latter claim, the claimant had to bear his costs. IRWIN *v.* BUCHANAN - - - - L. S. X. 22

182. —— **S. 16**—*Rules 4, 12—Power to enlarge time for serving notice of claim.*] The claimant was served with a writ of summons to recover possession of certain lands for non-payment of one and a half years' arrears of rent, and judgment was marked in default of appearance. The usual statutory notice under the Land Law (Ireland) Act, 1887, was posted on the 4th March, 1892, and on the 24th August, 1892, the claimant alleged that the amount of the rent was tendered to the respondent, but this was refused, as no costs were tendered. The respondent, however, denied that a tender was made at any time. On the 26th August, 1892, the claimant sent postal orders for the amount in a letter directed to the "Clerk of the Queen's Bench," but they were returned by the officer on the 29th August, 1892, and on the 8th of Sept., 1892, a notice of motion to apply for a writ of restitution was served on the ground that the amount of rent was tendered within the period for redemption. The motion was adjourned for argument before the Divisional Court, and on the 27th Oct. the application was refused. From this decision the claimant served notice of appeal, and the Court of Appeal affirmed the decision of the Queen's Bench. An application was now made to the Recorder of Londonderry, sitting at Magherafelt, to enlarge the time for serving a notice of claim under the Landlord and Tenant (Ireland) Act, notwithstanding that the time for so doing had elapsed:—*Held*, that sufficient excuse existed for not lodging the notice of claim, as the claimant had a reasonable expectation of being continued as a tenant until the decision of the Court of Appeal, and the application should be granted. SMYTH *v.* HOGG [L. S. XXVII. 103

183. —— **S. 18**—*Compensation for disturbance—Unreasonable conduct.*] When a tenant, under unwarrantable circumstances, refuses to keep on his farm, at a reasonable increase of rent, his conduct in doing so disentitles him to the compensation under the L. and T. (Ir.) Act, 1870. (By Morris, J.) HURLEY *v.* O'BRIEN - - - - Cir. Cas. VII. 175

184. —— **S. 18**—*Equities between landlord and tenant.*] The Court is not bound to award to the tenant the maximum amount of compensation, and where the latter has broken a contract entered into in relation to his holding, the amount of compensation will be cut down. SLOAN *v.* THOMPSON [L. S. V. 37

185. —— **S. 18**—*Equities betweeen landlord and tenant.*] It is unreasonable conduct on the part of a landlord to demand from a tenant security for future rent, and for the good cultivation of his farm, as a condition for allowing him to remain in his holding at a fair rent. M'CHESNEYS *v.* DELACHEROIS [L. S. V. 36

186. —— **S. 18**—*Equities between landlord and tenant.*] Where the landlord offers to pay the tenant's costs, and to continue him upon the same terms as before, if the tenant refuses to accept these terms his claim will be disallowed. KERR *v.* STEELE - - - - - - L. S. V. 37

187. —— **S. 18**—*Tenant's conduct so as to disentitle him to improvements.*] The 18th section of the Landlord and Tenant (Ir.) Act, 1870, applies as well to cases where compensation is claimed for improvements, as to those of disturbance. Where a tenant, whose lease had almost expired, and who was refused a renewal, pulled down a dwelling-house which was amply sufficient for the residue of his tenancy, and, though cautioned not to do so, built a new one, with the express object of running up a bill against the landlord, and so making him indifferent as to receiving the lands again, and also putting him to expense and trouble in obtaining possession, notwithstanding a covenant in the lease to deliver up peaceable possession on its determination:—*Held*, that he was entitled to no compensation for improvements. (By Fitzgerald, B.) LARKIN *v.* TUOHEY [Cir. Cas. VII. 95

188. —— **S. 18**—*Unreasonable conduct of claimant for compensation.*] C., while acting as land-agent to K., purchased the interest of a tenant from year to year in his farm, although he was aware that K. wished to obtain the farm himself, and continued to pay K. rent in the tenant's name, concealing the fact of the assignment. K. discovered this after C. had ceased to be his agent, and though he did not actively recognise him as tenant, did not bring an ejectment for some years:—*Held*, that C. was guilty of such unreasonable conduct as deprived him of any right to compensation. (By Fitzgerald, B.) CAMBIE *v.* O'KEEFFE - - Cir. Cas. VII. 182

189. —— **S. 20—Rules 3 (e), 12, 22**—*Discretion of County Court Judge—Improvements—Middleman—Costs.*] Where a writ of *habere* was executed on Dec. 12th, 1885, and the claim for improvements was not served till May 21st, 1887, the claimant having had, during a portion of the interval, negotiations with the landlord with a view to a new tenancy:—*Held*, by the County Court Judge, that "sufficient excuse" existed, and that the case should be heard; and, on appeal—*Held*, that the County Court Judge's discretion should not be reviewed. Claimants are not obliged to avail themselves of sec. 20 of the Act, but the middleman and occupying tenant may each bring claims at different times against the landlord, for improvements effected by them. A decree for £35 having been given, the County Court Judge and the Land Commission, nevertheless, refused to give the claimant his costs in each Court. WALSH *v.* FITZGERALD - C. A. XXI. 82

190. —— **S. 21**—*Deduction from compensation money for waste—Money in hands of third person.*] Where money awarded as compensation has been by consent deposited in the hands of a third person, the Chairman has no jurisdiction to order the payment of the money into Court, or to award damages to the landlord for waste subsequently committed on the holding by the tenant. (By Fitzgerald, J.) M'GREAVY *v.* M'DONALD - - - - - Cir. Cas. X. 164

191. —— **S. 24**—*Land claims dismissed through no appearance on claimant's part—Appeal to Judge of Assize—Jurisdiction—Practice.*] On a land claim being called on before the Chairman, there was no appearance for the claimant, and the claim was dismissed with costs. The claimant having appealed:—*Held*, that the Judge of Assize could not go into the merits of the case, even on the consent of the respondent, as by such a course he would be constituting the Assize Court an original tribunal for the hearing of land claims. (By Armstrong, Judge of Assize, and Lawson, J.) BURNSIDE *v.* MERCERS' CO. - - - - - Cir. Cas. XI. 60

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192. —— **S. 42**—*Charging order in respect of money paid for surrender of lease.*] The owner of subsisting leases agreed with the landlord, who was tenant for life with a power to accept surrenders of leases, to surrender them on being paid £3,500 as compensation for his improvements:—*Held*, that the sum was not a sum due in respect of compensation to a tenant quitting his holding, who had not been disturbed by his landlord within the 42nd sec. of the Landlord and Tenant Act, 1870, and the Court affirming the decision of the Chairman refused a charging order under that section. *Re* DOMVILLE - - - - - - **L. C. R. VII. 55**

193. —— **S. 42**—*Service of notice on remainderman.*] To obtain an order to charge under sec. 42, notice need not be served on a remainderman. Meaning of "sums due in respect of compensation." *Re* DOMVILLE - - **L. S. VI. 157**

194. —— **Ss. 45, 48**—*Forfeiture of holding to Board of Works—Annuitant—Practice.*] The forfeiture of a tenant's holding to the Board of Works, under sec. 45 of the L. & T. Act, 1870, operates not only on the tenant's interest, but on the absolute interest in the lands, including the interest of an annuitant, subject to whose annuity the tenant purchased them. Where, however, the Court is of opinion that the annuitant is practically secure, it will not on that account refuse to sanction a loan. Practice, where the sanction of the Court to such loans is sought. *Re* SCOTT'S ESTATE - **L. E. C. VI. 61**

195. —— **S. 46**—*Purchase of holding by occupying tenant.*] While every facility is to be given to a tenant to purchase under sec. 46, it must be done consistently with the interests of the estate, and very strong evidence must be produced that the persons whose bounden duty it is to sell the estate to the best advantage do not know what is most for the interest of the estate. *Re* SHERLOCK'S ESTATE **L. E. C. VIII.** *M.* **544**

196. —— **S. 46**—*Right of appeal—Competence—Appeal by tenants under "Bright" clauses*—Locus standi—*Question not raised in Court below—Appeal from Land Judges.*] In the course of the sale of an estate before a Land Judge of the Chancery Division, many of the tenants having made an application to the Court to divide the estate into lots suitable for being purchased by them under sec. 46, the matter was for this purpose referred by the Court to the examiner to settle the lots. Pending this settlement two offers were made to the Court for the purchase of the estate, one by H., which was supported by the owner, and the other by L. & M., which was supported by those tenants who had previously required the division into lots. The Land Judge decided in favour of L. & M. The owner and H. appealed. Pending the appeal, the present appellants to the House of Lords, twenty-one of the same tenants, applied to the Court of Appeal to be allowed to intervene and be heard by counsel upon the hearing of the appeal, which they were allowed to do. On the hearing in the Court of Appeal these tenants were heard in support of the contention of the respondents, L. & M., but did not put forward any claim on their own behalf that the previous order made by the Land Judge as to the division of the estate into lots should be proceeded with. The Court of Appeal reversed the decision of the Land Judge, and declared H. the purchaser. From this order the tenants who had supported the contention of L. & M. wished to appeal, and presented a petition for that purpose to the House of Lords. L. & M., however, took no part in the appeal. The owner having thereupon, by petition, raised the question as to their competency, alleging that they had no *locus standi* before the House of Lords:—*Held*, that the petition and appeal could not be allowed to proceed, as being incompetent, inasmuch as the parties who now wished to appeal to the House were not appellants in the Court of Appeal, and inasmuch as the right of reference for purchase by the tenants under section 46 had been waived before the Land Judge by the subsequent support given to the offer of L. & M., and had not been put forward in the Court of Appeal, supposing it to have been possible to have there put it forward. *Quære* (*per* the Lord Chancellor), whether an appeal

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can be brought to the House of Lords upon such a subject as the question of what sum should be offered, or from what person, as the purchase money for an estate being sold before the Land Judges? *Quære* (*per* the Lord Chancellor and Lord O'Hagan), whether the tenants who had supported, before the Land Judge, the offer of L. & M., could have appealed to the Court of Appeal to relegate the matter to the Land Judge to settle the rental and entertain the offers of the tenants? WALSH *v.* PEMBERTON. *Re* PEMBERTON'S ESTATE **[H. L. XIII. 149**

197. —— **S. 57**—*Notice to quit—Impressed stamp*—33 & 34 *Vic., c.* 97, *sec.* 23.] The stamp necessary to every notice to quit by the L. &. T. Act, 1870, must be an impressed one, and an adhesive one is improper. (By Fitzgerald, B.) RYAN *v.* RYAN - - - - - **Cir. Cas. VII. 96**

198. —— **S. 57**—*Notice to quit—Stamp duty on.*] Notices to quit must not only be stamped as provided by sec. 57 of the Act, but it must be proved either that the stamped notice was served on the tenant, or shown to the tenant at the time of service. BEAUCLERK *v.* JOHNSTON - **L. S. VI. 18**

199. —— **Ss. 57, 58**—*Yearly tenancy commencing before the Act—Written agreement for determination on one month's notice—Stamp on notice to quit—Retrospective operation of Act.*] A tenancy from year to year, of a pastoral character, having been entered into in November, 1862, by a written agreement providing that the tenant should deliver up possession upon receiving one month's notice in writing, the landlord on the 25th November, 1873, served a notice requiring the possession to be delivered up by the tenant on the 27th of December following. The notice was unstamped, and no stamp duty had been paid in respect thereof. In an action against the tenant for damages, by reason of the possession not having been delivered up:—*Held*, that sections 57 & 58 of the Landlord and Tenant Act, 1870, operated retro-actively in respect of the agreement, so as to render the notice inadmissible in evidence and invalid for the purpose of determining the tenancy, as the notice was unstamped. *Per* Whiteside, C.J. (O'Brien, Fitzgerald and Barry, J.J., not concurring):—The 58th sec. of the Landlord and Tenant Act, 1870, does not operate retro-actively, so as to prevent a notice to quit taking effect until after a period of not less than six calendar months from the date of service, where, by a written agreement entered into before the passing of the Act, it has been provided that the landlord shall be entitled to re-assume possession of the holding upon serving a notice to quit at a period of less than six calendar months. VERNON *v.* RAE **[Q. B. IX. 125**

200. —— **S. 58**—*Notice to quit—Yearly tenancy commencing in March—Notice to quit, served in March, to quit in September—Agreement to the contrary—Case stated under* 27 & 28 *Vic., c.* 99, *s.* 38.] In order to determine a tenancy from year to year, commencing in March, before the passing of the Landlord and Tenant (Ir.) Act, 1870, a notice to quit in September served six months before the September gale day is ineffectual to determine the tenancy in September. On the hearing of a case stated for the opinion of the Court above, under 27 & 28 Vic., c. 99, s. 38, by the direction of a Judge of Assize on a civil bill appeal, the appellant, although the defendant in the Court below, is entitled to begin. FITZWILLIAM *v.* DILLON **E. IX. 106**

201. —— **S. 58**—*Yearly tenancy commencing in March—Notice to quit served in March for September—"Agreement to the contrary"—Construction of statute—Retrospective operation.*] Where a tenancy from year to year had commenced in March, before the passing of the Landlord and Tenant (Ir.) Act, 1870, and a notice to quit in September was served six months before the September gale day:—*Held* (1), that an "agreement to the contrary" within the 58th section of the Landlord and Tenant (Ir.) Act, 1870, must be an express stipulation between the parties. (2) (O'Brien, J., *diss.*) that there having been no such agreement the six months' notice

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LANDLORD AND TENANT (IRELAND) ACT, 1870 - *continued.*

to quit, served for the last gale day of the calendar year, was sufficient to then determine the tenancy. *Earl Fitzwilliam* v. *Dillon* (IX. 106), not followed. *Per* O'Brien, J.:—Palles, C.B., and Fitzgerald, B., in *Earl Fitzwilliam* v. *Dillon*, (IX. 106), correctly held that the effect of the 58th section of the Landlord and Tenant (Ir.) Act, 1870, is that, although a tenancy from year to year, which commences on the 29th of September, or 1st of November, may continue to be determinable by a six months' notice to quit, a tenancy commencing on the 25th of March or 1st of May can only be determined by a twelve months' notice to quit. A tenancy commencing in March or May would, under the statute, be prolonged for six months ending on the last gale day of the calendar year, and the landlord would have the same rights and remedies for recovering the rent due up to that gale day as he had in respect of any previous gale. The third clause of the section, by which a penalty is imposed, applies only to the case of a party serving a notice to quit, which does not comply with all the conditions required by the first clause of the section. This was affirmed on appeal. MURPHY *v.* M'CORMICK. SHEARMAN *v.* KELLY

[Q. B. X. 113; C. A. XII. *M.* 98

202. —— **S. 59**—*Administration limited to the purpose of the Act—Appointment of administratrix—Practice.*] A claimant having died subsequently to his claim being lodged, the Court, at the hearing, and without requiring a notice of motion to be served, nominated his widow as his administratrix for the purposes of the Landlord and Tenant (Ir.) Act, 1870. The consideration of the claim having been then adjourned to the next ensuing Land Sessions:—*Held*, that the respondent was not entitled to receive a notice of the appointment of such administratrix. KAVANAGH *v.* POWER

[L. S. VIII. 33

203. —— **S. 59**—*Appointment of administrator for the purposes of the Act.*] An order appointing an administrator for the purposes of the Act was made, when it appeared that the deceased tenant, who held only for her life, made improvements for which compensation was about to be claimed, and her executors had renounced probate. ANON.

[L. S. VIII. *M.* 565

204. —— **S. 59**—*Limited administration for the purposes of the Act—Compensation money lodged in Court—Payment to limited administrator refused—Practice.*] Limited administration having been granted for the purpose of establishing a claim under the Act, compensation was awarded, and the amount decreed was lodged in Court. A third party subsequently took out general administration to the deceased tenant. On an application by the limited administrator:—*Held*, that the amount awarded as compensation could not be paid out to him, and that even had no general administration been taken out, the compensation money would not have been paid to the limited administrator. (By Palles, C.B.) CANNY *v.* HARVEY - - - - Cir. Cas. XI. 178

205. —— **S. 59**—*Death of claimant after Chairman's decree and before appeal—Limited administration—Form of order.*] An order was made under sec. 59 appointing the son of the claimant, who had died before the appeal was heard, as limited administrator for the purpose of the suit. Form of order in such case. (By Palles, C.B.) POWELL *v.* ROTTEN

[Cir. Cas. IX. 96

206. —— **S. 65**—*Deductions from rent—Poor rate and Grand Jury cess—Covenant for payment of rent over and above all rates, taxes, and outgoings.*] By a lease executed after the L. & T. Act, 1870, the rent was reserved "over and above all taxes, charges, and impositions, whatsoever," and the lessee covenanted "to pay said rent, and to pay all rates, taxes, and outgoings now payable, or hereafter to become payable, in respect of the demised premises." The lessee having claimed deductions from his rent for sums paid by him in respect of the lessor's proportion of poor rate and Grand Jury cess:—*Held*, that the lessee was entitled to deduct from his rent the sum

LANDLORD AND TENANT (IRELAND) ACT, 1870—*continued.*

paid for the lessor's proportion of poor rate and also the sum paid for the lessor's proportion of Grand Jury cess, the provisions of the lease not amounting to a contract to the contrary within s. 63 of the L. & T. Act, 1870. *Hely* v. *Kennedy*, (VIII. 26) not followed. (By Lawson, J.) BRADFORD *r.* REID

[Cir. Cas. XII. 139

207. —— **S. 65**—*Grand Jury cess—Deduction from rent—Contract to allow deduction in consideration of higher rent—Rent reduced by Land Commission at tenant's instance.*] Prior to the passing of the L. & T. Act, 1870, a tenant from year to year, held at the annual rent of £49 1s. 4d., which he continued to pay until 1872, when the rent was raised to £54 12s. 10d., out of which the tenant was then allowed to deduct half the Grand Jury cess. This arrangement continued until in November, 1882, on the tenant's application, an order was made by the Land Commission fixing the judicial rent of the holding at £46, under the Land Law Act, 1881:—*Held*, that there being no new tenancy created and gone into occupation under by the tenant, since the passing of the Act of 1870, the tenant was not entitled to deduct from his rent a proportion of the Grand Jury cess under sec. 65 of that Act; while neither was he entitled so to do by virtue of contract, he himself, by getting the rent reduced from the amount at which it was fixed when the deduction was granted, having destroyed the consideration for such contract. (By Lawson, J.) SHULDHAM *r.* BLACK - - - - Cir. Cas. XVII. 85

208. —— **S. 65**—*Payment of Grand Jury cess—Sale of tenant-right under Ulster custom—Creation of new tenancy—Implied liability to pay all rates.*] Where, subsequent to the L. & T. Act, 1870, the tenant of a holding, subject to the Ulster tenant-right custom, who had been liable to pay the entire Grand Jury cess, sold his interest, and the purchase-money was paid into the estate office, and the purchaser put into possession by the agent:—*Held*, that a new tenancy in the purchaser was created, but that it was an implied term thereof that he should continue liable to pay the whole Grand Jury cess, sec. 65 of the statute not preventing such an agreement from being entered into. (By Lawson, J.) MURTAGH *r.* MARQUIS OF BATH - - Cir. Cas. XVI. 119

209. —— **Ss. 65, 71**—*Premises to which sec. 65 is applicable.*] The 71st sec. limits the application of the 65th sec. to holdings agricultural or pastoral, or partly pastoral or partly agricultural. RAPHAEL *r.* SINCLAIR - L. S. VII. 202

210. —— **Ss. 65, 71**—*Tenant's right to deduct half county cess—Holding agricultural or pastoral.*] A dwelling-house, situate a little more than 5 miles from Dublin, having about 25 acres (Irish) of land attached, was taken by a Dublin merchant at £300 a year, as a residence, who at the same time intended to make profit out of the land so as to contribute towards the payment of the rent. The premises were all enclosed by a wall. About 15 acres (Irish) were in pasture and 10 under buildings, ornamental grounds and plantations. The rent at a valuation would be properly apportioned at £200 for the dwelling-house, garden and ornamental grounds, and £100 for the rest of the premises. The tenant kept some 20 head of cattle on the land, and in one year had 20 tons of hay off the land. On a case stated, reserving the question whether the holding was agricultural or pastoral in its character, or partly both, within the L. & T. Act, 1870, sec. 71, so as to entitle the defendant to deduct one-half the Grand Jury cess payable in respect of the premises:—*Held*, that the premises were not agricultural or pastoral within the meaning of that section. DOYNE *v.* CAMPBELL - E. VIII. 101

211. —— **S. 69**—*Tenancy for a year certain—Notice to quit.*] By a contract in writing, entered into after the passing of "The Landlord and Tenant Act, 1870," lands were let "for the term of one year certain, to commence on the 25th March, 1871, and to end on the 25th March, 1872":—*Held*, affirming the judgment of the Court of Common Pleas (*per* Whiteside, C.J., Palles, C.B., Fitzgerald, J., and Fitzgerald, B.; *diss.* O'Brien,

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LANDLORD AND TENANT (IRELAND) ACT, 1870—*continued.*

J., Deasy and Dowse, B.B.), that section 69 of that Act did not apply, and that the tenant was not entitled to notice to quit. WRIGHT *v.* TRACEY - - - - **E. C. VIII. 142**

213. —— **S. 71**—*Town parks.*] A holding in the suburbs of a town which derives its value from a villa residence built upon it, is not agricultural or pastoral or partly pastoral or partly agricultural and therefore is not a holding for which the tenant is entitled to compensation. HAY *v.* COOKE **[L. S. V. 145**

—— **S. 1** - - - - - - - **XXVII. 22**
See LAND LAW (IRELAND) ACT, 1881, 1887. 7.

—— **S. 4** - - - - - - - - **XXVI. 100**
See LAND LAW (IRELAND) ACT, 1887. 1.

—— **S. 7**—Fine - - - - - **XXVI.** *M.* **432**
See REDEMPTION OF RENT (IRELAND) ACT, 1891. 9.

—— **S. 8**—Away-going crops - - **XV.** *M.* **139**
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 4.

—— **Ss. 16, 24**—Jurisdiction of Land Commission on appeal **[XXVI. 48**
See LAND LAW (IRELAND) ACT, 1881. 173.

—— **S. 23**—Removal of decree into Inferior Court **[XV.** *M.* **117**
See PRACTICE—CERTIORARI. 2.

—— **S. 40**—Agreement between landlord and tenant—Apportionment of rent - - - - - **VI. 62**
See PRACTICE—LANDED ESTATES COURT—JURISDICTION. 2.

—— **Ss. 57, 58** - - - - - **XXIV. 48**
See LAND LAW (IRELAND) ACT, 1881. 104.

—— **S. 59** - - - - - - **XXIV. 13**
See LAND LAW (IRELAND) ACT, 1881. 166.

—— **S. 65**
See GRAND JURY—CESS. 7, 10, 11, 18.

LAND PURCHASE ACTS.

1. —— *Act*, 1885, *s.* 2—*Tenant in occupation—Sub-letting—Tenants for temporary convenience pending sale in Land Judges' Court—Security for advances—Cause shown against making advances—Land Law (Ireland) Act*, 1881, *ss.* 24, 57.] Where lands for sale in the Land Judges' Court had been let for temporary convenience, and the tenants applied for advances to enable them to purchase their holdings, the Land Commission agreed to make the advances; but the owner in the Land Judges' matter having intervened, and it appearing that the lands were sub-let in grazing or conacre, and that the tenants had not sufficient capital or stock to work their farms, the Court refused to make the advances, as not being "satisfied with the security," within the meaning of the 24th section of the Land Law (Ireland) Act, 1881, and the 2nd section of the Purchase of Land (Ireland) Act, 1885. *In the matter of the* ESTATE OF O'KELLY - - - **L. C. XXIII. 86**

2. —— *Act*, 1885, *s.* 14—*Sales for gross sum—Addition to advance—Purchase and resale of estate—Retention of guarantee deposits—Practice—Final schedule of incumbrances—Priority of owner's costs of sale—Landed Estates Court Act, s.* 78.] The provisions of sec. 14 of the Land Purchase Act, 1885, are only applicable in sales of purchase and re-sale by the Land Commission under sec. 5, or in cases where the Commission order a holding to be resold. Sales of incumbered estates by vesting order are deemed to be for benefit of parties entitled to fund, and the Court will direct the owner's costs of sale to be placed in priority to incumbrances on final schedule in absence of special circumstances. *In re* ESTATE OF LORD FERMOY **[L. C. XXII. 66**

3. —— *Act*, 1887, *s.* 14—*Registration of action as* lis pendens *—Application by vendors for payment out of purchase-moneys of lands.*] On March 9th, 1893, a sum of £1,697, being part of a sum advanced by the Land Commission to certain tenants

LAND PURCHASE ACTS—*continued.*

to enable them to purchase their holdings from the Brewers' Company, was paid into the Bank of Ireland to the credit of the matter under the Land Law (Ir.) Act, 1887, sec. 14. On March 17th, 1893, an action was registered as a *lis pendens* against the vendors:—*Held*, that the money might be paid out to the vendors, notwithstanding the registration of the *lis pendens*. *In the matter of* THE BREWERS' COMPANY, VENDORS OF LAND - - - **L. C. XXVII. 83**

4. —— *Act*, 1887, *s.* 14 (3)—*Application for advance—Nominal tenancy*—Bonâ fide *tenant.*] An advance will not be made for the purchase of a holding when the applicant is substantially a purchaser in possession, not paying rent but interest on the purchase-money, where the tenancy has been constituted with a view to purchase, and where it is determinable on refusal of the Land Commission to make an advance. *Re* RYLAND'S ESTATE - - **L. C. XXVII. 72**

5. —— *Act*, 1887, *s.* 16—*Apportionment and redemption of rents—Jurisdiction of Commission—Order for redemption of entire rent-charge, where part only of lands subject thereto is sold—Landed Estates Court Act, s.* 72—*Purchase of Land Act*, 1885.] The Land Commission have jurisdiction to order the redemption of an entire fee-farm rent, with or without a previous apportionment, though part only of the lands subject to the rent is sold under the Land Law Acts. To order the redemption is in the discretion of the Commission. Without strong clear reason the Court will not compel redemption of a rent-charge on unsold part of lands against the wish of the owner of the rent-charge. *Re* ESTATE OF PENTLAND **[L. C. XXII. 68; C. A. XXII. 81**

6. —— *Agreement for purchase—Setting aside—Duress—Threat of eviction—Staying proceedings before purchase-money paid.*] Motions on behalf of tenants to set aside agreements for the purchase of their farms, which were not made until some months after the execution of the agreements, and where statements by them as to duress on the part of the landlord and the purchase-money being excessive were not substantiated, were refused. WALSHE *v.* WATERFORD; FLYNN *v.* WATERFORD - - - - **L. C. XXII. 18, 27**

7. —— *Agreement for sale by vesting order—Jurisdiction to enforce, rescind, or vary—Purchase of Land Act*, 1885, *ss.* 10, 17—*Landed Estates Court Act*, 1858, *ss.* 37, 47—*Mistake in agreement—Specific performance—Land Law (Ireland) Act*, 1887, *s.* 22—*Question of law—Land not held under a contract of tenancy—Land Law (Ireland) Act*, 1881, *s.* 57—*Purchase of Land Amendment Act*, 1889.] Where an agreement for sale provides that the sale shall be carried into effect by vesting order, the Commission have jurisdiction, under the 37th section of the Landed Estates Court Act, 1858 (incorporated by the 10th section of the Purchase of Land Act, 1885), to enforce, vary, or rescind the agreement; and in all cases where an application for an advance has been sanctioned, the Commission have jurisdiction, under the 22nd section of the Land Law (Ireland) Act, 1887, to make a decree for specific performance. *Lord Waterford's Estate* (XXII. 18, 27), discussed. In exercising the jurisdiction under the 37th section of the Landed Estates Court Act, the Commission follow the former practice of the Landed Estates Court, and, if necessary, proceedings will be stayed in order to enable a suit to be brought in the Chancery Division. Proceedings will always be stayed where a person interested requires a question of law to be heard and determined by the Judicial Commissioner sitting with the Purchase Commissioners, under the 17th section of the Purchase of Land Act, 1885. Additional lands under the Purchase of Land Act, 1889, must be separately described in the agreement for sale. *Re* ABERCORN'S ESTATE; HOUSTON, TENANT. **[L. C. XXIV. 85**

8. —— *Appointment of guardian to minor—Landed Estates Court Act, s.* 73—*Land Purchase Act*, 1885, *s.* 10.] The jurisdiction of the Land Commission to appoint a guardian to a minor interested in proceedings under the Land Purchase Acts, is limited to cases in which a holding is sold by the Land

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LAND PURCHASE ACTS—*continued.*

Commission to a tenant or other persons, and cases in which a holding is sold by a landlord to a tenant, and it is agreed that such sale shall be carried out by vesting order. *Re* CORR'S ESTATE - - - - **L. C. XXVI. 139**

9. —— *Appointment of trustees for purpose of Settled Land Act—Purchase of Land (Ireland) Act*, 1885, *s.* 13—*Land Law (Ireland) Act*, 1887, *ss.* 16, 23—*Settled Land Act*, 1882, *s.* 22.] The Land Commission has power to appoint new trustees where lands are the subject of sale, but not where head-rents, tithe rent-charges, rent-charges, annuities, &c., are redeemed. *In the matter of* THE DAMES LONGWORTH ESTATE **[L. C. XXVI. *M.* 521**

10. —— *Devolution of purchaser's interest in intestacy.*] An ejectment decree was granted at the suit of the father of a deceased purchaser of a holding against the wife of the deceased; the deceased having died intestate and without issue. RYAN *v.* RYAN - - - **Q. S. XXIV. *M.* 537**

11. —— *Form of agreement between landlord and tenant—Tenant's liability for the costs of the conveyance—Retainer of solicitor by landlord.*] R. D., landlord, having entered into negotiations with his tenant for the purchase by the latter of his farm, prepared an agreement in the Form No. 3 of the Land Purchase Forms, striking out the words directed to be struck out where the tenant is to bear his own expenses incidental to purchase. The tenant having signed the agreement, the landlord employed the plaintiffs to carry out the purchase. On completion of the purchase the plaintiff sued the tenant for £20 10s. 8d., costs of stamp on conveyance, and other costs incidental to the purchase:—*Held*, that the plaintiffs were not entitled to sue the defendant in the absence of any retainer of his part. REEVES *v.* KELLY **[Q. B. D. XXVI. 92**

12. —— *Guarantee deposits*—48 & 49 *Vic.*, *c.* 73, *s.* 3—*Provision of guarantee deposits by incumbrancers on sold and unsold lands*—50 & 51 *Vic.*, *c.* 33, *s.* 12—*90th General Rule of 5th Dec.*, 1887—*Form* 43—*Consent of puisne incumbrancers on unsold lands to order under sec.* 12, *dispensing with consent.*] The consent on form 43 of incumbrancers on sold and unsold lands to the retention of guarantee deposits, without prejudice to their rights against the unsold lands, will not be acted on unless signed by all the puisne incumbrancers on such unsold lands, or unless an order is obtained under the 12th sec. of the Land Law Act, 1887, with the consent of such puisne incumbrancers, declaring that the incumbrances of the parties to the consent providing the guarantee deposit shall continue charged on the unsold lands in the same priority as they possessed before the sales. But such consent will be dispensed with by order where such puisne incumbrancers are amply secured. *Re* ESTATE OF ENNISKILLEN **[L. C. XXV. 40**

13. —— *Guarantee deposit—Purchase-money—Absence of consent of incumbrancers.*] Where the consent of the incumbrancers on an estate has not been given to the retention of the guarantee deposit, it cannot be retained. *Re* COLTHURST'S ESTATE - - - - - **C. A. XXI. *M.* 73**

14. —— *Inclusion in vesting order of more land than the tenant occupied at date of purchase.*] Where a tenant in his application to the Court for the purchase of his holding included in the area a greater quantity of land than was in his occupation as tenant, and on the purchase being completed the area stated in the vesting order and in the holding as described in the map thereto included a portion of which the purchaser was not in occupation as tenant:—*Held*, that the area so mentioned in the vesting order and map was not conclusive, but merely descriptive, and that the tenant became purchaser of no more land than was in his occupation as tenant at the date of the purchase. (By Johnson, J.) QUINN *v.* HEWSON - **Cir. Cas. XXVI. *M.* 534**

15. —— *Jurisdiction of Judicial Commissioner—Determination of questions of law*—48 & 49 *Vic.*, *c.* 73, *s.* 17—*Practice—Costs of requisition—Redemption of lay tithe and rents*—

LAND PURCHASE ACTS—*continued.*

50 & 51 *Vic.*, *c.* 33, *ss.* 15, 16—*Cost of making title to redemption prices—Practice—Title required.*] The jurisdiction of the Judicial Commissioner, under the 17th sec. of the Purchase of Land (Ir.) Act, 1885, is limited to the determination of questions of law on the requisition of any person interested. The Commissioner before whom the matter is pending disposes of the costs of the requisition, and of the proceedings thereunder, and makes the necessary orders consequent on the decision of the Judicial Commissioner. *Semble*, if no person interested requires a question of law to be determined under the 17th sec., an appeal lies direct from the Commissioner in the matter to the Court of Appeal, under the 22nd sec. of the Purchase of Land (Ir.) Act, 1885. When a redemption order has been made under the 15th or 16th sec. of the Land Law (Ir.) Act, 1887, a sum will be retained to meet the costs of making title to the tithe or rent redeemed. Title should be made by affidavit. *In re* ESTATE OF LORD LECONFIELD - **L. C. XXV. 38**

16. —— *Order for redemption of tithe rent-charge—Limited owner—Middleman—Payment into Bank of Ireland—Act of* 1887, *s.* 15 (2)—*Gen. Rule* 73.] The Court will order redemption of lay tithe rent-charge at twenty years' purchase (less average poor rate for five years) where a person in receipt of lay tithe, issuing out of lands sold under the Acts, is a limited owner, or holds under a lease or fee-farm grant. The Court will order the purchase-money to be paid into the Bank of Ireland under Gen. Rule 73, and that the claims of all persons entitled to the tithe shall attach to the purchase-money. HANRAHAN *v.* RYDER AND TRAVERS **[L. C. XXII. 26**

17. —— *Part payment of purchase-money in cash—Lodgment in Court—Rule* 84—*Landed Estates Court Act*, *ss.* 57, 64.] Where an agreement for sale provides that part of the purchase-money is to be paid in cash by the purchaser, and the procedure is by vesting order, the Court will, even where it appears that the estate is unencumbered, require the lodgment in Court of such money, to abide allocation. THE SKINNERS' CO. *v.* M'VEY - - **L. C. XXVI. 115**

18. —— *Practice—Part payment of purchase-money in cash—Lodgment in Court—General Rule* 84—*Landed Estates Court Act*, *ss.* 57, 64.] Where an agreement for sale provides that part of the purchase-money is to be paid in cash by the purchaser, and the procedure is by vesting order, the Land Commission, where the amount of the advance exceeds three-fourths of the price of the holding, will not necessarily order lodgment of the balance. *Skinners' Company* v. *M'Vey*, (XXVI. 115), overruled. SKINNERS' COMPANY *v.* CAMPBELL **[L. C. XXVI. 136**

19. —— *Practice as to advances in cases of tenancies created since the Act of* 1885—*Definition of tenant—Limit of advances—Land Law (Ireland) Act*, 1881, *s.* 57—*Purchase of Land Act*, 1885, *s.* 26—*Land Law (Ireland) Act*, 1887, *ss.* 14 (3), 34—*Purchase of Land Amendment Act*, 1888, *s.* 2.] Tenancies created since the passing of the Purchase of Land Act, 1885, are not excluded from the benefits of the Land Purchase Acts; but the land Commission must be satisfied (1) as to the validity and *bonâ fides* of the contracts of tenancy, as well as of the agreement for purchase; (2) that the tenant is in occupation of the holding under the contract of tenancy; and (3) that the security is sufficient. *Re* MARQUISE DE LA BEDOYERE'S ESTATE - - - **L. C. XXIV. 87**

20. —— *Purchase of holding by tenant from his father, the landlord.*] Where a purchase is made by a tenant from his father, the landlord, the transaction will be closely scrutinized to test the *bonâ fides* of the parties. *In the matter of* THE ESTATE OF RICHARD HAYES - **L. C. XXVII. 99**

21. —— *Redemption of impropriate tithe rent-charges—Price—Uniform rate of purchase—Special circumstances—Proceedings for variation of tithes under* 1 & 2 *Vic.*, *c.* 109—*Act*, 1887, *s.* 15.] The uniform rate of purchase adopted by the Land Commission for the redemption of impropriate

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LAND PURCHASE ACTS—*continued.*

tithe rent-charges will be varied where special circumstances are shown. Where an order had been made by a Court of Quarter Sessions for the revision under 1 & 2 Vic., c. 32, of an impropriate tithe rent-charge, which, though subsequently set aside for want of jurisdiction, would (if the proceedings had been regular) have resulted in largely reducing the amount, the Land Commission fixed the redemption price of such rent-charge at a less rate than 20 years' purchase. *In re Hanrahan's Estate* (MacCarthy's Land Purchase Cases, p. 5), commented on. *In the matter of* THE ESTATE OF ETHEL P. WARREN, *and in the matter of* THE ESTATE OF WM. SANKEY **L. C. XXVII. 119**

22. —— *Redemption of impropriate tithe rent-charge—Act, 1887, s.* 15 (2).] The uniform rate adopted by the Land Commission for the redemption of impropriate tithe rent-charges is twenty years' purchase, after deducting poor rate. Nevertheless, where it was shown that such tithes had been considerably reduced on septennial revision, but that the order had subsequently been quashed on the ground that the proceedings were within the prescribed period, the Court, in fixing the price, awarded a lesser rate of purchase. *Re* WARREN AND SANKEY **[L. C. XXVII. *M.* 470**

23. —— *Redemption of impropriate tithe rent-charges—Compulsory redemption of, where sales have been completed—Jurisdiction of the Land Commission—Land Law (Ir.) Act, 1881, s.* 24 (3)—*Indemnity by Land Commission.*] Where lands were sold under the Land Purchase (Ir.) Act, 1885, subject to certain tithe rent-charges, but indemnified therefrom by the Land Commission, and an arrangement was entered into whereby portion of the purchase-money was transferred to the Commission, and annual payments thereout were accepted in lieu of such tithes; on the application of the vendor, made subsequent to the completion of the sales, the Court—refusing to determine the redemption price of the tithes on the basis of such sum as would produce an equivalent annual income when invested—fixed the usual rate of purchase. The provisions of the Land Law (Ir.) Act, 1887, as to the redemption of tithes and other charges, are retrospective, and apply to sales completed before the passing of that Act. *In re* THE ESTATE OF THE MARQUIS OF BATH - - **L. C. XXVII. 38**

24. —— *Redemption of impropriate tithe rent-charge—Ecclesiastical and impropriate tithe rent-charge—Power of Commission to order redemption of impropriate tithe rent-charge—Price fixed.*] Where lands have been sold under the Land Law Acts, the Commission have power to order the redemption of impropriate tithe rent-charges issuing out of the lands, and will exercise the power in preference to proceeding by way of indemnity. The usual price fixed is 20 years' purchase of the tithe, less the average poor rates for five years. *In the matter of* THE ESTATE OF WATSON **L. C. XXIII. 87**

25. —— *Redemption of tithe rent-charge after the sale of a holding subject thereto has been completed—Jurisdiction to order —"Land sold"—Land Law (Ir.) Act,* 1885, *s.* 8—*Land Law (Ir.), Act,* 1887, *ss.* 14, 15, *sub-s.* 2 *and* 34—*Land Law (Ir.) Act,* 1891, *s.* 20.] The powers given to the Land Commission by sec. 15 of the Land Act of 1887 are powers ancillary to sale, and to be exercised in connection with and for the purposes of sale. There is no jurisdiction to order redemption of impropriate tithe rent-charge when the sales of the holdings, which had been liable thereto, have been completed and closed. *Re* THE MARQUIS OF BATH'S ESTATE **L. C. XXVII. 112**

26 —— *Redemption of impropriate tithe rent-charge—Question as to costs a question of law—Owner entitled to costs of making title thereto, and costs of drawing out redemption price—Purchase of Land Act,* 1885, *s.* 17—*Land Law (Ireland) Act,* 1887, *s.* 15—*Land Purchase Rules,* 1887, *rr.* 73, 107.] Where, in proceeding under the Purchase of Land Acts and the rules made thereunder, a question arises as to costs, although under these rules such costs are in the "discretion" of the Land Commissioners, by discretion is meant a judicial discretion; and if it is alleged that no judicial discretion was exercised in the granting or withholding of such costs, or that such costs were granted or withheld contrary to law, a "question of law" arises, which any person interested can require the Judicial Commissioners to hear under sec. 17 of the Purchase of Land Act, 1885. Where impropriate tithe rent-charge is ordered to be redeemed under sec. 15 of the Land Law Act, 1887, for the purpose of selling the land on which it is charged, under the Purchase of Land Acts, the owner of such tithe rent-charge is entitled to the costs and expenses of making title to such tithe rent-charge and to the costs of making application for the payment out to him of the redemption price of such tithe rent-charge. *In re* THE ESTATE OF LECONFIELD - - **L. C. XXV. 28**

27. —— *Redemption of life annuity—Compulsory powers of Land Commission—Price referred to Land Commission—Sum retained in Land Judges' Court to provide for redemption—Security of land charged—Evidence as to value of annuity—Landed Estates Court Act, s.* 68—*Land Law (Ireland) Act,* 1887, *s.* 15.] Where an annuity is compulsorily redeemed under the Land Purchase Acts, the Court will receive evidence as to value, but will not fix the redemption price at the amount required to purchase a Government annuity of equal amount, or the amount required to purchase the annuity in open market. *In the matter of* THE ESTATE OF THE IRISH LAND COMMISSION **[L. C. XXVI. 115**

28. —— *Redemption of rents—Determination of redemption price by Land Commission on consent of parties*—50 & 51 *Vic., c.* 33, *s.* 16 (3)—*66th General Rule of 5th Dec.,* 1887.] Where a fee-farm rent of £26 5s. 9d. issuing out of lands sold in the matter was directed to be redeemed and the parties consented that the Land Commission should determine the redemption price pursuant to the 16th sec. of the Land Law Act, 1887, the Commissioner, on evidence that the rent was amply secured, fixed the redemption price at twenty-five years' purchase of the net rent, after deducting the average poor rate for five years. *In re* ESTATE OF GIVAN - - **L. C. XXV. 40**

29. —— *Reducing instalments payable—Extension of period of repayment.*] The Land Commission has no jurisdiction to reduce the instalments payable by purchasers under the Land Purchase Acts. NEVILLE'S ESTATE; COLLINS' ESTATE **[L. C. XXIV. *M.* 586**

30. —— *Sale in Land Judges' Court—Offer to purchase by Land Commission—Application to increase offer.*] An application to increase the offer made by the Land Commission to purchase land being sold in the Land Judges' Court was refused. *In re* GARTLAND'S ESTATE - **L. C. XXV. *M.* 670**

—— Consent to investment by trustees - **XXVI. 73**
See TRUSTEE—INVESTMENT. 1.

—— Creation of rent-charge under sec. 16 of Arrears of Rent Act, 1882—Termination of tenant's interest by ejectment—New tenant purchasing under Acts—Liability for rent-charge - - - **XXVI. 76 note**
See ARREARS OF RENT (IRELAND) ACT, 1882. 11.

—— Payment out to sole trustee - **XXVI. 72**
See TRUSTEE—SOLE. 2.

—— Redemption of annuity—Death of annuitant after ruling of final schedule - - - - - **XXVI. 69**
See VENDOR AND PURCHASER. 3.

—— Sub-division of purchase annuity - - **XXVI. 145**
See LAND LAW (IRELAND) ACT, 1881. 161.

LANDS CLAUSES ACT.

1. —— *Compulsory purchase—Compensation—Interest—Waterford Water Act,* 1871—*Lands Clauses Consolidation Act,* 1845—*Costs.*] Where the Corporation of Waterford had appropriated and entered upon lands under the powers conferred by the Waterford Water Act, 1871, and had lodged in Court the

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LANDS CLAUSES ACT - *continued.*

sum awarded by the arbitrator; and upon a traverse to the award, a verdict for an increased amount and £20 costs was afterwards had by consent, and the Corporation then lodged in Court the balance of the verdict, not including costs:—*Held*, that interest at the rate of £4 per cent. on the sum originally lodged, and also on the sum awarded by the verdict, was payable from the date of entering on the lands to the dates of the respective lodgments, and that the Court had power, on summary petition, to direct payment of the costs awarded by the verdict. *Re* WATERFORD WATER ACT, 1871. *Ex parte* SULLIVAN - - - - **R. XII. 1**

2. —— *Compulsory purchase—Compensation—Arbitration—Draft award—Completion of purchase—Delay—Damages—Mandamus—Dublin South City Markets Act*, 1876—*Railways (Ireland) Act*, 1851.] A statement of claim alleged that the South City Market Co., under the Acts in that behalf empowering them, having given notice to the plaintiff that they required to purchase certain premises, the question as to the amount of compensation payable was brought before the valuator authorised to arbitrate on such claims, and the necessary evidence was fully given; averred that the plaintiff did all things necessary to enable the defendants (the arbitrator and the company) and each of them to have the award of the arbitrator made, issued and lodged as required by law, and a reasonable time in that behalf had elapsed, yet, although demanded by the plaintiff, the award had not been made, issued or lodged with the proper authority, the defendants neglecting and refusing to perform their duty; and claimed damages sustained by reason of the neglect and delay of the said defendants in making up the draft award, within the meaning of 14 & 15 Vic., c. 70, s. 9, and further claimed a mandamus to compel the arbitrator to frame a draft award pursuant thereto, and to compel the company to have the purchase of the premises completed. A demurrer having been taken by the company, on the ground that no duty imposed on the defendants was shown, nor was it shown how they were responsible for non-performance of any duty alleged:—*Held*, that the statement of claim disclosed no cause of action. HORGAN *v.* POSNETT AND SOUTH CITY MARKET CO. **[Q. B. D. XVII. 37**

3. —— *Money lodged in Court by Railway Company—Direct conveyance by Commissioners of Church Temporalities upon the trusts and to uses declared in a will.*] Upon petition that the proposed purchase of certain lands from the Commissioners of Church Temporalities be approved of, as a proper investment of a sum of money lodged in Court under the provisions of the "Lands Clauses Consolidation Act," it appeared that the proposed purchase would be for the benefit of the settled estate, it was ordered that the purchase-money should be transferred to the account of the Commissioners of Church Temporalities, the petitioner undertaking to forthwith procure the execution of a deed conveying the lands upon the trusts and to the uses declared in the will under which the settled estate was held. *Ex parte* BELFAST AND COUNTY DOWN RAILWAY CO. AND DANIEL DELACHEROIS - - - **B. IX 4**

LAPSE—Will—Construction.

See Cases under WILL—LAPSE.

LARCENY.

See Cases under CRIMINAL LAW—LARCENY.

LEASE.

See Cases under LANDLORD AND TENANT—LEASE.

—— For life or lives—Fishery—Appeal—5 & 6 Vic., c. 106, sec. 19 - - - - - **I. *M.* 177**

See FISHERY ACTS. 2.

—— Setting Aside—Bankruptcy

See Cases under BANKRUPTCY—SETTING ASIDE LEASE.

LEASING POWER.

See POWER. 11, 12.

LEGACY.

See Cases under WILL—LEGACY.

—— Duty.

See Cases under REVENUE—LEGACY DUTY.

LEGITIMACY—*Evidence of marriage—Letters—Reputation—Acts—Costs.*] Letters from the alleged husband to the alleged wife, and from other members of the alleged husband's family, and statements in the will of the alleged husband and of other members of the family, in all of which the alleged marriage was recognised, were not considered sufficient *per se* to prove a marriage; there was no record, in any shape, of a marriage, and the acts of the issue being inconsistent with a valid marriage; and no intimacy was proved between the alleged wife and the husband's family, but the reputation in his family was against a marriage. EASTWOOD *v.* EASTWOOD **[P. I. *M.* 27**

LEGITIMACY DECLARATION ACT.

1. —— *Answer not necessary—Parentage within terms of the Act.*] It is not necessary that the Attorney-General should file an answer traversing the statements in a petition for a declaration of legitimacy. The case comes within the Legitimacy Declaration Act (Ir.), 1868, although the rumour circulated be, not that the petitioner is illegitimate, but that he is not the child of his reputed parents. A. B. *v.* THE ATTORNEY-GENERAL - - - **P. III. *M.* 568**

2. —— *Form of petition under.*] The proper title for petition under the Legitimacy Declaration Act is, "In the matter of A. B. *v.* Attorney-General and others, and in the matter of the Legitimacy Declaration Act, 1868." A. B. *v.* ATTORNEY-GENERAL AND OTHERS - - - **P. III. *M.* 314**

LETTER ACCOMPANYING WILL—Secret trust—Discretionary trust - - **I. *M.* 442**

See WILL—PRECATORY TRUST. 5.

LETTING FOR TEMPORARY CONVENIENCE.

See LAND LAW (IRELAND) ACT, 1881. 45, 157, 160, 194, 195, 269, 271-277.

See LAND LAW (IRELAND) ACTS, 1881, 1887. 61-63.

LIABILITY OF EMPLOYER.

1. —— *Action not brought within time limited by sec. 4 of the Employers' Liability Act.*] Where an action, brought under the Employers' Liability Act, has not been commenced within the time prescribed by sec 4 of that Act, the County Court Judge has jurisdiction to dismiss the action with costs, but without prejudice. HALL *v.* PULLMAN **Q. S. XXVI. 96**

2. —— *Dangerous machinery and appliances—Knowledge but inadequate appreciation of the danger—Non-acceptance of risk—Contributory negligence—Duty of employer—Employers' Liability Act*, 1880.] It having been held by the Recorder of Belfast, under the circumstances appearing, that an action under the Employers' Liability Act, 1880, was unsustainable for injury caused by reason of a defect in the condition of the works in the employer's business, on the principle that, as the danger was known to and voluntarily incurred by the servant, he accepted the risk at his own peril; and further, that he had so contributed by his own negligence to cause the injury that his employer could not have avoided the result:—*Held*, on appeal, that though it was known by the deceased that the works and appliances were dangerous, yet this being a new structure, and part of the work of the deceased being difficult to perform, the deceased was not able to judge properly of the danger, and, therefore, did not adequately appreciate and did not voluntarily accept the risk. *Yarmouth* v. *France* (19 Q. B. D. 647) applied. (By Andrews, J.) CAMPBELL *v.* BRENNAN **[Q. S. XXII. 74; Cir. Cas. XXIII. 84**

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LIABILITY OF EMPLOYER—*continued.*

3. —— *Embarrassing statement of claim—Setting aside—O. XVIII, r.* 11.] In an action for damages to a workman caused by the fall of bricks from a scaffolding, a statement of claim, which stated that the defendant "so carelessly, negligently, and unskilfully erected the scaffolding, that a large number of bricks fell on the plaintiff," but not specifying the particular defects relied on, was set aside as embarrassing. MITCHELL *v.* ARTHURS **E. D. XVII. 102**

4. —— *False imprisonment—Authority of employee—Ratification.*] An employer was held not to be liable for the acts of his employee for giving a man into custody on a charge which was afterwards dismissed, where it was shown that the employee was desired to be guided by the employer's manager, and that neither the manager nor the employer ratified the act. BYRNE *v.* GUNN **C. A. XV.** *M.* **323**

5. —— *Knowledge of servant as to safe and unsafe mode of working machine—Negligence.*] Where there was a reasonable mode in which a proper machine could be fitly worked without danger, which safe mode, as well as a dangerous mode, was known to the deceased, who also must have known of the danger of the latter mode, and there was no evidence that the deceased had received any instructions, or that it was his duty to work in the dangerous mode in which he was working when he met his death:—*Held*, that there was no evidence of negligence on the part of the employers, and that damages for the death could not be recovered from them under the Act. NOONAN *v.* DUBLIN DISTILLERY CO.
[E. D. XXVII. *M.* **522**

6. —— *Master and servant—Negligence—Pleading.*] In a defence to an action for damages for the death of a milesman the defendant pleaded "that the accident in the said counts respectively mentioned was caused by the negligence of a fellow-servant or fellow-servants, of the said N. C., and the defendants had taken all due and proper care in the selection of such fellow-servants:—*Held*, a good plea. CONWAY *v.* BELFAST AND N. C. RAILWAY CO. **C. A. XV.** *M.* **310**

7. —— *Master and servant—Fellow servant—"Vice-principal"—Evidence—Injury to milesman by negligence of traffic manager—Alteration in manner of running trains—Railway Clauses Consolidation Act*, 1845, *sec.* 108.] Where a servant is injured by the negligence of another in the same common employment, their different classes or grades, the power of one to command, to employ or even to dismiss others, and the obligations of the latter to obey the lawful commands of the first, are not sufficient to prevent them being "fellow-servants" within the meaning of the rule exempting the master from responsibility to his servants for injuries caused by the negligence of their fellow-servants. *Semble*, that a master may so depute to another the entire control of his establishment as to constitute his deputy, as between himself and the workmen in the establishment, not a "fellow-servant" having greater authority, but the *alter ego* or representative of the master, and that for injury caused to a workman by the negligence of such a deputy the master would be responsible. Whenever the employment is such as necessarily to bring the employee accepting it into contact with the traffic of the line of a railway, risk of injury from the negligence of those managing that traffic is one of the risks naturally and necessarily incident to such employment, which the employee, in the absence of express contract, is presumed to have undertaken to bear, as between himself and the company. *Primâ facie*, therefore, the risk of negligence on the part of the general traffic-manager of a railway is a risk which a milesman employed on the line undertakes to bear, and they would be fellow-servants within the rule; and in an action against the company to recover damages for injury caused by such negligence, and resulting in the death of the milesman, where the defence is that it was caused by the negligence of a fellow-servant, the onus lies on the plaintiff to rebut the inferences that they were fellow-servants, and if it is not proved that such manager filled the character of a deputy-master or vice-principal, it will not be competent for the jury

LIABILITY OF EMPLOYER—*continued.*

to find that his status was other than that of a fellow-servant in a common employment with the milesman. *Quære*, whether in order to constitute such a deputy-master or vice-principal it is essential that he should have been invested with such authority that, as between him and his employers, nothing done by him in relation to the business over which he has control, would be an act authorised by them? CONWAY (or CONROY) *v.* BELFAST AND N. C. RAILWAY CO.
[C. P. IX. 217; E. C. XI. 115

8. ——*Negligence—Constructing of scaffolding—Incompetence of fellow-servant—Knowledge of master—Pleading—C. L. P. Act*, 1853, *sec.* 68—*Evidence*—Onus probandi.] The summons and plaint in an action by an employee against his employer, to recover damages for a bodily injury sustained by the plaintiff, contained two paragraphs, one alleging that the plaintiff was employed to work upon scaffolding which the defendant knew was unsafe unless its material, supplied by him, were sound and suitable, but that the defendant negligently supplied materials which were not sound and suitable, and of which the scaffolding was constructed without the plaintiff's knowledge of such unsoundness and unsuitability, and that by reason thereof the plaintiff was injured; the other, that the plaintiff was employed to work upon scaffolding constructed by the defendant, which was, by the defendant's negligence, constructed unsafely and with defective materials, of which the plaintiff was ignorant, and that by reason of such negligence the plaintiff was injured. The defendant pleaded that, admitting that the materials were not sound or suitable, and that the scaffolding was constructed unsafely and with defective materials, he did not supply the materials negligently, and construct the scaffold negligently, as alleged. It appeared at the trial that the scaffolding was put up with "cripples," which were made for the defendant by a mere working bricklayer, the plaintiff's fellow-workman; and the jury found that the "cripples" were not constructed of unsound materials supplied by the defendant, and that he did not know that they were constructed of such materials; that the "cripples" were insecurely constructed, but that the defendant did not know this, and the plaintiff did know it; and that the maker of the "cripples" was incompetent in that respect, but that the defendant did not know of his incompetence when he employed him. On those findings a verdict was directed for the defendant:—*Held* (Deasy, B., *diss.*), that the question as to the plaintiff's knowledge of the "cripples" having been insecurely constructed was not put in issue by the pleadings, and should not have been left to the jury; that a question should have been left to the jury as to whether the defendant had exercised due care in the selection of the person employed by him to make the "cripples," to ascertain that he was competent: and that the verdict should be set aside, and a new trial awarded. *Per* Palles, C.B.: When it is shown that a servant is incompetent, and that through his incompetency injury results to his fellow-servant, the mere fact of his incompetency throws the onus on the master of showing that he had exercised due and reasonable care in selecting him, and in the absence of such evidence justifies the question of negligence in the master being left to the jury; and upon the pleadings as framed it was open to the plaintiff to rely upon the incompetency of a fellow-servant on the authority of *Conway* v. *Belfast and N. C. Railway Co.* (XI. 115), and *Hutchinson* v. *York, Newcastle, and Berwick Railway Co.* (5 Ex. 343). That the defendant did not know of his employee's incompetency was not, *per se*, an answer to the action, for if upon making due inquiry he would have ascertained the fact he would be liable. *Per* Dowse, B.: A master would not, in such case, be liable for injury to a servant occasioned by negligence in employing an incompetent fellow-servant, if the master used due care in his selection; nor would the master be liable either for negligent personal interference or negligent employment of an incompetent fellow-servant, if the injury was occasioned by the servant's own negligence, or if he undertook the work with a knowledge of the materials or instruments to be employed, knowing that they were unsound, or unsuitable, or that they were unsafe and defective. SKERRITT *v.* SCALLAN **E. C. XI. 185**

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LIABILITY OF EMPLOYER—*continued.*

9. —— *Negligence—Defect in machinery—Damages.*] While an employer, who had recently procured machinery from a competent manufacturer, is not guilty of negligence by reason of not discovering a latent defect, he is bound to see that it does not cease to be fit for its purpose in course of wear, and is under an obligation to test and repair it, and in default of such testing while in course of wear, he will be liable to an employee injured in consequence of the defective condition of the machinery by reason of the effects of wear. THOMPSON *v.* BELFAST HARBOUR COMMISSIONERS **Q. S. XXIII. 48**

10. —— *Negligence of captain of merchant ship—Injury to sailor on board—Liability of owner of vessel.*] To render an employer liable for injury to one in his employ, through the negligence of another person also in his employ, it must be shown that the latter was not merely a fellow-workman, but was placed in a position of such authority as fairly to represent the employer himself. The captain of a merchant ship, under his control and management, is not a mere fellow-workman of the seamen on board bound to obey him, but is such an agent or representative of the owner of the vessel that the latter, by whom he has been appointed, will be liable for an injury to a seaman sustained by him through the captain's negligence during the voyage, while the seaman is acting in obedience to an order given by the captain. RAMSAY *v.* QUIN **[C. P. VIII. 149**

11. —— *Pleading—Traverse of negligence—Embarrassing defence—Contributory negligence—Traverse of* scienter—*Master and servant.*] In an action by a servant against a master for "negligently supplying to the plaintiff improper and defective tackling for a certain horse and cart" (which the plaintiff, as alleged, was employed to drive), by reason whereof the tackling broke, and the plaintiff became unable to control the horse, and received the injuries complained of; the statement of claim also averred that the defendant negligently, for the purposes of the employment, supplied the plaintiff with a vicious and untrained horse, and unfit to be driven, "as the defendant knew." In his statement of defence the defendant, having traversed the alleged occurrence and injuries, further pleaded a denial "that it was through any negligence on his part that the horse in the statement of claim referred to was supplied to the plaintiff;" and "that the plaintiff so far contributed to the occurrence of the alleged grievances complained of . . . . . by his own negligence and want of ordinary and common care and caution; that but for such negligence and want of ordinary and common care and caution on his part, the said grievances . . . . . or any of them, would not have occurred or happened." Upon motion, on behalf of the plaintiff, to set aside these defences as embarrassing:—*Held*, that the defences were good, and that contributory negligence was sufficiently alleged. COUGHLAN *v.* FLANAGAN **[E. D. XIV. 13**

LIBEL.

See Cases under DEFAMATION—LIBEL.

LICENSING ACTS.

1. —— 40 & 41 *Vic., c.* 4, *s.* 2—*Retrospective operation—Rateable value*—Certiorari.] 40 & 41 Vic., c. 4, sec. 2, is retrospective in its operation, and applies to applications for renewals of licenses which have been granted before the passing of the Act. (O'Brien, J., *diss.*). R. (CRAIG) *v.* COLLECTOR-GENERAL OF EXCISE - **Q. B. D. XII.** *M.* **337**

2. —— *Appeal against order of Petty Sessions Court—Refusal of renewal of annual license—Order stating ground of refusal—Evidence of other matters*—18 & 19 *Vic., c.* 62, *s.* 2—23 & 24 *Vic., c.* 35, *s.* 1.] Where an order of the Court of Petty Sessions refusing a renewal of an annual license is in terms regular and formal, and contains a legal ground for the refusal, the Court, on appeal, is, under 18 & 19 Vic., c. 62, s. 2, precluded from inquiring into any other ground of complaint. BURROWES *v.* DEVANE - - **Q. S. XIX 44**

LICENSING ACTS—*continued.*

3. —— *Appeal against dismiss of summons—Party aggrieved—Right of prosecutor to appeal.*] If a summons at the suit of a police officer for a breach of the licensing laws has been dismissed by the Justices, the police officer has no right to appeal, not being a party aggrieved. M'CANN *v.* HURST **[Q. S. XXVI.** *M.* **362**

4. —— *Appeal to Quarter Sessions—Summary jurisdiction—Service of notice on Clerk of Petty Sessions—Mandamus—Licensing Act*, 1872, *ss.* 52, 77—*Petty Sessions Act*, 1851.] A notice of intention to appeal against a conviction under the Licensing Act, 1872, was addressed generally to the convicting Justices, but was served only upon the Clerk of the Petty Sessions for the district:—*Held* (Gibson, J., *diss.*), that such notice and the service thereof were sufficient, and in compliance with sec. 52 of the Licensing Act, 1872, which requires notice of appeal to be given to the "Court of Summary Jurisdiction." The Licensing Act, 1872, s. 52, was not intended to override, but to harmonise with the previously existing Irish practice under the Petty Sessions (Ir.) Act, 1851. R. (CLARKE) *v.* CHAIRMAN AND JUSTICES OF WICKLOW **[Q. B. D. XXVI. 81**

5. ——*Appeal to Quarter Sessions—Recognisance—One surety—Signature of Justice*—27 & 28 *Vic., c.* 90, *s.* 50—35 & 36 *Vic., c.* 94, *s.* 52.] A recognisance taken under the Licensing Act, 1872 (35 & 36 Vic., c. 94, s. 52), by one surety, is sufficient. Such recognisance is good, although not signed by any magistrate. There is no power under 27 & 28 Vic., c. 90, s. 50, to take a new recognisance under statutes subsequently passed. MORRIS *v.* LAWLOR - - - **Q. S. XXVII.** *M.* **99**

6. —— *Application for license—Objection—Unfitness of applicant—Non-residence on premises—Possession of another licensed house—Specifying grounds of refusal*—Certiorari—3 & 4 *Wm. IV., c.* 68, *s.* 4.] Under the licensing code in force in Ireland non-residence on the premises sought to be licensed does not *per se* constitute "unfitness of the applicant" within sec. 4 of 3 & 4 Wm. IV., c. 68. The possession of another licensed public-house by the applicant for a license in respect of other premises does not *per se* constitute "unfitness of the applicant" within the same enactment. R. (KINSELLA) *v.* WICKLOW JUSTICES. R. (KAVANAGH) *v.* WICKLOW JUSTICES - - - - - **Q. B. D. XI. 32**

7. —— *Bonâ fide travellers.*] A conviction of a publican for selling drink on Sunday to men who stated to him that they had come from over three miles was reversed. *Re* FARRELL - - - **Q. S. XXIV.** *M.* **534**

8. —— Certiorari—*Sale of spirits during prohibited hours—Magistrates' conviction quashed—Costs*—35 & 36 *Vic., c.* 94, *ss.* 54, 78.] Where the defendant was summoned before the magistrates on the complaint of a District Inspector of Constabulary, for that "she did unlawfully open or keep open her licensed premises for the sale of intoxicating liquors, or did unlawfully expose for sale or sell same on her said licensed premises to persons not being *bonâ fide* travellers or lodgers therein, contrary to the statute," and the magistrates convicted the defendant and ordered her to pay a fine; the Court quashed the conviction on the ground that the summons charged alternative and distinct offences, whereas the order made by the magistrates dealt with the charges as one offence. Costs of the motion showing cause given against the magistrates. R. (COLLINS) *v.* THE JUSTICES OF WATERFORD - - - - - - **Q. B. D. XXVII. 54**

9. —— *Composite application for spirit grocer's license and a beer retailer's license—Suitability of premises—Discretion of justices to refuse*—Certiorari *and* mandamus, *when not available, against Justices refusing to grant certificate.*] The applicant, a grocer, applied to the Magistrates of the Petty Sessions district in which his premises were situate for a beer retailer's license and a spirit grocer's license: the application was refused. The applicant appealed to the County Court Judge and the Justices at the Annual Licensing Sessions, when the decision of the Court below was

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LICENSING ACTS—*continued.*

affirmed. A conditional order having been granted, the Divisional Court refused to make it absolute on the ground of the application being in the composite form, and thus disentitling the applicant to allege that he was refused a spirit grocer's license, he not having specifically applied for such:—*Held*, on appeal, that the order of the Divisional Court was right, and must be affirmed. R. (MARSHALL) *v.* JUSTICES OF COUNTY TYRONE [C. A. XXVII. 50

10. —— *Construction of statutes—Spirit grocer—Consumption of intoxicating liquor on premises where sold—Porter—Licensed spirit grocer holding license, also to sell beer for consumption on the premises*—35 & 36 *Vic.*, *c.* 94, *s.* 83.] On a summons against a defendant, who held not only a spirit grocer's license, but also a wholesale beer dealer's license, and a retail beer dealer's license (all for the sale of liquor to be consumed elsewhere than upon the premises) for that, he being duly licensed as a spirit grocer, purchasers from him of intoxicating liquors drank such liquors on his premises, with his privity and consent, he was convicted and fined £5, it appearing that porter sold by him had been so consumed on his premises; and the conviction was recorded on his license:—*Held* (Barry, J., *hesitante*, Fitzgerald, J., *dubitante*), that the summons was not rightly framed, and that no offence had been committed under sec. 83 of the Licensing Act, 1872, as the term intoxicating liquors therein does not include porter or beer, or any liquor other than spirits. *Quære* (by Fitzgerald, J.) whether a licensed spirit grocer can hold also a license to sell beer for consumption on the same premises? O'LOUGHLIN *v.* DOWLING - - - Q. B. XI. 170

11. —— *Forfeiture—Previous convictions—Unrecorded conviction under Sale of Food and Drugs Act*, 1875—37 & 38 *Vic.*, *c.* 69, *s.* 22—38 & 39 *Vic.*, *c.* 63—42 & 43 *Vic.*, *c.* 50.] A conviction for an offence against the provisions of the Sale of Food and Drugs Act, 1875, has not the effect of a conviction for an offence against the Licensing Acts, so as to work a forfeiture of the license, unless it is to be recorded on the license. MILLER *v.* M'CABE - Q. S. XXVI. *M.* 348

12. —— *Hotel keepers—Opening premises on Sunday.*] Where there is no intention proved on the part of the defendants to open their premises on Sunday for the sale or drink, summonses for having the doors of their premises open will be dismissed. QUINN *v.* EGAN; QUINN *v.* O'BRIEN; QUINN *v.* CURTAYNE - - P. S. XII. *M.* 574

13. —— *Jurisdiction of magistrates—Imprisonment with hard labour for non-payment of a penalty*—35 & 36 *Vic.*, *c.* 94, *s.* 78—36 & 37 *Vic.*, *c.* 82, *s.* 4.] Where a conviction for breach of the licensing laws is pronounced, under the 78th sec. of 35 & 36 Vic., c. 94, and a fine has been inflicted, with an alternative sentence of imprisonment in default of payment, there is no jurisdiction to order hard labour in addition. HENNESSY *v.* MORAN - - - - Q. S. XXV. 80

14. —— *Notice—Application for spirit license—Clear days.*] Twenty-one clear days' notice of application for a spirit license must be given under 3 & 4 Wm. IV., c. 68, sec. 2. *Re* O'CONNOR - - - - Q. S. I. *M.* 178

15. —— *Objection to granting of license—Grounds.*] The person who objects to the granting of a license should be prepared to give evidence on oath if required; and, if a magistrate, should refrain from voting. The three grounds for objection are: unfitness of applicant, unfitness of premises, and number of existing public-houses. ANON. [Q. S. IX. *M.* 536

16. —— *Power of constables to arrest in cases of drunkenness*—6 & 7 *Wm. IV.*, *c.* 38, *s.* 12—*Licensing Act*, 1872, *s.* 12—*Licensing Act*, 1874, *s.* 25.] The provision of the Act of William IV., which authorises the constable to arrest every person found drunk, is by implication repealed by the Licensing Acts. CARTER *v.* HEGARTY - Q. S. XXVII. 99

LICENSING ACTS—*continued.*

17. —— *Renewal of license—Annual certificate as to good character and conduct—Grant in Petty Sessions.*] The annual certificates required by publicans, previous to the renewal of licenses from the Excise, may be applied for under the Licensing Acts, 1872 and 1874, at an ordinary Petty Sessions of the district within which the applicants reside; and it is no ground for refusing to grant such certificates that the application had not been made at the Annual Licensing Petty Sessions. BRENNAN *v.* SMITH - - - Q. S. XI. 18

18. —— *Sale of Liquors on Sunday (Ir.) Act*, 1878—*Keeping licensed premises open though not for the sale of liquors.*] A conviction for keeping licensed premises open on Sunday, for sale of tobacco, groceries, etc., during which time some *bonâ fide* travellers were supplied with liquor, was reversed on appeal. MORIARTY *v.* HANNA - Q. S. XIII. *M.* 92

19. —— *Sale of Liquors on Sunday (Ir.) Act*, 1878—*Keeping licensed premises open though not for sale of liquors—Onus of proof.*] When a publican keeps open his licensed premises on Sunday, the onus is thrown upon him of showing that such act was not for the purpose of selling intoxicating liquors, his duty being to absolutely close the premises. SHIELS *v.* MACGEE [Q. S. XIII. *M.* 91

20. —— *Sale of Liquors on Sunday (Ir.) Act*, 1878, *s.* 1—*Construction—Public-house outside municipal boundary of city of Cork, but within Parliamentary boundary of county of city.*] On a case stated by magistrates for the opinion of the Court, as to whether a conviction for selling liquor on Sunday could be had against a publican whose premises were situate outside the municipal boundary of the city of Cork, but within the Parliamentary boundary of the county of the city of Cork:—*Held*, that the effect of the sale of liquors on Sunday (Ir.) Act, 1878, (41 & 42, Vic., c. 72), sec. 1., so far as relates to Cork, is to except from its operation merely the locality known as the municipal city of Cork: and therefore, that the defendant was liable to be convicted. KNOX *v.* KIDNEY [Q. B. D. XIII. 97

21. —— *Selling intoxicating liquors without a license—"Sale"—Publican agent of seller*—17 & 18 *Vic.*, *c.* 89, *s.* 3—35 & 36 *Vic.*, *c.* 92, *s.* 3.] Where an unlicensed shopkeeper is in the habit of giving printed dockets to parties, by means of which intoxicating liquors are obtained at a duly licensed house:—*Held* (Murphy, J., *diss.*), in the absence of proof that there was intoxicating liquor of which he was owner, or over which he had control, being supplied to the holders of such dockets, that an offence under 17 & 18 Vic., c. 89, s. 3, has not been committed. Where there is a serious doubt as to the construction of a licensing statute the Court will be slow to inflict penalties. M'LOUGHLIN *v.* M'CLOY - E. D. XXVI. 131

22. —— *Summary jurisdiction—Single offence—Licensing Act*, 1872 (35 & 36 *Vic.*, *c.* 94), *s.* 16 (1) (2).] A publican harbouring a constable while on duty, and on the same occasion supplying him with drink, may be convicted of two separate offences. R. (M'MANUS) *v.* JUSTICES OF MEATH [Q. B. D. XXVII. 127

23. —— *Summons for keeping premises open at unauthorised hours*—Bonâ fide *traveller—Onus of proof—Conviction, not negativing matters of defence*—Certiorari.] On a summons against a licensed publican for keeping open his premises at unauthorised hours on Sunday, the onus lies on him of proving as matters of defence, within section 28 of the Licensing Act, 1874, that the purchasers were *bonâ fide* travellers, or that he truly believed that they were, and took all reasonable precautions for the purpose of ascertaining whether they were or not, and where a conviction is pronounced, no indorsement is necessary on the face of it that the defendant had failed to prove those matters to the satisfaction of the magistrate adjudicating. *Sed, per* O'Brien, J.: It is desirable that in cases of this summary character the Justices should express their findings, when required so to do, on those specified questions of fact if in issue—section 51, sub-s. 4, of the Licensing Act, 1872, not applying in such case to exempt them from the necessity of so

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LICENSING ACTS—*continued.*

doing, and an objection to a conviction, founded on their refusal so to do, not being a mere objection for want of form, within section 54. *Roberts* v. *Humphreys* (L. R. 8, Q. B. 483), discussed. R. (MOONEY) *v.* COUNTY DUBLIN JUSTICES

[Q. B. D. XV. 68

24. —— *Third conviction—Indorsement on license—Renewal of license after second conviction, and third not pronounced within the same licensing year*—Certiorari—*Licensing Act*, 1872, *ss.* 30, 32—*Licensing Act*, 1874, *s.* 21.] Where two convictions for offences against the Licensing Laws have been recorded on a publican's license, a third conviction works a forfeiture of the license although the magistrates have not directed it to be recorded thereon, notwithstanding that the publican had meanwhile obtained a renewal of his license, on which the other convictions were not recorded, the old license being given up by him thereupon, and notwithstanding that the third conviction was not pronounced within the same licensing year. R. (O'LEARY) *v.* THE JUSTICES OF CORK

[Q. B. D. XVII. 106

25. —— *Transfer of license—Excessive number of previously licensed houses*—Certiorari—*Statutes, construction of—Maxim* "Communis error facit jus"—"Stare decisis, et non quieta movere."] Upon the application of the assignee of a licensed public-house in Ireland for transfer of a license, the Court of Licensing Sessions has no jurisdiction to refuse it merely on the ground of there being already, in the opinion of the Court, an excessive number of licensed public-houses in the district. *R.* (*Clitheroe*) v. *Recorder of Dublin* (XI. 85, Ir. R. 11, C. L. 412), followed. *Sharpe* v. *Wakefield* (21 Q. B. D., 66, 22, Q. B. D. 239, 15 App. Cas. 173), considered. R. (SMITH) *v.* JUSTICES OF CAVAN - - - - Q. B. D. XXVI. 61

26. —— *Transfer of license—Excessive number of publicans' licenses*—Certiorari—3 & 4 *Wm. IV.*, *c.* 68, *s.* 2—35 & 36 *Vic.*, *c.* 94—37 & 38 *Vic.*, *c.* 69, *s.* 12.] In May, 1877, the tenant of a licensed public-house surrendered the premises to his landlord, who in the following August demised same to another tenant, with the intention that the new tenant should continue to carry on the business of publican. But during the current year of the existing license, which would expire in October, no steps were taken to renew same, or to obtain a transfer, and the premises from thenceforth continued closed. In December, 1877, the tenant applied to a Justice of the Peace for an indorsement on the license by way of transfer, which was refused; and at the Quarter Sessions, held in January, 1878, an application having been made to the Recorder of Dublin for a licensing certificate, which was refused in consequence of the number of existing public-houses licensed in the locality:—*Held*, that the application to the Recorder could not be regarded as being for a transfer, and the case being therefore, distinguishable from *Clitheroe* v. *The Recorder of Dublin* (XI. 85), that the Court should not interfere. R. (O'CONNOR) *v.* THE RECORDER OF DUBLIN

[Q. B. D. XIII. 141

27. —— *Transfer of license—Objection—Number of previously licensed houses in the neighbourhood—Discretion of Licensing Court*—Certiorari—*Mandamus—Construction of Statute*—3 & 4 *Wm. IV.*, *c.* 68, *ss.* 2, 3, 4.] In the case of a transferee of a public-house and its license applying for a certificate, to entitle him to an Excise license for the ensuing year, the Court of Licensing Sessions has not jurisdiction, under the Licensing Code at present in force, to consider "the number of previously licensed houses in the neighbourhood" of the applicant's house, and to prohibit the issue of the license and refuse to grant the certificate on the ground that the number of existing licensed houses is excessive, or that there would be an excess if the application were granted. Where, in such a case, an order has been made by the Court of Licensing Sessions, prohibiting the issuing of the license and refusing to grant the certificate on that ground, which is recorded on the order, the order will be quashed, and a writ of *mandamus* issued. R. (CLITHEROE) *v.* RECORDER OF DUBLIN

[Q. B. XI. 85

LICENSING ACTS—*continued.*

28. —— *Transfer of license—Refusal of Justices to grant*—Certiorari.] An applicant for a license had held a mortgage on the licensed premises which were the subject of an Equity suit for administration in the Civil Bill Court; the County Court Judge refused to transfer the license to him at that time as the matter was pending in the Equity suit, but promised the applicant a new license at the ensuing sessions. The applicant purchased the premises, and put X. into possession, who sought for, and was refused, a license by the Justices, the County Court Judge having been succeeded by another. On a motion for a *certiorari*:—*Held*, that the Court would not interfere with the discretion of the Justices. *Ex parte* FEENY, *Re* LONDONDERRY JUSTICES - - Q. B. D. XV. *M.* 116

29. —— *Transfer of license—Renewal of license granted to former licensee by magistrates after annual licensing sessions—Duty received by Inland Revenue authorities thereon—Application by purchaser for transfer.*] Where, after the annual Licensing Petty Sessions (to which no application was made), a renewal of a license was granted at the ordinary Petty Sessions, and Excise duty was received thereon by the Inland Revenue authorities:—*Held*, on an application by a purchaser for a transfer, that, the license being produced with renewal duly indorsed, and the indorsement accepted by the Inland Revenue authorities, the Court was not at liberty to inquire into the circumstances under or date at which such renewal has been granted at Petty Sessions, and that a transfer should be granted accordingly. *In re* JOHN DAVIDSON

[Q. S. XIX. 52

30. —— *Transfer of license—Refusal by magistrates—Statement of ground of decision*—Certiorari—3 & 4 *Wm. IV.*, *c.* 68, *s.* 4—18 & 19 *Vic.*, *c.* 62, *s.* 1.] On an application to confirm the transfer of a publican's license, applicant was questioned by the magistrates as to the sufficiency of the yard accommodation of his premises, and on the application having been refused, the magistrates certified in writing that such refusal was upon the ground of the unsuitability of the premises, and because there was not sufficient yard accommodation:—*Held*, that, under such circumstances, it was not open to the applicant to object that the grounds of the refusal had not been expressly announced by the magistrates when delivering their decision. O'DONNELL *v.* JUSTICES OF THE PEACE FOR CO. DOWN - - - - - Q. B. D. XVII. 98

31. —— *Transfer of license—Rights of landlord of licensed premises on resumption of possession from tenant—Renewal of license*—Certiorari—6 *Geo. IV.*, *c.* 81—18 & 19 *Vic.*, *c.* 114—37 & 38 *Vic.*, *c.* 69.] The landlord of licensed premises, obtaining possession of them by ejectment, is not an assignee within the meaning of either 6 Geo. IV., c. 31, or 18 & 19 Vic., c. 114. In order to come within these statutes it is necessary that the person applying for a transfer should be the assignee both of the premises and of the license. *R.* (*Clitheroe*) v. *Recorder of Dublin* (XI. 85; I. R. 11, C. L. 412), adopted. R. (O'BRIEN) *v.* TIPPERARY CHAIRMAN AND JUSTICES

[C. A. XIV. 19

32. —— *Transfer of seven days' license—Grant of six days' license—Mandamus.*] In January 1876, the widow of the holder of a seven days' license applied to the magistrates for a transfer into her own name, and they gave her a six days' license, which was confirmed at the annual licensing sessions, there being no opposition. The Court granted a mandamus directing the magistrates to re-hear the application. R. (QUINN) *v.* TYRONE CHAIRMAN AND JUSTICES - - Q. B. D. XII. *M.* 310

33. —— *Transfer of license—Objection to granting, how made—Adjudication upon objection—Order of prohibition—Refusal of certificate for renewal—Written entry stating reason of prohibition or refusal—Jurisdiction of Licensing Justices*—3 & 4 *Wm. IV.*, *c.* 68, *s.* 4—18 & 19 *Vic.*, *c.* 62, *s.* 1—Certiorari.] Upon the hearing of applications for spirit licenses at Quarter Sessions on October 29th, D. applied for a transfer of a license to him. His name having been called in open Court, and proclamation made of the application, he was examined as to the

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LICENSING ACTS—*continued*

position and convenience of the house; and by questions put by the presiding Justices, it was elicited that his premises were situate beyond the jurisdiction of the borough police, and two miles distant from a police station; but no formal objection, either oral or in writing, was made to the granting of the transfer. The Chairman and Justices having heard all the applications, retired to consider them, and decided upon refusing D.'s application, on the ground of the inconvenience of his house. They then returned, and in open Court declared that the license to D. was refused, but they did not assign any reason for the prohibition, nor was any such reason then entered in writing by the Clerk of the Peace, the refusal being alone recorded. Afterwards, on November 3rd, when the chairman was sitting alone to hear civil bills, D. applied to him for a certificate of the reasons for which the transfer had been refused, and, on the following day, the chairman stated that it was by reason of the inconvenience of the house, and directed the Clerk of the Peace to make an entry to that effect. A writ of *certiorari* having been issued, commanding the return of the orders of prohibition and refusal to grant the certificate, what purported to be a copy of the list of the names of the various applicants was returned, having written thereon, opposite the name of D., and the description of his application for a transfer, the words—"Refusal because of the inconvenience of the house and place":—*Held*, that the orders of prohibition and refusal to grant the transfer and certificate should be quashed. R. (DEMPSEY) *v.* ANTRIM CHAIRMAN AND JUSTICES - - - **Q. B. IX. 156**

—— Committal of witness—Refusing to answer criminating questions - - - - **XVIII. 2**

See EVIDENCE. 17.

—— Disqualification of Justice - - **XXIII. 40**

See JUSTICES—DISQUALIFICATION. 3.

—— Transfer of license—Attached to freehold premises—Intestacy—Heir-at-law - **XXVI. 105, 123**

See SPIRIT LICENSE.

LIEN.

1. —— *General—Evidence of—Custom of trade—Linen dyers and finishers.*] In order to establish the existence of a general lien on the ground of usage or custom of a trade, it must be shown that it was so universally acquiesced in that everybody in the trade knew of its existence, or could have ascertained it on inquiry. Linen dyers and finishers in the North of Ireland have no general lien by the usage or custom of their trade enabling them to detain fabrics, delivered to them to be dyed or finished, for a general balance of accounts arising from work done in the course of their employment. *Savill* v. *Barchard* (4 Esp. 3); *Ex parte Watkins* (L. R. 8, Ch. 520): *Ex parte Vaux* (L. R. 9, Ch. 602), discussed. *Re* SPOTTEN, *Ex parte* PROVINCIAL BANK - - - **B. XI. 105**

2. —— *Goods—Order and disposition—Unregistered deed in the nature of a bill of sale—Relation back*—35 & 36 *Vic., c.* 58, *sec.* 21, *sub-sec.* 7—*B. and I. Act*, 1857, *sec.* 102—*Inspectorship deed.*] S. and Co. had been in the habit of obtaining advances from the Merchant Bank and giving letters to the bank declaring their goods at the bleach-green of B. and Co. to be subject to a lien for the amount of their advances. Subsequently a deed was executed by S. and Co. and B. and Co., declaring the goods then at the bleach-green to be subject to the lien:—*Held*, that the arrangements effected by letters prior to the execution of the deed were terminated by the execution of the instrument and merged therein. Other goods were from time to time substituted for those mentioned in the deed. B. and Co. covenanted by the deed to hold goods substituted with the sanction of the bank, for those specially mentioned in the deed, subject to the lien of the bank. The sanction of the bank was not, in fact, obtained at the time of the substitution. *Quære*, whether such substituted goods were subject to the lien by virtue of the deed? S. and Co. presented a petition for arrangement with their creditors, and after they had obtained the order for protection, sent to the Merchant Bank a letter

LIEN—*continued.*

describing the goods then at the bleach-green as subject to the lien of the bank:—*Held*, that the letter did not create any lien not existing by virtue of the deed. Every assignment of goods, whether legal or equitable, amounting to anything more than almost a mere promise, is subject to the operation of the Act for the registration of bills of sale. The Court will not in an arrangement case, pending the first sitting, upon motion dissolve an injunction restraining the removal of goods of the arranging debtor, out of the jurisdiction, unless upon the strictest proof of right by the person moving. *Quære*, whether the act of bankruptcy involved in the dismissal of a petition for arrangement relates back to the filing of the petition, or to the dismissal only? *Re* SPOTTEN AND CO. *Ex parte* THE MERCHANT BANKING CO. - **B. X. 46**

See Cases under PRACTICE—LANDED ESTATES COURT—LIEN.

—— Banker.

See BANKER. 6, 7.

—— On goods for payment of bills—Commission agent **XI. 51**

See BANKRUPTCY—ARRANGEMENT. 44.

—— Solicitor's.

See Cases under SOLICITOR—LIEN.

—— Vendor's - - - - - - **XVIII. 45**

See VENDOR AND PURCHASER. 5.

LIFE INSURANCE.

See INSURANCE. 6-10.

LIGHT.

1. —— *Ancient lights—Injunction—Substantial injury.*] Petition to restrain the erection of a building so as to darken the petitioner's ancient windows. The evidence was conflicting:—*Held*, that the injunction should issue, the Court being of opinion that substantial injury would result to the petitioner by the loss of sky area. MAGUIRE *v.* GRATTAN **[B. II. *M.* 136**

2. —— *Easement—Parol agreement—Extinguishment of license*—2 & 3 *Wm. IV., c.* 71, *sec.* 3.] To an action by the owner of a house for obstructing light to a window against the owner of the adjoining land, which right had been enjoyed for twenty years, the defendant pleaded on equitable grounds that the ancestor of the defendant had granted to the ancestor of the plaintiff a right to open a window in the wall in question, in consideration of which the ancestor of defendant and his successors were to be at liberty to build so as to block up the window if they pleased. Replication that the right had been enjoyed for twenty years, and that the agreement in the defence was not in writing. On demurrer:—*Held*, that the defence was bad under 2 & 3 Wm. IV., c. 71, sec. 3, and also that the benefit of a mere verbal license given by one party (deceased) to another party (deceased) would not pass to the representatives of the latter as against the representatives of the former. JUDGE *v.* LOWE - - - - **C. P. VII. 88**

3. —— *Setting aside verdict—Jury.*] In an action for obstruction of light, if the plaintiff proves sensible diminution of light and that his enjoyment of his premises was so interfered with, he is entitled to succeed even though he was not injured in his business. The fact that a jury viewed the premises did not entitle the defendant, when a verdict had been given in his favour, to succeed when a motion is made to set aside that verdict. MANNING *v.* GRESHAM HOTEL COMPANY **[Q. B. I. *M.* 6**

—— Obstruction—Evidence - - - **I. *M.* 36**

See EVIDENCE. 2.

LIMITATION OF ACTION—Account—Tenants in common - - - - - **VI. 70**

See TENANT IN COMMON. 1.

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LIMITATIONS, STATUTE OF.

1. —— *Accruer of right—Lease—Wrongful receipt of rent reserved—Absence beyond the seas—Possession by Receiver—Maintenance.*] In 1732 A. demised lands of K. to C., for three lives, renewable for ever; C.'s interest became vested in A. C., who in 1873 demised part of the lands to T. S., for three lives renewable for ever. A. C. left four daughters, entitled equally, one of whom married R. S. R. S. and his wife demised one-fourth part of the lands not demised to T. S, to N., for three lives, renewable for ever. R. S. had an only son, J. S. S., who died in 1820, leaving a widow, C. S., and a son, C. L. S., the latter living at the Cape, whence he never returned. In 1822, C. S. conveyed to J. G. P. the reversion on the lease to N. There was no evidence who received the rents from T. S. from 1820 to 1833, when a receiver was appointed, who paid N.'s rent to J. G. P., and retained one-fourth of the balance of T. S.'s rent after payment of head rent. In 1842 J. G. P. obtained an order to have this rent and arrears paid to him, which was done. Several renewals were made during the pendency of the cause to the respondent N., who had no interest, as a trustee for the parties in the cause and all others interested. In 1865 C. L. S., petitioner, assigned to L. his one-fourth of the reversion on T. S.'s lease and all arrears due. The petitioner filed a cause petition against J. G. P. and the respondent, praying that the respondent might be declared to be a trustee for him, and for payment of arrears of rents:—*Held*, that the Court could not presume either a will of J. S. S., or a conveyance by C. S. to J. G. P., and that the period under the Statute was 40 years, C. L. S. being absent beyond the seas, and therefore the bar did not apply; that the petitioner was entitled to S.'s one-fourth of the rents under T. S.'s lease, but as the arrears of them had been paid by the respondent under the order of 1842, the purchase of them was the purchase of a right which could only be realised by adverse litigation, and, under authority of *Prosser* v. *Edmunds* (1 Y. and C. 481), was not enforceable as tending to maintenance. TWISS *v.* NOBLETT
[V. C. IV. *M.* 64

2. —— *Accruer of right—Lease—Wrongful receipt of rent—3 & 4 Wm. IV., c. 27, s. 9.*] H., a lessee for lives renewable for ever of a house, on his marriage conveyed it to trustees and their heirs to his own use for life, and after his decease chargeable with a jointure for his wife C. and the children of the marriage equally, in default of appointment by H. (an event which happened). The settlement gave to H. and C. a leasing power "for any term whatever," and they in 1805 demised the premises for 61 years to M. The rent was reserved to H. and C., their heirs and assignees. From the death in 1815 of H., C. received the rent till she died in 1854, when J., the youngest son, entered into receipt. In 1858 a fee-farm grant was executed to him, and he in 1860 sold the property for value to the defendant. Some of the six children (other than J.) of the marriage filed this bill praying that the defendant should be declared a trustee of six undivided shares for the persons beneficially entitled under the settlement. The defendant relied on the Statute of Limitations:—*Held*, that C. had not been a person wrongfully claiming within the 3 & 4 Wm. IV., c. 27, s. 9, and that time did not begin to run against her representatives until her death in 1854. SHAW *v.* KEIGHRON
[R. III. *M.* 578

3. —— *Acknowledgment—Letter.*] A letter by a debtor asking for costs to be furnished is sufficient to take case out of Statute of Limitations. FITZGIBBON *v.* O'BRIEN
[M. O. I. *M.* 34

4. —— *Acknowledgment—Debtor and creditor.*] Letters of a defendant which do not contain an absolute acknowledgment of a debt, or an express promise to pay, but in which the alleged debtor expresses his wish that the claim should be discussed by his referee and the plaintiff's agent, and that if the claim should be established in such reference the matter should be arranged, will not afford an answer to a plea of the Statute of Limitations. CASSIDY *v.* FIRMAN
[E. I. *M.* 7

LIMITATIONS, STATUTE OF—*continued.*

5. —— *Acknowledgment—Letter.*] A debtor wrote to her creditor: "I must therefore once more request you to furnish me with an account of my debt to you," and suggested a method of ascertaining the amount, there having been mutual dealings between them:—*Held*, a sufficient acknowledgment within the Statute of Limitations. BURROWS *v.* BAKER
[V. C. III. *M.* 538

6. —— *Acknowledgment — Letters — Solicitor — Agent.*] C. acted as solicitor for a railway company in purchasing lands, &c., and died. In a suit to administer his assets, the company filed a charge claiming a sum as due to them by C. To save their claim from the bar of the Statute they relied on two letters written by C. to their secretary. In the first C. wrote: "I am now quite ready to go into the account, but as I have wrote to you, it is necessary to have an appointment to dispose of it satisfactorily. . . . I will on hearing from you, go over and vouch the account." The second letter contained this passage: "I am going shortly to London, and will take with me the vouchers and papers necessary to close what remains open on the account.":—*Held*, that these letters did not contain acknowledgments sufficient to take the case out of the operation of the Statute. CRAWFORD *v.* CRAWFORD - E. II. *M.* 119

7. —— *Adverse possession—Fiduciary capacity.*] The possession of a person clothed in a fiduciary capacity is not adverse, within the Statute of Limitations, and is no answer to one of the next of kin taking out letters of administration and suing in ejectment. (By Lawson, J.) MULHERN *v.* DORIAN - - - - Cir. Cas. XVII. 74

8. —— *Commencement of civil bill action.*] In relation to the Statute of Limitations, the commencement of a Civil Bill action dates, not from the time of the service of the process, but from the time of its delivery to the process-server and entry in his book. (By Morris, C.J.) COYNE *v.* HUNT
[Cir. Cas. XX. 82

9. —— *Demurrer to statement of claim founded on—Immaterial allegations—Time and place—O. XVIII., rr.* 11, 14.] A defence founded on the Statute of Limitations cannot, since the Judicature Act, be raised by demurrer. NICOLLS *v.* HIBERNIAN JOINT STOCK BANKING COMPANY
[E. D. XII. 83

10. — *Effect of petition for sale, or for partition and sale, by owner or incumbrancer.*] Whether a petition presented in the Landed Estates Court be for sale or for partition and sale, and whether it be presented by the owner or by an incumbrancer, an order for sale, made within the time of limitation affecting an incumbrance on the estate, will take the incumbrance out of the operation of the Statute of Limitations. Re *Colclough* (8 Ir. Ch. R. 330), observed upon, but followed. Decision of Flanagan, J., affirmed. *In re* NIXON'S ESTATE
[L. E. C. VIII. 111; Ch. A. IX. 31

11. —— *Ejectment on the title—Mortgage*—10 *Car.* 1, *c.* 15, *ss.* 2, 3 (*Irish*)—8 & 9 *Vic., c.* 106, *s.* 6.] The mortgagee of an assignee's interest in lands, where the assignee never went into possession, and was barred by the Statute from recovering in an action of ejectment on the title, cannot recover in an action of ejectment on the title. FLEMING *v.* MOORE
[Q. S. XXV. 48

12. —— *Express trust—Term.*] In 1812, E. B., by indenture, granted an annuity for lives, payable out of certain lands, and, to secure its payment, demised the lands to trustees for a term of years, with a proviso for cesser upon payment of all arrears of the annuity. In 1814, E. B., by indenture, granted to W. W. an annuity for lives, payable out of the same lands, and demised the lands to a trustee for a term of years, upon certain trusts for better securing the annuity, with a proviso for cesser upon payment of all arrears. A receiver appointed in a cause instituted to recover the arrears of the first annuity, having been in receipt of the rents and profits of the lands, from 1825 until the filing of a petition for sale in the Landed Estates Court, and the arrears having been paid upon such sale in 1868:—*Held*, that the claim of the representative of

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LIMITATIONS, STATUTE OF—*continued.*

W. W. to the arrears of the annuity granted in 1814 was not barred by 3 & 4 Wm. IV., c. 27. *In re* BIRMINGHAM'S (ASSIGNEES') ESTATE
[L. E. C. IV. M. 304; Ch. A. V. 39

13. —— *Express trust—Construction of will.*] A testator, by his will, dated in June, 1833, gave to J. G., his heirs, &c., all his real and personal estate, upon trust, to raise thereout £1,500, and invest £1,000, part thereof, for the use of his son, J. D., to be paid to him, with interest, &c., on attaining the age of 21 years, and £500 for the use of his daughter, C. D., to be paid to her, with interest, &c., on her attaining her age of 21 years, or marriage, with a gift to the survivor of the other's share, in the event of the death of J. D. under 21 years without issue, or C. D. under 21 years without being married. After a bequest of £1,000 to his wife, he directed that J. G. should invest such parts of his property as were not disposed of for the use of his said son, J. D., to be paid to him on the attaining of his age of 21 years, or in the event of his death under 21 years, without issue, for the use of his said daughter C. D., &c. The will then continued: "And upon this further trust that in the event of the death of both my said children before they shall respectively attain their said ages of 21 years, or that my said daughter shall not marry, &c., my will and desire is that the said J. G. shall and do retain to his own use and benefit all the rest, residue, and remainder of my said real and freehold property, goods, chattels, stock in trade, securities for money, and all other personal estate and effects, and the moneys and proceeds arising therefrom, and to apply and dispose of the same as he may deem and consider necessary. I give, devise, and bequeath unto my said son J. D. all the rest, residue, and remainder of my goods, chattels, personal estate, and effects of what nature or kind soever for his own sole use and benefit." C. D. died in 1834, aged about 4 years, and J. D. died later in the same year, aged about 5 years. J. G. died in 1869. Upon a bill being filed in 1871, to carry out the trusts of the testator's will, the defendants, who were the executors of J. G., in their answer admitted that J. G. fully accepted and acted in the trusts of the will, and assented to all the bequests therein contained:—*Held*, that the legacies to J. D. and C. D. of £1,000 and £500 were vested. *Held*, also, that J. G. took the beneficial interest in the residue of the testator's property. *Held*, also, that in consequence of the admission by the defendants, the Statute of Limitations, 3 & 4 Wm. IV., c. 23, could not be relied on as a defence, J. G. being an express trustee, and that the defendants were bound to pay to the administrator of C. D., out of the assets of J. G., the legacies of £1,000 and £500. Whether the 6th section of the 3 & 4 Wm. IV., c. 27, applies to suits for legacies under the 40th section, *quære*. O'REILLY *v.* WALSH - - - R. VI. 107

[This was affirmed on appeal. I. R. 7, Eq. 167.]

14. —— *Express trust—Construction of marriage articles.*] By articles of December 1, 1787, executed previously to the intended marriage of W. R., it was, amongst other things, agreed that certain lands or a rent-charge should be vested in trustees for 300 years from the death of W. R., upon a certain trust, and subject thereto upon trust to raise portions for the younger children of the marriage of W. R., distributable according to a power of appointment given to W. R. by the same articles. No settlement was executed. In 1813 W. R. appointed £1,500, part of said portions, as the portion of M. R., one of his daughters, and directed that said sum should, immediately after his death, be raised and paid, with interest to be computed from the day of his death, to trustees, to be applied as declared in the settlement executed on the marriage of W. R. with F. C. A. The said settlement provided that the trustees should pay the interest of said sum to F. C. A. for life, and after his death to M. R. for life, and should pay same to the children of the marriage as F. C. A. should appoint. F. C. A. died in 1832, having by his will appointed said sum in equal shares amongst his children. W. R. died in 1837. No payment of interest of the sum of £1,500, or any part thereof, was ever made to M. R. (who survived F. C. A.) or to any of her children, and no acknowledgment was ever made. Upon a sale of the said rent-charge in the Landed Estates Court, for which a petition was presented in 1868, the children of F. C. A. and their trustees claimed to be paid the said sum of £1,500, with interest from 1837, the date of the death of W. R.:—*Held* (upon appeal from the decision of the Landed Estates Court allowing the claim), by Lord O'Hagan, L.C. (the Lord Justice of Appeal declining to express any opinion on the question), that the case was within the 25th sec. of 3 & 4 Wm. IV., c. 27, the agreement to create the term of 300 years being equivalent in equity to the creation of said term. *Re* RADCLIFF'S ESTATE - Ch. A. V. 152

LIMITATIONS, STATUTE OF—*continued.*

15. —— *Express trust—Notice of unregistered security.*] By a settlement executed on the marriage of his son, O. M. charged a sum of £1,000 on chattel lands for the younger children of the marriage on the death of their parents, the survivor of whom died in 1830, when a bill was filed by the only younger child to raise the charge. The cause was referred to two barristers, who in 1834, awarded that the lands were subject to the charge. A deed was executed in 1836, which was also lost, by which O. M. and his grandson, the eldest son of the marriage, charged the lands with £1,000 in favour of the younger child. In 1843, on the marriage of the grandson, the lands were settled subject to the £1,000, and in 1845 the surviving trustee of the settlement in 1809 assigned the property to the grandson. The younger child died in 1854, from which time no interest was paid:—*Held*, that the effect of the deeds was to create an express trust for payment of the £1,000, and that the claim for principal and interest was not barred by the Statute of Limitations. A mortgagee claiming under a registered deed:—*Held*, bound by notice to his solicitor of a prior unregistered settlement. *Re* MASON'S ESTATE - - - L. E. C. V. 183

16. —— *Express trust—Power to sell—Construction of will.*] A testator directed that all his properties should be sold by his executors as soon as they could dispose of them to advantage, or such part of them as would pay all his debts specified in a schedule, and he bequeathed legacies payable immediately. He died in 1831, from which time no payment was made on account of the legacies:—*Held*, that no trust was created for payment of the legacies, to take the case out of the bar of the Statute of Limitations. *Re* BURLEIGH'S ESTATE - L. E. C. V. 81

17. —— *How raised as defence—O. XVIII., r.* 11.] The defence of the Statute of Limitations should be raised by statement of defence, and not by a demurrer to the statement of claim. NICHOLLS *v.* HIBERNIAN BANK E. D. XII. *M.* 296

18. —— *Judgment creditor—Acknowledgment—Part payment—Assignment in trust for benefit of creditors to maintain policy of assurance—Receipt of income by trustee—Payment of premiums.*] A. and B. were judgment creditors of S. S. in 1852 assigned his life interest in certain rents and funds to a trustee upon trust to maintain therewith a policy of assurance on his life, and accumulate the residue, if any, until his death, and after his decease to distribute the fund among A. and B. and others, his creditors. S. died in 1882:—*Held* (reversing the decision of Chatterton, V.C.), that the payment by the trustee from time to time of the premiums on the policy were part payments by the debtor and prevented the operation of the Statute of Limitations:—*Held* (affirming the Vice-Chancellor), that an acknowledgment in writing of a debt as due must, in order to satisfy the Statute, be more than a mere vague reference to debts in general. *Millington* v. *Thompson* (3 Ir. Ch. Rep. 236), distinguished. SCOTT *v.* SYNGE. C. A. XXV. 50

19. —— *Judgment more than twelve years old—Leave to issue execution—37 & 38 Vic., c. 57, s.* 1.] Section 1 of 37 & 38 Vic., c. 57, comprises sums secured by judgment before as well as since 13 & 14 Vic., c. 29, notwithstanding section 20 of the C. L. P. Act, 1853, which to this extent is impliedly repealed, so that on a foot of a judgment entered upon Aug. 7, 1871, leave to issue execution will not be granted more than 12 years next after the right to recover having elapsed, and the plaintiff's right being therefore barred under 37 & 38 Vic., c. 57. EVANS *v.* O'DONNELL - - - - Q. B. D. XIX. 53

[Affirmed on appeal. 18 L. R. Ir. 170.]

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LIMITATIONS, STATUTE OF—*continued.*

20. —— *Payment — Acknowledgment — Common Law Procedure Act*, 1853, *s.* 22.] A payment made under an order of the L. E. Court on account of a creditor's demand, is an acknowledgment of the debt, by part payment within the C. L. P. Act, 1853, sec. 22. CRONIN *v.* DENNEHY [E. III. *M.* 157

21. —— *Payment of interest on one of several judgments on foot of one joint and several bond.*] Three separate judgments to secure one sum were obtained against three respective obligors on their joint and several bond. Interest was paid on one judgment only, namely, that against the late Earl:—*Held*, that payment kept alive the judgment against the present Earl. *Re* KINGSTON'S ESTATE - L. E. C. III. *M.* 514

22. —— *Pleading—Future estate*—37 & 38 *Vic.*, *c.* 57.] Where the person entitled to the previous particular estate in land was not in possession of the rents and profits of the land when his interest determined, a plea that the right of action of the person in remainder is barred by the Real Property Limitation Act, 1874 (37 & 38 Vic., c. 57), sec. 2, must both aver that the action was brought neither within 12 years next after the time when the right of action first accrued to the person whose interest so determined, nor within six years next after the time when the estate of the person becoming entitled in possession became vested in possession. KNOTT *v.* CORNWALL - - - - - E. D. XV. 98

23. —— *Promissory note—Unanswered letter to defendant's solicitor—Evidence of admission by defendant of facts stated in letter.*] Is the circumstance that a defendant or his solicitor does not answer a letter from the plaintiff's solicitor evidence to go to the jury that the defendant admits the truth of certain facts, as disclosed in the letter and its enclosures, detrimental to the interests of the recipients, as tending to take a cause of action out of the Statute of Limitations?—*Held* (Palles, C.B., *diss.*), that such silence constitutes evidence of admission to go to the jury, in corroboration of the other facts in the case. *Per* Palles, C.B.: The defendant's solicitor should not have answered the letter, and would not be paid (as between party and party) for so doing. The defendant gave promissory notes for £50 to each of his sisters, Julia and Margaret, who resided together and were partners, carrying on a public-house. Subsequently to their instructing a solicitor to proceed to recover the amount due on both notes the defendant handed £5 to Julia, without saying how the money was to be applied. She appropriated £2 10s. to each of the notes, and put an indorsement to that effect on the back of the notes. Two writs having been issued, the notes so indorsed were, at his request, sent to the defendant's solicitor for inspection, and, together with them, a letter from the plaintiff's solicitor. The notes were returned without any reply to the letter. No further proceedings were taken on the writs. In a subsequent action brought on Margaret's note, after more than six years had elapsed from the date of the note, the defendant alleged that the £5 was paid by him in respect of Julia's note only, and pleaded the Statute of Limitations in the case of Margaret's note. The Judge refused to withdraw from the jury the letter of the plaintiff's solicitor enclosing the notes so indorsed, considering that an inference of assent might be drawn from the defendant's not having replied to it. The jury having found for the plaintiff:—*Held*, that the verdict should not be set aside, or a new trial granted, on the ground of misdirection and admission of illegal evidence. *Powell v. Heffernan* (8 L. R. Ir. 130) commented on. JOY *v.* JOY E. D. XXVI. 12

24. —— *Solicitor—Agent—Trust—Settlement of accounts.*] A solicitor for a railway company received a sum of £428 in 1854 to give in compensation and he entered the receipt of it in his ledger, but did not apply it for the purpose it was given to him for. In 1856 he recovered judgment against the company for a large sum for costs, and on his death an account was settled between his administrator and the company, and the balance due to him was paid in debentures of the company. In 1865 a suit was instituted to administer his assets, and the company

LIMITATIONS, STATUTE OF—*continued.*

filed a charge in respect of £428:—*Held* (reversing the Master of the Rolls), that the claim was barred by the Statute of Limitations. CRAWFORD *v.* CRAWFORD [R. I. *M.* 602; Ch. A. I. *M.* 660

25. —— *Use and Occupation—Estoppel.*] The respondent obtained a civil bill decree for the use and occupation of a cottage which the appellant had, when the civil bill was brought, occupied for twenty years without paying rent or giving a written acknowledgment of tenancy. In 1859 the respondent had obtained against the appellant a decree for £4 for use and occupation of the same cottage. The appellant obtained leave to pay it by instalments, but never paid any part:—*Held*, that there not being a written acknowledgment of the tenancy, mere non-payment of rent for 20 years created a tenancy in fee, and that the decree of 1859 did not stop the appellant from denying that he was, when the present civil bill was brought, a tenant of the respondent. (By Morris, J.) WILSON *v.* M'ATEER - Cir. Cas. II. *M.* 153

26. —— *Written agreement — Repairing contract.*] The plaintiff, by written agreement in 1870, agreed to hand up right of possession to the defendant of her house and plot in K. until such time as she should require it for her own personal use, and that any expense she was to be at by repair the plaintiff would see her paid before she got possession, at £2 per annum rent. One quarter's rent was paid at the time of the agreement; in 1887 the plaintiff sued for six years' rent, and the defendant set up a plea of the statute:—*Held*, that a decree for six years should be granted. (By Morris, C.J.) FEENY *v.* GALVIN [Cir. Cas. XXI. 32

—— Accruer of Right—Insolvency—Judgment upon bond given as security for a fund in which the judgment debtor has a life interest - - - IV. *M.* 4
See JUDGMENT. 2.

—— Adoption by landlord of payment of head rent by tenant [IX. 26
See LANDLORD AND TENANT—RENT. 7.

—— Application of to tithe rent-charge - XIX. 4
See TITHE RENT-CHARGE. 2.

—— Debt—Settlement - - - IV. *M.* 215
See EXECUTOR—ADMINISTRATION SUMMONS. 4.

—— Ejectment—Mistake—Writ of restitution I. *M.* 26
See WRIT OF RESTITUTION. 5.

—— Express trust—Purchase for value—Charity IV. *M.* 738
See CHARITY—SCHEME. 1.

—— Fund in Court from 1813 to 1870—Payments in respect of life estate made by remainderman - IV. *M.* 701
See TENANT FOR LIFE AND REMAINDERMAN. 2.

—— Landed Estates Court Conveyance [I. *M.* 64; II. *M.* 282
See LANDED ESTATES COURT CONVEYANCE. 1.

—— Landed Estates Court Petition - - I. *M.* 103
See PRACTICE—LANDED ESTATES COURT—PETITION. 1.

—— Payments for maintenance of lunatic—Charge of estate [XV. 45
See LUNATIC—MAINTENANCE. 2.

—— Payment by one conusor of joint judgment - VII. 68
See JUDGMENT. 1.

—— Pleading—Seduction - - - II. *M.* 42
See SEDUCTION. 6.

—— Proof of debts barred by statute in arrangement matters and bankruptcy - - VIII. *M.* 109
See BANKRUPTCY—ARRANGEMENT. 14.

—— Suit between trustee and *cestui que* trust II. *M.* 242
See HUSBAND AND WIFE. 21.

—— Title by—Application to have fair rent fixed XXIII. 88
See LAND LAW (IRELAND) ACT, 1887. 13.

—— Will—Trustee - - - - X. *M.* 616
See TRUSTEE—BREACH OF TRUST. 3.

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LIMITED ADMINISTRATION.

See Cases under PROBATE—LIMITED ADMINISTRATION.

LIMITED OWNER—*Lease by—Rent—Landed Property (Ireland) Improvement Act*, 1860—*Expenditure by intended lessee—Practice.*] S. contracted for a lease with a limited owner, and on the faith of getting it expended large sums of money upon the premises:—*Held*, that the sanction of a Judge of the Landed Estates Courts being sought under sec. 25 of the Landed Property Improvement Act, 1860, that Court, in estimating the rent in the proposed lease, was bound to have regard to the expenditure by S. *Re* DE SALIS' ESTATE [L. E. C. IV. *M.* 348

LIMITED POWER OF SALE—Settlement V. 170

See SETTLEMENT—CONSTRUCTION. 11.

LIQUIDATED DAMAGES—Bond—Penalty [II. *M.* 6

See BOND. 3.

LIQUIDATOR—Company—Security for Costs [XII. *M.* 161

See PRACTICE—SECURITY FOR COSTS. 2.

LIS PENDENS—*Plea of—Notice of filing summons and plaint—Lapse of six months from service.*] A plaint issued on the 12th of October, 1855, was served on the 23rd of October, and filed on the 6th of November. On the 13th of November the Court, by consent, ordered the first paragraph in the plaint to be set aside with costs, the plaintiff to be at liberty to amend. The order did not limit the time within which the plaint should be amended. The plaintiff did not amend, pay costs, or take any further step, or discontinue, but on the 14th of May issued the plaint in the present action, and served it on the following day:—*Held*, affirming the decision of the Court of Exchequer, that defendant's plea of *lis pendens* was proved. DORAN *v.* CHANCELLOR - E. C. II. *M.* 41

LODGER—Franchise.

See PARLIAMENT—FRANCHISE. 27-42.

LORD LIEUTENANT—*Action against—Staying proceedings—Official Act.*] No action can be maintained against the Lord Lieutenant of Ireland, during his continuance in office, for any act done by him as Lord Lieutenant. The Court will on motion stay the proceedings in such an action against the Lord Lieutenant without requiring him to plead. SULLIVAN *v.* EARL SPENCER - - Q. B. VI. 25

LOST WILL—Probate.

See Cases under PROBATE—LOST WILL.

LUNATIC. Col.

COMMITTAL - - - - - - - 389
CONTRACTS AND DISPOSITIONS - - - 390
MAINTENANCE - - - - - - - 390
PRACTICE - - - - - - - 390
PROPERTY - - - - - - - 391

LUNATIC—COMMITTAL—*Justices' warrant to commit—Printed form of, with blanks to be filled in—Neglect to insert—Removal of lunatic to district asylum—Certificate of medical officer—Incorporation of, in warrant*—30 & 31 *Vic., c.* 118, *s.* 10.] Where the blanks in a printed form of a warrant to commit a dangerous lunatic to the district asylum, under 30 & 31 Vic., c. 118, were not filled in with statements that the magistrate called in the assistance of a proper medical officer, and that he gave a proper medical certificate, the warrant was held void. A medical certificate, described in the warrant as "annexed," but not identified in any way by the reference as one which was before the magistrate previous to the signing of the warrant, cannot be taken as incorporated therewith for the purpose of supplying defects therein not of form but of substance. The medical custodian of the lunatic, acting and justifying under such warrant, is equally liable with the magistrates to an action for false imprisonment. COGHLAN *v.* WOODS [E. D. XVI. 105

LUNATIC—CONTRACTS AND DISPOSITIONS.

1. —— *Testamentary capacity—Evidence of lucid interval—Making a rational will—New trial—Principles on which granted where verdict is against weight of evidence.*] Where it appeared upon the evidence that the testator was subject to several insane delusions, including an illusion as to the nature and extent of his property, the Court set aside the verdict, finding that the testator was of sound mind, memory and understanding at the time of the execution of the will. To constitute a sound disposing mind, a testator must not only be able to understand that he is, by his will giving the whole of his property to one object of his regard, but he must also have capacity to comprehend the extent of his property, and the nature of the claims of others whom he is excluding from participation in that property. COLLIER *v.* CULLEN - P. X. 9

2. —— *Testamentary capacity—Province of jury.*] The question as to testamentary capacity is essentially a question to be left to the jury. HARVEY *v.* BUCHANAN P. I. *M.* 386

LUNATIC—MAINTENANCE.

1. —— *Dividends of funds—Trustee Relief Act.*] When legacies were paid into Court under the Trustee Relief Act, the legatee being of weak mind, but not found a lunatic by inquisition, the Court made an order for the payment of the dividends to a gentleman within the jurisdiction to be applied by him for the maintenance and clothing of the legatee, and directed that he should account every three years. *Re* CONNELLAN'S TRUSTS [R. I. *M.* 422

2. —— *Not so found—Reasonableness of amount—Statute of Limitations.*] Advances made for the maintenance of a lunatic will be paid out of the estate of the lunatic on its administration, and will be treated as a charge thereon, so as not to be barred by the Statute of Limitations, and the only restriction in the payment will be so far as the amount of the advance was reasonable. *Re* O'GRADY'S ESTATE; O'GRADY *v.* YOUNG [V. C. XV. 45

3. —— *Pauper—Property liable for maintenance*—38 & 39 *Vic., c.* 67, *s.* 16.] Where a pauper lunatic has been placed in an asylum, and expenses incurred by the governors in his maintenance, and he becomes entitled to property, the Court will order payment to the governors for his past maintenance. (By Chatterton, V.C.) In *re* FITZGERALD [Cy. Ct. A. XXVI. 181

LUNATIC—PRACTICE.

1. —— *Appointment of new trustee.*] A petition to have a new trustee appointed in the stead of a lunatic had been directed to be amended, and to be entitled in the lunacy matter as well as under the Trustee Acts. These directions having been complied with, the new trustee was appointed. *Re* ROPER'S SETTLEMENT - - C. II. *M.* 210

2. —— *Court of Appeal Act.*] The Lord Justice of Appeal sitting for the Lord Chancellor has no jurisdiction to act in matters of lunacy. ANON. - C. I. *M.* 24

3. —— *Form of Commission.*] In a lunacy matter the Commission can be sped in the country instead of in Dublin in case a lunatic cannot be removed to Dublin, and the commission can be directed to both the Commissioners in Lunacy or to either of them, so as to have the inquiry before one only, which is very usual in country cases. *Re* DAUNT C. I. *M.* 794

4. —— *Guardian* ad litem—*O. XII., r.* 1—*Practice.*] Before the general solicitor for lunatics is appointed as guardian *ad litem* for a defendant an affidavit must be made showing that there is no independent friend or relative who can be procured to act. NORMANTON *v.* BRENNAN Q. B. D. XII. *M.* 73

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LUNATIC—PROPERTY.

1. —— *Allowance to child of lunatic.*] An allowance can be made to a child of a lunatic out of the lunatic's estate. *Re* HARLEY - - - - - - C. I. *M.* 794

2. —— *Payment out of money lodged in Court.*] Money was lodged in Court by the defendant, and as the plaintiff was a lunatic and a pauper, his brother applied to have it paid out to him:—*Held*, that the interest and part of the principal should be paid out to him on his undertaking to apply it to the use of the plaintiff. LITTLE *v.* THWAIT - E. I. *M.* 661

LUNATIC.

—— Asylum—Presentment for - - - VIII. *M.* 545
See GRAND JURY—PRESENTMENT—LUNATIC ASYLUM.

—— Debtor's summons—Service on - XXVI. *M.* 521
See BANKRUPTCY—DEBTOR'S SUMMONS. 7.

—— Defendant—Execution against - XII. *M.* 396
See PRACTICE—EXECUTION. 1.

—— Executor becoming—Grant of administration XXI. 12
See PROBATE—GRANT OF ADMINISTRATION. 5.

—— Guardian *ad litem*—Appointment by County Court Judge. [XXVI. *M.* 635
See PRACTICE—CIVIL BILL COURT—GUARDIAN AD LITEM

—— Person of unsound mind not so found—Appointment of Guardian *ad litem* - - - IX. 98
See PRACTICE—CHANCERY—GUARDIAN AD LITEM. 7.

—— Service of Civil Bill - - - II. *M.* 574
See PRACTICE—CIVIL BILL COURT—SERVICE OF CIVIL BILL. 6.

—— Special case—Evidence - - - XVII. 43
See PRACTICE—EVIDENCE. 3.

—— Trustee—Appointment of new - - IV. *M.* 228
See TRUSTEE—APPOINTMENT. 7.

M.

MAINTENANCE—Infant—Illegitimate child.
See Cases under INFANT—MAINTENANCE.

—— Lunatic.
See Cases under LUNATIC—MAINTENANCE.

——Purchase of rights to be realised by adverse litigation [IV. *M.* 64
See LIMITATIONS, STATUTE OF. 1.

MALICIOUS INJURIES.

1. —— *City of Dublin—Information—"Give in his examination upon oath"—"Justice"—7 Wm. III., c.* 21 (*Ir.*), *s.* 4.] In the case of malicious injuries in the City of Dublin the information or examination must be lodged in the Central Police Office. *Semble*, the information should not be sworn before an ordinary Justice, but before a Divisional Magistrate. *In re* JESSON'S PRESENTMENT - Q. B. D. XXII. 92

2. —— *County Antrim and Belfast Borough Act*, 28 & 29 *Vic., c.* 183, *ss.* 34, 35, 36, 38, 42—*Stamp Act*, 54 & 55 *Vic., c.* 39, *s.* 21, *ss.* (2)—*Grand Jury Act*, 6 & 7 *Wm. IV., c.* 116, *s.* 137.] M. L. H. & B. had effected insurances on their premises with a plate glass company, against malicious injuries. A quantity of plate glass was smashed, and the company sent in claims to the Belfast Corporation under s. 35 of the Borough Act, claiming compensation for the damage sustained by them in having to replace the glass so destroyed. Under s. 38 of the same Act it is necessary that the person claiming

MALICIOUS INJURIES—*continued.*

compensation should, within three days after the commission of the offence, give or cause to be given the examination on oath of himself or the person who had charge of his property. This was done by the company, but when the claims came up for hearing before the City Council it appeared that the stamps on the affidavits were not cancelled, and accordingly the claims were disallowed, and from this the traversers applied to the going Judge of Assize to reconsider the cases:—*Held*, that the affidavits under s. 38 of the Borough Act of 1865, corresponding to s. 137 of the Grand Jury Act (6 & 7 Wm. IV., c. 116), being required to be made by law, are exempt from stamp duty; but that the only person who can claim compensation for malicious injury under the Grand Jury Acts or the Borough Act is the owner of the property injured, and as the insurance company was not the owner of the property injured, the claims must be disallowed. (By Andrews, J.) COMMERCIAL PLATE GLASS COMPANY, LIMITED *v.* THE LORD MAYOR, ALDERMEN AND CITIZENS OF BELFAST - - - - Cir. Cas. XXVII. 116

—— Presentment.
See Cases under GRAND JURY—PRESENTMENT—MALICIOUS INJURIES.

—— To property—Indictment - - - V. 41
See CRIMINAL LAW—INDICTMENT. 2.

MALICIOUS INJURIES ACT—Killing dog [XI. 146
See JUSTICES—OFFENCES. 8.

MALICIOUS PROSECUTION.

1. —— *Action for against railway company—Reasonable and probable cause—Evidence of malice.*] In an action for malicious prosecution, evidence upon which the Judge decides that there was a want of reasonable and probable cause is, of itself, if believed by the jury, evidence from which they may infer malice, but it is not conclusive evidence. *Sed quære*, whether such an action will lie at all against a corporation aggregate? COULTER *v.* DUBLIN AND BELFAST JUNCTION RAILWAY COMPANY - - - - Q. B. IX. 209

2. —— *Action for maliciously making false declaration before a magistrate—Non-averment of termination of proceedings—Pleading.*] In order to maintain an action for maliciously, falsely, and without probable cause swearing informations before a Justice of the Peace, under which a warrant was issued, and the plaintiff imprisoned, it is necessary, as in the case of an action for malicious prosecution, to aver that the proceedings before the magistrates had terminated. KELLY *v.* DAVIDSON [C. P. X. 19

—— Remitting action.
See REMITTING ACTION TO CIVIL BILL COURT. 74, 110, 111, 158.

MANDAMUS.

1. —— *Appeal to Quarter Sessions—Laches.*] Where an application for a mandamus was made on February 25 to review a decision of the County Court Judge made on the 10th of October preceding, the Court refused the application on the ground that it was made too late. R. (KILLIEN) *v.* KING'S COUNTY CHAIRMAN - - [Q. B. D. XV. *M.* 233

2. —— *Justice of the Peace—Dismissal of criminal charge—Conflict of evidence—Forcible entry—Purchaser under writ of fi. fa.—5 Rich. II., c.* 7.] While the Queen's Bench Division possesses jurisdiction, where Justices at Petty Sessions have refused to receive informations, and have dismissed the charge to compel them by a writ of mandamus to receive the informations and commit the parties for trial, and would exercise that jurisdiction, for instance, where, the evidence to sustain the charge being clear and uncontradicted, and the witnesses unimpeached, the Justices nevertheless refused to receive the informations and pronounced a dismissal, yet the Court will not inter-

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MANDAMUS—*continued.*

fere where the Justices have jurisdiction and proceed to investigate the case, deciding upon a question of fact, and exercising the large judicial discretion with which these are invested in considering, with good faith, the credibility of the witnesses and the weight and effect of conflicting evidence, even though the conclusion arrived at may have been erroneous. When a chattel interest in a house and land has been sold by a sheriff under a writ of *fieri facias*, and conveyed by assignment, the sheriff cannot put the execution-debtor out of possession, and the vendee, if he cannot obtain possession peaceably, must resort to an action for recovery of the land on the title; but if the vendee enters with a strong hand, with a multitude of people with unusual weapons, or with menace to life or limb, accompanied by circumstances of actual violence and terror, so as to prevent resistance by the apprehension of personal injury, it will constitute a "forcible entry" within the purview of 5 Rich. II., c. 7, for which he will be criminally liable. RYAN *v.* GODDARD [Q. B. D. XV. 103

8. —— *Revising barrister—Burgess roll*—32 & 33 *Vic., c. cxxxiii.*] An objector to persons claiming votes need not have personal knowledge of the nature of the objection when he signs the notice of objection. R. (JOHNSTON) *v.* WALL [Q. B. D. XXVII. 43

4. —— *Sheriff—Compelling person to act as sheriff.*] The Court will not grant a writ of mandamus or a peremptory order in the nature of a mandamus to compel a person to be sworn in and accept the office of High Sheriff to which he has been duly appointed. R. *v.* HUTCHINSON; R. *v.* GERRARD [Q. B. D. XXVII. 69

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MASTER AND SERVANT.

1. —— *Action against master for not giving discharge.*] An action for damages against a master for refusing to give a discharge to a servant does not lie: the servant's remedy being to summons the master before the Justices, and get them to give a discharge. NORTH *v.* TODD - Q. S. XI. *M.* 167

2. —— *Action for damages for refusing a character.*] No action for damages lies, at Common Law or by Statute, by a menial servant against his master, for refusing to give a certificate of character. HANDLY *v.* MOFFATT - C. P. VII. 9

3. —— *Enticing servant to leave employment*—"*Master workman*"—*Farmer or private gentleman.*] A farmer or private gentleman is not a "master workman" within 43 Geo. III., c. 86, sec. 7. MURPHY *v.* FARRELL [P. S. IX. *M.* 459

4. —— *Liability of servant for yacht in his charge, which was injured by his son.*] Plaintiff ordered that no person was to be let use his yacht. The defendant was her caretaker, and his son (who was of full age), without his father's authority, took out in her some friends for a trip, during which she was sunk by a collision with a steamer:—*Held*, that the defendant was liable. (By Monahan, C.J.) BRETT *v.* FEENY [Cir. Cas. III. *M.* 390

5. —— *Master employing workman retained by another without his leave—Female worker—Contract—43 Geo. III., c. 86, s. 7.*] Where an employer entered into a contract with a female worker, by which she was bound to work for him exclusively and to give a fortnight's notice before quitting his employment, and, not being supplied with sufficient work by the employer, she left his service without due notice, and entered that of another employer:—*Held*, that the second employer was not liable to the penalty under 43 Geo. III., c. 86, s. 7, the contract being void for want of mutuality, as containing nothing implied or expressed to compel the employer to supply her with work or to pay her for doing same. *Sykes* v. *Dixon* (9 A. & E., 693), applied. JOHNSTON *v.* BENSON - - - - Q. S. XXV. 20

6. —— *Refusal to give character.*] A master is not obliged to give a servant any more than a certificate stating that the servant has lived with him a certain time. BUTLER *v.* LAWSON [L. M. C. XIV. M. 517

7. —— *Refusal to give discharge.*] L. issued a summons against J. for that she was engaged under a contract of

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MASTER AND SERVANT—*continued.*

service, under which, on leaving the service, she was entitled to a discharge, and that J. refused to give such discharge, whereby she was prevented from obtaining other employment, and claimed £5 as compensation for breach of the contract. The Justices awarded 40s. compensation and 10s. costs, and from this decree J. served notice of appeal to the Recorder:—*Held*, that an appeal lay, and that no action lay for damages by a servant against her master for refusing to give a certificate of character. LINT *v.* JOHNSTON [Q. S. XXVII. M. 597

8. —— *Servant pledging master's credit without authority.*] Goods having been obtained on credit from a tradesman by a servant, the tradesman sued the master for the price. The master swore he had not sanctioned, nor was he aware that the goods had been obtained on credit; and that he on every Saturday gave the servant (who catered for him habitually) money to pay for the requisite supplies. The servant deposed that the goods had been consumed by his own family, and that he himself had intended to pay for them:—*Held*, that the master was not liable. (By Whiteside, C.J.) SYMES *v.* WILSON - - - - Cir. Cas. III. *M.* 598

9. —— *Share of profits—Wages—Magistrate's jurisdiction*—14 & 15 *Vic.*, *c.* 92, *s.* 16.] If a fisherman agrees to go on a fishing expedition under a contract to receive a certain proportion of the net profits in remuneration for his services:—*Held*, that this remuneration is in the nature of wages. *Held*, also (by Andrews, J., and Murphy, J.; *diss.*, Palles, C.B.), that such wages could be recovered by summons in the Petty Sessions Court, under 14 & 15 Vict., c. 92, s. 16. DONNELLY AND BYRNE *v.* HANLON E. D. XXVII. 73

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MILITARY CHAPLAIN—*Right to officiate within a parish without the consent of the incumbent and license of Archbishop.*] A military chaplain, appointed such by a commission from the Crown, was admonished and inhibited to abstain from performing Divine service or preaching, &c., in a building in the Richmond Barracks, Dublin, or elsewhere within the parish of St. Jude, without the consent of the incumbent of the parish and the license of the Archbishop. MILLS *v.* CRAIG [Prov. Ct. I. *M.* 735

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MISTAKE—*Payment of money to wrong person.*] The solicitor of A., purchaser of an estate in this Court, by mistake paid A.'s money, which was distinctly ear-marked, to the credit of B., the purchaser of another estate, whose solicitor he also was:—*Held*, that the money had remained A.'s, and should be refunded. *Re* RANKIN'S ESTATE - L. E. C. II. *M.* 474

—— Ejectment—Writ of Restitution—Statute of Limitations [I. *M.* 26
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MORTGAGE—EQUITABLE MORTGAGE.

1. —— *Circumstances negativing the existence of it.*] The existence of a debt and possession of the title deeds is not conclusive evidence of an equitable mortgage. Therefore, where a creditor had advanced part of the purchase-money of an estate in 1828, and the title deeds were in his possession, and it was alleged by him but not otherwise proved, that they were deposited with him until a mortgage should be prepared, and in 1839 he took a bond and judgment as a security for his debt, and dealt with it as so secured in his marriage settlement, and on other occasions, it was *Held*, that there was not sufficient evidence of an equitable mortgage. *Re* DE FREYNE'S ESTATE - - - L. E. C. V. 193

2. —— *Letter—Deposit of deeds.*] A wife wrote to the plaintiff saying she would insure him against any risk or responsibility which he might incur on account of her husband, to the bank, to the extent of £400. Title deeds were also deposited:—*Held* (affirming the decision of the V.C.), that a good equitable mortgage was created. A petition for sale had been adjourned until the question was decided in the Court of Chancery. (Observations of Christian, L.J., thereon.) JOICE *v.* BLAKE - - - - Ch. A. X. *M.* 283

3. —— *Priority—Registration.*] The defendant F., who held premises by an agreement for a lease, deposited the lease with the plaintiff to secure him against loss on a guarantee; a memorandum of the deposit was given but was not registered. Subsequently F. agreed to sell to C. and the agreement was registered. It appeared that C. knew of the existence of the letter, but considered it useless:—*Held*, that C. had notice of the letter, and that the equitable mortgage took priority. (By Flanagan, J.). CHRISTIE *v.* FARR [Cy. Ct. A. XVI. *M.* 105

4. —— *Priority of incumbrance—Notice—Co-existing legal and equitable mortgages—Merger.*] To secure to a bank repayment of £1,000 which he owed them, B. deposited, by way of equitable mortgage, title deeds to lands sold in this matter, and wrote them a letter dated 27th August, 1860, which was registered on the 14th September. His debt having increased, B. reduced it by negotiating with the Scottish Amicable Assurance Society a loan upon the security of other lands. In this transaction the petitioner was solicitor for the Assurance Society. His debt having increased still further, the bank in March, 1861, obtained from B. a legal mortgage which included the lands equitably mortgaged. The legal mortgage was to secure £3,000. In November, 1862, the petitioner obtained from B. a legal mortgage of the same lands to secure £3,400. B. died in March, 1863. The claim on foot of the equitable mortgage was placed on the schedule after those on foot of the other two mortgages:—*Held*, that the equitable mortgage was not extinguished by the bank taking the legal mortgage, and that there might exist a state of dealing in which the bank might have a claim on foot of both securities. Accounts and enquiries having been directed, it was found that, as a matter of fact, the legal mortgage had been taken by the bank in lieu of the

MORTGAGE—EQUITABLE MORTGAGE—*continued.*

contract by deposit. It further appeared that when B. obtained the loan from the Assurance Society, the searches made by the petitioner disclosed the existence of the equitable mortgage:—*Held*, that the notice in the earlier transaction did not, as a matter of law, bind the petitioner in the later one, and that the rule is that the previous notice must be of a kind such as impresses the mind of the Court with the belief that the party bound thereby had at the time of the later transaction actual existing knowledge of the former. *Re* SMALLMAN, *ex parte* ATKINSON - - - L. E. C. II. *M.* 43

5. —— *Subsequent registered deed—Priority.*] A sum of £300 secured by a deposit of deeds with a written memorandum, and a sum of £100 advanced upon a verbal agreement that the deeds should be retained till the money was paid, were lent to the owner in 1860. In 1871 by a marriage settlement a jointure of £50 was settled on the owner's wife, who had no notice of the previous charges:—*Held*, that the jointure should take priority of the £300 but not of that of £100, there being no writing in reference to it. *Re* STEPHEN'S ESTATE [L. E. C. IX. *M.* 619

6. —— *Transfer of possession—Deed purporting to be an absolute assignment, taking effect as a mortgage—Equity of redemption—Corroboration of a Plaintiff's parol evidence—* Onus probandi *in redemption suit—Laches—Costs.*] C. bequeathed certain leasehold premises, consisting of four houses, to his daughters, in equal shares; and he appointed A., one of his daughters, executrix, and S. executor of his will. At the time of his death C. was indebted to S. in a sum of money, as security for which S. held a bill of exchange, accepted by C., after whose death A., having no money available for the payment of the bill, asked S. to receive the rents of the houses so bequeathed, and he was accordingly put in possession of them, without any writing or transfer of lease. A. did not state at the time the transaction took place that S. was to hold them as a security, but that he was to repay himself the debt due to him by C. out of the rents. Some years afterwards S. obtained from A. the lease under which C. had held two of the houses in question. Subsequently A. executed a deed purporting to be an absolute assignment of the houses to S. When A. so executed the deed no solicitor advised her or acted for her, nor did she receive any consideration. Nine years after the execution of this deed A. left this country, and returned after the lapse of three years. Shortly after her return S. died, having made a will, whereby he appointed H. his executor, to whom A. applied for possession, and an account of the rents received by himself and his testator. This demand not being complied with, A. brought a suit against H. for redemption and accounts, and prayed that the deed mentioned might stand as a security only, for the repayment of the debt due by C. to S., and that it might be declared that S. and H. held the premises in question, and received the rents thereof as mortgagees:—*Held*, that the relation of the mortgagor and mortgagee was created by the transactions between A. and S., and accordingly that the deed in question should take effect only as a mortgage: that the *onus* of proving that the deed determined the equity of redemption rested upon the mortgagee; and that A. was not debarred from relief on the ground of laches, because her demand was against a mortgagee in possession, who was bound to keep an account. *Held*, further, that the corroboration necessary to sustain the parol evidence of a plaintiff claiming against the assets of a deceased person is not required to be such as would be in itself sufficient to sustain the whole action—it is sufficient if the plaintiff be corroborated in some material particular. (FitzGibbon, L.J. for M.R.). CRONE *v.* HEGARTY - R. XIII. 84

—— Assignment of same mortgage—Priority [I. *M.* 602, 732
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—— Deposit of lease—Covenant not to mortgage XIII. 130
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—— Letter of deposit—Shares - - II. *M.* 5
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MORTGAGE—FIXTURES—*Attached to the soil and freehold—Sale under execution—Railway or tramway.*] A railway or tramway embedded in the soil is a fixture and passes to a mortgagee under a deed demising premises with fixtures, tramways, rails. The relation of mortgagor and mortgagee does not come under sec. 29 of 23 & 24 Vic., c. 154. *Re* PATENT PEAT COMPANY - - - - **B. I. *M.* 543**

MORTGAGE—JUDGMENT MORTGAGE.

1. —*Affidavit to register—Costs subsequently added.*] A judgment was recovered "for £5,000 damages, with sixpence for costs and expenses, together with for costs." The affidavit to register the judgment as a statutable mortgage stated that the amount recovered was "£5,000, and sixpence for costs, both of said sums making together the sum of £5,000 0s. 6d." After the costs had been taxed judgment was entered up for the full amount of £5,285 18s. 2d.:—*Held*, that the judgment mortgage was a valid charge on the lands included in it to the extent of £5,000 0s. 6d. M'CRAITH *v.* QUIN **[Ch. A. VII. 161**

2. —*Affidavit to register—Mis-description of party—Burden of proof.*] An affidavit made to register a judgment as a mortgage stated that the title, &c., of the plaintiff was esquire. It was now shown that he was a miller:—*Held*, that the affidavit was complete on its face. The onus of proving that the plaintiff was not an esquire lay on the objector, who only proved that the plaintiff was a miller, and an esquire may be a miller. *Re* DOUGHTY'S ESTATE **L. E. C. II. *M.* 138**

3. —*Affidavit to register—House in town—Barony.*] A judgment having been registered as a mortgage against a house in Donaghadee, the affidavit not stating the parish in which the house was situate, but only describing the barony in which it was situate as given in the schedule to 13 & 14 Vic., c. 69:—*Held*, that the premises were insufficiently described in the affidavit. DELACHEROIS *v.* HERON - **Q. S. XXI. 36**

4. —*Affidavit to register—Plaintiff's residence.*] A judgment was obtained by two plaintiffs, and the affidavit registered for the judgment mortgage stated in its first part the title of the cause and the residence of the plaintiffs, but further on only gave the residence of the plaintiff who made the affidavit:—*Held*, to be a sufficient compliance with the Judgment Mortgage Act. *Re* GRAY'S ESTATE - - - **L. E. C. I. *M.* 351**

5. —*Affidavit to register—Description of parties—Name—Residence.*] In an affidavit made to register a judgment mortgage the defendant's usual place of abode was given as Ashbrook Terrace, in the county of Dublin, which was in fact in the city of Dublin. The averment respecting the name of the plaintiff was: "Deponent saith that the name of the deponent, J. T. H., the plaintiff in the said cause, and in the title hereof, and who recovered the said judgment, was at the time of entering the said judgment, and still is, the proper name of deponent":—*Held*, that the registration was valid. *Re* FRANCIS' ESTATE - - - **L. E. C. I. *M.* 714**

6.—*Affidavit to register—Title of plaintiffs—Omission of parish.*] When an affidavit to register a judgment is made by one of several executors, and he gives therein his own title, that is sufficient. The premises were alleged to be situated in the town of Omagh, but the "parish" was not given. There was no definition of a town to show the Court that Omagh was one within the Act:—*Held*, that the omission of the "parish" was not fatal. *Re* ESTATE OF ULSTER BANKING CO. **[L. E. C. III. *M.* 329**

7. —*Constructive notice—Misnomer of owner of lands—Searches.*] The registration of a judgment as a mortgage against lands will not raise presumption of notice, against a purchaser who had searched the registry, unless the owner of the lands be rightly named in the registry. TRESTON'S ESTATE - - - - - **L. E. C. IX. 64**

8. —*Costs of revivor after registration.*] In 1854 Y. obtained against C. a judgment, and registered it as a mortgage against the lands of C. Afterwards in 1864 the judgment was revived on the consent, and subsequently the lands were brought into this Court, whereupon Y. claimed to add to his claim on foot of the judgment mortgage the costs of reviving the judgment:—*Held*, that he was entitled to do so. *Re* CUMING'S ESTATE - - - - **L. E. C. III. *M.* 23**

9. —*Ejectment on the title—Prior mortgagee—Legal estate outstanding.*] Where a judgment creditor has registered his judgment as a mortgage against the lands of his debtor, and brings a civil bill ejectment on the title, he will be entitled to a decree for possession, notwithstanding that the legal estate in the lands is outstanding in a prior mortgagee, not a party to the ejectment, and whose mortgage is unredeemed. (By May, C.J.) BROWNE *v.* HALLISSY - **Cir. Cas. XII. 159**

10. —*Estate or interest—Tenancy at will—Landlord and Tenant Act*, 1870, *s.* 69.] A tenancy at will is an estate or interest in lands against which a judgment mortgage is capable of being registered. DEVLIN *v.* KELLY **Q. B. D. XX. 76**

11. —*Judgment entered on suggestion of breaches.*] A judgment entered on suggestion of breaches on a fidelity bond may be registered as a mortgage. *Re* MOORHEAD'S ESTATE **[L. E. C. IV. *M.* 562**

12. —*Judgment with stay of execution registered—Receiver.*] A judgment, with stay of execution as to the principal until after the death of P., was registered as a mortgage:—*Held*, that during the lifetime of P. a bill for a receiver to pay the interest would not lie. KENNEY *v.* KENNEY **[R. IV. *M.* 161**

13. —*Railway—Receiver—Priority.*] A judgment effectually registered as a mortgage against a railway company affects only that interest which the company has at the date of the registration in the lands whereon the railway is made—namely, the interest which remains after discharging the obligations which the law attaches to them. HOLLAND *v.* THE CORK AND KINSALE RAILWAY CO. - **R. II. *M.* 334**

14. —*Registration—Ecclesiastical benefice.*] A judgment cannot be registered as a mortgage against an ecclesiastical benefice, under 13 & 14 Vic., c. 29. LUBY *v.* DIXON; HOXE *v.* DIXON - - - - - **M. O. I. *M.* 101**

15. —*Registration of, pending stay of execution—Objections admissible at Nisi Prius.*] The registration of a judgment as a mortgage, under 13 & 14 Vic., c. 29, is not execution so as to be a breach of a stay of execution in the judgment. In any case an objection that such mortgage is invalid on the ground that the registration was effected while the stay of execution was in force could not succeed at Nisi Prius, if the judgment mortgage was regular on its face. An application should have been made to the Court in which the judgment was entered to set aside the registration. *Hone* v. *O'Flaherty* (9 Ir. Ch. R. 497), explained. BARNETT *v.* BRADLEY **C. A. XXIV. 39**

16. —*Validity of registration.*] A judgment mortgage was objected to on the following grounds:—(1), that it did not contain an affirmative statement of the names of the plaintiff and defendant; (2), that the defendant's name was described as Edward E. Lennon; (3), that the affidavit stated the defendant's place of abode at the time of the swearing of it and not at the date of the judgment being obtained; (4), that the date of the judgment was not mentioned in the affidavit, but only the date of the entry of the judgment. The Court disallowed all these objections, and held the judgment mortgage duly registered. *Re* LENNON'S ESTATE **L. E. C. IV. *M.* 491**

17. —*Waiver of costs for purpose of registration—Re-registration of judgment mortgage for debt and costs.*] A party having in May, 1872, obtained a judgment for £288 14s. 4d. with costs, three days afterwards registered it as a mortgage against the lands of the defendant, stating in his affidavit the amount as "£288 14s. 4d. debt besides costs, and the said costs are now waived for the purposes of this registration." Subsequently the costs were taxed at £57 15s. 6d., and in November, 1872, the same judgment was re-registered as a mortgage for

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MORTGAGE—JUDGMENT MORTGAGE—*continued.*

the full amount of debt and costs:—*Held*, that there could not be two registrations of the same judgment against the same land, and the first registration, waiving the costs, being valid, the second was bad. *Re* FIELD'S ESTATE - **L. E. C. XI. 92**

—— Claim by mortgagee under Landlord and Tenant (Ireland) Act, 1870 - - - - - - **XIV. 17**

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—— Registration of judgment obtained prior to 13 & 14 Vic., c. 29, against lands acquired subsequently to passing of the Act - - - **IV. *M.* 4**

See JUDGMENT. 2.

MORTGAGE—MORTGAGEE'S SALE—*Auction—Costs of advertisements—Attendance of solicitor at sale.*] In respect of a sale by a mortgagee the Taxing Master only allowed one out of three advertisements of the auction in each paper, and disallowed the travelling expenses of the mortgagee's solicitor for attending the sale:—*Held*, that all the advertisements should be allowed, and also the travelling expenses of the solicitor. BRADY *v.* TUCKEY - **C. XII. *M.* 309**

—— Costs of puisne incumbrance—Obtaining order for sale—Assets insufficient to pay prior incumbrances **[XXII. 41**

See PRACTICE—CIVIL BILL COURT—COSTS. 5.

MORTGAGE — REDEMPTION — *Loss of title-deed — Interest.*] A mortgage was effected by deposit of title-deeds. The mortgagee having lost one of them was unable to receive the mortgage money, which, having remained in bank for a year, was then withdrawn:—*Held*, that the mortgagee should not have any interest for the period during which the money lay in the bank, and that the mortgagor should have, against the mortgagee, his costs up to and including the hearing. STRAIN *v.* PORTER - - **C. II. *M.* 40**

MORTGAGE—TACKING—*Priority—Further mortgage—Notice.*] A mortgagee with the legal estate, making a further advance upon a second mortgage, is entitled to be paid in priority to an intervening incumbrance of which he had not notice. Such notice must be clear and distinct. DONOVAN *v.* M'DOWELL - - - - - **Q. S. XXIV. 95**

[The decision of the County Court Judge was reversed on appeal. (By Andrews, J.) - **XXIV. 96, note]**

MORTGAGE.

—— Ejectment on the title by mortgagee.

See EJECTMENT ON THE TITLE. 28, 29.

—— Mortgagor's signature of notice to quit.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT. 19, 20.

—— Not to be repaid for five years—Cause against absolute order for sale - - - - - **I. *M.* 443**

See PRACTICE—LANDED ESTATES COURT—ORDER FOR SALE. 3.

—— Notice to—Ejectment by landlord - **XVI. 4**

See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 21.

—— Trade machinery—Fixtures—Non-registration as bill of sale - - - - - - **X. 153**

See BILL OF SALE. 2.

MUNICIPAL CORPORATION. Col.

ELECTION - - - - - - - 402
FRANCHISE - - - - - - - 403
PROPERTY - - - - - - - 403

MUNICIPAL CORPORATION—ELECTION.

1. —— *Mayor—Casting vote*—3 & 4 *Vic., c.* 108, *ss.* 83, 85—31 & 32 *Vic., c.* 72, *ss.* 9, 12—*Test oaths—Declaration to faithfully fulfil duties of office—Corrupt Practices (Municipal Elections) Act*, 1872.] The 83rd sec. of the Municipal Reform Act (3 & 4 Vic., c. 108, Ir.) is not confined in its operation to the first municipal election occurring after the passing of the Act. A. was elected alderman for a ward by 106 votes, which were recorded in Council Book by the Town Clerk. B. was elected alderman, without opposition, for another ward containing 120 votes:—*Held*, that A. and not B. was entitled to give a casting vote on an election of mayor of the borough, as being the alderman elected by the greatest number of votes, within 3 & 4 Vic., c. 108, s. 83. The objection that a person elected mayor has not subscribed to a necessary statutory declaration can only be taken advantage of by a writ of *quo warranto* to remove him from office. *Semble*, a declaration by a member of a municipal corporation, that the declarant will duly and faithfully fulfil the duties of his office, according to the best of his judgment and abilities, is a sufficient compliance with the provision of 31 & 32 Vic., c. 72, s. 12, requiring a declaration "that the declarant will faithfully demean himself as a member of, or participator in the privileges of such corporation." HALL *v.* WALKER - - - **C. P. IX. 43**

2. —— *Petition—Corrupt Practices (Municipal Elections) Act*, 1872—*Office not vacated at time of election.*] In order to warrant the Court in determining, on a petition under the Corrupt Practices (Municipal Elections) Act, 1872, whether or not a Town Councillor has been duly elected, it must affirmatively appear that there had been a then existing vacancy in the office. SHANKS *v.* WADE - **C. P. D. XVII. 101**

3. —— *Petition—Mode of trial—Personation of voter*—34 & 35 *Vic., c.* 109, *s.* 20—35 & 36 *Vic., c.* 60, *s.* 28—23, 24 *G. O., January 9th*, 1872.] The hearing of a municipal election petition was directed to be by affidavit; and on the hearing it appearing that a voter had personated another elector, the vote was disallowed. *Re* BOROUGH OF WATERFORD MUNICIPAL ELECTION PETITION. SMITH *v.* RYAN.

[C. P. D. XIII. *M.* 122

4. —— *Poll open after 4 o'clock p.m.—Senior alderman—Presiding officer*—3 & 4 *Vic., c.* 108, *sec.* 64—35 & 36 *Vic., c.* 33.] At a municipal election the Town Clerk, acting for the Mayor, with the consent of the representatives of all the candidates directed that all voters actually within the precincts of the polling station at four o'clock, and who had not voted, should be permitted to record their votes. There was no evidence as to the number of voters who voted after four o'clock, and no means of ascertaining how such voters voted:—*Held*, that the election was void. The petition complained, *inter alia*, that the respondent presided at the election at which he was candidate. The 3 & 4 Vic., c. 108, s. 64, provides that the Senior Alderman shall preside at an election. There were two aldermen of the Ward, the respondent, who was first elected in 1867, and L., who had been first elected many years prior to 1867, but had been re-elected in 1870. *Held*, that seniority must be determined with reference to the respective dates of the then last election, and that as upon this rule the Alderman elected in 1867 was senior to the Alderman elected in 1870, the respondent was the proper person to preside at the election, notwithstanding that he was himself a candidate. At the election complained of two town councillors were also elected, and votes were given for them after four o'clock as well as for the respondent. They were not made parties to the petition. *Held*, that the election of the respondent might be declared void without disturbing the election as regarded either of the town councillors. GRIBBON *v.* KIRKER - **C. P. VII. 24**

—— Petition—Amendment - - - **VII. 10**

See PRACTICE—COMMON LAW—AMENDMENT 1.

—— Petition—Mode of trial - - - **VII. 15.**

See PRACTICE—COMMON LAW—MODE OF TRIAL. 1.

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MUNICIPAL CORPORATION—FRANCHISE.

1. —— *Payment of rates—Insufficient amount.*] Where certain claimants to the municipal franchise, on the last day for doing so, handed in cheques for an amount which afterwards was discovered to be insufficient, owing to their having taken credit for certain deductions which were not allowed, and the cheques having been returned, they on a subsequent day sent the right amount:—*Held* (O'Brien, J., *diss.*), that there had not been payment or tender of the proper amount at the proper time, and that the claimants were not entitled to the municipal franchise. R. (Collins) *v.* The Lord Mayor of Dublin - - - - **Q. B. D. XXV. 14.**

2. —— *Property in more than one ward—Successive occupation claim.*] A claimant of the borough franchise in a ward on the burgess roll, of which he was not previously enrolled, and claiming to be enrolled by reason of occupation of premises in the new ward, in immediate succession to premises in another ward where such burgess was enrolled, may have it thrown upon him to prove that he had been rightly on the roll in such last-mentioned ward. The circumstances under which property in different wards may be added in order to qualify a vote considered. Williams *v.* Curran **[Q. B. D. XXV. 84**

MUNICIPAL CORPORATION—PROPERTY.

1. —— *Borough funds—Surplus—Public benefit of inhabitants—Charitable infirmary—Cork Improvement Acts,* 1852, *sec.* 27, *and* 1868, *sec.* 159—*Constabulary—Waterworks*—Certiorari.] Borough Funds held by Municipal Corporations, to be applied under 3 & 4 Vic., c. 108, s. 131, are impressed with the character of trust funds, to be disposed of for the purposes therein specified. There is no surplus of a Borough Fund, for the purpose of being applied for the public benefit of the inhabitants and improvement of the borough, under 3 & 4 Vic., c. 108, s. 131, so long as any debt contracted after the passing of the Act remains due by the Corporation, while the balance of receipts over expenditure is less than the sums due. A Borough Fund, after satisfying the purposes primarily defined in 3 & 4 Vic., c. 108, s. 131, should be applied to reduction of taxation, and the ultimate surplus disposed of for the public benefit of the inhabitants of the borough and the improvement of the borough. *Quære*, whether a payment out of the surplus of a Borough Fund is "for the public benefit of the inhabitants of the borough," within 3 & 4 Vic., c. 108, s. 131, where same is allocated to a charitable infirmary, to which all the inhabitants might resort, in order to recoup expenditure incurred in consequence of an epidemic extensively prevailing in the borough? *Semble* (*per* O'Brien and Fitzgerald, JJ.), it would be for public benefit of the inhabitants within that section. Observations (*per Curiam*) as to the necessity of greater circumspection by Municipal Corporations as regards the application of corporate funds, in order that payments to which the Borough Fund is primarily liable may not be allocated out of other rates. R. *v.* Mayor and Corporation of Cork - - - - - - **Q. B. VIII. 131**

2. —— *Fines for drunkenness.*] Fines for drunkenness were directed to be paid to the Borough Fund of Drogheda. Anon. **[X. M. 74**

3. —— *Power of Municipal Commissioners.*] Municipal Commissioners appointed under the Municipal Corporations Act, in the stead of old corporations in the boroughs, to deal with the corporate property, have full power to dispose of the corporate estates for local public purposes. Afterwards costs were given to the Attorney-General against the relators. Attorney-General *v.* Commissioners of Carrickfergus **C. II. M. 40, 119**

N.

NAVIGABLE RIVERS—Public right of fishing **[II. M. 150**

See Fishery. 1.

NECESSARIES—For wife - - - **XIII. 104**

See Husband and Wife. 3.

—— Ship.

See Ship—Necessaries.

NEGLIGENCE.

1. —— *Action for damages for ship—Pleading—Statement by Plaintiff by what right he came on board.*] The defendants were owners of a steam packet carrying passengers, and the plaintiff accompanied a friend on board, and went to purchase a ticket for him, and in so doing fell down a hatchway of the ship and was injured. In an action against the company for negligently guarding the hatchway it was *Held*, on demurrer, that the plaintiff must set out in the summons and plaint the facts which entitled him to protection, and a mere general statement that he was lawfully on board, and that the defendants had been guilty of negligence, was not sufficient. Whelan *v.* Cork Steam Packet Co. - - - **C. P. VII. 168**

2. —— *Bailee for hire—Notice.*] The owner of a yard into which cattle were taken on fair days for payment is liable as a bailee for hire for the safe custody of them, although he had a notice to the contrary hung up in the yard, which was not brought to the knowledge of the owner of the cattle. (By George, J.) Williamson *v.* Gray - **Cir. Cas. I. M. 476**

3. —— *Bailment—Carelessness of employee of bailee—Accident.*] The bailee of a bailment must have exercised gross negligence by his servant, or on his own part, to render him liable for negligence. Where injury is done by accident, the plaintiff must show that the carelessness which caused it was gross. Drago *v.* Irwin - **Rec. C. XXVII. 139**

4. —— *Barbed wire fence—Injury to sheep on adjoining land.*] A railway company fenced off their railway from the adjoining lands with a barbed wire fence; and a sheep belonging to the plaintiff, owner of a portion of the lands, having been killed by contact with the fence:—*Held*, that, the fence being of an injurious kind, the company were liable in damages for the injury. M'Quillan *v.* Crommellin Iron Ore Company **[Q. S. XXVI. 15**

5. —— *Contributory—Plea—What should be negatived by.*] It is necessary for a defendant who relies on contributory negligence on the part of the plaintiff, to allege in his defence and prove at the trial, that he could not, by the exercise of ordinary care, have avoided the consequences of the plaintiff's neglect. Doyle *v.* Kinahan - - - **E. IV. M. 215**

6. —— *Pleading—How far necessary to set out facts relied on—Pleading evidence.*] A defence of contributory negligence may be raised by a pleading similar to that which prevailed under section 56 of the Common Law Procedure Act, 1853, *i.e.*, by stating generally that the defendant by his own want of care so far contributed to the occurrence that but for such want of care on his part the occurrence would not have happened, and without setting out the particular facts in which the contributory negligence consisted, and its form is not altered by the Rules under the Judicature Act. Rattray *v.* Cork and Macroom Railway Co. - - - - **E. D. XIII. 121**

7. —— *Contributory—Rights and duties of tram-car conductors.*] Intoxicated persons entering a tram-car in motion are to be regarded as trespassers. Delany *v.* Dublin United Tramways Co. - - **C. A. XXVI. 122**

8. —— *Contributory negligence—Remoteness of damage—Evidence of actionable negligence*—Scienter.] A plaintiff passing along the platform of the defendants' railway station came into contact with a chain that he had not observed, and was immediately bitten by a dog. The dog was attached by the

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NEGLIGENCE—*continued.*

chain to a luggage barrow, which was being drawn by a porter in the employment of the defendants. The plaintiff brought an action against the defendants for negligence. The jury awarded £100 damages to the plaintiff. The Queen's Bench Division (Gibson, J., *diss.*), having set aside the verdict on the ground of there being no evidence of actionable negligence fit to be submitted to a jury:—*Held* (reversing the Divisional Court), that there was evidence of actionable negligence fit to be submitted to a jury, and that the verdict for the plaintiff should stand. *Held*, also, that no question of *scienter* arose; and that the damage was not remote. The Court considering the damages excessive intimated that unless the plaintiff assented to the reduction of the damages from £100 to £50, there should be a new trial. MALLON v. GREAT SOUTHERN & WESTERN RAILWAY CO.

[C. A. XXVII. 125

9. —— *Damages — Fright — Nervous shock.*] Nervous or mental shock caused by great fright arising from the negligence of the defendants, though not accompanied by any actual physical injury, may be taken into account by the jury as an element in estimating the damages to which a plaintiff is entitled. *Victorian Railway Commissioners* v. *Coultas* (L. R. 3 App. Cas. 322), not followed. BELL *v.* GREAT NORTHERN RAILWAY CO. - - - - - - E. D. XXIV. 82

10. —— *Duty imposed by statute—Subsidence of public roadway in consequence of sewer underneath—Non-repair by Town Commissioners—Liability—Action—Indictment.*] Where the plaintiff's horse and car fell into a subsidence of the roadway and were injured, but there was no evidence that the defendants had made the sewer which caused the subsidence, so as to afford an inference that they were liable for its being badly constructed:—*Held*, that there was no evidence of negligence to render them liable. M'GINNITY v. NEWRY TOWN COMMISSIONERS - - - - - Q. S. XIX. 69

11. —— *Evidence—Liability of Railway Company—Empty waggon going off the rails—Absence of explanation.*] In an action for personal injury caused by the alleged negligence of the defendant, where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of events does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. In an action against a railway company for injury to the plaintiff by their alleged negligence, it was proved that one of several empty waggons which formed part of the train in which the plaintiff was travelling as a passenger left the rails, whereby the plaintiff was injured. No evidence was given as to the cause of the waggon leaving the rails, but the defendants' foreman stated that empty waggons were not likely to get off the rails:—*Held*, that the fact of the happening of the accident was sufficient evidence of negligence to call on the defendants to rebut it; and that, in the absence on their part of explanation of its cause, it was, *per se*, reasonable evidence of negligence on the part of the defendants to leave to the jury. *Scott* v. *London and St. Catherine Docks Co.*, (3 H. & C. 596), followed. FLANNERY *v.* WATERFORD & LIMERICK RAILWAY CO. - - - E. XI. 36

12. —— *Evidence—Railway company—Injury to passenger—Train over-shooting platform—Contributory negligence.*] A train passed the platform of a railway station; the servants of the company called out the name of the station as if to invite the passengers to alight, and there seemed no alternative to the passengers but to alight in the place in which the train was, or to be carried on, and it being in the daytime, and no immediate danger being apparent, they did so alight. The plaintiff in so doing suffered damage. The company was held responsible. *Siner and Wife* v. *Great Western Railway Company* (3 Ex. 150, and 4 Ex. 117), held not applicable. NICOLLS *v.* THE GREAT SOUTHERN AND WESTERN RAILWAY COMPANY - - - C. P. VII. 57

NEGLIGENCE—*continued.*

13. —— *Implied contract—Contributory negligence—"Want of care"—"Ordinary care and caution"—Remoteness of damages—Measure of damages.*] While a vessel of the plaintiff's was moored in port to a post allotted for the purpose by the harbour-master (who was acting as agent for the defendant, the owner of the harbour) a gale sprang up, and the master, who was the only person on board, went ashore for assistance, having left a lighted candle in the cabin. Before he returned the vessel had drifted owing to the post to which she was moored having, from rottenness, given way, and after drifting some time she was stranded and thrown on her side, and while in that condition was partially consumed by fire, caught from the lighted candle. To an action brought by the plaintiff in consequence, for breach of contract in not having provided a fit and proper mooring post, the defendant pleaded *inter alia* that the loss of the vessel was solely due to the want of proper skill and care in the mooring of the vessel by the plaintiff, and relying on contributory negligence. The jury found that the mooring post was not reasonably sufficient for the purpose of the vessel being moored thereto; but that the plaintiff did not use proper skill and care in watching and attending to the vessel, and thereby the plaintiff directly contributed to the occurrence, which would not have happened if there had been a greater number of hands on board; that it was not negligent on the part of the master to have left the lighted candle in the cabin, and that the value of the vessel was £500. A verdict was thereupon directed to be entered for the defendant for that amount. The plaintiff having moved to change the verdict into one for him, or for a new trial:—*Held*, that the contract implied in law in such case was that the defendant should use reasonable care to provide sufficient posts, and that there was no absolute warranty of their fitness or sufficiency; that there was no implied contract by the plaintiff with the defendant to use due care in watching his vessel, the only duty so cast on him being to take such care of it that by the want of same the defendant's pier should not be damaged; that there had been a breach of the implied contract on the part of the defendant, and none on the part of the plaintiff, and that a verdict should have been directed for the latter on the plea relying upon contributory negligence; but that there should be a new trial in order to determine and assess the proper amount of damages to be awarded. *Per* Palles, C.B.: The plaintiff was entitled to recover only nominal damages, because the effect of the plaintiff's want of care in watching and attending to the vessel was to sever from the negligent act of the defendant, in not using due care to provide a sufficient mooring post, the damage which resulted to the vessel by reason of her leaving her moorings, and as the damage sued for would not have happened but for the plaintiff's want of care, it could not be deemed the natural and necessary result of the defendant's breach of contract, as that contract did not contemplate loss by the plaintiff's negligence and insure him against its consequences. *Per* Fitzgerald, B.: The plaintiff was entitled to recover £500 (the value of the vessel, after deducting the amount received on the sale of the wreck), because there was no obligation imposed on the plaintiff to use reasonable care to provide against a breach of contract by the defendant, and the getting adrift of the vessel was the direct consequence of a breach of contract of which the plaintiff had notice only on such getting adrift. If there were, subsequent to such notice, any want of reasonable care or skill on the plaintiff's part, by which the stranding or loss of the vessel could have been to any extent prevented, the damages in respect of such stranding or loss should be diminished, and might be nominal. A plaintiff cannot enhance the damages arising from a breach of contract or injury by omitting to use reasonable care to prevent the consequences of such breach of contract or injury. *Per* Dowse, B.: The plaintiff was entitled to recover at least nominal damages for the defendant's breach of contract. He would not be entitled to substantial damages if by his own act he caused the loss of the vessel,

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NEGLIGENCE—*continued.*

and thus severed the substantial damages from the breach of contract; and the defendant would be entitled to claim in mitigation, though not in answer to the action, that the plaintiff should have kept a sufficient crew on board to have protected the vessel against the ordinary perils which a competent seaman would have provided against, such as the strain which forced her from her moorings. But the proper questions governing the case on this subject had not been left to the jury. *Quære*, whether, in the event of the jury finding that there was no default on the part of the plaintiff, the burning of the vessel, which caused all the loss, would not be too remote to be made the subject of damages? *Wilson* v. *The Newport Docks Company* (L. R. I. Ex. 177) and *Burrowes* v. *The March Gas Company* (L. R. 5. Ex. 67), discussed and distinguished. *Tuff* v. *Warman* (5. C. B. N. S. 585). *Jones* v. *Boyce* (1 Stark, 493), and the *Excelsior* (2 Adm. Ecc. 272), applied. MILLER *v.* NUGENT [E. D. XII. 112

14. —— *Injury caused by bull—Bull sold and led through streets for delivery to vendee—Liability of vendee—Absence of finding by jury as to whether the bull was in charge of defendant's servants.*] After a bull had been sold, but while the vendor was in charge of it on his way to deliver it to the vendee, the defendant, it caused injury to the plaintiff. In an action for damages the jury found that there had been negligent management of the bull, but could not agree as to whether the animal was in the charge of the defendant's servants. On a motion for a new trial:—*Held*, that it should be granted, as there was no finding as to whether the animal was in charge of the defendant's servants. BUCKLEY *v.* FITZGERALD - - - C. P. D. XV. *M.* 118

15. —— *Owner—Licensee.*] The owner of a horse and car is not liable for the negligent driving of some other person, even though he had knowledge of such driving, and the person driving had authority from the owner to drive, unless such driving was upon the business of the owner, or the relation of master and servant exists. HUNTER *v.* HANNAY [C. A. XXVI. 129

16. —— *Pleading—Setting aside summons and plaint—Ambiguity—Embarrassing.*] Action by a lodger against a landlord, complaining, in the first count, that the defendant so negligently and improperly constructed and maintained a staircase and lobby, that they fell down, causing injury to the plaintiff; and in the second count, that the defendant so negligently and improperly suffered the staircase and lobby to become in disrepair and dangerous that they fell down, causing said injury. Plea to the first count that, admitting, for the purpose of the defence, that the staircase and lobby fell down, as therein alleged, they did not fall down in consequence of same having been constructed or maintained negligently or improperly. Plea to the second count, that the defendant was not guilty of the negligence and improper conduct in said count mentioned as therein alleged:—*Held*, that the plea to the first count was objectionable, as not admitting the negligence alleged; and that the other plea should be set aside as embarrassing. DONOHOE *v.* KEARNS - E. IX. 180

17. —— *Pleading.*] The plaintiff, a coal trimmer on board the steamer of the defendants, was ordered to put oil on the machinery, and was injured while so doing. In an action the plaint did not contain an averment that the defendants knew the work to be dangerous, or that it was so in fact:—*Held*, on demurrer, that the plaint was bad for want of these averments, and because the injury might, consistently with the allegations in the plaint, have happened through the negligence of the plaintiff. SMYLEY *v.* GLASGOW AND LONDONDERRY STEAM PACKET CO. - - - - E. II. *M.* 6

18. —— *Pleading—Master and servant.*] If a railway company, defendants to an action for damages in consequence of their personal negligence (as averred), which caused the death of a person by reason of injuries received on their line, desire to excuse themselves by showing that they employed competent and skilful servants, through whose negligence they alleged

NEGLIGENCE—*continued.*

that the injuries occurred, they should plead instead of demurring. M'KINNEY *v.* IRISH NORTH-WESTERN RAILWAY CO. [E. C. II. *M.* 717

19. —— *Pleading—Embarrassing defence.*] In an action for negligence resulting in death, a traverse of the death being caused by negligence is not embarrassing. RIORDAN *v.* MACROOM RAILWAY CO. - - - C. C. I. *M.* 83

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See LIABILITY OF EMPLOYER. 2, 3, 5—11.

——Admiralty—Collision - - - VII. 18
See SHIP—COLLISION. 5.

—— Contributory—Pleading - - - IX. 6
See PRACTICE—COMMON LAW—PLEADING. 20.

—— Contributory—Vessel—Compulsorily in charge of pilot [XV. 83
See SHIP—TOWAGE. 1.

—— Damages
See CASES UNDER CAMPBELL'S ACT.

—— Damages—Pleading - - - I. *M.* 247
See DAMAGES. 1.

——Pleading - - - - - I. *M.* 209
See PRACTICE—COMMON LAW—PLEADING. 11.

—— Railway Company.
See Cases under RAILWAY—CARRIAGE OF GOODS.
RAILWAY—PASSENGER.
RAILWAY—PASSENGER'S LUGGAGE

—— *Scienter*—Pleading - - - IV. *M.* 475
See PRACTICE—COMMON LAW—PLEADING. 58.

—— Solicitor.
See Cases under SOLICITCR—NEGLIGENCE.

NEW TRIAL.

See PRACTICE—NEW TRIAL.
PRACTICE—CHANCERY—NEW TRIAL.
PRACTICE—COMMON LAW—NEW TRIAL.

NEWSPAPER — *Editor — Wrongful dismissal — Notice — Usage.*] It having been proved, in an action by an editor for damages for wrongful dismissal from his position, for which his salary was £250, that there was a custom requiring newspaper editors to get twelve months' notice of dismissal, the jury awarded him £234. MURRAY *v.* "FREEMAN'S JOURNAL" LTD. - - - - N. P. XXVI. *M.* 431

—— Proprietorship—Interrogatories—Tending to criminate [XIII. 147
See PRACTICE—DISCOVERY—INTERROGATORIES. 11.

NEXT FRIEND.

See PRACTICE—NEXT FRIEND.

—— Infant—Security for Costs - - I. *M.* 45
See PRACTICE——COMMON LAW—SECURITY FOR COSTS. 16.

—— Married woman—Security for costs - VIII. 190
See PRACTICE—CHANCERY—SECURITY FOR COSTS. 2.

NEXT OF KIN—Statute - - - IV. *M.* 179
See SETTLEMENT—CONSTRUCTION. 15.

NOTICE—Assignment of debt - - III. *M.* 99
See ASSIGNMENT OF DEBT. 2.

—— Assignment of Judgment - - - XIII. 30
See PRACTICE—EXECUTION. 2.

—— Constructive - - - - IX. 64
See MORTGAGE—JUDGMENT MORTGAGE. 7.

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NOTICE—*continued.*

——Equitable and Legal Mortgage - **II. *M.* 43**
See MORTGAGE—EQUITABLE MORTGAGE. 4.

——Negligence—Bailee for hire - - **I. *M.* 476**
See NEGLIGENCE. 2.

—— Solicitor—Unregistered deed - - **V. 183**
See REGISTRATION OF DEED. 1.

— To mortgagee—Ejectment - - **XVI. 4**
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 21.

——Unregistered voluntary deed—Priority - **XIII. 170**
See REGISTRATION OF DEED. 2.

NOTICE OF ACTION — *Corporation — Local Sanitary Authority*—3 & 4 *Vic., c.* 108, *s.* 204—41 & 42 *Vic., c.* 52, *s.* 263.] It is not necessary (under 3 & 4 Vic., c. 108, sec. 204, or 41 & 42 Vic., c. 52, sec. 263) to give notice of action to a corporation or local sanitary authority before suing on a simple contract, such as for goods sold, or work and labour done, even though their power to enter into such a contract may be derived from those statutes. *Semble*, the notice sections of the Municipal Corporations (Ir.) Act and the Public Health (Ir.) Act only apply where the action is in substance one of tort; and the form of action is immaterial. DALTON *v.* CLONMEL MAYOR AND CORPORATION - - - **E. D. XIV. 118**

—— Justices.
See Cases under JUSTICES—NOTICE OF ACTION.

—— Sheriff - - - - - **XIII. 159**
See SHERIFF. 11.

NOTICE OF APPEAL.
See PRACTICE—CIVIL BILL APPEAL—NOTICE OF APPEAL.

NOTICE OF DISMISSAL.

1.——*Commission agent—Contract of service—Joint agency.*] An agreement with commission agents was to stand good for six months from its date, and six months' notice from either side was to terminate it. Within six months from the date the hirer served this notice: "The death of Mr. Lyster"—one of the joint agents—"alters all our arrangements; you are at liberty to throw up our agency if you wish it, and to make all things in order, it would be as well that we hereby give you notice to terminate our agreement in six months from this date. This will give us power to do so, if we wish; we say not we shall do so; time and your own exertions will be the test":—*Held*, that the agreement was not a yearly hiring, and that the notice was sufficient. KEON *v.* HART - **C. P. II. *M.* 150**
[Affirmed on appeal, I. R. 3. C. L. 388.]

2.——*Housekeeper at hotel — Menial servant — Month's notice.*] A housekeeper in a large hotel, whose duty is to superintend the domestic servants and attend to the general economy of the establishment, is not a menial servant, although she resides in the house, and therefore, in the absence of contract to the contrary, is not liable to be dismissed from her employment at a month's notice. LAWLER *v.* LINDEN **[C. P. X. 86**

——Newspaper Editor - - - - **XXVI. *M.* 431**
See NEWSPAPER.

NOTICE OF MOTION.
See PRACTICE—CHANCERY—NOTICE OF MOTION.

NOTICE OF TRIAL.
See PRACTICE—NOTICE OF TRIAL.
PRACTICE—COMMON LAW—NOTICE OF TRIAL.

NOTICE TO PRODUCE—Evidence - **IV. *M* 46**
See CRIMINAL LAW—EVIDENCE. 2.

NOTICE TO QUIT.
See Cases under LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
See LANDLORD AND TENANT (IRELAND) ACT, 1870. 180, 197-201, 211.

NUISANCE.

1.——*Contractor—Under comptroller—Nuisance caused by—Liability.*] A defendant, who was a commander at Curragh Camp, ordered filth to be removed from the camp, and placed on a piece of ground near the plaintiff's house. The contractors, who had contracted with the comptroller to deodorize the matter, did not do so:—*Held*, that the defendant was not liable in an action for nuisance. IGOE *v.* EVELEIGH **[Q. B. IV. *M.* 508**

2.——*Public Health Act*, 1871—*Non-existence of closet or other sanitary convenience.*] A house built at the corner of two streets, and which has not any closet or any other sanitary convenience, and the refuse of which is cleared away by the public authorities every day, while the evidence proved that the air in the rooms was sufficient, is not a nuisance according to the existing law, as not being injurious to health. FISHER *v.* MAYOR OF BELFAST - - **Q. S. IX. *M.* 169**

—— Barbed wire fence - - **XXVII. *M.* 566**
See BARBED WIRE.

—— Order of Justices to disinfect house - **VI. 184**
See JUSTICES—CERTIORARI. 3.

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OBSTRUCTION—Footpath—Riding a bicycle thereon **[XXVI. 40**
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OFFENSIVE TRADE—Chandlery **XIII. 161, 165**
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PARLIAMENT. Col.

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ELECTION PETITION - - - - - 412
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PARLIAMENT—ELECTION.

1. —— *Ballot Act*, 1872, *s.* 4—*Violation of secrecy—Petty Sessions Act*, 1851.] A person accused under the Ballot Act, 1872, sec. 4, of violating the secrecy of the Ballot, may be convicted upon his own admission, if satisfactorily proved. The 21st sec. of the Petty Sessions Act, 1851, is prospective, and applies to the offences created by sec. 4 of the Ballot Act, 1872. (Whiteside, C.J., *diss.*) THE QUEEN *v.* UNKLES [Q. B. VIII. 38

2. —— *Ballot papers rejected for marks—Motion for inspection*—35 & 36 *Vic.*, *c.* 33, *sch.* 1, *s.* 40.] At a parliamentary election on counting the ballot papers certain marks appeared on several of them. These marks were not put on the papers by the voters. The returning officer rejected all papers which were so marked. It appeared that the number of votes rejected might, if they had not been rejected, have turned the scale at the election. A motion was made by the defeated candidate to have an inspection of these rejected ballot papers; this was objected to by the respondent, on the ground that it violated the spirit of the Ballot Act, which was to secure secrecy. The motion was granted, but the officer who was to preside at the inspection was ordered to take great care to prevent the identity of the voters being discovered. *Re* TYRONE ELECTION PETITION; MACARTNEY *v.* CORRY - C. P. VII. 80

3. —— *Candidate retiring after poll demanded—Candidate declared duly elected without poll.*] Two candidates, M. & D., having been proposed and seconded, the show of hands was declared to be in favour of M. A poll was demanded by D., and the sheriff named the polling day and adjourned the proceedings to the proper day. In proposing or seconding a vote of thanks to the sheriff M. said, "I retire from the contest." Before the time for the poll arrived, D. prevailed on the sheriff to declare him (D) duly elected:—*Held*, that the election was void. WEXFORD ELECTION PETITION; SUTTON *v.* DEVEREUX [C. P. III. *M.* 100

4. —— *Delay in opening polling station—What constitutes polling station—Secrecy of act of voting—Presence of others besides voters—Superintendence of presiding officer—Police-constable on duty at polling station—Omission of officers to make statutable declaration of secrecy—Effect of non-compliance with Act where result of election not affected—Ballot, Act*, 1872—*Parliamentary Elections Act*, 1868—*Special case—Result where Court equally divided—Costs—Petition caused by act of returning officer.*] Four of the polling stations at a parliamentary election where in private houses, on the drawing-room floors, each of which consisted of two rooms not communicating internally with each other, the means of access from one to the other being through a small lobby. Voters after having received their voting papers from the presiding officer, with his official stamp, in one room, resorted to the other room to attach their marks to the papers, and then returned across the lobby to deposit their papers in the ballot box in the first-mentioned room. It frequently happened that whilst a voter, in the act of voting, was crossing the lobby, away from the superintendence and control of the presiding officer, there were standing close to him at least three persons—viz., the police-constable on duty, a committee-man or friend who brought forward the voter and another elector about in turn to vote. But although voters might thus have shown their voting papers to those persons (which the constables had received no instructions to prevent), it did not appear that they had ever done so. The police-constables on duty made no statutable declaration of secrecy pursuant to the provisions of the Ballot Act, 1872. The judge who tried the petition finding as matters of fact that the election was free and pure, that the secrecy of the voting had been preserved, and that neither the structural arrangements of the polling stations nor the omission of the constable to make statutable

PARLIAMENT—ELECTION—*continued.*

declarations of secrecy had affected the result of the election, and having reserved a special case for the opinion of the Court as to whether the election should be declared invalidated, the Court were agreed in opinion that the police-constables on duty should, under the provisions of the Ballot Act, 1872, have made statutable declarations of secrecy, yet that the omission did not invalidate the election, as its result had not been affected thereby, but were equally divided in opinion as to whether the election had been invalidated by reason of the structural conformation of the polling stations, which had brought the voters into contact with other persons, who should not have been present, while the voters were in the act of voting. Being equally divided in opinion on the latter question, the Court pronounced no decision on the special case reserved. The election was subsequently declared not void by Barry, J. *Re* THE DROGHEDA ELECTION PETITION - - - C. P. IX. 161

PARLIAMENT—ELECTION PETITION.

1. —— *Acceptance of office by petitioner.*] After an election, a defeated candidate, who petitioned and claimed the seat, it was alleged, accepted office under the Crown. On motion to set aside the petition, because the petitioner had no *locus standi*:—*Held*, that the question was one for the Judge who should try the case. *Re* DUBLIN ELECTION PETITION [C. P. III. *M.* 84

2. —— *Admission of voters to be respondents—Elector who voted for candidate for whom seat is claimed and is not hostile to petitioner—Death, before petition filed, of candidate petitioned against.*] After the death of a candidate who had been returned after a parliamentary election, a petition complaining of his return, and praying that another candidate should be declared to have been duly elected, was presented by an elector, naming no respondent. The Court, on motion for that purpose by an elector who had voted for the defeated candidate, and was friendly to the petitioner, admitted him as a respondent to the petition. On consent another elector was admitted a respondent to oppose the petition. *Re* TIPPERARY ELECTION PETITION - - - - - - C. P. IX. 88

3. —— *Attachment — Contempt of Court — Jurisdiction of Judge before the trial.*] The petitioner in an election petition had given notice of the withdrawal of the petition, but the petition had not been actually withdrawn; a newspaper published two articles on the election petition, in one of which it hinted that the motives put forward by the petitioner for withdrawing the petition were false, and that the real motive was fear of defeat on account of personation of dead voters, &c.; in the other article a list was given of the numbers which appeared in some of the ballot papers which had been rejected, which the newspaper asserted would enable votes to be recognised, and the conduct of the petitioner was attacked in applying for an inspection of ballot papers:—*Held*, that the publication was a contempt of Court, but the learned judge, sitting as the senior Election Judge on the *rota*, held that he had not jurisdiction to commit before the election petition came on to be tried, but that the contempt was a contempt of the Court of Common Pleas. TYRONE ELECTION PETITION. MACARTNEY *v.* CORRY - - - - - C. P. VII. 166

4. —— *Attachment — Contempt — Public right to comment.*] Motion for an attachment against the printer and publisher of a newspaper for having printed and published articles in relation to an election petition which were calculated to interfere with the proceedings in the case, and were a contempt of the Court:—*Held* (by Lawson, J., and Keogh, J.), that the Court, although in election petitions it possesses a jurisdiction similar to that which it had in ordinary cases before the 31 & 32 Vic., c. 125, must apply a very different rule in determining whether it will exercise that jurisdiction, the question raised by an election petition being essentially one of a *public* nature. By Morris, J., and Monahan, C.J.: That the settled rules of law as regards private suits, should be applied to election petitions, but the discretion of the Court should be exercised on somewhat different principles. *Re* BELFAST ELECTION PETITION [C. P. III. *M.* 40

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PARLIAMENT—ELECTION PETITION—*continued.*

5. —— *Attorney as surety—Address.*] An attorney may be surety for the costs of an election petition. The surety, an attorney, gave, as his residence, his registered office, where he did not live. An objection to his sufficiency on the ground that his usual place of abode was not given:—*Held*, not fatal. *Re* GALWAY ELECTION PETITION
[M. O. III. *M.* 61; C. P. III. *M.* 135

6. —— *Computation of time—Recrimination by respondent—Service of list of objections—Sunday—Days of service and trial.*] The six days before the day appointed for the trial of a Parliamentary election petition, prescribed by 8 G. R., 1868, for delivery of a list of objections, by a respondent who intends to go into a recriminatory case, under 31 & 32 Vic., c. 125, s. 53, are to be computed exclusive of Sundays, of the day on which the list is delivered and of the day appointed for the trial. JOYCE v. O'DONNELL - - C. P. VIII. 113

7. —— *Costs.*] The proper costs which the Master ought to allow in a Parliamentary election petition stated at length. *Re* TYRONE ELECTION PETITION - C. P. VII. *M.* 273

8. —— *Death of candidate petitioned against—Petition presented subsequently—Claiming seat for another candidate—Jurisdiction—Respondent who voted for candidate for whom seat is claimed and who is not hostile to petitioner.*] Under the Parliamentary Elections Act, 1868 (31 & 32 Vic., c. 125), the Court has jurisdiction to entertain a petition, presented within the period prescribed, complaining of the undue return of a candidate at a Parliamentary election, and praying the seat for another candidate, as having been duly elected, although the petition is not presented until after the death of the candidate whose return as member is complained of. On motion by a respondent who had been admitted to oppose an election petition the Court discharged from the position of respondent an elector, who had voted for the candidate for whom the seat was prayed by the petition, and who was not hostile to the petitioner, where it appeared that it had become unnecessary that he should continue to act as respondent. *Re* TIPPERARY ELECTION PETITION - C. P. IX. 89

9. —— *Election set aside — Bribery — Undue influence.*] Bribery, undue influence, and systematic intimidation are sufficient grounds to set aside an election. *Re* DROGHEDA ELECTION PETITION (M'CLINTOCK *v.* WHITWORTH)
[C. P. III. *M.* 76

10. —— *Examination of sureties—Costs.*] When the respondent objected to the sureties on the ground of want of means, one withdrew his recognisance and lodged the amount in bank while the other on examination was proved to be solvent for a larger sum, the objection was disallowed; costs to be costs in the cause. *Re* SLIGO ELECTION PETITION
[M. O. III. *M.* 28

11. —— *Inherent disqualification of candidate in majority—Alienage—Conviction for felony—Knowledge, by electors, of disqualification—Seating candidate in minority—Resolution of House of Commons unseating and declaring member ineligible—Jurisdiction of Court to question its validity—Transportation—9 Geo. IV., c. 32.*] The facts of a candidate for Parliamentary election being an alien, or a convicted felon, who, having been sentenced to transportation, has not suffered his sentence, or received the Queen's pardon, constitute, respectively, such inherent disqualifications in him as to his status as a candidate, that, if the electors were affected with notice of such disabilities, and, notwithstanding, voted for him in the majority, his election would be void, and an opposing qualified candidate, though in the minority, would be entitled to be seated. *Quoad* such case, *Trench* v. *Nolan* (VI. 109) and *Drinkwater* v. *Deakin* (L. R. 9 C. P. 626) are not conflicting. Where it had been fully known to the voters at a Parliamentary election that a candidate in the majority, a natural-born British subject had become a naturalised citizen of the United States of America, and under the 33 & 34 Vic., c. 14, renounced allegiance to the British sovereign, and that having been convicted of treason

PARLIAMENT—ELECTION PETITION—*continued.*

felony, and sentenced to a term of transportation, he had escaped before the expiration of the term,, and had not received the Queen's pardon, the Court, on a petition that a qualified candidate in the minority should be declared elected, *Held*, that the votes given for the candidate in the majority were thrown away and that the candidate in the minority was entitled to be seated. *Trench* v. *Nolan* (VI. 109) approved and followed. *Re* TIPPERARY ELECTION PETITION
[C. P. IX. 141

12. —— *Inspection of ballot papers.*] Liberty was given to the Clerk of the Crown and Hanaper to permit the agents of the petitioners and respondents, in a Parliamentary election petition, to inspect ballot papers which had been received by the Returning Officer, though objected to, on the part of a candidate, as having been marked so that the voters could be identified. *Re* DROGHEDA ELECTION PETITION
[C. P. VIII. 218

13. —— *Inspection of ballot papers.*] A motion for inspection of ballot papers was granted, but the Court refused counsel to be present, with liberty to make any application if any inconvenience arose from the absence of any person not specified in the order. *Re* ATHLONE ELECTION PETITION
[Q. B. VIII. *M.* 88

14. —— *Insufficiency of security—Shareholder in companies of unlimited liability—Practice.*] The respondent in an election petition objected to the petitioner's security as insufficient. The petitioner served a notice that he would prove it sufficient:—*Held*, that the respondent must, nevertheless, begin. *Re* YOUGHAL PETITION - - - M. O. III. *M.* 10

15. —— *Jurisdiction of Judge on* rota, *not being a Judge of the Common Pleas—37 G. R.* 1868.] Motion to have the case raised by a Parliamentary election petition stated at a special case refused—the motion being made to a Judge on the *rota* as Election Judge who was not a Judge of the Court of Common Pleas, instead of being made to the Court of Common Pleas, or to a Judge of that Court on the *rota* in Chamber. O'DONEL *v.* TIGHE; SHIEL *v.* ENNIS
[C. P. VIII. 42

16. —— *Lodgment in Court of* £1,000—*Objections to recognisances removed.*] A petitioner may, by lodging in Court within the prescribed time £1,000, remove objections to his recognisances and sureties. *Re* ATHLONE PETITION
[C. P. III. *M.* 27

17. —— *Member of Parliament as surety.*] A Member of Parliament may be a surety in the case of an election petition. *Re* CASHEL PETITION - M. O. III. *M.* 28

18. —— *Motion not moved—Practice.*] In an election petition a motion, which is not moved, will be discharged with costs, not refused. *Re* GALWAY ELECTION PETITION
[C. P. III. *M.* 83

19. —— *Motion to bring a special case before the Court.*] The sitting member moved the Judge at Chambers for liberty to state a special case to bring before the Court the question at issue. The counsel for the petitioner concurred. Motion granted on the understanding that there were not any matters of fact at issue between the parties. *Re* WEXFORD ELECTION PETITION - C. P. III. *M.* 25

20. —— *Motion to set aside petition on ground of insufficiency of security.*] A motion to set aside an election petition on the ground that the securities are insufficient, must, in the first instance, be made to the Master within the time limited by the orders. *Re* LIMERICK PETITION
[M. O. III. *M.* 27 and 61

21. —— *Offering reward for evidence — Contempt — Attachment.*] Offering a reward for evidence in an election petition is not a contempt which the Court will restrain by attachment. *Re* LIMERICK ELECTION - C. P. III. *M.* 102

22. —— *Particulars*]. An order was made that the petitioner should five days before the day of trial leave with the Master of the Court and give to the respondent or his agent

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PARLIAMENT—ELECTION PETITION —*continued.*

particulars in writing of all persons alleged to have been bribed, treated, and unduly influenced. *Re* ARMAGH ELECTION PETITION - - **Q. B. D. XIV. 103** note

23. —— *Particulars*]. Application for particulars of persons intimidated should be made in the first instance to the Judges on the *rota* for the trial of election petitions. COX *v.* KEARNEY - - - **Q. B. D. XXVI. 141** note

24. —— *Particulars.*] The respondent in an election petition applied for particulars, which was granted. *Re* BELFAST ELECTION PETITION - - - **C. P. III.** *M.* **27**

25. —— *Particulars.*] A motion for particulars was granted. *Re* CARRICKFERGUS ELECTION PETITION - **C. P. III.** *M.* **28**

26. —— *Particulars.*] In an election petition the respondent moved for further particulars, the names of certain of the petitioner's witnesses. The petition was founded on acts of intimidation and undue influence, and the petitioner's solicitor made an affidavit stating the probable consequences of disclosing the names. That affidavit was unencountered:—*Held*, that the motion should be refused. *Re* DROGHEDA ELECTION PETITION - - - - **C. P. III.** *M.* **7**

27.—"*So far as is known to the petitioner*"—*Form of order*—*Time for delivery.*] A petitioner was ordered to furnish, six days before the trial, particulars in writing of (1), the names and numbers on the register of the electors alleged to have been personated, and the names of the persons alleged to have personated the said electors; (2), names and numbers on the register of the electors alleged to have been employed as paid agents for the respondent; (3), names and addresses of persons alleged to have been bribed, and of the persons by whom said bribery was alleged to have been committed, so far as known to the petitioner; (4), names of the agents of the respondent, and of the other persons alleged to have been guilty of undue influence, and the names and addresses of the persons alleged to have been unduly influenced, so far as known to the petitioner. *Maude* v. *Lowley* (L. R. 9, C. P. 165), followed. *Re* ATHLONE ELECTION PETITION: SHEIL *v.* ENNIS **[C. P. D. XIV. 104**

28. —— *Particulars of persons bribed and bribing and using undue influence.*] An election petition charged bribery, intimidation, and undue influence. The petitioner was ordered to give, three days before the trial, in writing, the names of those who were unduly influenced, who were bribed, and who offered bribes, and to give six days before trial particulars relating to the specific charges contained in general averment in the petition, that the sitting member or his agents were guilty of corrupt practices. *Re* LONDONDERRY PETITION **[C. P. III.** *M.* **25**

29. —— *Particulars—Undue influence—Intimidation by individuals.*] In an election petition where the undue influence alleged was intimidation, practised by individual persons as distinguished from general intimidation, the Court ordered the petitioner to deliver to the respondent, within a certain time, particulars in writing of the names and addresses of individual persons alleged to have practised intimidation, and the periods and places when and where such alleged intimidation was practised, and the nature of the intimidation, without prejudice to the respondent subsequently applying, if so advised, for particulars of the names, addresses, and numbers on the register of voters, of the persons so alleged to have been intimidated. COX *v.* KEARNEY **[Q. B. D. XXVI. 141**

30. —— *Particulars—Time when, and to what limit granted.*] Where intimidation, threats, and undue influence appear to have been used at an election, and to be likely to be continued in order to keep back witnesses, such particulars will not be ordered, before the hearing of the petition, as would expose witnesses to a probable risk of subjection to further influence or intimidation, in order to prevent their giving evidence. As regards such particulars, the opening speech of counsel, where the petition is heard in a local venue, will be a sufficient notification in order to prevent surprise and to enable the respondent to procure his witnesses; or if further time be necessary, it will be allowed upon the hearing. A petitioner, to the best of his ability furnishing particulars, will not, on the hearing of the petition, be narrowly confined to those specified. A respondent sought to obtain particulars of paragraphs in the petition, which alleged that voters and non-voters had been treated, that supporters of the petitioner had been threatened, intimidated, and unduly influenced by clerical and other means, and that bands, banners, &c., had been provided by the respondent for illegal purposes:—*Held*, that particulars should not be ordered specifying the names of the respondent's agents; the names of the persons for whom bands, banners, &c., had been provided; the names of the persons who were, or of those by whom they were, treated, threatened, influenced, or intimidated; or specifying the houses where treating took place, or the occasions on which threats, undue influence, or intimidation were used. *Held*, further, that particulars should be given within six days before the hearing, specifying the towns and villages where voters had been treated, between stated periods, not exceeding an interval of ten days. TRENCH *v.* NOLAN - - - - - - **C. P. VI. 58**

PARLIAMENT—ELECTION PETITION —*continued.*

31. —— *Period from which time to present petition runs.*] The twenty-one days within which a petition against an election must be presented begin to run, not from the date of the declaration of the hustings, but from the day on which the return is made to the Clerk of the Crown and Hanaper. *Re* GALWAY PETITION - - - - **C. P. III.** *M.* **26**

32.——*Recognisances—Place of abode of surety—Stamping.*] In an election petition the petitioner cannot be a surety also. The recognisance of the sureties must be taken before a magistrate in *Ireland*. In the absence of contradictory evidence it will be assumed that the place of abode is correctly given in the recognisances, even when that place is, in fact, a hotel. An election petition must be treated as any other cause in the Court would be, and, since the Court does not require recognisances to be stamped, the recognisances of a surety for the petitioner in an election petition need not be stamped. *Re* ATHLONE PETITION - - - - **M. O. III.** *M.* **9**

33. —— *Reports of investigations as to means of sureties.*] The Master will not order that the newspapers shall not publish reports of the investigation into the affairs of sureties for the costs of an election petition on notice of objection to the sureties. *Re* GALWAY ELECTION PETITION **M. O. III.** *M.* **61.**

34.——*Security in case of a dual petition.*] In the case of a dual petition the sum of £1,000 is not a sufficient security. *Re* LIMERICK ELECTION PETITION - - **M. O. III.** *M.* **61**

35. —— *Special case stated—Jurisdiction of Court to draw inference of fact*—31 & 32 *Vic., c.* 125, *s.* 11, *cl.* 16—35 & 36 *Vic., c.* 33, *sch.* 1, *r.* 36—*Rejection of ballot papers.*] Where, in an election petition, the only allegation was that votes had been improperly rejected by the returning officer, on the ground alleged that the votes had been so marked upon the ballot papers that the voters might be identified:—*Held*, a proper case to be decided upon a special case stated for the full Court. SHIEL *v.* ENNIS - - - - - - **C. P. VIII. 67**

36.——*Stamping of recognisance.*] Notice of objections was served because the recognisance was not stamped. Afterwards, and before the motion was made, the recognisance was stamped:—*Held*, that no rule should be made on the motion. *Re* LONDONDERRY PETITION - - **M. O. III.** *M.* **10**

37. —— *Surety—Attending for cross-examination as to means.*] A petitioner's surety stated in his affidavit that he was entitled to real property, but did not state what the property really was. On search, it was ascertained that he was entitled to one-third of £262 2s. 7d. per annum, which was charged with two separate annuities of £50 each:—*Held*, that the surety should attend for cross-examination. The recognisance was withdrawn and £250 lodged in bank. *Re* SLIGO ELECTION PETITION - - - **M. O. III.** *M.* **10**

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PARLIAMENT—ELECTION PETITION—*continued.*

38. —— *Surety—Solvency.*] A surety in an Election Petition should be sufficient and solvent; costs of a motion to disallow them were given as costs in the cause. (By Morris, J.) *Re* TIPPERARY ELECTION PETITION - C. P. IV. *M.* 321

39. —— *Taxation of costs*—31 & 32 *Vic., c.* 125, *sec.* 2.] Under the 31 & 32 Vic., c. 125, the Court of C.P. has jurisdiction to review the taxation of the Master in matters of principle. The costs should be taxed on the same principle as costs between solicitor and client are taxed in a suit in Chancery. "High Court of Chancery" means, in England, the English Court of Chancery, and, in Ireland, the Irish Court of Chancery. LONDONDERRY ELECTION PETITION AND DROGHEDA ELECTION PETITION - - - - C. P. III. *M.* 366

40. —— *Taxation of costs—Fees to counsel—Printing analysis of bill of particulars—Expenses of witnesses.*] The Master of the Court, in taxing the bill of costs of an ordinary Parliamentary Election Petition, reduced, 1st, counsel's fees on a motion for particulars, from five, four, and three guineas, to three, three, and two guineas; 2nd, the fee to senior counsel from two hundred to one hundred guineas, on his brief at the hearing; 3rd, the fee to junior counsel from sixty to fifty guineas; 4th, the refreshers of senior counsel from twenty to fifteen guineas; 5th, the refreshers of junior counsel from twelve to six guineas; 6th, the fees for eight consultations to four; 7th, the consultation fees from five, five, and three guineas, to three, three, and two guineas. He disallowed, 8th, the expenses of the printing of an analysis of a bill of particulars; 9th, £38 17s. 6d. out of £117 12s. incurred in the preliminary examination of witnesses; 10th, £214 out of £333 10s., the expenses paid to witnesses, only one shilling *viaticum* being allowed to witnesses resident in town; 11th, various charges and fees on subpœnas; 12th, the payments made to assistants for taking evidence. The Court, on appeal, referred the bill of costs back to the Master to reconsider the refresher fees allowed to junior counsel, and to allow the item for printing, and the expenses for summoning any witnesses mentioned in the bill of particulars; also, the necessary expenses of examination and attendance of such witnesses as had been summoned and attended to such amount as he should see fit; but refused to interfere with the Master's discretion with regard to the other items. *Re* ARMAGH ELECTION PETITION (RIGGS *v.* BERESFORD) - - C. P. X. 178

41. —— *Taxation of costs—Fees to counsel—Witnesses' expenses not certified by Registrar—Copies of shorthand notes—Retainers.*] Where, on taxation of costs of an election petition, the Master disallowed a general retainer to the senior counsel, and cut down the fees on their briefs, it was held that he had no right to interfere with the discretion of the attorney acting *bonâ fide* for the interest of his client. Several witnesses who had not obtained a certificate from the Registrar were paid their expenses by the petitioner; the Master disallowed this item, but the Court reversed his decision. Sums paid to shorthand writers for copies of the notes taken of the evidence should be allowed. *Re* GALWAY ELECTION PETITION [C. P. VII. 189

42. —— *Taxation of costs—Remitting for re-taxation.*] The Court will remit for re-taxation bills of cost which have been taxed, and the amount paid, the costs having been taxed on a wrong scale. *Re* GALWAY ELECTION PETITION [C. P. III. *M.* 448

43. —— *Treating before Dissolution.*] A person elected an M.P. is guilty of the offence of treating within the 31 & 32 Vic., c. 125; 17 & 18 Vic., c. 102; and the 20 & 21 Vic., c. 87; although such treating was practised before the Dissolution, and was not continued after it. *Re* YOUGHAL ELECTION PETITION - - - - C. P. III. *M.* 266

44. —— *Undue influence—Disqualification of candidate—Knowledge by electors of undue influence and disqualification—Seating candidate in minority—Parliamentary Elections Act,* 1868—*Corrupt Practices Prevention Act,* 1854—Ignorantia juris haud excusat.] Prior to a county election, and pursuant to arrangements, N., a candidate, by himself and his agents, practised undue influence upon the electors. R.C. clergymen publicly denounced and threatened the electors with spiritual chastisement and temporal injury, and, by letters read at public meetings, and by resolutions adopted at clerical conferences, and which were published throughout the county, R.C. prelates aided in the exercise of such undue influence. Before the nomination the actions of intimidation and undue influence became publicly known among the electors. On the nomination day, T., the opposing candidate, advertised in the local journals, and posted on the polling and nomination places a notice stating that N. had been guilty of undue influence, and was thereby disqualified. The notice was in English, a language which many of the electors were not acquainted with. On the election day persons were stationed at the booths for the purpose of serving copies of the notice, many of which were scattered about the booths. A few hundred were served on the electors before polling; they were tendered to other voters, who either declined to receive them, or were prevented by the confusion, or by agents of N., or by R.C. clergymen, and in one booth they were not served until the voters had polled, in consequence of a misdirection. There were 4,686 available electors, chiefly R.C., of whom nearly 2,823 voted for N., and 658 for T., but large numbers who had promised to support T. did not vote, or voted for N., owing to the undue influence and intimidation. On a petition that T. should be declared elected, the Judge determined that, prior to the election, by the acts of intimidation and undue influence, N. was disqualified and his status destroyed; and those acts were generally known among the great body of electors, especially those who afterwards voted for N. Upon a case reserved for the consideration of the Court:—*Held,* firstly, that the commission of undue influence, *ipso facto,* disqualified N., and, *eo instante,* destroyed his status as a candidate. Secondly (Monahan, C.J., *diss.*), that from the nature of the acts and the circumstances under which they took place, the electors should be taken to have known as a fact that undue influence had been practised. Thirdly (Monahan, C.J., *diss.*), that undue influence being a criminal offence, knowledge by the electors of its commission by the candidate involved knowledge of disqualification as a consequence, according to the maxim, *ignorantia juris haud excusat,* and therefore, and further because T. had done all that could reasonably be done in order to apprise the electors of such consequences, they should be taken to have known that by reason of such acts N. was disqualified. Fourthly (Monahan, C.J., *diss.*), that the disqualification having been created before the election by acts in which N. was personally implicated, and knowledge of it having been brought home to the electors, T. was entitled to be seated. *Per* Monahan, C.J.:—Under 31 & 32 Vic., c. 125, sec. 12, the questions to be determined by the Court are questions of law, arising upon given findings of fact, and, *semble,* the Court has no jurisdiction, upon a case reserved, to draw inferences of fact. It not having been found in fact that the disqualifying effect of undue influence was known to the body of the electors, the Court, from the general authority of the acts, could not presume general knowledge of their criminality or consequence, the maxim *ignorantia juris haud excusat* involving no such presumption in the case of persons other than the criminal. The materials presented were inadequate in order to enable the Court to determine that knowledge in fact of N.'s disqualification was brought home to a sufficient number of those who constituted his majority, so as to warrant the Court in reducing it below the number of votes received for T., therefore T. was not entitled to be seated. *Re* GALWAY ELECTION PETITION (TRENCH *v.* NOLAN) - C. P. VI. 109

45. —— *Venue—Change—Insufficiency of accommodation.*] In an election petition the venue will not be changed on the ground that the accommodation in the borough where the venue is laid is sufficient. *Re* CARRICKFERGUS PETITION [C. P. III. *M.* 84

46. —— *Venue—Change—Intimidation.*] In an election petition, voters and probable witnesses were intimidated by the party of the petitioner during the election, and the intimi-

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PARLIAMENT—ELECTION PETITION—*continued.*

dation was continued down to the time when the respondent moved to change the venue:—*Held*, that the venue should be changed to a town near the borough in which the election had taken place. *Re* SLIGO ELECTION PETITION [C. P. III. *M.* 59

47. —— *Venue—Practice.*] In determining on a motion to change the venue in which an election petition shall be tried, the Court will not express any opinion as to the evidence lest it should have effect on the hearing of the petition, nor will the Court state in detail the grounds on which its decision rests. *Re* DROGHEDA ELECTION PETITION C. P. III. *M.* 6

48. —— *Venue—Parliamentary Elections Act*, 1868, *s.* 11, *sub-s.* 11—*Borough election—Special circumstances—Convenience—Particulars of bribery, treating, and undue influence.*] The venue was changed from the borough to the assize town of the county on the ground that it would be difficult, if not impossible, to procure suitable accommodation in the borough for the persons who should necessarily attend at the trial. The existence of great political excitement in the borough is not in general a ground for changing the venue. The petitioner was ordered to furnish particulars of all persons alleged to have been bribed, treated, or unduly influenced. *Re* DUNGANNON ELECTION PETITION (NEWTON *v.* DICKSON) [C. P. D. XIV. 102

49. —— *Venue—Recognisances.*] A motion to change the venue in which an election petition shall be tried may be made before the recognisances of the petitioner's sureties have been completed. *Re* SLIGO ELECTION PETITION C. P. III. *M.* 7

—— Money lodged in Court—Garnishee - XV. *M.* 23

See PRACTICE—GARNISHEE. 11.

PARLIAMENT—FRANCHISE.

1. —— *Amendment of claim—Description of qualification—Successive occupation—Omission of one of the houses occupied—* 48 *Vic., c.* 17, *ss.* 4, 17.] Where a person claimed to be entitled to the franchise on the ground of his occupation of different premises in immediate succession, his claim must set forth and describe all the several qualifying premises, and if he has occupied during the qualifying period another house in addition to those set forth the Revising Barrister has no power to amend by inserting a description of it. *Semble*, the power to amend conferred by sec. 17 (1) of the Act of 1885 applies only to mistakes made by the officers whose duty it is to compile the lists. MELAUGH *v.* CHAMBERS - - C. A. XX. 71

2. —— *Amendment of nature of qualification*—48 *Vic., c.* 17, *s.* 4—*Costs.*] A change in the description of the qualification of a claimant as it appeared on the register and supplemental list, from "rated occupier" of the "house, offices, gate-lodge, and lands of Terenure College, at Terenure," rated at "£200," into an "inhabitant occupier" of a bedroom at Terenure College, and striking out the "£200," is an alteration of the entire qualification. The Revising Barrister has no power to receive evidence for such a purpose, or to make such an amendment. ALEXANDER *v.* BOURKE (TERENURE COLLEGE CASE) [C. A. XXII. 30

3. —— *Costs—Clerk of the Peace*—48 *Vic., c.* 17, *s.* 26.] The Court of Appeal has no jurisdiction, under sec. 26 of 48 Vic., c. 17, to order that the costs of an unsuccessful party should be paid by the Clerk of the Peace named as respondent in the appeal. ALEXANDER *v.* BOURKE (MOUNT ARGUS CASE, No. 2) - - - - - C. A. XXII. 32

4. —— *Disqualification—Receipt of poor law relief during* 12 *months preceding claim—Supply of coffin for burial of child—* 29 & 30 *Vic., c.* 38—13 & 14 *Vic., c.* 69, *s.* 111.] A claimant having within a year preceding, applied to the relieving officer, under the provisions of 29 & 30 Vic., c. 38, for the supply of a coffin to bury his infant child who had died in his house:—*Held* (*dubitante* Barry, L.J.), that he had received relief within the meaning of the Poor Law Acts, and was, therefore, disqualified under 13 & 14 Vic., c. 69, *s.* 111. KERR *v.* CHAMBERS [C. A. XX. 62

PARLIAMENT—FRANCHISE—*continued.*

5. —— *Effect of deed stated in the case—Remitting case for amendment.*] The appellant claimed as a joint occupier with K. The case stated by the Revising Barrister found that in 1861 K., by deed, assigned his interest in the premises to the appellant in trust for the use of K. during his life; that K. carried on business in the house on his own account, and that the appellant and his wife exercised a trade therein:—*Held*, that the Court could not look at the deed, since it was incorporated in the case, and its effect was thereby found; and that the case should not be remitted. HILGROVES *v.* O'SHEA - - E. C. II. *M.* 648

6. —— *Expenses—Registration—Chargeability of expenses—County and City of Dublin—Voters resident in county but registered for city*—13 & 14 *Vic., c.* 69, *ss.* 71, 72.] The county of Dublin is not obliged to contribute to the expenses of the registration of voters for the county of the city of Dublin under 13 & 14 Vic., c. 69, s. 72, Dublin not being regarded and treated by the Act as a borough situate in two counties, and the whole expenses incurred in respect of voters resident in the county but registered for the city must be borne by the municipal borough of Dublin. DUBLIN CORPORATION *v.* DUBLIN COUNTY GRAND JURY - Q. B. D. XIV. 91

7. —— *Freeman—Grand-birth claim.*] Claimants by grand-birth are entitled to be admitted as Freemen of Dublin. ANON. [L. M. C. IV. *M.* 543

8. —— *Inhabitant occupier—Claimant occupying under will without probate—Receipts for rent evidence of occupation.*] The only son of a deceased tenant, who along with a sister has resided on the qualifying premises since deceased's death, and in whose name the rents have been receipted, is entitled to the Parliamentary franchise, although a document purporting to be a will of the deceased tenant bequeathing the premises to the claimant could not be produced in evidence in the absence of probate. KIRKPATRICK *v.* MURPHY C. A. XXV. 62

9. —— *Inhabitant occupier—Occupation of premises on death intestate of previous tenant—Payment of rent as sole occupier.*] A person who, on the death intestate of his father, the former tenant of the qualifying premises, continues to reside on the premises along with others who are beneficially interested therein, and who, with their knowledge and consent, pays the rent, and has his name inserted on the rent book as sole tenant, is the sole occupier of the premises, and is entitled to the Parliamentary franchise. HOLLAND *v.* CHAMBERS (MURRAY'S CASE) - - - - - - C. A. XXV. 71

10. —— *Inhabitant occupier.*] G. Gallagher claimed as inhabitant occupier of a dwelling-house, 12, Abercorn Place, East Div. Londonderry City, in immediate succession from dwelling-house 17, Harding Street, Londonderry City, occupied in immediate succession for twelve months, on and previously to 20th July, 1892. It appeared that Gallagher during a substantial portion of the qualifying period occupied as his dwelling-house a part of a building not rated to the relief of the poor in the rate struck for the Borough of Londonderry, on 7th November, 1891. The house in question, with a number of others, was erected in the summer of 1891, and became the subject of a special valuation by request to the Commissioners of Valuation. A question arose as to whether these houses could be entered on the lists furnished to the guardians in the previous February, the period of the regular annual valuation for the purposes of rating; and it was *bonâ fide* resolved by the guardians that it was better to pretermit those new ratings. The Revising Barrister struck out the names of the claimants:—*Held*, that the decision of the Revising Barrister should be reversed, and the names re-inserted on the list. *Criglington's case* followed, and *M'Gaffigan* v. *Riddall* distinguished. *Re* GEORGE GALLAGHER - - C. A. XXVII. *M.* 491

11. —— *Inhabitant occupier.*] J. M'Gahey claimed, as an inhabitant householder, the premises being described as "rooms, 15 Fountain-street." It was proved on the hearing that M'Gahey occupied two upper rooms in No. 15 for the qualifying period, and that the rest of the house was occupied

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PARLIAMENT—FRANCHISE—*continued.*

by a Mrs. O'Neill, a widow, to whom the claimant paid the rent. There was one outer door and one staircase, the use of which was attached to the two rooms occupied by M'Gahey, but there was no demise of these to the claimant. It also appeared that the widow's son was entered on the landlord's books as the tenant; he resided in another part of the town, but it was at the instance of the landlord that the son's name was put on the books as that of the tenant. The claimant's rent was paid to the widow, and the furniture in the house was the property of the widow. It was the widow's son who made the contract of sub-letting to the claimant. The Recorder decided that the real tenant was Mrs. O'Neill; that her son was her trustee and agent; that as the claimant had the two rooms with only an easement of ingress and egress, he was only a lodger. The name was accordingly struck out:—*Held*, that the decision of the Revising Barrister must be upheld. Palles, C.B., said that there was no finding as a matter of fact that what the claimant inhabited was a separate dwelling house; and that the Court of Appeal is not entitled to go into questions of fact in a registery case. *Re* JOHN M'GAHEY [C. A. XXVII. *M.* 492

12. —— *Inhabitant occupier.*] R. Campbell claimed as an inhabitant householder to be entitled to a vote for the Borough of Londonderry. The premises were described "house and yard, 92 Fountain-street." It appeared that the claimant occupied the premises under weekly or monthly tenancies, and that the tenancy had been duly determined by notice to quit that had expired within the qualifying year, and the claimant was served with a summons for possession, and the summons was settled before hearing at Petty Sessions; the terms of the settlement were payment of the costs of the summons and a sum on account of arrears due in respect of the premises prior to the service of the notice to quit. Campbell continued as tenant for a substantial period. It was admitted that prior to the settlement the claimant was an overholder to the extent of at least one week. The Court below, having regard to the overholding, which could not have been as tenant or as owner, struck out the name:—*Held*, that the Recorder's decision was right, the claimant being a trespasser during the period of overholding, and not being a tenant at sufferance, there being no finding that the notice to quit was not intended to be acted upon. It was impossible to hold that in cases in which the summonses were brought there was a tenancy at sufferance. *Re* ROBERT CAMPBELL - C. A. XXVII. *M.* 491

13. —— *Inhabitant occupier—Electoral Disabilities Removal Act*, 1891.] A claimant for the inhabitant householder franchise was absent from home for various periods not exceeding four months, necessitated by his work, his wife and children being left in the house:—*Held*, that he was protected by the Electoral Disabilities Removal Act, 1891, and was entitled to the franchise. HOLLAND *v.* CHAMBERS (FITZSIMONS' CASE) - - - - - C. A. XXVII. 107

14. —— *Inhabitant occupier.*] Certain premises were left to executors of a will in trust. By a document signed by all parties the old tenancy was surrendered by the executors and a new tenancy was created in the claimant, who was the eldest son of the testator's five children. The claimant was rated for the premises:—*Held*, that he was entitled to the franchise. GLENDENNING *v.* CHAMBERS [C. A. XXVII. 106

15. —— *Inhabitant occupier—Claimant absent in search of employment during part of qualifying period—Claimant's family left in occupation.*] A claimant who, during the qualifying period, leaves the qualifying premises in search of employment, having at his departure the intention of returning, who is not shown to have been restrained during his absence from returning, and who leaves his family in occupation of the qualifying premises, is not disqualified. CASEY *v.* RIDDALL - - - C. A. XXIV. 111

16. —— *Inhabitant occupier—Exempted premises—Premises not entered in rate book.*] Occupation of a dwelling-house attached to a school confers the Parliamentary franchise,

PARLIAMENT—FRANCHISE—*continued.*

the block of the buildings having been described as exempt in Griffiths' General Valuation Report, but being neither rated, described, nor entered in the rate-book. TORISH *v.* WYNNE - - - - - C. A. XXV. 72

17. —— *Inhabitant occupier—Exempt premises—Dwelling-house in a National school.*] The inhabitant occupier of a dwelling-house which is not rated, but which forms part of a building used as a National school, is entitled to the Parliamentary franchise, the whole building being entered in the rate-book as exempt. TORISH *v.* JOHNSTON [C. A. XXV. 83

18. —— *Inhabitant occupier—House let in flats—Lodger—Residence of landlord in house.*] The occupiers of separate rooms or flats of a house, in which the landlord himself resides, are *primâ facie* lodgers and not inhabitant occupiers, and the *onus* lies on them of showing that the arrangement with their landlord amounted to a letting of a portion of the house as distinct from the letting of lodgings. In determining this question the manner in which other houses in the same street are used is immaterial and should not be taken into consideration. CAMPBELL *v.* CHAMBERS (CAMPBELL'S CASE) - - - - C. A. XX. 70

19. —— *Inhabitant occupier—Inability to return to dwelling-house without breach of legal obligation—Compulsory absence on military duty*—30 & 31 *Vic.*, *c.* 102, *s.* 3—48 *Vic.*, *c.* 3, *s.* 2—*Adhesion to English precedents.*] A claimant to Parliamentary franchise who is compulsorily absent from his dwelling-house during a portion of the qualifying period, as in the case of a militiaman absent for three weeks' drill, and unable to return without a breach of military duty, cannot be deemed in constructive occupancy of his dwelling house by reason of its occupation by his wife and family, so as to entitle him to a vote as an inhabitant occupier within 48 Vic., c. 3, s. 2, and 30 & 31 Vic., c. 102, s. 3. In order to maintain an uniformity of franchise throughout the United Kingdom, in accordance with the Act of 1884, s. 2, the Court of Appeal, though not absolutely bound to follow, will as a rule not dissent from the decisions of Courts of First Instance in England. MARTIN *v.* HANRAHAN - - - - C. A. XXII. 1

20. —— *Inhabitant occupier—Joint rating—Separate occupation in fact.*] A person is entitled to be placed on the Registry of Parliamentary Voters, if, as a matter of fact, he is sole occupier of a house, notwithstanding that another person is, with his knowledge and consent, jointly rated with him in respect of the same house. CAMPBELL *v.* CHAMBERS (GALLAGHER'S CASE) - - - C. A. XX. 61

21. —— *Inhabitant occupier—Occupation by son of tenant in fee who died intestate, the widow still continuing to reside on the premises.*] The eldest son of a tenant in fee who has died intestate is entitled to claim the Paliamentary franchise as sole occupant, although the widow has continued to reside with him on the qualifying premises, and although the receipts for the instalments of the purchase money have been given in the widow's name. RIDDALL *v.* MAGUIRE C. A. XXV. 83

22. —— *Inhabitant occupier—Payment of rates—Deduction of proportion for period during which premises are unoccupied—Resolution of Poor Law Guardians*—Ultra vires—30 & 31 *Vic.*, *c.* 102, *s.* 3 (4)—6 & 7 *Vic.*, *c.* 92, *s.* 10.] An inhabitant occupier is disqualified (under 30 & 31 Vic., c. 102 s. 3 (4)) by the non-payment of a portion of the poor rates struck during the qualifying period and payable in respect of the qualifying premises, although payment of such portion has been remitted by the Board of Guardians, if in allowing such remission, the Guardians were acting *ultra vires*. Where premises were occupied at the date of the striking of a rate, but subsequently became unoccupied for a portion of the period for which the rate was calculated to provide, a resolution passed by the Board of Guardians remitting payment of a proportion of the rate in respect of the premises, as a deduction proportionate to the period of vacancy, is *ultra vires*. It is not equivalent to payment or tender of the rates due in respect of

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PARLIAMENT—FRANCHISE—*continued.*

the qualifying premises, that the voter has been prevented paying such rates by the answer of the rate-collector that no rates were due, given in reply to the voter's inquiry, even when at the time of such inquiry the voter was prepared thereupon to pay all rates then due. M'CROSSAN *v.* RIDDALL [C. A. XXIII. 53

23. —— *Inhabitant occupier—Rating*—30 & 31 *Vic., c.* 102, *s.* 3 (3).] Under 30 & 31 Vic., c. 102, s. 3 (3), it is sufficient for an inhabitant occupier to have been rated to all rates actually struck within the qualifying period. *Per* Sir M. Morris, C.J.: There is no such thing as a continuous rating which extends over the whole period. *Per* Fitzgibbon. L.J.: Rating is an act which takes place once for all when a rate is struck, and "being rated" means being included in the rate struck. M'CARTNEY *v.* BLACK. BELL *v.* BLACK [C. A. XXIII. 70

24. —— *Inhabitant occupier—Residence of landlord in the house*—41 & 42 *Vic., c.* 26, *s.* 5—48 *Vic., c.* 3, *ss.* 2, 7.] M. occupied an unfurnished room in a house, for the qualifying period, at a weekly rent. Other persons similarly occupied rooms in the house, and the landlord resided in it. The landlord and the occupants used the hall door, the hall, the stairs, and the yard, so far as the circumstances of each required. The resident who came in last at night fastened the hall door:—*Held*, that on these facts the Revising Barrister was right in expunging M.'s name from the list of inhabitant occupiers. M'CAY *v.* CHAMBERS - - - C. A. XXI. 69

25. —— *Inhabitant occupier—Separate occupation—Dwelling house*—41 & 42 *Vic., c.* 26, *s.* 5.] In the case of a community or family being the joint equitable owners of a house, the sole and exclusive occupation of a distinct bedroom by a member of the community or family cannot be the separate occupation of a dwelling-house within 41 & 42 Vic., c. 26, s. 5. ALEXANDER *v.* BOURKE ("MOUNT ARGUS" CASE) - - XXI. 68

26. —— *Inhabitant occupier—Succession claim—Tenant evicted and put in as caretaker*—30 & 31 *Vic., c.* 102, *s.* 26.] A tenant who, upon eviction, has been put into possession of the premises as caretaker, is not thereby entitled to vote, under 30 & 31 Vic., c. 102, s. 26, as having occupied the premises in immediate succession. DIVINE *v.* RIDDALL [C. A. XXIII. 4

27. —— *Lodger.*] A man who occupies rooms of the prescribed value, and for the prescribed time, is entitled to the lodger franchise, even though he allows other men, who pay him for such permission, to work and sleep in one of the rooms. EDWARDS *v.* LANG; FITZGERALD *v.* KINSELLA [E. C. III. *M.* 740

28. —— *Lodger—Age of* 21*—Period of occupation—Time for claiming.*] A claimant of the lodger franchise need not be of full age during the 12 months' occupation required by the Act, or at the time when he lodges his notice of claim. WHEELER'S CASE & WILKINSON'S CASE [Rev. C. II. *M.* 530

29. —— *Lodger—Joint use of sitting-room—Alteration of claim after sent in.*] In the case of lodgers occupying separate bedrooms, and having the joint use with others of a common sitting-room, the annual value of the part separately occupied, where under £10, cannot be added to the annual value, also under £10, of the occupier's right of joint-occupation of the sitting-room, so as to entitle him to the franchise. Where a lodger claim and declaration has been materially altered by some person, without the knowledge or express authority of the claimant, after it was duly signed, attested, and sent in, but before it was lodged, the claim is rendered invalid. ORMSBY'S AND MAXWELL'S CASES - C. A. XXVII. *M.* 470

30. —— *Lodger—Clerk residing over office.*] A clerk in mercantile house receiving exclusive use of furnished bedroom, and joint use of a sitting-room and his board as part of his remuneration, but who was not obliged to reside, and could discharge his duties as well if non-resident, and if non-resident would receive larger salary, was held entitled to the franchise. PARKER *v.* CAMPLIN - E. C. V. 16

PARLIAMENT—FRANCHISE—*continued.*

31. —— *Lodger—Control of landlord.*] To constitute a claimant as "lodger" it is not necessary that the landlord should have retained over the outer door of the house a control entitling him to enter therein as a right and independently of the consent of the tenant. EDWARDS *v.* LANG [E. C. II. *M.* 686

32. —— *Lodger—Declaration attached to claim—Power of Revising Barrister to amend—Description as "agent"*—48 *Vic., c.* 17, *s.* 27 (2).] The Revising Barrister has power under 48 Vic., c. 17, s. 27 (2), to amend the description of the witness who makes the declaration annexed to a lodger claim. "Agent" sufficiently describes a registration agent. CAMPBELL *v.* CHAMBERS (HARRIS' CASE) C. A. XXII. 6

33. —— *Lodger—Joint lodgers.*] Joint lodgers of sitting-room occupying separate bed-rooms and dressing-rooms of the value of £10, for which £45 rent was paid, were held not entitled to the franchise. HARRIS *v.* O'CONNOR [E. C. V. 16

34. —— *Lodger—Occupying separately and as sole tenant.*] A person who claims as a separate occupier and sole tenant of premises, is entitled to be placed on the register, although another person, whom the claimant would not exclude even at an unreasonable hour, occupies one room exclusively at night, when he pleases, and pays for his board, but not for his lodging. BYRNE *v.* COOPER - E. C. II. *M.* 717

35. —— *Lodger—Omission in notice of claim and list.*] A lodger is entitled to be placed on the register although the description of the landlord is omitted as well from the notice of claim as from the list of claimants. MATHEWS *v.* MAGRATH [E. C. II. *M.* 669

36. —— *Lodger—Rated occupier*—31 & 32 *Vic., c.* 112, *s.* 35.] A person otherwise duly qualified as a lodger is not entitled to be registered as a voter, if he is returned, even erroneously, as a rated occupier of the same premises. CAMPBELL *v.* CHAMBERS (SIMPSON'S CASE) - - - C. A. XX. 63

37. —— *Lodger—Representation of the People (Ireland) Act*, 1868.] The word "lodger" in the 31 & 32 Vic., c. 49, means a person who occupies a part of a dwelling-house as his residence, either where the landlord resides on the premises, or where, though the house is wholly let out in tenements, the landlord retains over the outer door a control which entitles him to enter the premises against the will of the occupiers of the tenements without thereby becoming a trespasser. BEAHAN'S CASE [Rev. C. II. *M.* 505

38. —— *Lodger—Residence—Amending qualification.*] Claim in respect of three rooms. Claimant always slept in a closet, which was proved to be part of the same lodgings, but which was not mentioned in the claim:—*Held*, on appeal, that the claim should have been amended by adding the closet. EDWARDS *v.* LANG - - - E. C. II. *M.* 717

39. —— *Lodger—Residence*—31 & 32 *Vic., c.* 49, *s.* 4.] M. occupied lodgings, during the qualifying period, in the city of Derry, separately, and as sole tenant. During the qualifying period he resided in them for the whole of five, and part of three, months; for the rest of the time he lived in lodgings in Belfast. During his absence from Derry he paid the rent for his lodgings there, and they were kept for him; they were not used or occupied by any other person during his absence, and he could return to them when he pleased. These facts having been found by the Revising Barrister:—*Held*, that the only question which should be considered was as to whether the facts so found constituted a sufficient residence in point of law; and that, on such facts, there was a sufficient residence to qualify for registration as a lodger within 31 & 32 Vic., c. 49, s. 4. CAMPBELL *v.* CHAMBERS (M'VICKER'S CASE) C. A. XXI. 67

40. —— *Lodger—Trinity College—Representation of the People (Ireland) Act*, 1868, *sec.* 4.] On a claim to be registered a voter in respect of lodgings, under 31 & 32 Vic., c. 49, s. 4, it appeared that the claimant occupied separately as sole tenant, and, for the twelve months preceding July 20th, 1874, resided in rooms on the ground floor of a building in Trinity College

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PARLIAMENT—FRANCHISE—*continued.*

and within its walls which were of the clear yearly value, if let unfurnished, of £10. The rooms were let to him at a year's rent, but no period of his tenancy was fixed or agreed upon. On the landings of several other storeys in the same building there were similar sets of rooms, each set being separate from, and not communicating with, any other set; and no person had a right to enter the claimant's rooms without his permission. The rooms would not have been let to the claimant had he not been connected with the college and engaged in its work:—*Held*, that the claimant was entitled to be registered a voter, as a lodger, within the meaning of the Representation of the People (Ir.) Act, 1868, s. 4. *Re* M'DONOGH - - - - - **Rev. C. VIII. 184**

41. —— *Lodger—Rooms in Trinity College.*] A claimant cannot qualify as a lodger out of rooms in Trinity College, Dublin. LANG *v.* EDWARDS - - **E. C. II. *M.* 717**

42. —— *Lodger—Rooms in Trinity College.*] Students who occupy in the University of Dublin chambers of the prescribed annual value, are, nevertheless, not entitled to be placed as lodgers on the register of Parliamentary voters. WHEELER'S CASE - - - - - - - - - **Rev. C. II. *M.* 560.**

43. —— *Notice of claim—Jurisdiction of Revising Barrister.*] The revising barrister has no jurisdiction to look at the original notice of claim when it was not signed by the claimant himself. EDWARDS *v.* LANG **E. C. II. *M.* 669.**

44. —— *Notice of claim—Jurisdiction of Revising Barrister.*] The revising barrister has no jurisdiction to look at the notice of claim, although the calling of the witness to the claimant's signature to the notice be omitted. MEADE *v.* COOPER - - - - - - - **E. C. II. *M.* 669.**

45. —— *Notice of claim—Signature of Claimant—Date.*] Every claimant of the franchise must, under 31 & 32 Vic., c. 112, be in a position to prove that his notice of claim was signed on the day of its date. EUSTACE'S CASE **[Rev. C. II. *M.* 518**

46. —— *Notice of objection—Ground of objection specifically stated—Supplemental list—48 Vic., c. 17, s. 20—First schedule, form No. 11, and third schedule.*] An objection grounded on the column of the Register headed "Nature of Qualification" is a good objection to persons whose names appear on the Clerk of the Union's Supplemental List of £10 rated occupiers. TORISH *v.* ANDERSON - - - **C. A. XXIII. 73**

47. —— *Notice of objection—Objector proved guilty of illegal practices at previous election—13 & 14 Vic., c. 69, s. 36.*] A notice of objection to a claimant's right to being placed on the register of voters is not invalid by reason of the objector having been proved guilty of illegal practices at the previous election, if his name appears on the current register of persons entitled to vote at an election of a Member of Parliament. *Per* Fitzgibbon, L.J.: The validity of an objection to a claim to vote does not depend on the validity of the objector's name being on the list of voters. BARR *v.* CHAMBERS **[C. A. XXI. 65**

48. —— *Notice of objection—Power to amend—48 Vic., c. 17, s. 27.*] The Revising Barrister has power to amend the "duplicate" of a notice of objection served through the post, under the provisions of the Parliamentary Voters (Ir.) Act, 1850, so as to make it correspond with the original. CAMPBELL *v.* CHAMBERS (HALL'S CASE) - - **C. A. XX. 64**

49. —— *Rated occupier.*] Lynch grazed three fields under a parol contract with Meara, which terminated on the 1st of February in each year, Meara paying all the rates. The contract was not renewed after the 1st of February, 1868, but Lynch continued to use the fields as before, and in August, 1868, paid £7, the amount of the half-year's rent:—*Held*, that Meara had not ceased to be an occupier and that he was entitled to be retained on the list of rated occupiers. SHEA *v.* MEARA **[E. C. II. *M.* 648**

PARLIAMENT—FRANCHISE—*continued.*

50. —— *Rated occupier—Claim to be rated—Payment after 1st July.*] Several joint occupiers of premises, who had not paid the poor-rate on or before the 1st of July, as provided by the 13 & 14 Vic., c. 63, s. 5, although the notice prescribed by s. 109 had been published, subsequently claimed to be rated jointly in respect of the premises and paid the poor-rate, which previously to the 1st January in the same year had become payable in respect of the premises:—*Held*, that the subsequent payment could not be taken to operate by relation back to the 1st of July, so as to entitle the parties to be registered on the list of voters at elections for the borough. SHAW *v.* FIELD - - - - - - **E. C. X. 106**

51. —— *Rated occupier—Claimant serving no claim, his name being the same as that of his father, who died during the qualifying period.*] A person who, during the qualifying period, succeeds his father in the occupation of the qualifying premises, and who, in consequence of having the same name as his father, does not make any claim to be rated, is not entitled to the Parliamentary franchise. SEFTON *v.* LUNNY **[C. A. XXV. 71**

52. —— *Rated occupier—Joint rating—Sub-letting, for purpose of growing potatoes, of a rood of qualifying premises not separately rated—Sub-letting of "house and garden," the separately rated portion being described as "house."*] The sub-letting, for the purpose of growing potatoes, of a rood of the qualifying premises not separately rated, comes within the rule applicable to conacre, and does not amount to parting with the occupation. A claimant in respect of lands, who sub-lets a house and garden situated on the lands, is not disqualified by reason that, though the sub-let portion is a "house and garden," the separately-rated portion is described in the rate-book as a "house," the custom of the district being to describe a house with a garden attached to it, when separately rated, usually as a "house and garden," but occasionally as a house." TORISH *v.* BATES **C. A. XXV. 73**

53. —— *Rated occupier—Joint.*] Certain premises, consisting of a house and yard, rated at £85 per annum, were by a fee farm grant granted to the R.C. Bishop and others as trustees in trust for the parish. The yearly rent was £30 5s. In the premises resided, for the qualifying period, the bishop, the administrator, and two curates, all of whom were trustees under the grant. Each had sole and exclusive use of separate rooms, and they used the rest of the house in common. The bishop could appoint or remove the administrator and curates at pleasure, but could not otherwise deprive them of their respective rooms. The four inhabitants were jointly rated for the premises; the fee farm rent being paid not by the claimants personally, but by the trustees out of public sources:—*Held*, that all four were entitled to the franchise as joint rated occupiers, and that they were tenants at will within the meaning of the Franchise Acts. HOLLANDS (O'DOHERTY'S CASE) *v.* CHAMBERS - - **C. A. XXVII. *M.* 471**

54. —— *Rated occupier—Joint rated occupier—13 & 14 Vic., c. 69, s. 6—31 & 32 Vic., c. 49, s. 6.*] Where two partners in trade are rated as joint occupiers of qualifying premises, though the joint tenancy and occupancy has in fact ceased, the one who remains in sole occupation is entitled to the franchise, although there is no claim on his behalf to be rated separately or as an occupant in immediate succession. BURNSIDE *v.* CHAMBERS (R. A. BURNSIDE'S CASE). **[C. A. XXI. 78**

55. —— *Rated occupier—Joint rated occupier erroneously entered by Clerk of the Peace as rated occupier—Power of Revising Barrister to amend.*] A person who is qualified for the Parliamentary franchise as one of two joint rated occupiers of premises of a certain valuation, is not disqualified in consequence of having been erroneously entered by the Clerk of the Peace as the rated occupier of the same premises to the extent of half that valuation, the Revising Barrister having in such a case power to amend the entry. M'LOUGHLIN *v.* CHAMBERS - - - - - - - **C. A. XXV. 82**

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PARLIAMENT—FRANCHISE—*continued.*

56. —— *Rated occupier—Joint—Fishery rights—Interruption during close season.*] Fishery rights are rateable in corporeal hereditaments, and capable of such occupation as will confer the Parliamentary franchise on the lessees thereof, and the fact that such lessees are prevented by law from exercising their rights during the close season does not disqualify them. TORISH *v.* M'CORKELL - C. A. XXV. 81

57. —— *Rated occupier—"Last rate for time being."*] "Rated under the last rate for the time being" in the 13 & 14 Vic., c. 69, s. 5, means the last rate before the 20th July, when the party must be entitled. CARLISLE *v.* KEEGAN - E. C. V. 17

58. —— *Rated occupier — Occupation — Sub-letting—Sub-let portion different from separately-rated portion — Appeal on question of fact.*] M. appeared in rate book as the rated occupier of the qualifying premises valued at £18 5s.; on the lands there was a small dwelling-house, with a garden under one rood in extent, which were sub-let. This house was separately valued and rated, and the description of it appeared in the rate book as "house"; "house" in that book occasionally included garden. The Revising Barrister held that the garden was included in the description of the "house," and placed his name on the register:—*Held* (Fitzgibbon, L.J., *diss.*), that the finding of the Revising Barrister on the question of fact should not be disturbed. TORISH *v.* MAXWELL C. A. XXV. 73

59. —— *Ratcd occupier—Omission of value of rated premises.*] From each of the notices of claim served by the appellants was omitted the rated value of the premises of each appellant. The value did not appear on the published list of claims. The Revising Barrister expunged the names:—*Held*, that the names should be inserted. AHEARN *v.* TROY [E. C. II. *M.* 648

60. —— *Rated occupier—Portion of qualifying premises, not separately rated, let for grazing.*] A rated occupier of lands, who lets for grazing purposes a field which is a portion of the qualifying premises, and which is not separately rated, and who, by the agreement for doing so, is restrained from interfering with such grazing, but is not restrained from entering on the field, and whose agent obtains possession of one of the keys of a gate subsequently erected at the entrance of the field by the person who gets the grazing, but with the agent's consent, does not part with the occupation of the holding, and is entitled to the Parliamentary franchise. TORISH *v.* KING - - - - C. A. XXV. 72

61. —— *Rated occupier—Succession claim—Payment of rates—13 & 14 Vic., c. 69, s. 7—48 Vic., c. 17, form No. 21.*] K. occupied certain premises in the City of L., which were rated at £6, until the 1st of September, 1886, in respect of which he paid all rates and taxes due up to the 1st of October. Some of his boxes remained in them during the month of September. On the 1st of October, G., to whom he had sub-let them, went into occupation. A rate for the relief of the poor was struck on the 9th of October. The sum charged on these premises in respect of that rate was not paid. K. paid all rates and taxes due by him in respect of other premises in the City of L., into which he had moved on the 1st of September. In the List of Claimants (Form No. 21) under the Parliamentary Registration (Ireland) Act, 1885, opposite the name of K., under the heading, "Nature of Qualification," were the words, "Rated occupier of shop, room, and premises, £10":—*Held*, that K. was entitled to the Parliamentary franchise as rated occupier of these premises in immediate succession; that no rate accrued due on the former premises between 1st and 8th of October; that the non-payment of any rate struck between these dates in respect of the former premises would not have affected his claim, and that the statement of the valuation in the claim under the head "Nature of Qualification" was not required, and if inaccurate, did not affect it. CAMPBELL *v.* CHAMBERS (KEMPSTON'S CASE) - - - C. A. XXI. 80

62. —— *Rated occupier—Saving of right to be registered—Non-publication of appropriate list—Power to amend—48 Vic., c. 3, s. 10—48 Vic., c. 17, ss. 4, 27—Forms 17, 18.*] Non-publication by the Town Clerk of the list, Form No. 18 (48 Vic., c. 17), does not prevent the names of persons for whom such is the appropriate list being retained on the register, if such names have been published in list No. 17, and are otherwise entitled to be registered. Persons whose names were not on the register in force in 1884, but had been placed on the lists to form the register in force in 1885, which lists at the date of the passing of the Act, 48 Vic., c. 3, had been signed by the Revising Barrister, but had not been delivered to the Clerk of the Peace or to the Sheriff, are persons whose rights are saved by sec. 10 of that Act as having been "registered" at the date of the passing of the Act. M'INTYRE *v.* BLACK [C. A. XXIII. 49

63. —— *Rated occupier—Succession claim—Joint rated occupier—48 Vic., c. 3, s. 10—13 & 14 Vic., c. 69, s. 6.*] A succession claim, under the saving clause of the Representation of the People Act, 1884, from premises qualifying the claimant as a voter at the time the Act was passed, to new premises of the requisite qualifying value, is valid. The fact that the claimant was jointly rated with another as occupier of the old premises—though described on the register and rate-book for 1884 as "rated occupier"—will not prevent him being qualified for the new premises to which he succeeded as sole tenant and sole occupier. M'CRABB *v.* CHAMBERS [C. A. XXI. 75

64. —— *Rated occupier—Tenants holding separate farms and working them jointly.*] Tenants holding separate farms and being separately rated are entitled to claim the franchise as separate occupiers, though they all reside together and work the farms jointly. BOYLANDS *v.* LLOYD - C. A. XXIV. 110

65. —— *Service franchise—Gardener living over stable—Dwelling-house—41 & 42 Vic., c. 26, s. 5—48 Vic., c. 3, s. 3.*] H., a gardener, occupied exclusively by virtue of his service and took his meals in a room over his employer's coach-house. The coach-house was in a yard which was surrounded by a wall with a gate in it, and separated from the employer's house by an avenue, but was included in the grounds surrounding it:—*Held*, that H. was entitled to the franchise. *Crossan* v. *Chambers*, (18 L. R. (Ir.) 68), distinguished. HOLLY *v.* BOURKE [C. A. XXI. 79

66. —— *Service franchise — Person under whom voters serve—Religious community—48 Vic., c. 3, s. 3—41 & 42 Vic., c. 26, s. 5.*] In a college conducted by a religious community each teacher had as such, during the qualifying period, the exclusive use of a separate bedroom in the college, by virtue of his office, or employment as a teacher in the college, serving as such under the supreme control of the superior-general of the community, who himself resided in Paris. The Revising Barrister having found that each bedroom so occupied constituted a dwelling-house for the purpose of the franchise, and was not inhabited by the person under whom the teachers served, while the general supervision and control over the college was exercised by the residing president, but not as employer of the teacher:—*Held*, that the teachers were entitled to the franchise. *Stribling* v. *Halse* (16 Q. B. D. 246), and *Hassan* v. *Chambers* (18 L. R. (Ir.) 68), followed. ALEXANDER *v.* BOURKE (FRENCH COLLEGE CASE.) - - - - - C. A. XXII. 21

67. —— *Signature of claim—Evidence—Lodger and occupier franchise.*] The signature by the claimant of the claim to the franchise must be proved in *every* case. DONFIELD'S CASE [Rev. C. II. *M.* 507

68. —— *Succession claim—Change of houses.*] Where one claimant had moved in the course of the year from a house rated at £7 to a house rated at £10 10s., and another from a house rated at over £8 to one rated at more than £4, and under £8:—*Held*, that they were entitled to the franchise. CRONIN *v.* CARLISLE; SHEVLIN *v.* CARLISLE [E. C. II. *M.* 648

69. —— *Succession claim—Notice of claim.*] A person who was on the list of Parliamentary voters for 1867, removed in March, 1868, to other premises, and was struck off the list as not having occupied either set of premises for twelve months

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PARLIAMENT—FRANCHISE—*continued.*

before the 20th July, 1868. He then claimed as an occupier of premises held "in immediate succession":—*Held*, that it was not necessary for him to serve a notice of claim for that purpose. KILLENER *v.* TARRANT - - **E. C. II. *M.* 635**

70. —— *Succession claim—Power of amendment*—48 *Vic., c.* 17 *s.* 4.] Where the name of a person appears on the Register and on the Supplemental List in respect of different premises, which he has occupied during different portions of the qualifying period, the Revising Barrister has not power, under sec. 4 of 48 Vic., c. 17, to take evidence to prove that he occupied them in immediate succession and to amend the Supplemental List by adding the words "in immediate succession from" and inserting thereafter a description of the premises in respect of which the name has appeared on the Register. ALEXANDER *v.* BOURKE (DOYLE'S CASE) - - **C. A. XXIII. 68**

PARLIAMENT—POLLING DISTRICT—*Constitution of additional—Jurisdiction of Justices—Ballot Act*, 35 & 36 *Vic., c.* 33, *s.* 18 (14) (15) (16)—*Parliamentary Registration (Ir.) Act*, 48 *Vic., c.* 17, *s.* 9—*Repeal by implication.*] The power to constitute additional and occasional polling places and districts in Ireland conferred upon the Justices at Quarter Sessions, subject to the approval of the Privy Council, by the Ballot Act, 1872, is unaffected by the Parliamentary Registration Act, 1885, and still exists. The maxim "*Unius expressio alterius exclusio*" held inapplicable. *Re* NORTH ANTRIM POLLING DISTRICTS - - - **P. C. XXIV. 109**

PARLIAMENTARY COSTS—Recovery of—Practice. **[I. *M.* 26**

See PRACTICE—COMMON LAW—COSTS. 16.

PARTICULARS.

See PRACTICE—PARTICULARS.
PRACTICE—CIVIL BILL COURT—PARTICULARS.
PRACTICE—COMMON LAW—PARTICULARS.

—— Amendment at trial—*Quantum meruit* - **I. *M.* 349**
See FRAUDS, STATUTE OF. 3.

—— Election Petition.
See PARLIAMENT—ELECTION PETITION. 22-30, 48.

—— Indorsed on Summons and Plaint—Demurrer - **VI. 29**
See PRACTICE—COMMON LAW—PARTIES. 3.

—— Probate—Pleading—Undue influence - **IV. *M.* 107**
See PROBATE—PLEADING. 1.

PARTIES.

See PRACTICE—PARTIES.
PRACTICE—ADMIRALTY—PARTIES.
PRACTICE—CHANCERY—PARTIES.
PRACTICE—CIVIL BILL APPEAL—PARTIES.
PRACTICE—CIVIL BILL COURT—PARTIES.
PRACTICE—COMMON LAW—PARTIES.

—— Objection for want of—Costs of day—Practice Chancery **[I. *M.* 24**

See PRACTICE—CHANCERY—COSTS. 1.

PARTITION.

1. —— *Injunction—Action of trespass—Setting up tenancy created by receiver appointed on behalf of minor—Assertion of doubtful equity.*] Where A., a former receiver over portion of a property, to another portion of which he was himself entitled, after an order directing division in a partition suit remained in possession of the entire property, and B., the person entitled to the other portion of the lands, before execution of the mutual conveyances, attempted by force to oust A. from that portion of the lands to which B. was entitled; an application for an injunction against an action for trespass

PARTITION—*continued.*

against B. was refused; but an injunction was granted against A. setting up a tenancy from year to year in himself to a portion of the lands which he alleged was acquired by him while acting as receiver for the whole property for a minor under the Court of Chancery, notwithstanding the receipt of rent from him by the agent of the minor subsequent to his discharge as receiver, A. having elected to accept a scheme for division proposed under the partition suit, in which the portion of the lands in question was treated as not in the occupation of any tenant. HUGHES *v.* D'ARCY **[R. VIII. 130**

2. —— *Practice—Reference to Master.*] On the hearing of a petition for partition of lands between two co-owners, the Court instead of directing a commission of perambulation to issue, made a declaration that the lands should be divided, and referred to the Master to make such partition, with liberty to receive proposals, the parties enjoying the moieties in severalty and to execute mutual conveyances. CLARKE *v.* CLARKE - - - - - - - **C. I. *M.* 44**

See Cases under PRACTICE—LANDED ESTATES COURT—PARTITION.

—— Deed—Effect of on right of way - - **VIII. 105**
See WAY. 3.

—— Discharge of receiver—Costs - **II. *M.* 235**
See PRACTICE—CHANCERY—COSTS. 5.

PARTNERSHIP.

1. —— *Arbitration clause—Dissolution of partnership by marriage—Bill to wind up—Staying proceedings under C. L. P. A. Act*, 1856, *sec.* 14.] A deed of partnership between A. and B. provided that all matters in dispute arising between the parties relating to the partnership business should be referred to arbitration. The partnership became dissolved by the marriage of A. A. filed a bill in Chancery against B., who had, in opposition to the provisions of the deed, persisted in carrying on the business, to wind up the partnership and take account under the Court; whereupon, on the ground that the matters so in dispute should have been referred to arbitration under the deed, B. moved that the proceedings in the cause should be stayed, pursuant to the Common Law Proceedure Amendment Act, 1856, sec. 14:—*Held*, that the matters in dispute were not within the arbitration clauses, and that the proceedings should not be stayed. DENNEHY *v.* JOLLY **[R. IX. 3.**

2. —— *Construction of covenant in deed—Demand.*] The preliminary part of the partnership deed of a banking company stated that the parties of the third part (of whom J. S. was one), their executors and administrators and each of them, so far as related to the acts, deeds, and defaults of himself, his heirs, executors, and administrators did thereby for himself, his heirs, executors, and administrators, covenant, &c., with and to the (trustees) parties thereto of the second part, their executors and administrators in manner following:—The 168th clause provided that any proprietor of the society being indebted thereto, should, upon demand made upon him, by the Court of Directors, pay and discharge his debt without requiring the accounts of the society to be taken, and as if such proprietor were a debtor to the society without being interested as a partner, and that in default of payment the amount thereof should be sued for and recovered as and by way of liquidated damages. The 169th clause provided that, in case of default to pay, and that such debt should be a debt cognisable by the Courts of Common Law, and which might have been sued for as such in case the person liable thereto had not been interested as a member of the Society, the amount thereof should and might in any Court in which such debt might be cognisable be sued for by the trustee or trustees or public officer of the society, or by any other person or persons acting on behalf thereof in the same manner as a debt due to the society from any person not being a member thereof; and it should not be lawful for the defendant to plead or rely on such partnership in bar of

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PARTNERSHIP—*continued.*

said action. J. S., one of the proprietors, died indebted to the society in a considerable sum for advances to him. Proceedings were subsequently taken in Chancery to wind up the banking company; and a claim made by the official liquidator upon foot of the advances in a suit to administer his assets was allowed by the Master. It was admitted that no demand had been made upon J. S. in his lifetime:—*Held*, reversing the order made by the Master, and affirming an order of the Master of the Rolls, that in the absence of a demand made in the lifetime of J. S., the claim of the official liquidator was unsustainable. NORRIS *v.* SADLEIR - **C. A. VII. 47**

3. —— *Construction of deed—Share of deceased partner payable by instalments—Interest.*] A partnership deed contained the following clause:—"In the event of any partner dying during the continuance of the partnership, the amount of his share in said firm, as ascertained at the stock-taking previous to his death, together with interest thereon, at the rate of £10 per cent. per annum, shall be paid to his personal representatives by four annual consecutive equal instalments, the first of such payments to be made twelve months from the date of the stock-taking next preceding the death of such partner":—*Held*, that the interest was payable on each instalment only. BEATER *v.* MURRAY - **R. IV. *M.* 532**

4. —— *Money advanced by clerk—Proof of debts in bankruptcy*—28 & 29 *Vic., c.* 86, *s.* 5.] K., a clerk in the employment of the bankrupt, advanced £800 to be employed by the bankrupt in one branch of his business, K. to be paid interest and half the profits in lieu of extra salary, and to have a lien on goods purchased with the £800, the bankrupt to take all risk. The agreement was not in writing:—*Held*, that K. was not a partner, and that he should be admitted to prove on the bankrupt's estate for moneys due to him on foot of the £800, and that his debt should not be postponed to the debts of the other creditors. *Re* BORTHWICK. *Ex parte* KIRKPATRICK **[B. IX. 155**

5. —— *No deed—Company not incorporated—Pleading.*] In an action for money lent, and on accounts stated, the defence was that the plaintiff and the defendant and others were united in co-partnership . . . and that the said money was lent and expended, and the said accounts were stated for and on account of the said co-partnership; and there was put in a replication:—that the co-partnership was unincorporated and not constituted by statute, etc., nor registered as a joint-stock company, nor was there any deed of partnership; but not showing that the co-partnership was illegal:—*Held*, on demurrer, that the replication was bad. GURRY *v.* M'NAMEE **[C. P. II. *M.* 265**

6. —— *Solicitor—Profits.*] A decree was made in an action in the Recorder's Court for partnership profits between a solicitor and his town agent. DODD *v.* WHITE **[Rec. C. XXVI. *M.* 402**

—— Service on one of two partners—Final judgment motion **[XII. *M.* 46**

See PRACTICE—PARTIES. 12.

PARTY WALL—Destruction of—Pleading - **V. 120**

See PRACTICE—COMMON LAW—PLEADING. 2.

PASSENGER ACT, 1855—Ss. 18, 84—Stowaway—Owner **[XXVII. 43**

See JUSTICES—CERTIORARI. 7.

PASSENGER SHIP—Certificate—Number of passengers and guests - - - - - **XVIII. 9**

See SHIP—PASSENGER SHIP.

PASTURE HOLDING.

See LAND LAW (IRELAND) ACT, 1881. 112, 122, 159, 195, 258–267.

See LAND LAW (IRELAND) ACTS, 1881. 1887. 2, 40, 41, 58–60.

See LANDLORD AND TENANT (IRELAND) ACT, 1870. 58, 66, 116, 121, 170, 171.

See REDEMPTION OF RENT (IRELAND) ACT, 1891. 8.

PAUPER—Suit by

See PRACTICE—CHANCERY—PAUPER.

PAWNBROKER.

1. —— *Hire of goods on the three years' system—Pawning by hirer, before payment of last instalment*—5 *Vic., c.* 24, *sec.* 68—26 *Geo. III., c.* 43, *s.* 13.] A sewing machine was hired on the three years' system, under a written contract whereby the absolute right of property therein remained in the manufacturer until the payment of the last instalment. It was pawned to the defendant in violation of one of the terms of the contract. On a summons being taken out, under 5 Vic., c. 24, s. 68, before one of the police magistrates of Dublin, a decree for the return of it by the pawnbroker was made. WILSON *v.* IVORS - - - - - - **M. P. C. IX. *M.* 83**

2. —— *Hours of business—Construction of statutes*—28 *Geo. III., c.* 49, *s.* 20—9 & 10 *Vic., c.* 98.] Sec. 20 of 28 Geo. III., c. 49, prescribing the hours within which pawnbrokers may receive pledges, applies not merely to pawnbrokers within the metropolis, but to all pawnbrokers throughout Ireland. The statute 9 & 10 Vic., c. 98, does not apply to Ireland. SEDDALL *v.* WILSON **Q. B. D. XXV. 62**

3. —— *Musical instrument pledged by soldier in uniform—Received by assistant*—44 & 45 *Vic., c.* 58.] The fine and treble value of the article against a pawnbroker, whose assistant had taken in pawn a musical instrument from a soldier in uniform, was affirmed on appeal. JONES *v.* CASHIN **[Q. S. XXVII. *M.* 87**

PAYMENT BY BANK DRAFT—Landlord and Tenant Act, 1860 - - - - - - **XI. 9**

See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 23.

PAYMENT BY CHEQUE.

See BANKER. 4, 5.

See PRACTICE—DEFENCE. 13.

PAYMENT INTO COURT.

See PRACTICE—PAYMENT INTO COURT.

—— Costs from Payment to Withdrawal of Notice of Trial **[I. *M.* 156**

See PRACTICE—COMMON LAW—COSTS. 22.

PAYMENT OUT OF COURT.

See PRACTICE—PAYMENT OUT OF COURT.

PRACTICE—ADMIRALTY—PAYMENT OUT OF COURT.

PRACTICE—CHANCERY—PAYMENT OUT OF COURT.

PRACTICE—COMMON LAW—PAYMENT OUT OF COURT.

PEACE PRESERVATION ACTS.

1. —— *Act*, 1870, *sec.* 39—*Compensation for personal injuries—Illegal combination or conspiracy.*] Personal injuries received in the course of a party riot, though sustained by persons who did not themselves take any part in the riot, do not entitle the injured persons to compensation under the 39th sec. of the Peace Preservation (Ir.) Act, 1870. There must be a clear case of illegal combination or conspiracy to injure the claimant in order to bring him within the provisions of the Act. (By LAWSON, J.) *Re* MORROW. *Re* TONER - **Cir. Cas. VII. 142**

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PEACE PRESERVATION ACTS—*continued.*

2. —— *Act*, 1870, *sec.* 39—*Peace Preservation* (*Ireland*) *Act*, 1875, *sec.* 3—"*Crime of character known as agrarian, or arising out of any illegal combination or conspiracy*"—*Finding of Petty Jury—Suppression of material evidence—Grounds for charging district.*] Upon an application for compensation by the representatives of the deceased:—*Held*, that a verdict of manslaughter by a Petty Jury on an indictment for the murder of the deceased was not conclusive that a murder had not been committed. (By Barry, J.) *Re* GILKINSON'S PRESENTMENT [Cir. Cas. XI. 123

3. —— *Act*, 1870, *sec.* 39—*Compensation—Agrarian crime—Presentment—Applotment—Costs.*] It is not necessary that application for compensation under the Peace Preservation (Ir.) Act, 1870, should be brought before the Presentment Sessions before being made to the Grand Jury of the county. The Judge on appeal, has no power to vary the applotment of the Grand Jury, and he will not, on slight grounds, alter the amount of compensation awarded. There is no power under the Act to award costs to a successful respondent. (By Fitzgerald, B.) *Re* KINNEALLY - - - - Cir. Cas. VII. 85

4. —— *Amount of compensation—Evidence of agrarian crime—Alteration of area—Costs.*] The Judge of Assize, taking into consideration the circumstances under which the injuries were inflicted, and the relation of the injured man to the tenants, refused to reduce the amount of compensation awarded for the loss of an eye; and to alter the area chargeable therewith, which the Grand Jury had, in their discretion, fixed, but had no power to give costs. (By Palles, C.B.) KILLEEN *v.* WHITEFORD - - - Cir. Cas. VIII. *M.* 574

5. —— *Motion to take writ off the file.*] A motion to take the writ of summons and plaint off the file for the purpose of producing it before the Grand Jury, was granted, on a written undertaking to re-file it without delay. *Re* NEIL [C. P. VII. *M.* 500

6. —— *Presentment—Malicious injuries—Injuries inflicted before expiry of Act—Assizes after the expiry of Act.*] Where a presentment had been made for injuries inflicted before the expiry of the Peace Preservation Act, the notices in respect of which were served and the applications made before the expiry thereof, but the matter came before the Grand Jury at the next Assizes, which were held after the expiry of the Act:—*Held*, by the majority of the Court, that the Judge of Assize ought not to fiat the presentment. *Re* CORSCADDEN'S AND HEBRON'S PRESENTMENT - Cir. C. R. XV. *M.* 118

7. —— *Presentment—Power to amend.*] When a presentment under the Peace Preservation Act, 1875, omits to state the requirements contained in section 3 of that Act, the Judge on appeal can, if the evidence before him warrants it, introduce the necessary amendments to make the presentment comply with such section. *Quære*, is the question whether material evidence was withheld by persons resident within the district, one exclusively for the Grand Jury? *Re* M'DONAGH'S PRESENTMENT - - - - Cir. C. R. XII. 179

8. —— *Writ of prohibition—Feloniously setting fire to premises—Inquiry by magistrates, no person being accused—Proclaimed district—Summons to witness*—14 & 15 *Vic.*, *c.* 93, *ss.* 9, 10.] A summons to witness to appear and give evidence under the Peace Preservation Act, 1870, sec. 13, at an inquiry by Justices of the Peace, in relation to the commission, of a felony or misdemeanor, in a proclaimed district, must disclose on the face of it that a felony or misdemeanor has been committed. Where the facts, connected with the occurrence of a fire by which premises were consumed, had been of such a character, that it would appear that the fire was not accidental, but felonious, and it appears to the Justices of the Peace, in a proclaimed district, that a felony was committed, the Court will not grant a writ of prohibition to restrain them from holding an inquiry as to the commission of such felony, and taking informations in relation thereto, although it is not sworn on the depositions, that the fire was feloniously caused. *Per* O'Brien, J.: In order that it should appear, within the

PEACE PRESERVATION ACTS—*continued.*

Peace Preservation Act, 1870, sec. 13, that a felony or misdemeanor was committed, it is not necessary that the Justices of the Peace should have before them evidence on oath, previously to summoning witnesses under that section. *Per* Fitzgerald, J.: It would be expedient and not unconstitutional for the Legislature to extend to unproclaimed districts the operation of section 13 of the Peace Preservation Act, 1870, enabling Justices of the Peace to summon witnesses, and to compel them to give evidence if they are capable of doing so, on an inquiry as to the commission of a felony or misdemeanor where it appears that it has been committed, although no person is charged with the crime. R. *v.* DUBLIN COUNTY JUSTICES [Q. B. IX. 33

PEER—Privilege—Letter missive - II. *M.* 119
See PRACTICE—CHANCERY—SERVICE. 9.

PENAL RENT—Ejectment - - XVIII. 100
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 24.

—— Ejectment for non-payment of—Relief in equity XI. 19
See LANDLORD AND TENANT—RENT. 9.

—— Reduced rent to be received if covenants performed. [XIII. 130
See LANDLORD AND TENANT—LEASE. 5.

PENALTIES—*Action for—Judgment by default—Practice—Common Law.*] To an action for three several penalties against a poor law guardian, no defence was filed, and the officer declined to mark judgment for more than one penalty. On motion, the Court ordered him to mark judgment for the three. M'DERMOTT *v.* SULLIVAN - - E. II. *M.* 300

PERJURY.

See CRIMINAL LAW—PERJURY.

PERPETUATING TESTIMONY.

1. —— *Examination* de bene esse.] In a suit for perpetuation of testimony a conditional order had been obtained for substitution of service of the subpœna; on a motion to examine a witness who was very old *de bene esse*, an order was made which was directed to be served upon the same person as before, or upon the solicitor if an appearance was entered. BLAKE *v.* BLAKE [R. I. *M.* 63

2. —— *Examination of witnesses in chief—Plaintiff and Defendant—O. XXXVI., r.* 6—*O. XXXIX., r.* 9.] O. XXXVI, r. 6, is the proper order under which to make an application to examine witnesses and perpetuate their testimony in pursuance of the 5 & 6, Vic., c. 69. On such an application, even though made *ex parte*, the Court will order that both plaintiff and defendant shall be at liberty to examine their witnesses and cross-examine those of the opposite party. LITTON *v.* MURPHY - - V. C. XII. 100

3. —— *Parties—Marriage within prohibited degrees*—5 & 6 *Wm., IV., c.* 54.] A bill to perpetuate testimony alleged that by the will of the plaintiff's grandfather the plaintiff was then entitled to the first estate in tail male in lands expectant upon the decease of the defendant without legitimate issue. In 1823 the defendant married and had issue, and subsequently, after the death of his wife, he went through the form of marriage with his wife's sister, by whom he had issue. The defendant demurred to the bill on the ground that it did not allege that the defendant had an interest in disputing the plaintiff's claim, and that in fact the defendant had no interest; that the testimony was not necessary for establishing the plaintiff's title; and that the defendant's sons by his second marriage should have been made parties to the bill, and also the persons entitled in remainder expectant on the determination of the plaintiff's estate tail. The Court allowed the demurrer, the defendant's sons by the second marriage being *primâ facie* legitimate, and

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PERPETUATING TESTIMONY—*continued.*

should have been made parties; and because it did not appear that the defendant's second marriage took place subsequent to 1835, and the Act passed that year did not affect marriages celebrated prior to its passing. MOLONY *v.* MOLONY - - - - **C. G. S. VIII.** *M.* **574**

PERSONAL PROPERTY—Fine on surrender of fee-farm grant - - - - - **XVII. 105**

See EXECUTOR—ADMINISTRATION ACTION. 7.

PETITION.

See BANKRUPTCY—PETITION.
PRACTICE—CHANCERY—PETITION.
PRACTICE—LANDED ESTATES COURT—PETITION.

PEW.

1. —— *Parish churches — Churchwardens — Vestry Act—Declaration.*] The acting churchwardens appointed under 7 Geo. IV., c. 72, s. 44, who have not taken the statutory declaration of office imposed by 5 & 6 Wm. IV., c. 62, have power to allocate the pews in a parish church. PULLMAN *v.* RAWLINS **[Prov. C. I.** *M.* **47**

2. —— *Roman Catholic Church—Right of person in possession to defend his possession—Assault.*] The defendant was in possession of a pew in a Roman Catholic Church, as a mere licensee of the presumed owner of the pew. The plaintiff, who was also a licensee of the presumed owner, but under a license subsequent in point of time to the license given to the defendant, endeavoured to force his way into the pew during the celebration of Divine service, the defendant resisted, and in so doing committed an assault:—*Held*, that the resistance was justified, the assault not having been violent, and there being no legal right in either to the pew. BRETT *v.* MULLARKEY - - - - - **C. P. VII. 91**

PILOT.

See SHIP—PILOT.

PIN MONEY—*Arrears of—Acquiescence.*] A claim having been made by the wife of the owner to 7½ years' arrears of pin-money, secured by a trust term created in lands ordered to be sold in the Landed Estates Court, the evidence in support of it consisted of affidavits made by the owner and his wife, deposing to promises made by the former from time to time to pay the arrears. The estate was insolvent and during the 7½ years the owner was in reduced circumstances. No claim to the arrears appeared upon the schedule to the petition filed by the owner in 1866, nor until 1871 was any step taken to assert it by the owner or his wife or the trustees of her marriage settlement:—*Held*, that the wife must be presumed to have acquiesced in the receipt of the money by her husband, and that only one year's arrears prior to the filing of the schedule of the incumbrances could be allowed. There ought in such a case to be the evidence of third parties or of some writing, or of circumstances showing an intention to prefer the claim at the earliest period possible. *Ridout* v. *Lewis* (1 Atk. 268), commented on. *Re* JOYCE'S ESTATE - **L. E. C. VI. 74**

PLEADING.

See PRACTICE—COMMON LAW—PLEADING.
PRACTICE—CHANCERY—PLEADING.
PROBATE—PLEADING.

—— Chancery—Signature by Junior Counsel of Petition of Appeal - - - - - - - - **I.** *M.* **279.**

See COUNSEL—JUNIOR. 4.

POLICE—Presentment for - - - - - **I.** *M.* **282**

See GRAND JURY—PRESENTMENT—POLICE.

POLICY OF INSURANCE.

See Cases under INSURANCE.

POLLING DISTRICT—Constitution of Additional **[XXIV. 109**

See PARLIAMENT—POLLING DISTRICT.

POOR LAW.

1. —— *Dispensary—Medical attendance—Dispensary Regulations, Nov.* 25, 1869, *Art.* 22.] Where, in consequence of the medical officer of a dispensary district being necessarily incapacitated from acting by reason of temporary absence, the dispensary committee passed a resolution to appoint a substitute, who acted as medical officer accordingly; but the circumstances had not been reported to the Guardians, nor had the approval of the Commissioners been obtained, although article 22 of the Dispensary Regulations, Nov. 25, 1869, prescribes that in such case, "the Committee shall report the circumstances of the case to the Board of Guardians, who shall, subject to the approval of the Commissioners, determine the amount of remuneration, if any, to be paid to the temporary substitute":—*Held*, that the Board of Guardians had not under the words "if any" in article 22, power to refuse any remuneration to the temporary substitute; and that, having taken the benefit of his work, for which he was led to believe he would be paid, they were liable to pay him a reasonable sum as remuneration. (By Murphy, J.) LAMBERT *v.* LOUGHREA UNION GUARDIANS **Cir. Cas. XIX. 37**

2. —— *Guardians—Contract by—Not under seal—General Regulations*, 1852.] A contract by a Board of Poor Law Guardians, in their corporate capacity for the supply of boilers and the making of necessary repairs, to be executed in a workhouse, is valid though not executed under their corporate seal; and the Guardians, having accepted the benefit of said contract, may be sued thereon. KENNEDY *v.* BELFAST UNION GUARDIANS - - - - **C. P. D. XV. 95**

3. —— *Guardian—Liability to medical officer for the fee for attending a person not entitled to free attendance.*] A Poor Law Guardian would be liable to the medical officer of a dispensary for the fees payable by a person to whom he gave a ticket for free attendance, but who was not entitled to such, if fraud be proved. (By Barry, J.) WOODS *v.* CRUMLEY **[Cir. Cas. XI.** *M.* **206**

4. —— *Guardians—Liabilities—Medical Charities Act.*] An apothecary to the South Dublin Union, who was appointed by the Dispensary Committee to do extra work during the time of the cholera, and who was promised extra remuneration for such work by a resolution passed by the Board of Guardians, was held (*diss.* Fitzgerald, J.) entitled to recover the extra remuneration from the Guardians although they had not contracted with him, and the contract had not been under their seal or sanctioned by the Poor Law Commissioners. M'CARTHY *v.* GUARDIANS OF THE POOR OF THE SOUTH DUBLIN UNION - - - - - - - **Q. B. I.** *M.* **489**

5. —— *Guardians—Liability in actions of tort*—1 & 2 *Vic., c.* 56.] A Board of Poor Law Guardians are liable, in their corporate capacity, for damages in an action of tort, in the same way as an individual would be liable. The circumstance that the statute which constituted them provided no means of levying a rate to pay whatever damages might be given against them, does not disentitle the plaintiff to obtain judgment. The judgment of the Court of Common Pleas reversed. LEVINGSTON *v.* GUARDIANS OF THE LURGAN UNION **[C. P. I.** *M.* **778; E. C. II.** *M.* **210**

——Guardians—*Ex officio*—Disqualification as Justices.

See JUSTICES—DISQUALIFICATION. 4. 5.

—— Guardians—Liability for improperly issuing red ticket. **[X.** *M.* **447**

See PRACTICE—CIVIL BILL COURT—FRAUD.

—— Guardians—Liability—Negligence.

See CAMPBELL'S ACT. 1. 2.

——Guardians—Liability under Seed Supply (Ir.) Act, 1880

See Cases under SEED SUPPLY (IR.) ACT, 1880.

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POOR RATE.

1. —— *Appeal to Quarter Sessions—Market house and market fees*—1 & 2 *Vic., c.* 56—15 & 16 *Vic., c.* 63—*Rate good in part and bad in part.*] There is a right of appeal direct to Quarter Sessions against a Poor-rate under 1 & 2 Vic., c. 56, s. 106, notwithstanding 15 & 16 Vic., c. 63, ss. 10, 23. A market house is rateable, but the market fees are not. Where the valuation is good in part and bad in part, the whole rate will be quashed. *R.* v. *Cunningham* (5 East, 478), followed. NEWPORT *v.* GUARDIANS OF THE WATERFORD UNION [Q. S. X. 7

2. —— *Costs of Guardians applying for arrears of Poor Rate—Practice, Landed Estates Court.*] Poor Law Guardians who, knowing that there is to be a sale of the lands in the L. E. Court, lie by, and after the sale come in and claim arrears of poor rates, will not be allowed their costs. *Re* PRESTON'S ESTATE - - - - - L. E. C. II. *M.* 121

3. —— *Deductions by tenant*—1 & 2 *Vic., c.* 56, *s.* 74.] Where a tenant, during a period of years, allowed his rent to go into arrear, but paid certain sums on a general account without making any deductions for poor rates:—*Held*, that on payment of the balance remaining due, he was entitled to deduct for poor rates in respect of all sums so paid by him. STOTT *v.* WALSH - - - - - - N. P. XXVII. 70

4. —— *Distress—Liability of subsequent occupier—Notice of action—Limitation of action*—1 & 2 *Vic., c.* 56, *ss.* 71, 73, 113—6 & 7 *Vic., c.* 92, *s.* 6—12 & 13 *Vic., c.* 104, *s.* 19—13 & 14 *Vic., c.* 82, *s.* 1.] The goods of a person not primarily liable cannot be distrained for arrears of poor rate more than two years due. SMITH-BARRY *v.* MILL-STREET UNION GUARDIANS [Q. S. XXIV. 80

5. —— *Exemption—Charitable purposes—Valuation Acts.*] The Magee College, which was founded for the education of young men in preparation for the Christian Ministry in connection with the Presbyterian Church, of which the professors received a salary and fees, was held to be liable to pay poor rates, and not within the proviso of the Poor Law Acts, which except from such liability institutions exclusively used for charitable purposes. THE MAGEE COLLEGE *v.* COMMISSIONERS OF VALUATION - - - - Q. B. IV. *M.* 632

6. —— *Exemption—Literary Society*—6 & 7 *Vic., c.* 36, *sec.* 1.] A society created for the purpose of promoting literary and scientific objects among the Catholic young men of a city, in which lectures on scientific and literary subjects are given to which the general public are admitted, is entitled to exemption from rates under 6 & 7 Vic., c. 36, s. 1. *Re* LIMERICK CATHOLIC INSTITUTE - - - - - Q. S. XII. 161

7. —— *Exemption of building for public purposes—Town hall.*] A town hall is exempt from Poor-rate, and the landlord is liable for half the rates on the profit rent he receives for it. SLIGO GUARDIANS *v.* WYNNE - Q. S. VIII. *M.* 472

8. —— *Exemption—Hereditaments dedicated to a public purpose.*] The Londonderry Bridge Commissioners had power to levy tolls which were expended (1) in payment of interest on borrowed capital; (2) in forming sinking fund for repayment of borrowed capital; (3) in forming a fund to make the bridge toll free:—*Held*, by the Queen's Bench, that the tolls and toll-house did not come within any of the exemptions from Poor-rate, and were, therefore, liable. The decision of the Queen's Bench was reversed upon appeal. LONDONDERRY UNION GUARDIANS *v.* LONDONDERRY BRIDGE COMMISSIONERS [Q. B. I. *M.* 138; E. C. II. *M.* 335

9. —— *Farm and house—Untenanted—Liability of owner—O. XXV., r.* 2—*Practice—Refreshers.*] Where an unoccupied tenement is made up of lands and buildings, the lands forming the principal element, the buildings being merely accessory:—*Held*, that the owner is in occupation of the buildings for purposes of rating. THE GUARDIANS OF THE CROOM UNION *v.* TRENCH - - - - - - E. D. XXVII. 28

POOR RATE—*continued.*

10. —— *Liability of Custom House Stores and Offices.*] The Dublin Custom House Stores and Offices are liable to be rated by the Commissioners of Valuation for the Poor Rate. DUBLIN PORT AND DOCKS BOARD *v.* COMMISSIONERS OF VALUATION - - - - Rec. C. IV. *M.* 533

11. —— *Priority*—12 & 13 *Vic., c.* 104, *ss.* 17, 18.] Registered judgments for Poor Rates take priority over all charges upon any property, in the same Union, of the person against whom the judgments have been registered. O'ROURKE *v.* COPELAND [L. J. XXVI. 126

12. —— *Right of action by collector—Recovery of arrears from ratepayer, after payment by collector to Poor Law Guardians*—6 & 7 *Wm. IV., c.* 116, *s.* 153—1 & 2 *Vic., c.* 56, *s.* 73.] Where, under the obligation of his bond, a Poor Rate collector has paid the full amount of the rates struck to the Poor Law Guardians, he is not debarred from suing in his own name to recover arrears still due by a ratepayer. *Boyle* v. *Lennon* (XII. M. 161), distinguished. (By Deasy, L.J.) WILSON *v.* GAHAN - - - - Cir. Cas. XVI. 98

13. —— *Right to be rated—Weekly or monthly tenant—Premises of rateable value exceeding £4*—12 & 13 *Vic., c.* 91, *ss.* 63, 66—*Reform Act*, 1868, *s.* 19.] A weekly or monthly tenant, occupying premises of a rateable value exceeding £4, is entitled to be assessed on the Collector-General's rate book. R. (ROURKE) *v.* COLLECTOR-GENERAL OF RATES [Q. B. D. XII. *M.* 337

14. —— *Stations for advertising—Person liable to be rated—Appeal from valuation or rating*—52 & 53 *Vic., c.* 27, *ss.* 3, 4.] The mere poster of advertisements upon hoardings erected by him on lands (of which he is not the immediate lessor) by permission of the occupier of the lands or of the owner, is not the person legally liable to be rated under 52 & 53 Vic., c. 27 (Advertising Stations Rating Act, 1889), ss. 3, 4. Such a person if so rated, is not bound to appeal either from the valuation or the rating, though named therein. SHELLY *v.* DILLON - - - - - - E. D. XXVI. 106

—— Borough—Occupier VII. 79

See RATES. 1.

—— Collector—Expenses under Juries Act, 1871 X. *M.* 186

See GRAND JURY—PRESENTMENT—JURIES ACT, 1871. 4.

—— Deduction - - - - - XVII. *M.* 126

See LANDLORD AND TENANT—RENT. 10.

—— Deduction - - - - - XII. 139

See LANDLORD AND TENANT (IRELAND) ACT, 1870. 206.

—— Deduction—Erroneous recital in Landed Estates Court conveyance - - - XXVI. *M.* 646

See LANDED ESTATES COURT CONVEYANCE. 6.

—— Seizure of Cattle trespassing on lands—Right of action of owner of cattle - - - XXI. 17

See ACTION. 1.

PORTIONS.

See SETTLEMENT—PORTIONS.

POSSESSION OF STOLEN GOODS.

See CRIMINAL LAW—POSSESSION OF STOLEN GOODS.

POST CARD—Libel - - - XIII. 107

See DEFAMATION—PRIVILEGE. 3.

POSTMASTER-GENERAL—*Telegraph Acts—Liability—Negligence by subordinates.*] In an action under the Telegraph Acts, 1863 and 1868, brought against the defendant, the Postmaster-General, in his individual capacity, for damages caused by the negligence of persons in the employment of the Post Office:—*Held*, that he was not liable. JONES *v.* MONSELL [Q. B. VI. 39

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POSTPONEMENT OF TRIAL.

See CRIMINAL LAW—POSTPONEMENT OF TRIAL.
PRACTICE—COMMON LAW—POSTPONEMENT OF TRIAL.

POWER.

1. —— *Appointment—After forfeiture of interest—Execution of—Life interest determinable on alienation—Mortgage—Will.*] A power of appointment, which is given in general terms to a tenant for life, which may be exercised during the entire life of the donee, and the exercise of which is not limited by any words to the period of her enjoyment of the life estate (which is to be forfeited by certain acts of the donee), is not defeated by the mere acceleration of the estates in remainder caused by a forfeiture of the life estate resulting from the performance by the donee of one of the forbidden acts. The donee of such a power appointed to A. one of the objects of it, all the estates save "the square yard, hereinafter mentioned in such part of" the estates as A. should think fit, and that yard was appointed to the other object of the power:—*Held*, that the appointment might be sustained although the selection of the nominal portion was left to A., the real appointee. *Re* STONE'S ESTATE
[L. E. C. III. *M.* 618; Ch. A. IV. *M.* 258

2. —— *Appointment—Benefit of appointer—Exercise.*] A., having under her husband's will a power to appoint a sum of £1,000 amongst the children of their marriage, a settlement was executed upon the marriage of her daughter M., to which A. and M. were parties. By this settlement A. appointed the fund to M., and in a subsequent part of it, it was provided, that if M. should die without issue the fund should go to A., her executors, &c.:—*Held*, in the absence of evidence *dehors*, the settlement of acts and circumstances attending the exercise of the power from which a stipulation to benefit the appointor might be inferred, and such not appearing from the deed itself, that the appointment was valid. *Re* DANES' ESTATE
[L. E. C. V. 30

3. —— *Appointment—Execution—Power reserved by subsequent deed—Codicil subsequent to deed—Wills Act, ss.* 23, 24, 27.] A., by her will, in 1860, charged her real estates with the payment in aid of her personalty of her debts, legacies, &c., and in the event (which happened) of a deficiency of her personalty, directed her K. estate, or a competent part of her other real estates, to be sold for that purpose. Under an indenture of 1863, executed as her son's marriage settlement, in accordance with an agreement of 1862, she conveyed her K. estate to certain uses, reserving to herself a power to charge £1,000, for herself or any other person. By a codicil in 1863 she confirmed her will:—*Held*, that the power in the settlement of 1862 was well executed alike by the will of 1860, and the codicil of 1863, and that to the extent of £1,000, the K. estate was liable on the deficiency of her personalty. MEREDYTH *v.* MEREDYTH
[R. V. 147

4. —— *Appointment—Execution—Fraud—Acquiescence.*] Under a marriage settlement S. was entitled to a life estate with power of appointment among his children. He was indebted to F., who had obtained a receiver over his life estate, and in March, 1853, an arrangement was made that S., his wife (who was entitled to a jointure), and his children should join in a mortgage to F. In May, 1854, S. exercised the power of appointment in favour of I. S., his son, subject to changes in favour of his younger children, of whom all but one were of age, and subsequently they all, except the youngest, joined in the mortgage to F. In an action to set aside the appointment on the ground of fraud:—*Held*, that there was no evidence of fraud or undue parental influence, and that the mere fact that the appointment was solely for S.'s benefit was not sufficient to avoid it. SKELTON *v.* FLANAGAN - - - R. I. *M.* 533

5. —— *Appointment—Execution of power during bankruptcy proceedings—Setting aside deed.*] K., having an estate for life in certain lands, which were settled in strict settlement, and a power to appoint portions for younger children (the power of appointment being secured by a term of years) was adjudicated bankrupt, and, in conjunction with his assignees, sold and conveyed to a purchaser his life interest in the lands, the subject of

POWER—*continued.*

the charge and term for years. He afterwards during the bankruptcy proceedings executed the power of appointment. The bankruptcy was finally annulled:—*Held*, that the deed of appointment was void, as being in fraud of the purchaser of the bankrupt's interest in the lands. *Re* KER'S ESTATE
[L. E. C. VIII. 174

6. —— *Appointment—Exercised at different times—Same object—Election—Cumulative sums.*] A sum of £7,000 was charged upon certain lands, by an indenture of settlement executed on the marriage of F. K. with M. P., for the younger children of the marriage, to be distributed in such shares and portions as F. K. should by any deed appoint. By a settlement executed on the marriage of G. P. K., one of the younger children, the said F. K., by virtue of said power of appointment, appointed £800, as the share of G. P. K., as one of such younger children. By a deed-poll of later date the said F. K., in exercise of said power, executed a general power of appointment of the entire £7,000 amongst all his then surviving younger children, and ratified same by a subsequent deed, and by these two deeds of later date he appointed £400 to said G. P. K.:—*Held*, that the appointments were not cumulative, and that G. P. K. was entitled only to £800. *Re* KEON'S ESTATE. *Ex parte* KEON
[L. J. XIII. 117

7. —— *Appointment—Marriage settlement—Objects of power—Meaning of words "then in being."*] By marriage settlement L. settled certain lands upon trust, after the decease of the settlor, "to convey, release, and assign the same respectively, and pay and apply the rents, issues, and profits, and income thereof, unto or for the benefit of all and every or anyone or more child or children, or any grandchild or grandchildren or other issue then in being of the said intended marriage, for such estate or interest, and in such parts, shares, and proportions, if more than one . . . . . and with, under, and subject to said restrictions and conditions and such powers, directions, and regulations for maintenance, education, advancement, or otherwise, as he, the said L., at any time or times and from time to time during his life, by any deed or deeds, writing or writings, shall direct or appoint." L. purporting to act in pursuance of this power of appointment, appointed the settled lands to his eldest son N. L., who died in the lifetime of L. The question, thereupon, arising whether the appointment to N. L. was valid, inasmuch as he predeceased L., and the words of the settlement "then in being" applied to all the objects of the power alike, and limited the power of appointment to children, grandchildren, and remoter issue living at the death of L.:—*Held* (affirming the decision of the Court of Appeal), that (1) the words "then in being" referred to the death of L., the settlor, but (2) that their reference was confined to the grandchildren, and remoter issue of the settlor, and that they did not limit the power of appointment to the children of the settlor who might be living at his death, and that consequently the appointment to N. L. was valid. LEADER *v.* DUFFY - - H. L. XXII. 57

8. —— *Appointment—Precatory trust or power to appoint—"Leave"—Construction—Will.*] A testator left to M., E., and R., the entire of his property during their joint and several lives, adding the words, "in leaving my property to my three nieces as co-heirs, it is my wish that if my grand-nephew, J. W. C., conducts himself to their satisfaction that the(y) should leave him the property I now leave them." The three nieces, M., E., and R., and J. W. C. survived the testator, but J. W. C. predeceased the nieces; the survivor of the three nieces having died:— *Held*, that on the death of the survivor the heiress-at-law of the testator was entitled to the real estate. "Leave" always implies a testamentary power to be executed only by will. MOORE *v.* FFOLLIOTT - - - R. XXI. 21

9. —— *Appointment—To donee of power—Construction of will—Objects of power.*] V. devised and bequeathed his real and freehold, &c., lands to his wife, her heirs, executors, &c., as to his beneficial lands, &c., "in trust for my said wife, and the children of our marriage, in such shares and proportions, and in such manner and form to all extents and purposes as she shall by any deed or instrument in her lifetime, or by her last will

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POWER—*continued.*

and testament, or any codicil or codicils thereto, direct, limit, or appoint." The testator's wife by deed appointed part of the beneficial lands to a trustee, his heirs, &c., to hold as to the entire (except a one-millionth part) to the use of herself, her heirs, &c., and, as to the remaining one-millionth part to the use of her children in equal shares:—*Held*, that V. had not intended to give the estate to his wife and children, and to give her a power whereby she might entirely defeat the gift to the children, and that the will must be interpreted to be a gift to his wife during her life and to the children as she should appoint it. *Re* SINCLAIRE'S ESTATE - **L. E. C. II. *M.* 61**

10. —— *Execution of "Upon or previous to marriage"—Will—Construction.*] V., by will, gave to his two brothers a power, which was to be exercised by them respectively when they came to an estate in possession, and by the same deed or writing "to be made *upon or previously* to their marriage respectively." One donee of the power, nineteen years after his marriage, which happened in the testator's lifetime, executed a deed purporting to be an exercise of the power:—*Held*, that "upon or previously to" could not naturally include "after" the marriage. *Re* BURROWES' ESTATE - **L. E. C. II. *M.* 354**

11. —— *Leasing—Lease under—Construction of words "Provided the interest of the lessor shall so long continue."*] The interest in a lease for lives renewable for ever having vested in the five daughters of G.. one of them (H.) in 1773 married F., who was then by settlement made tenant for life with a power to lease for any term not exceeding three lives or thirty-one years; and a term for 500 years was vested in trustees. In 1800 a lease for three lives was made to O. by the representatives of the interests of the sisters of H., whose interest was in that lease represented only by F., who died in 1821. The interest of O. vested in B., who in 1825 leased the lands to S. for three lives, and the longest of them, provided his interest should so long continue and not otherwise. In 1828 B. bought the trust term, the interest in the lease of 1800 having terminated:—*Held*, that the lease of 1800 was not an excess of the power, and that no equity in S. arose to have the term granted to him kept alive, as to the one-fifth of the lands, in consequence of the purchase by B. of the trust term. *Re* O'BRIEN'S ESTATE - - - - **L. E. C. III. *M.* 225**

12. —— *Leasing—Married woman—Joint.*] Marriage articles reserved to the husband and wife jointly a leasing power over the wife's lands. The husband alone made the lease:—*Held*, it was voidable only, not void, and was capable of being confirmed. EDWARDS v. LYNCH. EDWARDS *v.* HOLLANDS **[E. II. *M.* 354**

—— Revocation—Voluntary deed.

See SETTLEMENT—VOLUNTARY SETTLEMENT. 1, 2.

PRACTICE (Since the Judicature Acts).

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PRACTICE—ACCOUNT.

1. —— *O. XXXIII.,—O. XXXIX., rr.* 5, 6.] Where lands were granted to the plaintiff, by the defendant, as a security for moneys due, and afterwards the plaintiff, alleging that he was still unpaid, brought an action to recover possession of the lands and mesne rates, and the defendant alleged that the sum secured had been satisfied by the rents received by the plaintiff, and payments made to him by the defendant, it was ordered that it be referred to the master to take an account between the parties under O. XXXIII., with liberty to either party then to apply for leave to sign judgment, the Court not requiring that a consent for judgment should be given dependent on the result of such inquiries. WETHERILL *v.* RATHBORNE - - - - - - - - **Q. B. D. XII. 64**

2. —— *Receiver—Specific performance—O. XXXIX., r.* 9—*O. XIV., r.* 1.] Plaintiffs claimed, as executors of a testator: (1) to have an account taken, pursuant to the terms of a certain indenture, of moneys advanced by the testator; (2) to have an agreement entered into by the defendant with the testator specifically performed; (3) to have a receiver appointed over the life estate of the defendant in lands specified in a schedule to the said indenture, and for further relief. The defendant admitted the several allegations of fact contained in the statement of claim:—*Held*, that they were entitled under O. XXXIX., r. 9, to have the accounts taken and a receiver appointed pending the hearing. *Held*, also, that O. XIV., r. 1., only applies to cases of account, and not to where there are several matters of relief sought for. SAUNDERS *v.* PAGET. **[V. C. XII. 69**

PRACTICE—ACTION FOR RECOVERY OF LAND—*Appearance by persons not named as defendants—Leave to enter—Judicature Act, sch. r.* 17—*O. XI., r.* 8.] An appearance in an action for the recovery of land by certain per-

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PRACTICE (Since the Judicature Acts)—ACTION FOR RECOVERY OF LAND—*continued.*

sons not named as defendants, but served with the writ of summons, was set aside as irregular, they not having before entering an appearance obtained the leave of the Court or a Judge to do so. ROBINSON *v.* RICHARDSON
[Q. B. D. XII. 147

—— Consent - - - - - - XVII. 109

See PRACTICE—CONSENT. 2.

—— Form of statement of claim - - XII. 45

See PRACTICE—CLAIM. 4.

PRACTICE—ADJOURNMENT OF TRIAL—*Pending appeal.*] The trial of an action was adjourned pending an appeal from an order refusing to transfer it to the Chancery Division. FAY *v.* BULFIN - Q. B. D. XII. *M.* 294

PRACTICE — AFFIDAVIT—*Marksman—Jurat—Certificate of Commissioner—G. O.* 143, 1854.] Where the jurat to an affidavit by a marksman is insufficient, by reason of the Commissioner not certifying that the deponent understood same, the defect is not waived by the filing of an answering affidavit. M'CANN *v.* COEN - - C. P. D. XVII. 12

PRACTICE—AFFIRMATION—*Formal defect—Rules of June*, 1891, *O. XXXVIII.—Leave to renew motion—Costs.*] Where an affirmation, though received and filed, is defective in point of form, the party relying on the same is not to be prejudiced thereby. ACTON *v.* FARRELL
[Q. B. D. XXV. 78

PRACTICE—AMENDMENT.

1. —— *Chief Clerk's certificate—Time elapsed for application to vary—Special circumstances*—30 & 31 *Vic., c.* 44, *s.* 142.] Chief Clerk's certificate amended under special circumstances, although the time for application to vary the same had elapsed. SINTON *v.* RICE - - - - - R. XXV. 5

2. —— *Counter-claim after issue joined—New matter set out by defence—O. XXVI., rr.* 2, 4.] A defendant in an action had filed a counter-claim against the plaintiff and his co-defendants, and had joined issue upon the statement of defence of one of the defendants to this counter-claim. Subsequently other defendants also delivered their defence to the counter-claim, setting out new matters relative to the subject matter of the action. Upon the hearing of a motion, upon summons in Chambers, for leave to amend the counter-claim, on the ground that the plaintiff therein wished to give a correct version of these alleged new matters:—*Held*, that the counter-claim might be so amended, the plaintiff paying costs of the defendants thereto, who should have fourteen days to reply to the amended counter-claim. ARTHUR *v.* ARTHUR - - R. XIII. 60

3. —— *Indorsement of residence on writ—Costs of counsel—O. III., rr.* 1, 2—*O. XXVI., r.* 10—*O. LIII., r.* 6.] Leave was given to amend a writ of summons, which had not been filed, by adding the residence of one of the plaintiffs; but counsel should not be allowed the costs of such a motion. CASEY *v.* O'LEARY - - - E. D. XII. *M.* 50

4. —— *Entry of appearance.*] Where a solicitor for one of two defendants by mistake entered an appearance for both, the Court gave leave to amend the appearance. J—— *v.* HENRY
[E. D. XXIV. *M.* 70

5. —— *Judgment.*] Where, in an action of ejectment, the judgment, which was entered in default of defence, wrongly stated the area of the lands as "22a. 1r. 30p. or thereabouts" in place of 24a. 1r. 19p. (thereby following an error in an Originating Notice to fix a fair rent and in the writ of summons), the Court refused an application on notice by the plaintiff for liberty to amend, holding that the words "or thereabouts" would cover any mistake which had been made. BASS *v.* MURPHY - Q. B. D. XXVII. *M.* 511

6. —— *Judgment on bond—Clerical error of officer—Lapse of time—Statute of limitations—Death of defendant.*] Where an error was made in entering up a judgment on a bond and warrant of attorney—the christian name of the plaintiff being entered as John in mistake for James—the Court, notwithstanding the lapse of several years and the death of one of the parties in the meantime, allowed the error in the judgment to be amended by substituting "James as administrator of John, deceased," for "John." *Ryan* v. *Sheehy* (12 Ir. L. R. 44), explained. LOUGHREY *v.* SWAN
[E. D. XXIII. 8; C. A. XXIII. 54

PRACTICE (Since the Judicature Acts)—AMENDMENT—*continued.*

7. —— *Misnomer of lands in summons and plaint—Defence filed.*] Leave to amend a summons and plaint for use and occupation, in which the name of the lands had been misstated, was granted on a motion *ex parte*; a copy of it, as amended, to be served on the defendant, who was to have a week to plead *de novo*, if necessary, in which case the defendant was to pay the costs thereby incurred. MARSH *v.* WALSH
[C. P. D. XII. *M.* 36

8. —— *Mistake—Remitting order—O. XXVIII., r.* 11—*Costs.*] In amending a mistake in a remitting order where the mistake is due to the plaintiff's solicitor, the Court may direct the order to be amended as of its original date. SOUTHERN *v.* MURPHY - - - - Q. B. D. XXVII. 59

9. —— *Specially indorsed writ—O. XXVI., r.* 10.] Where a variance appeared between the claim as set out on a specially-indorsed writ, and the affidavit in support of the motion, leave was given to the plaintiff to amend the writ and to sign judgment on it. TEDESCO *v.* HARGRAVE Vac. J. XV. 38

10. —— *Statement of claim—Claim for specific performance of contract—Leave to deliver new statement of defence, or to amend former statement—Costs—Judicature Act, sec.* 36—*O. XXVI., rr.* 3, 4.] Where, after the defendant had delivered his statement of defence, the plaintiff delivered an amended statement of claim, claiming specific performance of a contract, in foot of which he had originally claimed payment of a sum of money thereby agreed upon; and the defendant thereupon moved on notice for leave to deliver a new statement of defence and for the costs occasioned under the circumstances:—*Held*, that the defendant should have leave to deliver a new or amended statement of defence, but was only entitled to the costs as of an *ex parte* application. WAKEFIELD *v.* MARTIN
[Q. B. D. XIV. 24

11. —— *Statement of claim—Costs.*] Leave to amend a statement of claim for maliciously issuing a summons against the plaintiff by adding a claim for libel, was given, the plaintiff to pay her own costs, the defendant to have his costs as costs in the cause. ANTHONY *v.* PERCIVAL
[Q. B. D. XIV. 96

12. —— *Statement of claim—Additional claim for relief—O. XXVI., rr.* 1, 3, 10.] Where, after delivery of a statement of claim and statement of defence, the plaintiff, under O. XXVI., r. 1, delivered an amended statement of claim, claiming an additional relief, depending on an issue entirely collateral to what was raised by the original statement:—*Held*, that the plaintiff should have applied to the Court for leave to insert the new claim. *Moore* v. *Alwell* (8 L.R. Ir. 245), followed. IRWIN *v.* FITTON - - - V. C. XV. 95

13. —— *Statement of claim—Variation between writ and statement of claim—Amount of claim—Absence of prayer for relief—Judicature Act, sch. rr.* 21, 24.] Leave to amend a statement of claim was given where it did not state the relief sought. It is immaterial if the amount claimed in the statement of claim is less than that indorsed on the writ. HAMILTON *v.* HAMILTON - - - E. D. XII. *M.* 310

14. —— *Statement of claim—Without leave—Additional and independent cause of action—O. XXVI., rr.* 1, 10—*Judicature Act, sch. rr.* 2, 6.] A plaintiff cannot, under the power of amending his statement of claim once without leave, given by O. XXVI., r. 1, bring in a new and independent cause of action not contained in the indorsement of the writ of summons. *Per* Dowse, B.: The proper course would be for the plaintiff to apply, under O. XXVI., r. 10, for leave

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PRACTICE (Since the Judicature Acts)—AMENDMENT—*continued.*

to amend the indorsement of the writ. *Large* v. *Large*, (W. N., 1877, p. 198), commented on. MOORE *v.* ALWELL [E. D. XV. 54

15. —— *Statement of claim—Action for money received for the use of the plaintiff—Omission of date and place of trial in statement of claim—Particulars of claim—Judicature Act, sch. r.* 23.] The plaintiff sued the defendant "for money received by the defendant for the use of the plaintiff." The statement of claim contained no date, nor was any place of trial named. Upon motion to set aside the statement of claim as vague and embarrasing, and because it did not contain a statement of the material facts upon which the plaintiff relied:—*Held*, that the statement of claim sufficiently alleged a cause of action; that the omission to name a place of trial could be remedied by amendment; and that the defect of absence of date could be remedied by the defendant asking for particulars. CURRAN *v.* MICHEALS [E. D. XIV. 30

16. —— *Writ—Audience of solicitor.*] A solicitor has no power to move a motion for the amendment of a writ. ANON. [Q. B. D. XXIV. *M.* 37

17. —— *Writ—Motion for final judgment—Part of claim unliquidated—Abandonment—O. XIII., r.* 1.] The Court has a discretionary jurisdiction to amend a writ of summons by striking out an unliquidated claim, and to give leave to enter final judgment under O. XIII., r. 1, for the balance, on the one motion. Where a substantial demand is sought to be struck out, the Court will not grant the amendment if the plaintiff refuses to abandon the demand. SMITH-BARRY *v.* MULCAHY - - E. D. XXIV. 76

18. —— *Writ.*] A writ of summons can only be amended on summons after appearance is entered. HENRY *v.* LEHENNY - - - - - - E. D. XVIII. 53

19. —— *Writ—Re-service—O. II., sch. r.* 2.] Where the Court grants permission to amend a writ of summons, the amended writ must be served in the same way as the original one; and a judgment marked in default of pleading without such service is irregular, and will be set aside. BRYANS *v.* HUGHES - - - - - E. D. XVIII. 23

20. —— *Writ and statement of claim—Married woman—Separate estate—33 & 34 Vic., c.* 93, *s.* 12—37 & 38 *Vic., c.* 50, *ss.* 1, 2, 4.] Where in proceedings against a husband and wife, for breach of contract by the wife before the marriage, it is sought to charge the separate estate of the wife, the Court will allow the pleadings to be amended by inserting a claim against it. A new and independent claim cannot be introduced into a statement of claim without amending the writ of summons. *Moore* v. *Alwell* (XV. 54), followed. MORRIS *v.* CRANWELL - - - E. D. XVI. 32

21. —— *Writ of summons—Motion moveable by solicitor—O. LIII., r.* 6.] Leave to amend a writ was given; such a motion is properly moveable by a solicitor. WESTHEAD *v.* MAGEE - - - - - - - E. D. XII. *M.* 185.

——Claim - - - - - - XVI. 103

See PRACTICE—CLAIM. 5.

——Notice of motion to remit - - - XXIV. 97

See REMITTING ACTION TO CIVIL BILL COURT. 67.

——Striking out premises in action for recovery of land [XV. *M.* 23

See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 1.

——Writ specially endorsed—Statement of claim [XXVII. *M.* 522

See PRACTICE—WRIT SPECIALLY INDORSED. 6.

PRACTICE (Since the Judicature Acts)—APPEAL.

1. —— *Death of respondent—Revivor of action—Appellant neglecting to proceed—O. XVII., r.* 8.] In an action for specific performance the plaintiff appealed from a judgment dismissing the action with costs, and after the notice of appeal was served the defendant died. The plaintiff not having taken any steps, the heir and personal representative of the deceased defendant revived the action. The plaintiff did not proceed with the appeal, and the new defendants applied to the Court of Appeal to direct the plaintiff to do so, and in default that the appeal be dismissed:—*Held*, that the proper course for the new defendants would have been to have given the order reviving the action to the Registrar, and that then the appeal would have been listed in its turn. NOLAN *v.* THE MARQUIS OF DROGHEDA [C. A. XXVII. 84

2. —— *Extension of time for—O. LVIII., r.* 11.] The Court granted an extension of time for appealing where the order appealed against had by inadvertence been made up too soon. *Re* CONNOLLY'S TRUSTS - - - C. A. XV. *M.* 617

3. —— *Interpleader issue—Reference to County Court—Consent order—Jurisdiction.*] On an interpleader summons the Judge, by consent of the parties, ordered the issue to be tried in the County Court, directing that a civil bill process be issued by the claimant against the plaintiff as defendant, the question on such civil bill to be whether the goods and chattels seized by the sheriff were the property of the claimant or not:—*Held*, that no appeal lay from the decision of the County Court Judge. CAREW *v.* HANLY - - - - E. D. XXIV. 33

4. —— *Interlocutory order—G. O., Jan.* 3*rd*, 1878—*Judicature Act*, 1877, *ss.* 24, 25—*O. LVIII.*] Orders depending for their validity upon an interlocutory order made before the Judicature Act came into operation could not be the subject of an appeal. JOHNSTON *v.* EDGE - C. A. XII. *M.* 109

5. —— *New evidence on appeal.*] A party will not be allowed to give fresh evidence on an appeal from the Land Commission Court, save on special ground; but fresh documents of title, a map, and the affidavit of the surveyor, will be admitted. STACK *v.* LORD MUSKERRY [C. A. XXVI. 118

6. —— *Notice of appeal from order granting new trial—Rules, June*, 1891, *O. LVIII., rr.* 3, 15—*Costs.*] Judgment on motion for a new trial is a final judgment within the meaning of O. LVIII., rr. 3, 15, and the time for appealing is twelve months from the date of the order. HUNTER *v.* HANNAY [C. A. XXVI. 129

7. —— *Order of Judge in Chamber—Judicature Act, s.* 54.] A party desiring to appeal from an order made by the Judge in Chambers, on a summons, should move in Court on notice to discharge the order. *Holloway* v. *Cheston* (19 Ch. D. 516), followed. *In re* CLOVER HILL ESTATE - V. C. XVIII. 51

8. —— *Order of Judge sitting during circuit—Court of Appeal—Enlargement of time for appealing—Judicature Act, ss.* 45, 54—*O. LVII., r.* 6—*O. LVIII., r.* 13—*O. LX., rr.* 1, 7—*O. VI.* (*April*, 1878).] An appeal from an order made by a Judge sitting in Dublin during circuit, to hear motions in Court for the Divisions of the High Court of Justice, must be taken to the Court of Appeal, and not to the Divisional Court. When an appeal has been wrongly taken to the Divisional Court, it is not empowered, under O. LVII., r. 6, to enlarge the time limited for appealing. NUGENT *v.* BOND [E. D. XIV. 40

9. —— *Order of Vacation Judge—Jurisdiction of Vacation Judge—O. LX., rr.* 6, 7—*Judicature Act, ss.* 24, 44, 54.] An appeal from an order made by a Vacation Judge sitting in Court lies, in the first instance, to the Court of Appeal, and not to the Divisional Court. *Semble*, an application, by way of appeal, to discharge or vary an order made by a Vacation Judge sitting in Chambers lies, in the first instance, to a Divisional Court, or to the Judge sitting in Court, unless by special leave under Section 54 of the Judicature Act. *Nugent* v. *Bond* (XIV., 40), considered. CASSIDY *v.* CINNAMOND - - - - - - - E. D. XV. 2

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PRACTICE (Since the Judicature Acts)—APPEAL—*con.*

10. —— *Reference of account to Master—Consent—Setting aside award—C. L. P. A. Act*, 1856, *s.* 6.] Where an action involving a question of accounts is referred to the Master to take the account, the Master is not in the position of an arbitrator so as to render his award final and conclusive, notwithstanding that the reference is by consent. But, although his decision is open to review by the Court, it will not be set aside unless a case of gross mistake leading to a miscarriage of justice is established; and where the question is one solely as to the weight of evidence, the Court will not disturb his finding. KEATINGE *v.* MORRIS
[C. A. XX. 31

11. —— *Time—Interlocutory order—Leave to sign final judgment—O. XIII., r.* 1—*O. LVIII., r.* 11.] In an action for costs, an order was made, on a motion for final judgment, that the bill should be referred to the Taxing Master for taxation, and that final judgment should be marked upon the sum taxed:—*Held*, that an appeal from this order, which was not taken within 21 days, was late. NOBLE *v.* ANTHONY - - - - - C. A. XV. *M.* 310

12. —— *Time for lodging notice of with officer—Judicature Act, s.* 57—*O. LVII., r.* 6—*O. LVIII., rr.* 2, 4, 11.] Notice of appeal from an interlocutory order made on the 7th November was given on the 21st November for the 26th November, but the appeal was not set down, nor were the necessary documents lodged with the proper officer until the 27th November. The appeal having come on to be heard on the 16th December:—*Held*, that the appeal, not having been set down till after the day for which notice was given, must be dismissed, even though the time for appealing had not expired when the appeal was set down, and though from the manner in which the Court of Appeal was constituted, the appeal could not have been heard until the day on which it actually came before the Court. An application to extend the time for appeal was refused. MACKEN *v.* MURPHY
[C. A. XIII. 22

13. —— *To the House of Lords—Application to stay execution for costs pending appeal—O. LVIII., r.* 17.] L. applied to the Court of Appeal for an order that execution, or any proceedings for the recovery of costs under an order of the Court of Appeal, should be stayed pending an appeal to the House of Lords, L. undertaking to lodge in Court the amount of taxed costs payable under the order. L. had paid the amount of the costs to the sheriff under protest before the motion, who retained the same, as he had been served with a cautionary notice:—*Held*, that the sheriff should pay over the amount received to the defendant's solicitor on his giving an undertaking to repay the same if the appeal to the House of Lords should prove successful. LEAHY *v.* GLOVER - - - C. A. XXVII. 49

14. —— *To the House of Lords—Security for costs—recognisance—Standing order IV.*] Applicants not having entered a recognisance in person as required by Standing Order IV., of the House of Lords, but merely by sureties:—*Held*, that the appeal should stand dismissed without prejudice to the applicants presenting a new appeal within the time limited by Standing Order I. COWRY *v.* CLANRICARDE
[H. L. XXVII. *M.* 159

—— Discretionary order staying execution XXII. 60
See PRACTICE—EXECUTION. 11.

—— To House of Lords—Remitting Motion - XX. 57
See REMITTING ACTION TO CIVIL BILL COURT. 152.

PRACTICE—APPEARANCE.

1. —— *Computation of time—Action for recovery of land on non-payment of rent—Ten days—Sunday—O. I., r.* 2a—*App. A., part I., form* 2a—*Landlord and Tenant Act*, 1860, *s.* 60—*C. L. P. Act*, 1853, *s.* 232.] In an action to recover land for non-payment of rent, the writ of summons was served

PRACTICE (Since the Judicature Acts)—APPEARANCE—*continued.*

on January 8th, and the appearance entered on January 20th. The Exchequer Division refused to set aside the appearance. The Court of Appeal set it aside, Sunday being included in the ten days limited for appearance. DUNN *v.* KELLY
[E. D. XV. 20; C. A. XV. *M.* 232

2. —— *Computation of time for entering—O. XII., r.* 7—*App. A. part* 1, *form No.* 1.] In the time allowed for entering an appearance the day of service is included. BESSBOROUGH *v.* HOWARD - - - - - - E. D. XII. 149

3. —— *Computation of time—Action for recovery of land on non-payment of rent—Ten days—Sunday—O. I., r.* 2a—*App. A., part* 1, *form* 2a—*O. LVII., r.* 2—*Landlord and Tenant Act*, 1860, *s.* 60—*C. L. P. Act*, 1853, *s.* 232.] A writ of summons to recover land for non-payment of rent was served on December 3rd, and appearance entered on December 14th. The Common Pleas Division set aside the appearance, as Sunday should have been included in the computation of ten days. The Court of Appeal dismissed an appeal for this decision. KEATING *v.* COLLINS - - C. A. XV. *M.* 138

4. —— *Married woman.*] Where an appearance has been entered by a married woman in her own name through a solicitor, instead of appearing by her husband or next friend, the appearance was set aside, though she alone had been named as a defendant, and served with the writ of summons. DAUNT *v.* CONEWAY - - - - C. P. D. XV. 48

—— Amendment - - - XXIV. *M.* 70
See PRACTICE—AMENDMENT. 4.

—— By Partners - - - - XII. 70
See PRACTICE—WRIT SPECIALLY INDORSED. 16.

—— Default
See PRACTICE—DEFAULT. 1—3.

—— Remitting Motion.
See REMITTING ACTION TO CIVIL BILL COURT. 21. 22, 71.

—— Writ with residence of defendants omitted
[XII. *M.* 134
See PRACTICE—WRIT OF SUMMONS. 1.

PRACTICE—ATTACHMENT.

1. —— *Injunction—Notice—Service—O. XLIII., r.* 2.] Notice of motion for an attachment for breach of an injunction may be served like any other notice of motion. It is not necessary, before applying for an attachment to issue against a defendant for breach of an injunction, that the writ of injunction should issue or be served, when the defendant has been served with notice of the order granting the injunction. MINING CO. OF IRELAND *v.* DELANY - V. C. XXI. 49

2. —— *Service—Indorsement.*] A motion for attachment of a party for disobeying an order of the Court will not be granted unless the order has been served personally on him, and contains an indorsement to the effect that if he does not comply with the order he will be attached. MOLONY *v.* MULCAHY
[R. XV. *M.* 232

3. —— *O. XLI., r.* 4.] Where upon an application to attach a defendant for non-compliance with an order made by the Master requiring the defendant to file accounts within a stated time, it appeared that the defendant had not been served by the plaintiff with a copy of the Master's order indorsed as directed by O. XLI., r. 4: the Court made no rule on the motion, but without prejudice to any further proceedings that might be necessary. *Wallace* v. *Graham* (11 L. R. Ir. 369), not followed. PRIOR *v.* JOHNSTON.
[Q. B. D. XXVII. 106

——Corporate body - - - - - XXII. 32
See TOWN COMMISSIONERS. 3.

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PRACTICE (Since the Judicature Acts)—BAIL IN ERROR—*Lodging money in lieu of bail—C. L. P. Act*, 1853, *sec.* 172—*Judicature Act*, 1877, *s.* 28 (11).] Leave was given to lodge money in Court, being twice the amount of the defendant's taxed costs, in lieu of bail in error, with a view to appeal, notice of which had been served. TODD *v.* PRATT
[C. P. D. XII. *M.* 74

PRACTICE—CASE STATED—*Court of Appeal—Right to begin.*] The party who has obtained a decree is the proper party to begin on a case stated for the Court of Appeal. LENDRUM *v.* DEAZLEY - - - C. A. XIII. 111

PRACTICE—CERTIORARI.

1. —— *County Court—Reversal of dismiss on the merits—27 & 28 Vic., c. 99, ss. 3, 9, 48.*] Where a County Court Judge dismisses a civil bill on the merits, and the Judge of Assize, on appeal, reverses the dismiss and gives a decree exceeding £20, the Court will remove the decree by *certiorari* under 27 & 28 Vic., c. 99, s. 9. FLYNN *v.* LESLIE
[C. P. D. XIII. 99

2. —— *County Court decree on land claim—27 & 28 Vic., c. 99, s. 9—"Judgment"—Landlord and Tenant (Ireland) Act*, 1870, *s.* 23.] A decree of the County Court Judge on a land claim is a "judgment" within section 9 of 27 & 28 Vic., c. 99, and as such can be removed into the Superior Court on *certiorari*. GRACEY *v.* HARRISON; M'VEIGH *v.* HARRISON; M'KITTERICK *v.* HARRISON; MOORE *v.* MOWBRAY
[C. P. D. XV. *M.* 117

3. —— *Equity civil bill decree—No return of* nulla bona—27 & 28 *Vic., c.* 99, *s.* 9—*County Court Rules, O. XXIX., r.* 238.] Where an Equity civil bill decree, for the payment of a sum of money, was obtained against a defendant, and remained unpaid, and it was proved that the defendant had no goods that could be seized under a decree of the County Court, but had a farm which he was proceeding to sell:—*Held (hesitante)*, that the decree could be removed into the Chancery Division by *certiorari*, under 27 & 28 Vic., c. 99, s. 9, and that it was not necessary to obtain a return of *nulla bona* to the decree. CLARKE *v.* TORRENS - Vac. J. XIII. 169

4. —— *Removing decree into Superior Court—Remitted action—Costs.*] A motion for a writ of *certiorari*, to remove a decree in a remitted action into the Superior Courts was granted, with £2 2s. costs. FEE *v.* HALL Q. B. D. XII. *M.* 242

PRACTICE—CHAMBERS.

1. —— *Chancery Division—Administration action—Motion to fix mode of trial—Evidence of value—Affidavit*—Viva voce *evidence.*] Evidence of the value of property in an action in which the administration of an estate is sought is not a matter for the hearing of the action, but in settling the accounts in Chambers. OSWALD *v.* SKIPTON - - V. C. XV. 51

2. —— *Common Pleas Division—Rule of Court—Consent for judgment—Costs of counsel—O. LIII., r.* 6.] A motion to make a consent a rule of Court is movable in Chambers, but is not one fit for the attendance of counsel under O. LIII., r. 6, but this rule will not be applied to any motion which under practice before the Judicature Act would have been moved by counsel. WHITSON *v.* CARRIGGE - C. P. D. XII. *M.* 36

3. —— *Exchequer Division—Extension of time to plead—Action in another Division—Judicature Act, ss.* 36, 44—*O. LIII., r.* 8.] A Judge of the Exchequer Division made an order for an extension of time for pleading under O. LIII., r. 8, in an action in the Common Pleas Division. RICHARDSON *v.* MAHON - - - - E. D. XII. *M.* 23

PRACTICE—CLAIM.

1. —— *Delivery of more than six weeks after appearance—O. XX., r.* 1—*O. XXVIII., r.* 1.] Where a defendant has appeared and has not dispensed with the delivery of a statement of claim, the plaintiff may deliver a statement of claim at any time before the defendant has moved to dismiss the action for want of prosecution. O'CONNELL *v.* O'CONNELL
[E. D. XV. 4

PRACTICE (Since the Judicature Acts)—CLAIM—*con.*

2. —— *Embarrassing—Prolixity—Matters of evidence—Documents—Libel—Judicature Act, sch. r.* 23.] Objections were sustained to a statement of claim as embarrassing, on the grounds of prolixity, and stating the evidence by which the material facts were to be proved, in contravention of the Judicature Act, sch. r. 23. CRAWFORD *v.* THE BRITISH MEDICAL ASSOCIATION - - Q. B. D. XV. 86

3. —— *Embarrassing—Divergence between writ and claim as to causes of action—Judicature Act, sch. r.* 23—*O. LIX.*] A statement of claim in an action for trespass alleged that "the defendant personally commanded, conducted, and assisted at said trespass hereinbefore described, and threatened the wife of the plaintiff, and pointed a loaded gun at her and fired same over her head, whereby she was so frightened that she fainted, and was for a long time seriously unwell and unable to attend to any of her ordinary avocations:"—*Held*, that this averment, although not actually embarrassing, should be struck out, the Court having power to set it aside, under O. LIX., as not complying with the established practice of the Court in pleading. According to the system of pleading established in Ireland under the Judicature Act, the "material facts" which alone should be stated under schedule rule 23 in a pleading are: (1) Facts which constitute the cause of action, (2) damages to which the plaintiff is entitled, and (3) facts which constitute special damage. Any other facts than these, even though they may be necessary to prove the cause of action, or are admissible in aggravation of damages, should not be stated. *Millington* v. *Loring* (6 Q. B. D. 190), applied. LACEY *v.* KENDAL - - - E. D. XVII. 112

4. —— *Form of, in action for recovery of land—Setting out facts relied on—Judicature Act*, 1877, *s.* 67, *sch. rr.* 23, 24—*O. XVIII., r.* 8—*Rules of Court, app. C. Forms* 13, 16, 17.] A statement of claim in an action for recovery of land which followed the form of summons and plaint in ejectment on the title under the C.L.P. Act, 1853, was set aside because it did not state the facts upon which the plaintiff relied, but only the relief which he sought. SELCHON *v.* CAWLEY
[E. D. XII. 45

5. —— *Irregularity—Amendment—O. XXVI., r.* 1.] The plaintiff in an action to recover land for non-payment of rent, having delivered a statement of claim for a larger sum than was claimed by the writ of summons, and for mesne rates which had not been included therein:—*Held*, that the statement of claim was irregular, and should be amended. CROSTHWAITE *v.* SMITH - - Q. B. D. XVI. 103

6. —— *Notice in lieu of, not filed—Pleading, what constitutes—Setting aside judgment—Judicature Act, s.* 3—*O. XVIII., rr.* 22, 23—*O. XX., rr.* 1, 2—*O. XL., r.* 4—*O. LXV.*] The notice which a plaintiff may deliver as his statement of claim under O. XX., r. 2, in an action on a specially indorsed writ, must be filed before entering judgment by default of pleading. FLOOD *v.* MACDONNELL - Q. B. D. XIV. 38

7. —— *Notice in lieu of—Action for seduction—O. XX., r.* 2.] In an action for seduction the plaintiff served a notice to the effect that the claim appeared by the indorsement upon the writ. This notice was set aside, as the cause of action could not be made the subject of a special indorsement. M'KROWN *v.* HUTCHINS - - - Q. B. D. XV. *M.* 310

8. —— *Substitution of service—Fictitious address for service—O. XI., r.* 1—*Judicature Act, sch. r.* 15.] After service of a writ of summons, the defendant entered an appearance, giving an address at which, on subsequently proceeding to serve a statement of claim, it was found he did not reside, the house being unoccupied. It was stated that he had gone to America, but that his wife, residing in Dublin, was in communication with him. On motion to set aside the appearance, or for leave to substitute service of the statement of claim: Leave to substitute service was given by posting a copy of the statement of claim on the unoccupied house, and serving the wife in person. CITY AND COUNTY BUILDING SOCIETY *v.* HAYES
[E. D. XVI. 105

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PRACTICE (Since the Judicature Acts)—CLAIM—*con.*

9. —— *Uncertain—Detinue—Description of chattels.*] The first count, in trover, of a summons and plaint described the goods as "certain blocks of marble," and the second count, in detinue, described them as "the goods in the first count mentioned." A motion to set aside the second count for uncertainty, was granted, with costs, with leave to amend by describing the goods more particularly. ABBOTT *v.* BELFAST HARBOUR COMMISSIONERS - - **E. D. XII.** *M.* **58**

—— Amendment.
See PRACTICE—AMENDMENT. 10-15.

—— Disclosing no cause of action - **XXVII.** *M.* **486**
See ACTION. 3.

PRACTICE—CONSENT.

1. —— An action by a solicitor for libel was stayed on payment of costs and an apology, and a consent thereto was made a rule of Court. M'CANN *v.* MATHEWS **[E. D. XXVII.** *M.* **199**

2. —— *Action for recovery of land—Signature.*] A consent cannot be made a rule of Court in an action for recovery of land, unless signed by the parties themselves, or their solicitors when directly authorised to do so, and an indorsement to that effect on the consent is necessary. O'HARA *v.* WHITESTONE **[C. P. D. XVII. 109**

PRACTICE—CONTINUING PROCEEDINGS—*Death of sole plaintiff—Judgment less than six years old—Administrator—O. XLI., r.* 19—*O. XLIX., r.* 4.] An order to continue proceedings in the name of the administrator of the deceased sole plaintiff was made. HAMILTON *v.* HAMILTON **[V. C. XII.** *M.* **161**

PRACTICE—COSTS.

1. —— *Action fit to be tried in Superior Courts—Trespass* quare clausum fregit—*Question of title—Certificate.*] The Court refused to give a certificate that an action between two neighbouring small farmers for obstruction of water was a fit one to be tried in the Superior Courts, but gave one that the plaintiff was justified in asserting her claim, and that the defendant was wrong. (By Palles, C.B.) TOOHER *v.* CLEMENTS - - - - - **E. D. XII.** *M.* **243**

2. —— *Action for rent—Amount due under* £20—50 & 51 *Vic., c.* 33, *s.* 5.] When the order of the Land Commission fixing a fair rent reduces the amount due below the sum of £20, the plaintiff in an action for rent commenced in the Superior Courts is not entitled to the costs of a writ, issued pending the hearing of the application to fix the fair rent, for an amount over £20. CONNER *v.* LYONS - - **E. D. XXVII. 135**

3. —— *Action for slander—Judgment entered for defendant—Defendant deprived of costs—Motion to vary Judge's order—Discretion—Judicature Act, s.* 53.] In an action claiming damages for slander, when the defendant set up a plea of privilege, practically tantamount to a justification, which he was unable to substantiate at the trial, and the jury found a verdict for the plaintiff for the sum of 10s. lodged in Court, the Judge entered judgment for the defendant, and certified that he was not to be entitled to costs:—*Held*, that the Court would not interfere with the discretion exercised by the trial Judge, on a consideration of all the facts and circumstances of the case disclosed in the evidence before him, on which he was in a position to form a better opinion. KEARNEY *v.* HANNON **[C. P. XVI. 55**

4. —— *Action referred to County Court—Matters of mere account—Scale of taxation—C. L. P. A. Act,* 1856, *s.* 6.] Where a case, being matter of mere account, is referred under s. 6 of the C. L. P. A. Act, 1856, for trial before the County Court Judge, and the order directs that "the costs of this application and of the said inquiry be costs in the cause," the plaintiff's costs of the inquiry in the County Court are to be taxed upon the High Court scale. *Wheatcroft* v. *Foster* (1 E. B. & E. 737), considered. DORAN *v.* CLARKE **[E. D. XXIV. 34**

PRACTICE (Since the Judicature Acts)—COSTS—*continued.*

5. —— *Application to vary.*] Any application to vary an order as regards costs must be on summons. DUBLIN, WICKLOW, AND WEXFORD RAILWAY CO., *ex parte* SCALLON **R. XXVI.** *M.* **324**

6. —— *Certificate for half costs—Action for sum over* £50—*Complication of facts—C. L. P. A. Act,* 1856, *s.* 97.] Where in an action for work and labour the sum sued for exceeded the jurisdiction of the County Court, but was reduced to an amount capable of being recovered in that Court by a finding on a defence, the evidence given in support of which was of a complicated nature:—*Held*, that the action was one fit to be tried in the Superior Court, and that a certificate under s. 97 of the C. L. P. A. Act, 1856, should be granted. BOGAN *v.* EDMONDSON - - - - - **C. P. D. XII. 66**

7. —— *C. L. P. Act,* 1853, *s.* 133.] The Court has power, under section 133 of the C. L. P. Act, 1853, to give the costs of an order made for the transfer of public stocks or shares under that section, and of the order for attachment of the same under sec. 132 of the Act. MASSERENE *v.* ROCHE **[Q. B. D. XXI. 82**

8. —— *Counsel's fee for appearing to cross-summons.*] Where an originating and cross-summons have been heard, and adjudicated upon, the successful party is entitled to the costs of both, counsel's fees being measured accordingly. FITZGERALD *v.* FITZGERALD - - - - **R. XIII. 60**

9. —— *Counter-claim and set-off—Judicature Act, sched. r.* 22—*C. L. P. Act,* 1853, *ss.* 40, 243—*C. L. P. A. Act,* 1856, *s.* 97—*Judge's certificate.*] A counter-claim, when pleaded under sched. r. 22 of the Judicature Act, is essentially different from a set-off under the C. L. P. Act, 1853. The latter is a defence to the action and a plea in bar; the former operates as a cross-action, so that if a plaintiff abandons his claim, or fails in proving it, the defendant may obtain judgment on his counter-claim. Where the plaintiff established his claim for a sum exceeding £20, and the defendant proved a counter-claim sufficient to reduce it below that sum, both parties residing within the same Civil Bill jurisdiction:—*Held*, that the plaintiff was entitled to his full costs, and was not deprived of them by sec. 97 of the C. L. P. A. Act, 1856; for that, the matter having been pleaded exclusively as a counter-claim, the plaintiff had recovered a sum exceeding £20, although, if the same facts had been pleaded as a set-off, under sec. 40 of the C. L. P. Act, 1853, he would only have been held to have recovered the balance. *Hannan* v. *Laffan* (XV. 32), followed. The words "and costs," when added to the Judge's certificate, do not amount to an adjudication that the party is entitled to costs, but mean simply such costs as the law allows. Whether the party is entitled to costs or not is a question to be decided by the Taxing Master. RYAN *v.* FRASER **[E. D. XVIII. 21**

[This was reversed on appeal, 16 L. R. Ir. 253.

10. —— *Deprival for special cause—Discretionary power of Judge at trial—Action in which the right to costs does not depend on the amount recovered—Seduction—Position of the parties—Conduct of the woman—Smallness of damages awarded—Judicature Act, s.* 53.] In an action to recover damages for the seduction of the plaintiff's sister, who acted as his housekeeper and worked on his farm, the jury awarded the plaintiff £10 damages. The Judge at the trial made an order depriving the plaintiff of costs, for special cause, by reason of the circumstances out of which the action arose, and the position of the parties, and certified, in effect, that the plaintiff and defendant were farmers of small position; that the conduct of the woman, who was 35 years of age, was more than usually censurable, and that she was herself to blame; that the plaintiff could not have expected and should not have recovered more than £10; and that the action ought not to have been brought to trial in the Superior Court, but in the County Court, to which the defendant's solicitor had asked to let it be remitted. On an application by the plaintiff to review the order as to costs:—*Held*, by the Queen's Bench Division, (1) That, under the Judicature Act, sec. 53, the Judge at the trial was invested with a discretionary jurisdiction to deprive the plaintiff of the

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PRACTICE (Since the Judicature Acts)—COSTS—*continued.*

right to recover any costs, for special cause; (2) That taking into consideration the personal merits and conduct of the parties, accompanied by the award of only £10 damages, the exercise of the Judge's discretion should not be interfered with. (Johnson, J., *diss.*) *Per* Johnson, J.: No special cause, within the meaning of sec. 53, was shown, justifying the plaintiff's deprival of all costs in the action; and it would be an untenable principle that a plaintiff, who in an action for seduction, or in other actions for unliquidated damages, recovers only an amount within the jurisdiction of the County Court, should on that account be deprived of costs. The Court of Appeal reversed the Queen's Bench Division. WILSON *v.* M'MAINS
[Q. B. D. XXI. 9; C. A. XXI. *M.* 73

11. —— *Extension of time for pleading — Surety — Rules, June*, 1891, *O. LIV., rr.* 13, 16.] In an action brought against a surety on the bond of a contractor, who had been found a lunatic, and money due to whom was lodged in Court in the lunacy matter, the defendant's application for extending the time to enter a defence was granted with costs of counsel. TRACEY *v.* MACCABE - - **E. D. XXVI. 115**

12. —— *Filing defence before motion to remit.*] Where a defence is put in before a motion to remit is brought, the costs of such defence must be borne by the defendant. M'CLURE *v.* MURRAY - - **E. D. XXVI. *M.* 324**

13. —— *Final judgment entered for £20—Half costs—O. VIII., rr.* 2, 3—*C. L. P. Act*, 1853, *s.* 243.] Where a plaintiff, in a defended action, recovers in contract £20, he is only entitled to the costs allowed under O. VIII., r. 3, 1878. LONG *v.* FITZGIBBON - - - **E. D. XXI. 13**

[This was affirmed on appeal, 20 L. R. Ir. 15.]

14. —— *Garnishee—Making absolute conditional order—Appearance by garnishee—Order XLV., rr.* 1, 3.] A garnishee appearing on the motion to make absolute the conditional order, and stating his readiness to pay the amount due by him, will not be allowed the costs of his appearance. THE NATIONAL BANK *v.* FITZGERALD **Q. B. D. XXVII. 18**

15. —— *Interpleader.*] Where a plaintiff in an interpleader issue only succeeded in establishing his title to half the chattels claimed by him, the Court refused to allow him the costs of the interpleader issue or of the motion for costs, allowing him only the costs of the interpleader motion and poundage fees in respect of the chattels recovered by him. CUMMINS *v.* KAVANAGH - - - - **Q. B. D. XXV. 24**

16. —— *Judgment by default in actions of contract, where less than £20 recovered—Judicature Act*, 1877, *ss.* 53, 71—*C. L. P. Act*, 1853, *s.* 243—*C. L. P. A. Act*, 1856, *s.* 97—*O. XII., rr.* 3, 5—*Rules of Court, April*, 1878, *O. VIII., r.* 2.] Section 53 of the Judicature Act, 1877, does not repeal the provisions of the Common Law Procedure (Ir.) Act, 1853, sec. 243, and the Amendment Act of 1856, sec. 97, which regulated the amount of costs to be recovered in actions previous to the passing of the Judicature Act; and these statutes, so far as they relate to costs, are still applicable both in cases of defended and undefended actions. LAPSLEY *v.* BLEE
[C. A. XIII. 174

17. —— *Judgment by default—Costs of motion to substitute service—O. VIII., r.* 2.] Where judgment had been suffered by default for £68, and the costs were taxed at £11 15s., which included the costs of a motion to substitute service of the writ of summons, but the Master had refused, under O. VIII., r. 2, to allow judgment to be entered for more than £5 6s.:—*Held*, that the plaintiff was entitled to enter judgment for the full amount of the costs as taxed. EAGER *v.* BUCKLEY - - - **Q. B. D. XV. 60**

18. —— *Money lodged by defendant on one count found sufficient—"Recovered in the action"—Verdict of £2 on other counts—C. L. P. Act*, 1853, *ss.* 78, 126—*C. L. P. A. Act*, 1856, *s.* 97—*Judicature Act, s.* 53.] Where the defendant in an action of tort in the High Court lodged £5 in respect of the second count and traversed the other counts, and the jury found that the £5 lodged in respect of the second count was sufficient, and awarded the plaintiff £2 damages on other counts, and judgment was entered accordingly:—*Held* (Porter, M.R., and Barry, L.J., *diss.*), that the plaintiff could not add the £5 and £2 together, so as to entitle him to the general costs of the action. *Walsh* v. *Walsh* (17 Ir. C. L. R. 174), followed. *Arkins* v. *Armstrong* (III., M. 465, Ir. R. 3, C.L. 373), overruled. MYERS *v.* PHELAN
[C. A. XXIV. 60

19. —— *Money lodged under order for security for costs upon terms—Tender before action without plea—Acceptancy of amount lodged—Costs of action—O. XXX., r.* 4—9 *G. O.*, 1854.] A defendant had applied for an order for security for costs, and an order was made on the terms that he should pay into Court a sum he admitted to be due, and stated he had tendered before action as being the entire amount due. He accordingly lodged the sum in Court, and the plaintiff drew it out in full satisfaction:—*Held*, that the defendant was entitled to the costs of the action. WOLF *v.* WALKER **C. P. D. XIV. 111**

20. —— *Perjury.*] Costs will not necessarily follow the result, if the manner of a party's swearing is such as should disentitle him to them. RAE *v.* JOYCE
[V. C. XXVI. *M.* 324

21. —— *Plaintiff suing through "Stubbs' Agency."*] Costs will not be given where a plaintiff sues through "Stubbs' Agency." ALLIANCE GAS CO. *v.* ANON.
[Rec. C. XXIII. *M.* 366

22. —— *Remitted action—Less than £5 damages—Certificate that title was in question—C. L. P. Act*, 1853, *ss.* 126, 243—*C. L. P. Act*, 1856, *s.* 97—*C. L. P. Act*, 1870, *s.* 5—*Jud. Act*, 1877, *s.* 53—40 & 41 *Vic., c.* 56, *ss.* 51, 52—*County Court Rules*, 1890—*O. XXXV., rr.* 2, 3.] In a remitted case where the damages given by the County Court Judge in favour of the plaintiff are for such an amount as if given by a verdict of a jury in the Superior Court would not entitle the plaintiff to costs without a certificate of the Judge under the costs sections of the Common Law Procedure Acts, 1853 and 1856, the County Court Judge has no jurisdiction to give any certificate, and consequently in such a case the plaintiff can get no costs of the proceedings in the Superior Court. (By Holmes, J.) M'COSKER *v.* M'COSKER - - **Cir. Cas. XXVII. 77**

23. —— *Taxation—Injunction.*] An order was made staying an injunction for six months:—*Held*, that the stay did not apply to the costs of the action. THE DUBLIN PORT AND DOCKS BOARD *v.* THE COMMISSIONERS OF KINGSTOWN TOWNSHIP.
[R. XXVII. 65

—— Amendment of Claim - - - **XIV. 96**
See PRACTICE—AMENDMENT. 11.

—— Amendment of Defence - - - **XIV. 24**
See PRACTICE—AMENDMENT. 10.

—— Award - - - - - **XIII. 66**
See ARBITRATION. 11.

—— Execution for, after execution for possession in action for recovery of land - - - **XXIII. 58**
See PRACTICE—EXECUTION. 4.

—— Execution for - - - - - - **XIX. 59**
See PRACTICE—EXECUTION. 12.

—— Indorsement of excessive sum on writ.
See PRACTICE—WRIT OF SUMMONS. 3-5.

—— Motion for payment by instalments **XXIV. M. 316**
See DEBTORS ACT (IRELAND), 1872. 37.

—— Order of priority of judgment to costs **XVIII. 101**
See PRACTICE—JUDGMENT. 50.

—— Third party - - - - - **XV. 10**
See PRACTICE—THIRD PARTIES. 1.

—— Third party intervening in garnishee proceedings **XXV. 15**
See PRACTICE—GARNISHEE. 2.

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PRACTICE (Since the Judicature Acts)—COUNTER-CLAIM.

1. —— *Action for recovery of land for non-payment of rent —Judicature Act, s.* 27 (4), *sched. r.* 22.] In an action to recover possession of land for non-payment of rent the defendant delivered a counter-claim, alleging that he was entitled to certain annuities charged on the landlord's interest in the lands sought to be recovered, the arrears of which were more than sufficient to cover the rent sued for, and also claiming credit for certain head-rents paid by him. On a motion to set aside the counterclaim:—*Held*, that it was properly pleaded in the action as being connected with its subject-matter and should be allowed to stand. *Semble*, *Cahill* v. *Kearney* (I. R. 2, C. L. 498), has no application since the Judicature Act. WHITTON *v.* HANLON - **E. D. XIX. 31**

2. —— *Action for slander—Counter-claim for seduction—Judicature Act, s.* 27 (3) (7), *sched. r.* 22—*O. XXI., r.* 9.] A counter-claim for seduction will not be allowed in an action for slander. KELL *v.* LEGG - **Q. B. D. XIII. *M.* 374**

3. —— *Action to recover land on title, not claiming mesne rates—Counter-claim for damages—Breach of agreement—Specific performance—Judicature Act, sched. r.* 22—*O. XXI., rr.* 9, 10—*O. XVI., r.* 2.] In an action to recover land on the title, not claiming mesne rates, the defendant having pleaded by way of counter-claim that the plaintiff had agreed to assign to the defendant under which the plaintiff claimed, and seeking damages for breach of the agreement:—*Held*, that the counter-claim should be disallowed, but might be amended by claiming specific performance of the agreement. CARLIN *v.* DOHERTY - - **Q. B. D. XV. 117**

4. —— *Action of tort against four defendants—Counter-claim in contract by one defendant—Convenience—Judicature Act, sched. r.* 22, *O. XXI., r.* 9.] Where, in an action by the plaintiff as trustee and executrix against four defendants for trespass to lands and goods, a counter-claim was delivered by one of the defendants against the plaintiff, as such trustee and executrix, for goods sold and delivered to the testator, and for goods sold and delivered to the plaintiff, as such trustee and executrix; the Court refused to set aside the counter-claim, on the ground of inconvenience, but ordered it to be limited to the plaintiff's character of executrix. *Quære*, whether the plaintiff could have any right of action as "trustee" which he would not have in his personal capacity? MANNING *v.* GARSTIN **[E. D. XV. 8**

5. —— *Claim and counter-claim both established—Form of judgment—Costs—Distinction between set-off and counter-claim —Judicature Act, s.* 53, *sched. r.* 22—*O. XXI., r.* 10]. In an action for assault, the defendant set up a counter-claim on foot of promissory notes made by the plaintiff to the defendant. The jury having found for the plaintiff on the assault, with £100 damages, and that the plaintiff was indebted to the defendant in £100 in the counter-claim, and the Judge at the trial having ordered judgment to be entered for the defendant, with costs: The Court set aside this order, and ordered judgment to be entered for the plaintiff, in respect of the action of assault, for £100, with costs, and for the defendant in respect of the counter-claim for £100, with costs; that the said sums and costs should be set off against one another, and that the party in whose favour there should be a balance should recover from the other the amount of such balance. Where the defendant establishes a strict set-off equal to or exceeding the plaintiff's demand, this amounts to a defence to the action, and the plaintiff cannot have judgment; but where the defendant establishes a counter-claim merely (as this does not amount to a defence), the plaintiff is entitled to judgment on his cause of action, and the defendant to judgment on his counter-claim. These sums will then be set off against one another, and the party in whose favour the balance shall be will have judgment for the amount of such balance. *Chatfield* v. *Sedgwick* (4 C. P. D., 459), discussed. HANNAN *v.* LAFFAN **[E. D. XV. 32**

6. —— *Connection between claim and counter-claim—Action for slander—Irrelevant allegations, striking out as immaterial —Judicature Act, s.* 27 (3) (7), *sched. r.* 22—*O. XXI., rr.* 9, 10—*App. C., forms of counter-claim.*] Any claim for relief against a plaintiff exclusively may be made the subject of a counter-claim by a defendant, whether connected or disconnected with the original subject matter of the action, and so, although the statement of claim and counter-claim be in respect of unliquidated demands, but subject to the discretionary power of the Court or a Judge, on the application of the plaintiff, to refuse permission to the defendant to avail himself of such counter-claim, in case it appears that same cannot be conveniently disposed of in the pending action—a judicial control, which (*per* Dowse, B.) might well be exercised if the counter-claim proceeded on lines entirely different from those of the statement of claim, or was calculated to unduly dominate or overshadow the case of the plaintiff, the question being one of justice and propriety depending on the nature of each particular case. Where the counter-claim to an action for slander alleged in the third and fourth paragraphs, that on divers occasions quarrels had taken place between the plaintiff and defendant, and between their wives, and that upon those or some of those occasions, the plaintiff slandered the defendant, and in the fifth paragraph pleaded the same slander of the defendant by the plaintiff as a separate cause of action, claiming damages accordingly, the Court on an application by the plaintiff, before reply, to have said paragraphs set aside:—*Held*, that the third and fourth paragraphs should be struck out as irrelevant and embarrassing, but that the fifth paragraph was unobjectionable, although the slander therein alleged was uttered independently of, and prior to, that alleged in the statement of claim. *Per* Dowse, B:—Where there are slanders and cross-slanders uttered at the same time a jury is apt to commingle both subject-matters, and to experience a difficulty in estimating the respective injuries inflicted, but where the slanders are separate and disconnected, an estimate can, without any disturbing influence, be formed on each, and in such case it is not inconvenient that both causes of action should be tried together. *Padwick* v. *Scott* (2, Ch. D. 736) distinguished, on the ground that there the counter-claim sought relief against third parties. QUIN *v.* HESSION - - - **E. D. XIII. 12**

7. ——*Cross action—Relief claimed against plaintiff and co-defendants—Judicature Act, s.* 27 (3)—*O. XXI., r.* 5.] A counter-claim will be sustained which seeks the same relief as the plaintiff against co-defendants, if it enables the Court to grant plenary relief in one action, according to the rights of all the parties to the subject of litigation, and at the same time conforms to the Judicature Act and Rules. Executors were released by a deed, signed by the legatees of their testator, from all claims and demands concerning the testator's estate. A., one of the legatees, brought an action against the executors, and N. and W., also legatees. The statement of claim sought to have this deed of release declared fraudulent and void, as against the plaintiff. W. delivered a statement of defence, admitting the facts alleged in the statement of claim, and seeking, by way of counter-claim against A., N., and the executors, that the said deed might be declared fraudulent and void as against W. N. having moved to set aside this counter-claim on the grounds that it was embarrassing, and claimed no relief against him, either alone or jointly with A., as required by O. XXI., r. 5:—*Held*, that it was not necessary that all the parties to the deed should be joined as plaintiffs, and that although W. sought the same relief against his co-defendants as A. (the plaintiff), the Court acting according to the spirit of section 27 (3) of the Judicature Act, would not set aside on the counter-claim. *Furness* v. *Booth* (L.R. 4, C.D. 586), and *Harris* v. *Gamble* (L.R. 6, C.D. 748), distinguished. *Huggons* v. *Tweed* (W. N., 1879, p. 1), and *Turner* v. *Hednesford Gas Co.* (L.R. 3, Ex. D., 145) approved and followed. (By Fitzgibbon, L.J.). ARTHUR *v.* ARTHUR **[R. XIII. 25**

8. —— *Defence Limited.*] Though a defence be limited by order of the Court, a counter-claim may be filed. STANNER *v.* BEAMISH - **Q. B. D. XXVI. *M.* 334**

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PRACTICE (Since the Judicature Acts)—COUNTER-CLAIM—*continued.*

9.——*Justification—Question of right—Traverse and money paid into Court.*] In an action for trespass, and to establish a right to a watercourse, a plea admitting a limited right in the plaintiff, and bringing into Court the sum of 5s., in respect of any damage done in excess of that limited right:—*Held*, good. *Campbell* v. *M'Clelland* (XX. 29), distinguished. A paragraph in a counter-claim, averring that, "lest the plaintiff should plead justification to the aforesaid causes of action, or either of them, under any easement, the defendant says, as a distinct and separate cause of action, that the plaintiff did the acts over and in excess of any right or easement to which the plaintiff may be entitled." *Held*, that the paragraph should be struck out as not in accordance with the Judicature Act, Form 18, of Appendix C, and as not setting out the actual justification anticipated. IRVINE *v.* CLARE - **C. P. D. XXI. 22**

10.——*Money claim in action for recovery of land on the title—Judicature Act, sched. r. 22—O. XXI., rr. 9, 10.*] In an action for recovery of land on the title and mesne rates, where the defendant pleaded, by way of counter-claim, that the plaintiff was indebted to him for work done in building the house sought to be recovered, the Court refused to set aside the counter-claim, but, by consent, directed it to be amended by stating it to be "against the claim of the plaintiff for mesne rates." *Hanley* v. *Hanley* (XIII. 60), not followed. ODUM *v.* HARTLEY - - - - - **E. D. XV. 31**

11.——*Money claim in action for recovery of land on the title—Judicature Act, sched. r. 22—O. XXI., rr. 9, 10—O. XVI. r. 2.*] In an action for recovery of land on the title and mesne rates, in respect of houses which the defendant contracted to build, the defendant pleaded, by way of counter-claim, that the plaintiff was indebted to him for work done and materials provided for building the house:—*Held*, that the counter-claim should be disallowed. O'BRIEN *v.* HARTLEY **[C. P. D. XV. 31**

12.——*O. XXXVI. rr. 10, 11.*] In a specially indorsed writ the defendant filed no defence, but filed a counter-claim, when the pleadings were closed the plaintiffs were given leave to mark final judgment on the amount of their claim, by reason of the default in filing a defence, but execution was stayed till the trial of the counter-claim. No step having been taken by the defendant to have the counter-claim tried:—*Held*, that the counter-claim should be dismissed, and the stay on execution removed. MUSGRAVE & Co. *v.* CUSSEN **[Q. B. D. XXVII. 36**

13.——*Plaintiff suing as executor—Counter-claim against him as executor and also personally—Judicature Act, sched. r. 22—O. XVI., r. 5—O. XXI., rr. 9, 10.*] Where a plaintiff sues in a representative capacity, the defendant cannot set up a counter-claim against the plaintiff personally, even though it be alleged that such counter-claim arises with reference to the state in respect of which the plaintiff is suing. The word "claim" in O. XVI., r. 5, does not include a counter-claim. HICKEY *v.* HICKEY - - - **E. D. XV. 41**

14.——*Secretary of State for War—O. XIX., r. 3—Petition of right.*] The defendant in an action for breach of contract cannot set up a counter-claim where the plaintiff is Her Majesty's Principal Secretary of State for War. *Semble*, the defendant's remedy is by petition of right. HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE WAR DEPARTMENT *v.* EASDALE - - - **Q. B. D. XXVII. 70**

——Amendment - - - - - - **XIII. 60**
See PRACTICE—AMENDMENT. 2.

——Costs - - - - - - - **XVIII. 21**
See PRACTICE—COSTS. 9.

——Ejectment on the Title - - - **XIII. 60**
See EJECTMENT ON THE TITLE. 11.

PRACTICE (Since the Judicature Acts)—DEFAULT.

1.——*Appearance—Action against husband and wife—Separate estate—Statement of claim—Motion to charge separate estate—Service of notice of motion—O. XVIII., r. 21—XXIX., r. 4.*] In an action against husband and wife, the plaintiff, claiming that the separate estate of the wife should be declared well charged with the amount of the plaintiff's claim, and no appearance having been filed, delivered a statement of claim, and filed a notice of motion with the proper officer of the Division to apply to the Court for an order to declare the separate estate of the married woman well charged with the amount of the plaintiff's claim and costs, but same was not served:—*Held*, that the notice of motion should have been served. DEVITT *v.* FAUNT - - **C. P. D. XVI. 54**

2.——*Appearance by one of two defendants jointly liable.*] Where two defendants are jointly liable upon a liquidated demand, and one does not enter an appearance, the plaintiff may mark judgment, and issue execution against him for the whole amount. The plaintiff does not thereby waive his right against the other defendant who has appeared. This right should be enforced by entering a suggestion under sec. 97, of the C. L. P. Act, 1853. MONTGOMERIE *v.* FERRIS AND BROWN **[Q. B. D. XXI. 43**

3.——*Appearance—Judgment—Several defendants—Judgment against one—Rules, June, 1891, O. XIII., r. 4.*] Where, in an action on a joint and several promissory note against two defendants, one of the defendants was served with the writ and did not enter any appearance, and the other was not served:—*Held*, that the plaintiff was entitled to judgment against the defendant who had been served, without abandoning his rights against the other defendant. Such an order is not under O. XIII., r. 4. *Quære*, if the note were a joint one only, could the plaintiff obtain such judgment? PARKER *v.* HAMILTON **[E. D. XXVI. 51**

4.——*Defence—Interlocutory judgment for damages—Assessing before Master—*Ex parte *motion—O. XXVIII., r. 5.*] A motion to have the damages assessed before the Master of the Court, where the defendant has allowed judgment to go by default, can be made *ex parte*. [A Judge refused to make such an order except on notice in *Caledonian Insurance Co.* v. *Rathborne*, XII., M. 310.] TREVOR *v.* ROONEY **[Q. B. D. XII. *M.* 310**

5.——*Defence—Irregularity—Statement of defence after lapse of eight days where judgment has not been marked—O. XXI., r. 1—O. XXVIII., r. 12—C. L. P. Act, 1853, s. 39.*] A defendant may deliver his statement of defence at any time after the lapse of the time allowed for doing so, by O. XX., r. 1, from the date of the delivery of the statement of claim—except in an action for recovery of land—if the plaintiff has not marked judgment; and the Court will not set aside as irregular a defence delivered before judgment has been marked. The practice in this respect, under the Judicature Act, does not differ from the practice formerly prevailing under the Common Law Procedure Act, 1853. The plaintiff delivered his statement of claim on the 7th January, 1880; the statement of defence was delivered on 19th January. The plaintiff, not having marked judgment, moved to set aside the statement of defence, on the ground that it was irregular, and for leave to sign final judgment:—*Held*, that the statement of defence was regularly filed. SCHOFIELD *v.* SKEHAN - - - - - **E. D. XIV. 26**

6.——*Defence—Judgment by default—Assessment of damages before Master—Summons—O. XXVIII., r. 5.*] An application for assessment of damages in an action for seduction, where judgment was allowed to go by default, was directed to be by summons. FLYNN *v.* QUINN **[Q. B. D. XIII. *M.* 374**

7.——*Defence—Judgment—Leave to sign final—Recovery of land and mesne rates—Variation between writ and statement of claim—O. XIII., r. 1.*] In an action for the recovery of lands and of mesne rates, there was a variation between the writ and the statement of claim as to the description of the land, and the former did not contain a claim for mesne rates. The

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PRACTICE (Since the Judicature Acts)—DEFAULT—*con.*

defendant did not file a defence, and the officer refused to mark judgment, although the plaintiff offered to give up his claim for mesne rates. Upon a motion for leave to mark final judgment, the defendant applied for leave to file a defence:—*Held*, that defendant had shown no ground for his application, and judgment was directed to be marked. THOMPSON *v.* HARPER - - - - - **Q. B. D. XII.** *M.* 310

8. —— *Defence—Judgment—Defence filed after lapse of eight days—O. XXVIII., r.* 12.] A motion for judgment in default of pleading can be moved where the defence has not been filed till after the lapse of the eight days limited; but on a motion for judgment no rule was made, the defence to stand, on the terms of the defendant paying the costs of the motion. POTTS *v.* DEANE - **V. C. XVII.** *M.* 428

9. —— *Defence—Judgment—Motion for—Counter-claim for larger amount—Form of order—Rules, June*, 1891, *O. XXVII., r.* 2.] Where a defendant filed no defence to a specially endorsed writ, but counter-claimed for damages for breach of contract, the plaintiff was held entitled to have judgment, but a stay was put on the execution till the determination of the issue raised on the counter-claim. MUSGRAVE *v.* CUSSEN - - - - - **Q. B. D. XXVI.** *M.* 682

10. —— *Defence—Judgment—Liberty to deliver defence—Costs properly incurred by Plaintiff—Case to direct further proceedings.*] On motion for judgment in default of pleading, occasioned by a fatality, the Court, under the circumstances, gave liberty to a defendant to deliver a statement of defence, on the terms of paying the plaintiff all his costs occasioned by such default, including the costs (which had been incurred) of a case to counsel to direct further proceedings and advise proofs. JACKSON *v.* NIXON - - - **R. XIV. 54**

11. —— *Defence—Judgment—Motion for—Action to compel specific performance—Proof of agreement—Admission of facts alleged by pleading—O. XXVIII., rr.* 10, 12.] On a motion for judgment (under O. XXVIII., rr. 10, 12) where no defence has been delivered, in an action to compel the specific performance of an agreement in writing, the Court before making the order will require the production and proof of the document upon which the action is founded. DOHERTY *v.* KELLY. (By Fitzgibbon, L.J.) - **R. XIII. 59**

PRACTICE—DEFENCE.

1. —— *Embarrassing—Pleading—Prolixity—Fraud, how to be pleaded—Counter-claim—Making third party defendant to counter-claim—Connection with subject matter of original action—Equitable relief—Judicature Act, ss.* 27 (2) (3), 36—*Sched. r.* 23—*O. XVIII., r.* 14—*O. XXI., r.* 5.] In an action for detinue of certain documents of title, alleged by the plaintiff to be his, the statement of claim set out the title of the plaintiff to the lands comprised in the documents from the year 1731. One of the paragraphs of the statement of defence traversed a paragraph of the statement of claim, stating the effect of one of the title deeds under which the plaintiff held, in these words, "the defendant denies the statements of the fourth paragraph of the statement of claim":—*Held*, that this, though a general traverse, was sufficient, inasmuch as it was an immaterial allegation. Another paragraph of the statement of the defence alleged that the defendant had been induced to execute one of the documents in question "by fraud of" the plaintiff, and impeached the deed on that ground. *Held*, that this paragraph must be struck out as embarrassing, because the material facts constituting the alleged fraud were not stated, and it did not appear whether the fraud alleged was legal or equitable. *Held*, further, that the statement of claim was unnecessarily prolix in setting forth the title of the plaintiff to the lands, and that it would have been enough for it to have alleged that the documents claimed belonged to the plaintiff, and that the defendant withheld them from him. By a paragraph of his counter-claim the defendant averred that T., a third party, made defendant to the counter-claim, contracted that, if the defendant paid a certain sum of purchase-money for land to

PRACTICE (Since the Judicature Acts)—DEFENCE—*con.*

the plaintiff, T. would discharge an incumbrance on the land, but that T. had failed so to do, and claimed damages against T.:—*Held*, that this paragraph of the defendant's counter-claim must be struck out, because the plaintiff could not have been made a co-defendant with T. in an action on that contract by the defendant. BARCLAY *v.* M'HUGH - **E. D. XII. 176**

2. —— *Embarrassing—Trespass—Plea of justification—Payment of money into Court—O. XXX., sched. r.* 30—*O. XXVI., sched. r.* 28.] In actions to recover damages for continuing trespass (in one of which actions an injunction was also sought for) the defendants pleaded: (1) that they did the acts complained of in the exercise of their legal rights; and (2) that a certain sum, which was brought into Court, was sufficient to satisfy the plaintiff's claim for damages. The plaintiffs having moved to strike out the latter plea as embarrassing:—*Held*, that, although the plea of payment into Court was not necessarily embarrassing, and although a defendant might plead it together with a traverse of the plaintiff's title, still, if he did so, the plaintiff was entitled to put him to his election upon which plea he would proceed. The Court accordingly, having asked the plaintiffs respectively whether if the plea of title were withdrawn they would be willing to accept the sums lodged in Court in satisfaction of their causes of action, to which they agreed, and having asked the defendants if on these terms they would withdraw their pleas of title, which they declined to do—struck out the plea of payment into Court as embarrassing. O'DONNELL *v.* CALLANAN. **E. D. XX. 25; C. A. XX. 29.** CAMPBELL *v.* M'CLELLAND - - **C. A. XX. 29**

3. —— *Extension of time for delivering—O. XXI., r.* 1—*Notice*] A motion for extension of time to deliver a defence cannot be made *ex parte*. HEMMING *v.* HALL **[Q. B. D. XIII.** *M.* 89

4. —— *Extension of time for delivery of—Notice—O. XXI., r.* 1.] When leave is asked to extend the time for the delivery of a statement of defence after the time for doing so has expired, notice of the application must be given to the plaintiff. BEALIN *v.* GREGG - - - **E. D. XII. 137**

5. —— *Leave to plead additional defences—O. XVIII., r.* 9—*Not guilty by statute.*] In an action against the sanitary surveyor of a town, the Court gave leave, under O. XVIII., r. 9, to the defendant to plead traverses, in addition to the plea of not guilty by statute, under the Public Health Act. PORTE *v.* JOYNT - - - **E. D. XIII.** *M.* 123

6. —— *Motion to set aside—Delay.*] A motion to set aside a defence after issue joined, which was not made within three weeks after the defence was filed, was refused with costs. HACKETT *v.* LALOR - - **C. P. D. XVII.** *M.* 126

7. —— *Not guilty by statute—Leave to plead additional defence—O. XVIII., r.* 9.] In an action brought to recover damages for false arrest, and malicious prosecution, in reference to the robbery of a shawl which the plaintiff was charged with having stolen from the defendant's shop, the Court refused to give the defendant leave to plead both "not guilty by statute," and a plea that a felony had been committed, and that there was reasonable and probable cause to suspect the plaintiff; but directed the defendant to elect between the two pleas. JOHNSTONE *v.* KAVANAGH **[Q. B. D. XIII.** *M.* 121

8. —— *Particulars of payment.*] Where a plea of payment is made by the defendant full particulars must be stated; as also where a counter-claim is made for money demand against the plaintiffs. JAMES *v.* HUNTER **C. P. D. XIII.** *M.* 375

9. —— *Pleading a negative pregnant.*] Where the defendant pleaded a negative pregnant, which was embarrassing and ambiguous, the defence was set aside, with liberty to amend. HARRIS *v.* GREAT BRITAIN MUTUAL LIFE ASSURANCE SOCIETY **[E. D. XIII. 65 note**

10. —— *Pleading general issue—Immaterial allegations—Necessity to traverse—Allegations which contain gist of action—*

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PRACTICE (Since the Judicature Acts)—DEFENCE— *continued.*

Judicature Act, sched. r. 23—*O. XVIII., r.* 10.] In an action upon a solicitor's bill of costs, the statement of claim alleged that a signed bill of costs had been delivered to the defendant; whereto the defendant pleaded (third paragraph) that "he does not admit the statements or any of them contained in the third paragraph of the statement of claim." Another paragraph (the fourth) of the statement of defence was to the effect that the charges claimed by the plaintiff in respect of certain solicitors' costs were not taxed by any proper taxing authority, and that, should the defendant be adjudged liable to pay to the plaintiff for these matters, the amount of the said charges should be referred for taxation to the proper taxing officer:—*Held*, that the third paragraph, though it amounted to the general issue, was sufficiently specific, inasmuch as the allegations to which it was pleaded were immaterial; but that the fourth paragraph alleged no facts of defence to the statement of claim, and should therefore be struck out. *Per* Dowse, B.: Where a proposition is the gist of an action, a general traverse is not allowable, but the denial must be specific, but where it is not the gist of the action a general denial is sufficient. *Jones* v. *Quinn* (XIII. 16), discussed. QUIRK *v.* FITZGERALD - **E. D. XIII. 64**

11. —— *Setting aside—Raising immaterial issue—Judicature Act, sched. r.* 28.] A defendant cannot put forward by way of defence matters which would merely go in reduction of damages. LALOUETTE *v.* ROBSON - **C. P. D. XII. 171**

12. —— *Time for delivery of—Day of service—Appearance —O. XII., r.* 5—*O. XXI., r.* 1—*Appendix (A.), Part I., Form No.* 1—*Judicature Act, s.* 26.] In the computation of the time for delivering a statement of defence, the day of service is not included. Where the rules contain no provision on points of practice, the practice remains as before the passing of the Judicature Act. DUCKWORTH *v.* M'CLELLAND **[C. P. D. XII. 136**

13. —— *Want of consideration—Judicature Act, sched. r.* 23 —*O. XVIII. rr.* 3, 13, 14.] In a defence to an action on a dishonoured cheque the want of consideration alleged should be set forth on the pleadings; also the want of authority by the defendant; and it should be alleged that plaintiff had notice of the same. MALONE *v.* MALONE - **C. P. D. XVIII. 97**

—— Costs of filing before moving to remit **XXVI.** *M.* 324
See PRACTICE—COSTS. 12.

—— Default.
See PRACTICE—DEFAULT. 4—11.

PRACTICE—DEMURRER.

1. —— *After verdict.*] An appeal from an order on demurrer came before the Court after verdict. *Quære*, would not a defect in a plea be cured by the verdict? CONWAY *v.* BELFAST AND N. C. RAILWAY CO. - - - **C. A. XV.** *M.* 310

2. —— *Demurrer books—O. XXVII., r.* 6—*G. O.*, 1854, *r.* 50] O. XXVII., r. 6, allowing either party to enter a demurrer "immediately," must be taken as repealing G. O., 1854, r. 50, requiring demurrer books to be made up; and, accordingly, a party whose pleading is demurred to is bound, without waiting for points of demurrer or demurrer books, to enter the demurrer within ten days; otherwise the demurrer is admitted. HOLMES *v.* CONNOLLY - - - - **E. D. XVI. 31**

3. —— *Form of—Specific statement of ground in law— O. XXVII., r.* 2—*App.* (*C.*) *Form* 20—*Setting aside demurrer.*] A defendant, having obtained leave from the Court to defend and demur, delivered his statement of defence, and demurred to the statement of claim "on the ground that the facts alleged therein do not show any cause of action in the plaintiff against the said defendant, and on other grounds sufficient in law to sustain this demurrer." Upon the hearing of a motion on behalf of the plaintiff, to set aside this demurrer "as embarrassing, and filed contrary to the provisions of the General Orders, as not specifying some ground in law for the demurrer":—*Held*, that the demurrer was bad, not having complied with the requirements of O. XXVII., r. 2, and should be set aside. DUNVILLE *v.* ALEXANDER **[R. XIII. 69**

PRACTICE (Since the Judicature Acts)—DEMURRER— *continued.*

4. —— *Liberty to reply and demur—Summons—O. XXVII., r.* 5.] When a plaintiff applies for liberty to reply and demur to a paragraph of the defendant's statement of defence, the application must be made on summons. KANE *v.* STONEYFORD RIVER DRAINAGE CO. - - - **C. P. D. XVI. 93**

5. —— *Liberty to plead and demur—Summons—O. XXVII., r.* 5.] An application for leave to plead and demur must be by summons. O'KEEFFE *v.* WALSH **[Q. B. D. XIII.** *M.* 374

6. —— *Liberty to demur and join issue—Liberty to reply and demur—O. XXIII., r.* 2—*O. XXVII., r.* 5—*O. LII., r.* 2.] A motion for leave to demur and join issue can be moved *ex parte*; a motion for leave to reply and demur is to be moved on summons. ULSTER BANKING CO. *v.* BRYAN **[Q. B. D. XII.** *M.* 310

7. —— *Liberty to demur and plead—Motion to Court or Judge—O. XXVII., r.* 5—*O. LII., r.* 2.] A motion for liberty to demur and to plead after the demurrer is overruled, under O. XXVII., r. 5, is movable before a Judge in Chambers. SLATTERY *v.* MASSY - **E. D. XII.** *M.* 59

8. —— *Liberty to demur, reserving liberty to plead— O. XXVII., r.* 5.] The defendants obtained *ex parte* an order for liberty to demur to the writ of summons, reserving liberty to plead should the demurrer be overruled. COMYN *v.* LIVERPOOL, LONDON AND GLOBE INSURANCE CO. **[C. P. D. XII.** *M.* 109

9. —— *Lodging of paper books for Judges—O. XXVII., rr.* 6, 7—50, *G. O.*, 1854.] The paper-books for the judges ought to be lodged by the plaintiff, if the defendant, who has entered the demurrer and given notice of it, has failed to lodge them. CRAWFORD *v.* HEATHCOTE **[Q. B. D. XII. 135**

10. —— *Misjoinder of parties—Unconnected causes of action —Multifariousness—O. XV., r.* 4—*O. XVI., r.* 8—*O. XVIII., r.* 3—*O. XXVII., r.* 1.] It is not a ground of demurrer to a statement of claim that two or more parties have been joined as defendants, in the alternative, although they are not shown to have been in privity, and the causes of action against them are disconnected. THE BLAKE AND GOODYEAR BOOT AND SHOE MACHINERY CO. *v.* MOORE **Q. B. D. XV. 60**

11. —— *Not maintainable where writ is specially indorsed, and notice served under O. XX., r.* 2.] *Maher* v. *Taylor*, (XII. 74), and *Kirwan* v. *Coen* (XII. M. 295), applied and acted upon where, upon demurrer to a statement of defence, it appeared that the writ of summons, specially indorsed under O. II., r. 3, followed by the delivery, as a statement of claim, of a notice under O. XX., r. 2, did not sufficiently state the plaintiff's claim. BELFAST BANKING CO. *v.* DOHERTY **[Q. B. D. XIII. 40**

12. —— *Reply — Departure — Inconsistent statements — O. XVIII., r.* 12.] A plaintiff is entitled, in his reply to a statement of defence, to rely on any grounds that will sustain his action; and an allegation in the reply inconsistent with one in the statement of claim is not necessarily a sufficient ground on which to allow a demurrer. O'SULLIVAN *v.* HAMILTON **[C. P. D. XV. 96**

PRACTICE—DISCONTINUANCE—*After reply—Rules, June*, 1891, *O. XXVI., r.* 1.] The Court will not give liberty to discontinue an action after the reply has been filed, unless the party against whom it is sought to discontinue has had notice of the application. BUTLER *v.* MARQUIS OF CONYNGHAM **[Q. B. D. XXVI. 119**

PRACTICE—DISCOVERY—DOCUMENTS.

1. —— *Action by administratrix* de bonis non—*O. XXXI., r.* 11.] In an action by an administratrix *de bonis non* against the defendant, who had admitted the receipt of money which had been invested in stock and shares, subsequently sold, for the use of a former administratrix, and who claimed credit for money stated to be paid to the same, a motion for discovery by the defendant was granted. LLOYD *v.* JOLLY **[Q. B. D. XII.** *M.* 134

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PRACTICE (Since the Judicature Acts)—DISCOVERY—DOCUMENTS—*continued.*

2. —— *Affidavit—O. XXXI., r.* 11.] An order for production of documents was made without an affidavit; but no right exists in all cases as a matter of course to obtain such an order without an affidavit. KAVANAGH *v.* GABBETT
[Q. B. D. XII. *M.* 47

3. —— *Application for, how to be made—O. XXXI.*] If discovery or inspection of documents be applied for before the statement of defence be delivered, the application must be by summons; if after the defence be delivered, it should be *ex parte*. DIXON *v.* UPPER INNY DRAINAGE BOARD
[C. P. D. XIII. *M.* 375

4. —— *Application for, how and when to be made—Motion or summons before Judge at Chambers—Affidavit, when to be required—Documents shown by pleadings to be* in esse *and material to action—Appeal from order made by Judge and purporting to be made by the Court—Costs—Judicature Act, ss.* 24, 44, 45, 48—*O. XXXI., r.* 11—*O. LIII., rr.* 2, 3.] In an action for recovery of land and arears of rent, to which the plaintiff claimed to be entitled under a Landed Estates Court conveyance, the defendant pleaded that he held the land under two leases made prior to the conveyance, and subject to which the conveyance was made. The plaintiff thereupon applied, on notice of motion, to a Judge of the Divisional Court in which the action was brought, for an order that, under O. XXXI., r. 11, the defendant should make discovery on oath of the documents that were, or had been, in his possession or power relating to any matter in question in the action; not grounding the application on any affidavit. The application was refused, and, though it was alleged that the Judge was, in fact, sitting at Chambers, the order purported to have been made "by the Court." On appeal from that order direct to the Court of Appeal:—*Held*, that the order should be treated as having been made by "the Court" and so that the appeal lay as taken: that, although an affidavit might be required on such applications, to show at least some reasonable grounds for a belief that the party was in possession of documents of which the discovery was sought, it was here unnecessary, having regard to the facts appearing on the pleadings; and that the plaintiff was entitled to discovery of the documents, their existence and materiality being apparent on the pleadings. HEALY *v.* SMYTH - - - - - - - - - C. A. XIII. 56

5. —— *Application after appearance—Summons—Affidavit—O. XXXI., rr.* 10, 11.] A motion for discovery of documents was refused, on the ground that, being made after the defendant had entered an appearance, the application should be on summons. MORRIS *v.* ALLEN Q. B. D. XIV. 13

6. —— *Application before statement of claim—O. XXXI., rr.* 11, 12.] An order cannot be made for discovery of documents before the statement of claim is delivered. M'INTYRE *v.* BODEGA CO. & FOY RIVIERE - - C. A. XVIII. *M.* 39

7. —— *Application after service of writ—O. XXXI., rr.* 1, 10.] An order for discovery of documents was made after a writ had been served, and before any pleading had been served. HAMILTON *v.* BOYLAN - V. C. XV. *M.* 22

8. —— *Chamber motion—Application by solicitor—Rules, June*, 1891, *O. XXXI., r.* 12—*O. LIV., r.* 13 (6).] An application for discovery of documents is a Chamber motion under O. LIV., r. 13 (6) of Rules of June, 1891, and as such is movable by a solicitor; and the clerk in the office should not issue a summons in such case without drawing attention to the fact that a summons is unnecessary. Where a mining company, in their affidavit of documents, did not disclose an agreement for the purchase of a mine (which had been referred to in the prospectus of the company), the Court—in an action for calls upon shares—ordered the company to make a further affidavit disclosing the agreement. AARON'S REEFS COMPANY *v.* TWISS - E. D. XXVI. 11

9. —— Ex parte *motion—O. XXXI., rr.* 10, 11—*O. LII., r.* 2—*O. LIII., r.* 2.] A motion for discovery of documents should be made *ex parte* before a Judge in Chambers. WRIGHT *v.* GREAT NORTHERN RAILWAY CO.
[E. D. XII. *M.* 242

PRACTICE (Since the Judicature Acts)—DISCOVERY—DOCUMENTS—*continued.*

10. —— Ex parte *application after issue joined—O. XXXI., r.* 11.] Order for discovery of documents was granted, on an *ex parte* application after issue had been joined. MORAN *v.* O'FARRELL - - - - - E. D. XVII. 63

11. —— *Inspection—O. XXXI., r.* 17.] On an application under O. XXXI., r. 17, the Court will not grant an order for inspection of documents, though some of them are referred to in the pleading of the opposite party, if the documents are not in the possession or power of that party. CRONIN *v.* PAUL
[E. D. XVI. 56

12. —— *Inspection—Garnishee—Plaintiff's right of inspection—O. XXXI., rr.* 13, 14, 16, 17—*O. XLIV., r.* 10.] Where the garnishee, in his affidavit to show cause, referred to documents, but did not make exhibits of same:—*Held*, that the plaintiff was entitled under O. XXXI., r. 13, to serve notice upon the garnishee under r. 14, and, on the failure of the garnishee to reply to the notice, to institute a motion under rr. 16, 17. M'CARTHY *v.* SPILLANE
[C. P. D. XVIII. 99

13. —— *Inspection—O. XXXI., r.* 10.] The Court will not make an order for the inspection of documents, before the statement of claim is delivered, unless a special case has been made by affidavit, even though the action is for the purpose of setting them aside. HUNTER *v.* NELSON V. C. XV. 16

14. —— *Inspection—Trespass to several fishery—Documents relating to Plaintiff's title—Reasonable ground for believing that documents exist, and that they are in the possession of a party to the action—O. XXXI., rr.* 11, 12.] The Court will not make an order under O. XXXI., r. 11, when there are reasonable grounds for believing that it would be illusory, by reason of there being no documents in existence relating to any matter in question in the action; but if there be *primâ facie* evidence of the existence of documents, one party is entitled to appeal to the oath of the other as to such documents being in his possession or power, and it is not necessary to show that a document within the Rule is in the possession or power of the party from whom discovery is sought. In an action of trespass to two several fisheries in a certain river, the plaintiff in his statement of claim averred that he was seized in fee and possessed of one of the fisheries in question in that portion of the river where he was riparian proprietor, and of the other where he did not claim the bed and soil of the *locus in quo*. By their defence the defendants traversed the alleged trespass and the title of the plaintiff to the fisheries claimed by him. Issue was joined, and the defendants applied, under O. XXXI., r. 11, for an order for the discovery upon the oath of the plaintiff of the documents in his possession or power relating to any matter in question in the action:—*Held*, *per* Palles. C.B. (Fitzgerald, B., *dubitante*), that the defendants were entitled to the order sought for, on the ground that there was a strong presumption of the existence of documents relating to a matter in question in the action. *Held*, further, that the title to the inspection or production of such documents is a matter to be determined, not upon an application for an order under r. 11, but upon the subsequent application to compel production or inspection after the order has been made in pursuance of r. 12. *Healy* v. *Smith* (XIII. 56), discussed. *Johnston* v. *Smith* (36 L.T., N.S. 741), distinguished. POWELL *v.* HEFFERMAN - - - E. D. XIII. 179

15. —— *Inspection—Form of order—O. XXXI., rr.* 10, 11—*O. LIII., r.* 2 (6), (7).] The form of order for discovery and inspection of documents settled. NEILAN *v.* LAHIFF
[E. D. XII. 46

16. —— *Inspection—Trust deed—Interrogatories—O. XXXI., r.* 13—*Privilege.*] A motion for liberty to inspect a trust deed, and to take copy thereof, in order to ascertain particulars as to the source and amount of the trust fund, was refused. GREER *v.* CALDBECK - - - - C. P. D. XIX. 68

17. —— *Insufficiency of affidavit of—Application for further affidavit—O. XXXI., r.* 12.] An affidavit of documents, made pursuant to O. XXXI., r. 12, is conclusive against the party

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PRACTICE (Since the Judicature Acts)—DISCOVERY—DOCUMENTS—*continued.*

seeking discovery, and no further affidavit will be ordered, unless it be shown either from the affidavit itself, or from the documents therein referred to, or from admissions in the pleading of the party deposing, that other documents exist, in his power or possession, which are material and relevant to the action. *Jones* v. *The Monte Video Gas Co.* (5 Q. B. D. 556), followed. ROSS *v.* DUBLIN TRAMWAYS CO. - **E. D. XV. 72**

18. —— *Motion in alternative that defence be struck out—Privilege—Tendency to criminate—Affidavit—O. XXXI., rr.* 11, 12, 19.] It is not sufficient for a defendant against whom an order has been made for the discovery on oath of documents relating to any matter in question in the action, to make an affidavit that he declines to comply with the order, on the ground that the making of the affidavit required by the order and the contents of such affidavit might criminate him. He must make the affidavit in the form mentioned in O. XXXI., r. 12 (Form No. 9, App. B.) and claim his privilege as provided in that form. It cannot be made a part of the order for the discovery of documents that in default of compliance with such order the defence should be struck out, inasmuch as O. XXXI., r. 19, contemplates that the order to strike out the defence should be subsequent to the neglect to comply with the order for the discovery of documents. BELL *v.* M'PHILPIN **[Q. B. D. XXV. 23**

19. —— *O. XXXI., r.* 11—*Chancery (Ireland) Act*, 1867, *ss.* 70, 73.] Cross motions, without affidavits, were granted, by consent, for discovery of documents. CARROLL *v.* BUTLER **[E. D. XII. *M.* 121**

20. —— *Privilege—Confidential communications—O. XXXI., r.* 10.] In an action by an employer against a guarantee company in respect of their guarantee of the honesty of an employee of the plaintiff, a motion for the inspection of a reply given by A. to certain queries put to him by the defendants respecting the employee's honesty, was granted. FEARNLEY *v.* LONDON GUARANTEE CO. - - **E. D. XII. *M.* 311**

21. —— *Production—Libel—O. XXXI., r.* 11.] An *ex parte* motion for discovery of documents in an action of libel, made without an affidavit, was granted. ROE *v.* DUBLIN DISTILLERIES CO. - - - **C. P. D. XII. *M.* 110**

—— Public officer—Attachment - - **XXII. 32**

See TOWN COMMISSIONERS. 3.

PRACTICE—DISCOVERY—INTERROGATORIES.

1. —— *Administering before statement of claim or defence—O. XXXI.—Information given in affidavits in support of final judgment motion.*] A motion for interrogatories was refused where the information required was given in affidavits on a motion for final judgment heard the same time. PALMER *v.* M'ENEANEY - - - - - **Q. B. D. XIII. *M.* 89**

2. —— *After issue joined—Rules, June*, 1891, *O. XXXI., r.* 1.] An application for liberty to administer interrogatories after issue has been joined should be grounded on an affidavit setting forth the necessity for them at that stage of the case. ROWLANDS *v.* HOOPER - - **Q. B. D. XXVI. 131**

3. —— *After reply—Rules, June*, 1891, *O. XXXI., r.* 1.] Leave to administer interrogatories after reply will only be granted on special grounds or on an affidavit satisfying the Court that such liberty should be given. HANNAN *v.* PLUNKETT - - - - - **Q. B. D. XXVI. *M.* 304**

4. —— *Answer—Additions not printed or verified by affidavit.*] The Court refused to order the officer to receive the defendant's answer to interrogatories where four words had been added in writing after it was printed and verified. STEVENSON *v.* HALL - - - - - - **R. XII. *M.* 109**

5. —— *Delivery of, to joint stock company—Leave for, how obtained—O. XXXI., r.* 4.] When a statement of defence has been delivered by a joint stock company, a motion to deliver interrogatories to an officer of the defendant company must be on summons. *Semble*, before a statement of defence has been delivered leave may be obtained *ex parte*. M'QUEEN *v.* GREAT S. AND W. RAILWAY CO. - **C. P. D. XII. 171**

PRACTICE (Since the Judicature Acts)—DISCOVERY—INTERROGATORIES—*continued.*

6. —— *Delivery before statement of claim—O. XXXI., r.* 1.] Leave to deliver interrogatories to the defendant before the statement of claim was delivered was refused. ANON. **[Q. B. D. XII. *M.* 161**

7. —— *Delivery by defendant after plea—Affidavit—O. XXXI., r.* 1.] An order for the delivery of interrogatories by the defendant after defence filed was made, no affidavit being filed in support of the motion. WHELAN *v.* SHAW **[E. D. XII. *M.* 50**

8. —— *Fishing and irrelevant—Application to compel answer to—O. XXXI., rr.* 7, 9.] In an action for the price of a mare sold by the plaintiff to the defendant, the defence to which was that the mare was not of the stipulated quality, interrogatories administered by the defendant, asking the plaintiff the person from whom he had purchased the animal, the time and place of the purchase, and the price paid by him, were ordered to be struck out as irrelevant. LOVE *v.* PAWSON **Q. B. D. XII. 135**

9. —— *Husband and wife—Separate estate—Rules, June*, 1891, *O. XXXI., r.* 1.] On a motion for leave to administer interrogatories, as to her marriage settlement and separate estate, to a defendant who had been sued as a spinster but had married *pendente lite*:—*Held*, by Sir Peter O'Brien, C.J., and Harrison, J., that such interrogatories were not admissible under O. XXXI., r. 1. *Held*, by Johnson and O'Brien, JJ., that they were so admissible. LEE *v.* BUCHANAN **[Q. B. D. XXVI. 50**

10. —— *Leave to deliver after close of pleadings—Action for libel—Answers tending to criminate.*] In an action for libel the defendant after the close of the pleadings, applied for leave to deliver interrogatories inquiring, amongst other things, whether the plaintiff was the author of a pamphlet in a newspaper comment on which the alleged libel was contained; and whether he had written or had been a party to certain other newspaper articles dealing with a pamphlet in reply to which his own pamphlet was written—*Held*, that such interrogatories ought not to be allowed, as the answers might tend to criminate the plaintiff and expose him in turn to an action for libel, BEHAN *v.* TICKELL - - - - **E. D. XX. 23**

11. —— *Libel in newspaper—Discovery of proprietorship—Answers tending to criminate—6 & 7 Wm. IV., c.* 76, *s.* 19—32 & 33 *Vic., c.* 24—33 & 34 *Vic., c.* 99—*Judicature Act, s.* 27 (7)—*O. XXXI., r.* 5.] In an action claiming damages for an alleged libel published in a newspaper, but not making any claim for discovery, the plaintiff served interrogatories seeking discovery as to the fact of publication, and asking—Was not the defendant the proprietor of the newspaper at the time of said publication? to which the defendant declined to answer, on the ground that criminal proceedings had been commenced against him by the plaintiff in respect of the same alleged libel, and that the interrogatories tended to criminate him in said pending prosecution:—*Held*, that the right to discovery of the proprietorship of the newspaper, which, under 6 & 7 Wm. IV., c. 76, s. 19, and 32 & 33 Vic., c. 24, might formerly have been enforced by a bill in equity, is unaffected by the Judicature Act, which merely alters the procedure for enforcing the right, and that, whether discovery be claimed in an action or not, the right to it may now be enforced by interrogatories; and that this right should be enforced in the present action, notwithstanding it being alleged that the interrogatories tended to criminate the defendant, it being provided by 6 & 7 Wm. IV., c. 76, s. 19, as re-enacted by 32 & 33 Vic., c. 24, that such discovery is not to be made use of in any proceeding against the defendant save in that in which the discovery is made. LEFROY *v.* BURNSIDE - - - **E. D. XIII. 147**

12. —— *Mode of objecting to—Irrelevance—Interrogatories as to credit of party—O. XXXI., rr.* 5, 7.] Objections may be taken on any ground to interrogatories either on a summons within four days after service, to strike them out under

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PRACTICE (Since the Judicature Acts)—DISCOVERY—INTERROGATORIES—*continued.*

O. XXXI., r. 5, or by the interrogated party's affidavit in answer, though filed after that time, under r. 7. Where, in an action for illegal seizure of the plaintiff's goods under an execution against A., the defendant traversed the doing of the acts complained of, and the plaintiff's property in the goods, interrogatories by the defendant, which sought to ascertain whether A. had transferred the goods in question to the plaintiff, or if they were ever A.'s property, and how plaintiff procured them, and how plaintiff obtained the money he paid to release the goods from seizure, were disallowed, as seeking merely to find out the plaintiff's case; others were disallowed as irrelevant and immaterial; and one as to whether the plaintiff ever alleged that the goods had been assigned by bill of sale to B., and that plaintiff was in charge of the goods as B.'s salesman, was disallowed as going only to the plaintiff's credit. DUFFY *v.* M'HUGH - - **E. D. XII. 79**

13. —— *Questions of law and fact involved—Evasive answering.*] If a defendant is asked whether he possesses certain specifically described lands in a certain place, it is a sufficient answer to say he possesses lands in that place, as mentioned in the statement of claim. If a defendant be asked to answer an interrogatory that involves matters of law, as well as matters of fact, it is sufficient for the defendant merely to state what his contention is. The judgment of the Queen's Bench Division reversed. IRWIN *v.* SMITH.

[Q. B. D. XXV. 22; C. A. XXV. 23. note

PRACTICE—DISMISSAL FOR WANT OF PROSECUTION.

1. —— *Action brought before Judicature Act, 1877—O. XXXV., r. 4*] An action which had been three terms at issue before the Judicature Act came into operation, was dismissed with costs. HOCTOR *v.* DELANY

[Q. B. D. XII. *M.* 134

2. —— *Costs of motion—Delay—O. XXXV., r. 4—C. L. P. Act*, 1853, *s.* 106, 178—*G. O.*, 1854.] In 1876 an order was obtained that the plaintiff should be at liberty to proceed in an action in which the defence was filed in 1874. Some days afterwards an order was obtained that the plaintiff should proceed for trial at the Assizes next after the expiration of 20 days, or in default, that the defendants be dismissed with costs. By an oversight this rule was not made absolute. In February, 1878, an order for liberty to proceed was made absolute. The action was subsequently dismissed for want of prosecution, with costs, but without the costs of the motion, through the defendant's delay in having the second order of 1876 made absolute. HALL *v.* WREN **E. D. XII. *M.* 110**

3. —— *Discontinuance after service of notice of motion—Costs—O. XXXV., r.* 4.] After a motion was served that a suit be dismissed for want of prosecution, the plaintiffs served a notice of discontinuance, and offered to pay the defendant's costs, exclusive of the costs of the motion:—*Held*, that costs of the motion should be allowed. SCOTTISH AMICABLE INSURANCE CO. *v.* DOHENY - - - - **C. P. D. XII. *M.* 296**

4. —— *Former trial—Amended pleadings—Notice of trial served, but withdrawn—O. XXXV., rr.* 2, 4.] A verdict in an action, tried at the Spring Assizes, 1886, was subsequently set aside, and a new trial was ordered at the Spring Assizes, 1887; either party being bound to accept short notice of trial, and liberty being given to both to amend the pleadings. Amended statements of claim and defence were delivered, and issue joined. Notice of trial at the Spring Assizes, 1887, was served by the plaintiff, but was withdrawn, and no further steps were taken in the action. Under these circumstances, the defendant having moved to dismiss the action for want of prosecution, under O. XXXV., rr. 2, 4:—*Held*, that, inasmuch as no effective notice of trial had been served after the joinder of issue in 1887, the defendant was entitled to have the action dismissed for want of prosecution. *Foot* v. *Benn* (16 L. R. (Ir.) 247), questioned. ROCHE *v.* HOURIHAN

[Q. B. D. XXI. 72

PRACTICE (Since the Judicature Acts)—DISMISSAL FOR WANT OF PROSECUTION—*continued.*

5. —— *Motion on notice—O. XXXV., r. 4—O. LII., rr.* 1, 2—*O. LIII., rr.* 3, 6.] An application to dismiss an action for want of prosecution should be made by motion on notice. JOHNSTON *v.* HACKETT - - **C. P. D. XII. *M.* 295**

6. —— *Notice of motion—Date not given in notice—O. LII., r.* 3.] Where a notice of motion did not specify the date on which it was to be moved, but stated that it would be moved on the "first opportunity," and two clear days had elapsed since the service:—*Held*, that the notice of motion was sufficient within O. LII., r. 3. CAMPBELL *v.* ARMSTRONG

[C. P. D. XVI. 3

7. —— *Security for costs—Judgment on defendant's counter-claim on admissions in pleadings—Judicature Act, s.* 28 (11)—*O. XXXV., r.* 4.] Where a plaintiff does not deliver a reply to the defendant's counter-claim within the time limited for that purpose, the defendant is entitled to move for judgment on the counter-claim, on admissions of fact in the pleadings, and to have the original action dismissed for want of prosecution, notwithstanding that, on the defendant's application, an order had been made staying proceedings until the plaintiff should give security for costs. LONDON ROAD CAR CO. *v.* HARFORD - - - - - **Q. B. D. XX. 22**

8. —— *Several defendants—O. XXXV., r.* 4.] One of several defendants may move to dismiss an action as against himself without serving notice on his co-defendants. *Ward* v. *Ward* (11 Beav. 162) followed. CARLISLE *v.* BELFAST UNION GUARDIANS - - - **E. D. XV. 49**

9. —— *Suit commenced before Judicature Act, 1877—Close of pleadings—O. XXXV. rr.* 3, 4.] A bill has been filed in December, 1877, and time to answer was extended, the defence being filed on 16th February, 1878; no further steps having been taken, a motion, on May 7th, that the suit should be dismissed for want of prosecution was granted. WHITE *v.* EGAN - - - - - **B. XII. *M.* 241**

10. —— *Statement of claim dispensed with—Notice of trial not given within six weeks after close of pleadings—Statement of defence not delivered—O. XXXV., rr.* 2, 4.] A writ of summons for recovery of land was served on February 5th, and an appearance was entered stating that delivery of a statement of claim would be dispensed with. The plaintiffs did not deliver the statement of claim, and did not give notice of trial within six weeks. A motion to dismiss for want of prosecution was refused, with leave to the defendant to deliver a defence. WHITFIELD *v.* DALY

[Q. B. D. XII. *M.* 241

11. —— *Two of several defendants not served with statement of claim—O. XXVIII., r.* 1.] Where two of several defendants in an action have appeared to the writ of summons, and the time for the plaintiff to deliver his statement of claim has expired, but the plaintiff has, without the knowledge of those defendants, obtained an order to continue the action in the names of several persons as defendants in place of the principal defendant, who has died, those defendants cannot move to dismiss the action as against them for want of prosecution. The plaintiff should have served notice of the order for revival on the said defendants; and the said defendants should have written to the plaintiff's solicitor to inquire how the action stood as against the other defendants. TELLETT *v.* LALOR - - - **C. P. D. XV. 70**

PRACTICE—EVIDENCE.

1. —— *Affidavit and commission—O. XXXVI., r.* 1.] An order will not be made that certain facts may be proved by affidavit, if they are facts directly in issue in the action and going to the gist thereof:—*Semble*, where such an order is made on the application of a party, the evidence of the opposite party as to these facts must also be given by affidavit. CRONIN *v.* PAUL - - - - - **E. D. XV. 121**

2. —— *Officer of Court—Compelling to attend in criminal trial.*] The Court refused to order one of its officers to attend

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PRACTICE (Since the Judicature Acts)—EVIDENCE— *continued.*

a criminal proceeding as a witness, the proper course being for the Crown Office to issue a summons. R. (CROSBIE) *v.* O'HARE - - - - - **Q. B. D. XII.** *M.* **22**

3. —— *Special case — Lunatic — Sufficient evidence — O. XXXIV., r.* 9.] On a motion for leave to set down for argument a special case where a lunatic was a party, the Court declined to accept as "sufficient evidence" the statement of counsel that the statements in the special case were true, and required an affidavit. MAJOR *v.* MAJOR **V. C. XVII. 43**

4. —— Subpœna duces tecum—*Production of documents—Telegrams—73 G. O.*, 1854.] In an action for malicious prosecution the Court granted a *subpœna duces tecum* for the production by the Post Office officials of telegrams sent by Constabulary officers relating to the prosecution; and a similar order directed to the Crown solicitor as to the informations and depositions. COLGAN *v.* QUINN **[E. D. XVII. 30**

5. —— *Witness out of jurisdiction—Subpœna.*] It is not necessary that the proposed witnesses should actually refuse to attend before *subpœnas* can be issued out of the jurisdiction. KINGDOM YACHT CO. *v.* WILSON **[C. A. XXVI. 130**

PRACTICE—EXECUTION.

1. —— *After six years since judgment—Leave to issue—Defendant a lunatic—O. XLI., r.* 19.] Leave to issue execution on foot of a judgment recovered more than six years ago was granted: full information as to the nearest relatives of the defendant, who was a lunatic, and of the nature of his property, being given. MALONE *v.* YOUNG - **C. P. D. XII.** *M.* **296**

2. —— *Assignment of judgment—Notice of assignment—Judgment debtor—Judicature Act, s.* 28 (6)—*O. XLI., r.* 19.] Where a judgment is assigned, notice of the assignment must be served on the judgment debtor before a summons is taken out for leave to issue execution. THE GOVERNOR AND COMPANY OF BANK OF IRELAND *v.* LONDONDERRY AND LOUGH SWILLY RAILWAY CO. - - - - - - **C. P. D. XIII. 30**

3. —— *Change of parties by death—O. XLI., r.* 19.] A motion for leave to issue execution against the defendant, P., as administrator of his father, L., in an action brought against them to recover money on promissory notes, in which judgment had been marked two days after the death of L., P. having no goods, was refused; but liberty was given to serve P. with a notice making him a defendant as administrator of L. O'REILLY *v.* O'REILLY - - **C. P. D. XII.** *M.* **296**

4. —— *Costs — Judgment — Action for recovery of land.*] Where in an action for the recovery of land on the title judgment with costs has been obtained by the plaintiff, and execution for possession issued, he may subsequently issue execution, by writ of *fi. fa.*, against the defendant's goods for his taxed costs, although at the time of issuing execution for possession such costs had not been taxed or entered on the judgment. *Beasley* v. *Chapman* (6 L. R. (Ir.), 393), dissented from. HAROLD *v.* DALY - - - **Q. B. D. XXIII. 58**

5. —— *Death of defendant—Administration not taken out—O. XLI.*] Where the defendant had died, and his widow and son had entered into possession of his farm and effects, but administration had not been taken out to him, a motion for leave to issue execution against the widow as executrix *de son tort* was refused. CRESSWELL *v.* CRESSWELL **[Q. B. D. XIII.** *M.* **374**

6. —— *Discovery in aid of—Oral examination of defendant —Ex parte application—Rules, June,* 1891, *O. XLII., r.* 35.] An application under O. XLII., r. 35, of the Rules of June, 1891, for an order for the oral examination of a defendant as to debts due to him by third parties, can be made *ex parte*. LEWIS *v.* BATEMAN - - - **Q. B. D. XXV. 84**

7. —— *Judgment more than six years recovered—Rules, June,* 1891, *O. XLII., r.* 25.] A motion for leave to issue execution

PRACTICE (Since the Judicature Acts)—EXECUTION— *continued.*

on foot of a judgment, where more than six years have elapsed since the date of it, should be on notice under Order XLII., r. 25. DEVITT *v.* M'COY **[Q. B. D. XXVI.** *M.* **403**

8. —— *Liberty to issue against one defendant—Judgment more than six years old—O. XLI., r.* 19—*O. LII., r.* 2.] A motion for leave to issue execution against the survivor of two defendants, on a judgment more than six years old, should be on notice. M'BIRNEY *v.* CURTIS **[E. D. XII.** *M.* **59**

9. —— *Liberty to issue on judgment more than six years after marking—Service of notice of motion.*] Notice of motion for liberty to issue execution on a judgment more than six years old, must be served for a particular day. FURLONG *v.* FURLONG - - - - - - **Q. B. D. XXVI. 111**

10. —— *Liability of executor of executor—7 Wm. III., c.* 6, *s.* 11—*O. XLI., r.* 19.] When judgment has been obtained against an executor *de bonis testatoris*, and the executor dies, leave will not be given to issue execution against the executor's own goods under O. XLI., r. 19. The liability created by 7 Wm. III., c. 6, s. 11, in the executors of an executor who has converted his testator's goods to his own use must be enforced by independent proceedings. ENNIS *v.* ENNIS **[C. P. D. XVII. 99**

11. —— *Motion to stay—Motion for final judgment—Action for rent — Inability to pay — Jurisdiction — Costs — Appeal — O. XIII., r.* 1—*O. XLI., r.* 15—*Land Law (Ireland) Act,* 1887, *s.* 30.] An appeal lies from a discretionary order of a Divisional Court, staying execution, under O. XLI., r. 15, on a motion for leave to enter final judgment under O. XIII., r. 1. In an action for a money demand, as for rent, the mere circumstance, not that by time being accorded the defendant would become in a position to pay, but that the defendant is unable to pay at the date of an order for leave to enter final judgment, does not constitute sufficient ground for respiting execution under O. XLI. r. 15, where there is no defence to the action, and neither the plaintiff's rights nor the defendant's liability would, by deferring execution, be affected by virtue of the operation of the Land Law Acts or otherwise. *Per* Barry, L.J. : As to the Court being invested with inherent jurisdiction in such cases, to stay its process, such discretionary power must be exercised according to settled principles, and its exercise, in suspending execution, would not be justified upon the mere ground of the defendant's present inability to pay. *Per* Fitzgibbon, L.J. : The Court has jurisdiction to stay the execution of its process wherever justice so requires—as where some further investigation is necessary or where it is in furtherance of ultimate justice, or for the benefit of one or both of the parties without injury to either; but no Court is invested with any power to delay justice if justice would be defeated by delay. DESART *v.* TOWNSEND **C. A. XXII. 60**

12. —— *Order awarding costs—O. XLI., rr.* 18, 20—*G. O.,* 1854, 178.] When an action is dismissed for want of prosecution, and costs are by the order awarded to the defendant, he may issue execution at any time within six years without leave. MOHAN *v.* KIRWAN - - **E. D. XIX. 59**

13. —— *Revivor of judgment—Change of parties by death—O. XLI., r.* 19—*O. LIII., r.* 2 (37), *and amendment by Rules of June* 1879.] An application under O. XLI., r. 19, should be on notice. The fact that a suit is pending to impeach a judgment against a deceased person is not ground sufficient for prevent issuing execution thereon against his personal representative. *Semble*, the practice of reviving judgments is no longer in force. GERTY *v.* SLATOR **E. D. XV. 99**

14. —— *Revivor of judgment—Change of parties by death—O. XLI., r.* 19—*Documents necessary to obtain order to issue execution.*] There is, since the Judicature Act, no necessity to revive a judgment six years old, but in case of a change in the parties entitled to issue execution, leave to issue will be given upon motion on notice, and the production of the proper documents to show the title of the party applying. Form of order in such case. WALSH *v.* HART **E. D. XII. 73**

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PRACTICE (Since the Judicature Acts)—EXECUTION— *continued.*

15. —— *Summons—O. XLI., r.* 19.] Leave to issue execution under O. XLI., r. 19, will not be granted on an *ex parte* motion, but should be applied for on summons. GERTY *v.* SLATOR - - - - - C. P. D. XVII. 12

—— For costs—Stay of, pending appeal to House of Lords [XXVII. 49

See PRACTICE—APPEAL. 13.

—— Stay—Registration of Judgment Mortgage XXIV. 39

See MORTGAGE—JUDGMENT MORTGAGE. 15.

PRACTICE—GARNISHEE.

1. —— *Annuity payable under deed—Gift over on contingencies—Deed not set aside as attempt to defeat creditors—O. XLIV., r.* 2.] Where a judgment debtor, being in pecuniary difficulties, had agreed to retire from a partnership in consideration of the annuity to be paid to trustees for him under a deed then executed, until he should assign, charge, or incumber the said annuity, or do or suffer something by his default, or by operation or process of law, whereby it would become payable to some other person or persons; in any of which events the trustees were to pay the annuity as they should in their absolute and uncontrolled discretion think proper, for the maintenance and support, or otherwise for the benefit of the annuitant:—*Held*, that the annuity was attachable as a debt, without the deed having been set aside as an attempt to defeat creditors. NOKES *v.* MANDERS [C. P. D. XV. 18

2. —— *Appearance of parties not served with conditional order—Costs—Amendment—O. XLIV.*] A third party compelled to intervene in garnishee proceedings, in order to protect his interest in the fund attached by the conditional order, is entitled to his costs against the party obtaining such order, though he has not been served therewith. CORK UNION GUARDIANS *v.* BULL Q. B. D. XXV. 15

3. —— *Balance in sheriff's hands after satisfaction of* fieri facias—*C. L. P. A. Act*, 1856, *s.* 63—*O. XLV., r.* 2.] A sheriff had taken in execution under a writ of *fieri facias* a farm held for a term of years. This when sold produced sufficient to satisfy the claims of the execution creditor, and to leave a surplus in the hands of the sheriff to the amount of £154. While that balance remained in the sheriff's hands, without any demand having been made for it by the execution debtor, other judgments were obtained against the execution debtor:—*Held* (*diss.* Fitzgerald, B.), that the balance in the sheriff's hands might properly be made the subject of a garnishee order, inasmuch as it constituted, after the satisfaction of the *fieri facias* under which the execution was levied, a debt due by the sheriff to the original execution debtor. *Semble*, such would not be the case if the subject matter of the execution were not one and indivisible. WOULFE *v.* MINIHANE - - - - - E. D. XIV. 31

4. —— *Claim by judgment debtor for work and labour*—Quantum meruit—*O. XLIV.*, 2.] Where an action for work and labour had been instituted by, and verdict found for, the judgment debtor against the garnishee, for £300, leave being reserved to reduce the amount to £150, but judgment was not entered:—*Held*, that on an affidavit by the judgment creditor that the debt so due by the garnishee was equal to or greater than the judgment creditor's demand, the latter was entitled to an order to attach, but not to an order to pay, as if judgment should be entered in the action against the garnishee, the simple contract debt would become merged therein. CRISFORD *v.* O'SULLIVAN - - - - - E. D. XVII. 14

5. —— *Current gale of rent, not due—O. XLIV., r.* 2—*Apportionment Act*, 1870.] An order of the Exchequer Division refusing to attach rent which would be payable at a future date, was affirmed by the Court of Appeal, the Apportionment Act not altering the character of rent. DOHERTY *v.* KIERAN [C. A. XIII. *M.* 372

PRACTICE (Since the Judicature Acts)—GARNISHEE— *continued.*

6. —— *Debts due or accruing—O. II., r.* 3—*O. XLIV., r.* 2.] A motion was granted to attach a debt though merely an equitable debt, and only accruing due. GREER *v.* MOORE [C. P. D. XIII. 11

7. —— *Judgment debtor's* locus standi *to show cause—O. XLVI., r.* 1—*O. XLIV., r.* 4.] Where a garnishee order, directed to be served upon the judgment debtor, has been obtained, cause against making it absolute may be shown, not alone by the garnishee, but by the judgment debtor. LOVELY *v.* WHITE - - - - - Q. B. D. XVIII. 3

8. —— *Money due to debtor on deposit receipt—Conditional order to attach—O. XLIV., r.* 2—*C. L. P. A. Act*, 1856, *s.* 63—*Debt due but not payable.*] Money due on a bank deposit receipt, payable in future, is attachable under a garnishee order; and on the *ex parte* application of the plaintiff, who has obtained judgment against the defendant, the Court will make a conditional order to attach, but not to pay. REIDY *v.* CASEY [C. P. D. XVI. 93

9. —— *Money due on bank deposit receipt—Bank wound up under liquidators—Debt due but not payable—Form of order—O. XLIV., r.* 2—*C. L. P. A. Act*, 1856, *s.* 63.] Money due on a deposit receipt, by a bank which is being wound up under liquidators, is attachable under a garnishee order against the liquidators, although the amount payable depends on that of the future dividends that may be declared on the realisation of the assets. SMITH *v.* SEXTON - Q. B. D. XX. 75

10. —— *Money lodged in bank on deposit receipt—O. XLIV.*] An order, attaching money lodged in bank on deposit receipt, was made. BARRETT *v.* M'CARTHY - E. D. XIII. *M.* 376

11. —— *Money lodged in election petition—C. L. P. A. Act*, 1856, *s.* 63.] Money lodged in an election petition cannot be attached. BELFAST BANKING CO. *v.* KIRK [C. P. D. XV. *M.* 23

12. —— *Oral examination of debtor under O. XLIV., r.* 1—*Summons.*] An application for an order for the attendance of a debtor for examination, under O. XLIV., r. 1, should be on summons. WHEELER *v.* TODD Q. B. D. XVIII. *M.* 647

13. —— *O. LXIV., r.* 2—*Affidavit—Title of Court.*] A garnishee order was made where the affidavit was entitled merely "In the High Court of Justice in Ireland," without the addition of the Division. HENRY *v.* COLHOUN [Q. B. D. XII. *M.* 47

14. —— *O. XLIV., r.* 2—*Future accruing gales of an annuity—Order to pay.*] The future accruing gales of an annuity cannot be attached under O. XLIV., r. 2, and where a garnishee order has been expressed so to extend, the subsequent order for payment was confined to a gale accruing due at the time of the attachment. BASCOMBE *v.* OUGE [C. P. D. XV. 47

15. —— *Order to show cause*—Uberrima fides.] Where facts having a material bearing on the order sought were not disclosed in the affidavit used in an *ex parte* application for a conditional order, the Court, on the application to make absolute the order, discharged it with costs. TELFORD *v.* COADY [Q. B. D. XXVII. 7

16. —— *Rent due to trustees—O. XLIV., r.* 2.] An application, directing tenants of the judgment debtor to pay the amount of the judgment debt, was opposed on the ground that the rents were payable to trustees; the Court refused the motion, as it appeared that difficult questions of law would arise which could not be properly decided on a summary motion. MARSHALL *v.* ATKINS - - C. P. D. XVIII. 13

—— Costs of appearance by garnishee - XXVII. 18

See PRACTICE—COSTS. 14.

PRACTICE—GUARDIAN AD LITEM.

1. —— *Default of appearance by minors—Summons by plaintiff for appointment of guardian—O. XII., r.* 1—*O. LIII., r.* 2 (11).] In default of appearance by minor defendants, the plaintiff himself may, after complying with the requirements of O. XII., r. 1, issue a summons to nominate a guardian. O'CONNOR *v.* FETHERSTON - - - C. P. D. XIII. 75

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PRACTICE (Since the Judicature Acts)- GUARDIAN AD LITEM—*continued.*

2. —— *Lunatic Defendant—Default of appearance—O. XII., r. 1—O. XVII.*] The managing clerk of the plaintiff's solicitors was appointed guardian *ad litem* of the defendant, who was of unsound mind, not so found by inquisition. MACDONOGH *v.* SHEEHY - - - - - - **C. P. D. XIII. *M.* 375**

—— Lunatic - - - - - - - - - **XII *M.* 73**

See LUNATIC—PRACTICE. 4.

PRACTICE—INJUNCTION.

1. —— *Executor—Life interest—Crops—Live stock—Furniture and implements.*] An injunction to restrain the sale by an executor of farming implements and furniture, which with the crops and live stock were left to a remainderman after the determination of a life interest therein, was granted, but was refused as regarded the crops and live stock. (By Madden, J.) *Re* HALL, *deceased* - - - **Vac. J. XXVI. *M.* 493**

2. —— *Final judgment marked—Judicature Act, s.* 28 (8).] An injunction can now be obtained after final judgment in an action as well as pending the proceedings. AGNEW *v.* M'DOWELL **[E. D. XVIII. 103**

3. —— *Isolated act by shopman, since dismissed.*] The Court of Appeal reversed a decision of the Vice-Chancellor granting an injunction restraining the defendant from representing the cigars sold by him as cigars of the plaintiff's, or permitting them to be described as "the best two D" cigars or as "the two D" cigars. On an appeal to the House of Lords, not on the question of the judgment as to the labels, but solely on that of the false representations alleged to have been made by the defendant's servant as to his cigars:—*Held*, that the object for which an injunction was granted in cases of this description was to prevent a repetition of fraudulent acts, of which repetition the Court might be apprehensive; but when once a reason for an injunction was shown they must look to the circumstances of each case. In the present case the action complained of was an isolated transaction, which was attributed to a shopman in the employment of the defendant, who had ceased to be in his employment, and it would not be right to enjoin the defendant from doing acts which there was not the slightest ground for supposing he was ever likely to do, inasmuch as he had never set up any claim, nor was he likely to do so in the future. The judgment appealed from should be affirmed, and the appeal dismissed with costs. LEAHY *v.* GLOVER **[H. L. XXVII. *M.* 135**

4. —— *Jurisdiction—Action for rent—Auction of stock on land by Defendant—Judicature Act, s.* 28, *sub-s.* 8.] Pending the proceedings in an action for rent, and before judgment, the defendant called an auction of all the stock and effects on the farm tenanted, on which the plaintiff had been prevented from distraining in consequence of the disturbed state of the district:—*Held*, that an injunction should not be granted to restrain the auctioneer from parting with the proceeds of the sale pending the recovery of judgment. *Wetton* v. *Wilson* (XII. 148) and *Shaw* v. *Jersey* (4 C. P. D. 120, 359) distinguished. MAX *v.* BUCKLEY **[C. P. D. XVI. 4; C. A. XVI. 1**

5. —— *Perpetual—Action for trespass to several fishery claiming damages and an injunction—Judicature Act, s.* 28, *sub-s.* 8—*C. L. P. A. Act*, 1856, *s.* 84.] In an action against several defendants for trespass to a several fishery, the statement of claim alleged that, unless the defendants were restrained by injunction, they would again commit similar acts of trespass, and thereby make the plaintiff's several fishery valueless, and prayed damages and an injunction. The defendants denied the plaintiff's title to the several fishery. The plaintiff having established his title at the trial:—*Held*, by Palles, C.B. and Dowse, B. (Fitzgerald, B., *dub.*), that having regard to the evidence and to the nature of the property (a several fishery), the case was a fit one for a perpetual injunction. *Per* Palles, C.B.: The Court might grant the injunction, either under the former practice in the Courts of Equity or under the Jud. Act, s. 28, sub-s. 8. *Per* Dowse, B.: The Court might grant the injunction either under the former practice in the Courts of Equity or under the Jud. Act, s. 28, sub-s. 8, or under s. 84, of C. L. P. A. Act, 1856, which is still in force, and extends to applications made at the trial of an action (as well as to applications before and after judgment). POWELL *v.* HEFFERNAN - - - **E. D. XV. 78**

PRACTICE (Since the Judicature Acts)—INJUNCTION—*continued.*

6. —— *Restraining proceedings in another Court—Petition for winding up of company—Application to Court where proceedings pending before order for winding up*—25 & 26 *Vic., c.* 89, *s.* 85—*Judicature Act, s.* 27 (5)—*O. L., r.* 4.] Where a petition for winding up a company under the Companies' Act has been presented, until an order for winding up the company has been made, an application to restrain proceedings pending in another Court should, since the Judicature Act, be made to the Court in which the proceedings are pending. LLANGENNECH COAL CO., LIMITED, *v.* THE OLD PARK PRINTING CO., LIMITED - - **C. P. D. XIII. 74**

7. —— *Subject matter of suit—Principal and agent—Judicature Act, sec.* 28, *sub-s.* 8—*O. LI., rr.* 1, 3.] In an action by a principal against an agent, to recover the amount of certain goods supplied to the agent for sale, and admitted to be sold by him, the Court will, on reasonable evidence that certain moneys lying to the agent's credit in bank are the proceeds of the sale of such goods, restrain the defendant from drawing out of the bank, and the bank from paying out such moneys, pending the result of the action. WETTON *v.* WILSON - - - - - **C. P. D. XII. 148**

—— Libel - - - - - **XXVII. *M.* 388**

See DEFAMATION—LIBEL. 6.

PRACTICE—INSPECTION AND INTERIM PRESERVATION OF PROPERTY.

1. —— *O. LI., r.* 3.] Where a defendant, in an action for recovery of rent, by his statement of defence disputed the acreage of his farm, and had used threats to the plaintiff and his surveyor, who had in consequence of said defence entered on the farm for the purpose of surveying it: It was ordered that the plaintiff and his surveyor and his assistant should be at liberty to inspect and survey the farm. CONYERS *v.* DORGAN - - - - - - **E. D. XV. 121**

2. —— *O. LI., rr.* 3, 4.] Where the plaintiff has lost certain fishing nets, which he alleged were in the defendant's possession, and it was necessary for the purpose of identification to examine the nets in the defendant's possession, the Court in an action for wrongful detention ordered that a full inspection thereof should be afforded under O. LI., rr. 3, 4. MULHOLLAND *v.* KEARON - **Q. B. D. XII. 110**

PRACTICE—INTERPLEADER.

1. —— *Auctioneer—Common origin of claim*—9 & 10 *Vic., c.* 64, *s.* 1—*Claim by affidavit—Jurisdiction of Court to make order under the "Interpleader Act."*] M. brought an action against R. to recover a sum of money, being the proceeds of goods sold by R., an auctioneer, for M., whose title to the goods sold was through a bill of sale executed by N., who afterwards, and before the sale, was adjudged bankrupt. On the same day he was so adjudged, notice of the adjudication was sent by the official assignees in bankruptcy to R., cautioning him against selling, but making no actual claim to the goods. Subsequent to the sale, the official assignees made formal claim to the proceeds, disputing the validity of the bill of sale, on behalf of the creditors of N. Upon the hearing of an application for an order under the Interpleader Act (9 & 10 Vic., c. 64):—*Held*, that the Court had no jurisdiction to grant the order, because the alleged titles of M. and the assignees to the money in question had not a common origin. *Best* v. *Hayes* (I.H. & C., 718); *Tanner* v. *European Bank* (L.R., 1 Ex., 216), and *Attenborough* v. *St. Katherine's Docks Co.* (3 C. P. D., 450) distinguished. *Crawshay* v. *Thornton* (2 My. & Cr., 1) followed. M'CLELLAND *v.* REILLY - **E. D. XIII. 177**

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PRACTICE (Since the Judicature Acts)—INTERPLEADER—*continued.*

2.——*Balance remaining in sheriff's hands after execution—Additional claim by execution creditor—Not sufficient money retained to meet claim—Mistake—Collusion.*] Although a sheriff is not entitled to relief under the Interpleader Act if he pays over the money to one of the parties after notice of claim by a third party, yet he would not be debarred from obtaining such an order if a small portion of the money was, under a *bonâ fide* mistake, paid over to one of the claimants. ORMSBY *v.* WIGHT - - **Q. B. D. XXVII. 134**

3.——*Day fixed for hearing—Sale of goods seized by sheriff.*] Where an interpleader summons is issued by a sheriff for a particular day, it cannot be heard, in the absence of the claimant, if not called on that day. The Court will not order a sale of the goods in the hands of the sheriff, pending the hearing of the summons. KENNEDY *v.* LAVAN **[E. D. XVIII. 5**

4.——*Notice of claim given by claimant's solicitor—Sheriff's costs.*] Where notice of a claim to goods seized by an execution creditor was given by the claimant's solicitor, and the claimant did not appear on the summoning order, the Court barred the claimant's claim and granted a conditional order, to be served on the claimant personally, calling on him to pay the execution creditor's costs, and the sheriff was given no costs. Subsequently the claimant, who had not been served with the conditional order within the time limited, appeared and claimed costs, which were refused. BURKE *v.* BURKE **[E. D. XII. *M.* 50 & 88**

——Costs - - - - - - **XXV. 24**
See PRACTICE—COSTS. 15.

——Summons—Service out of the jurisdiction **XXVII. 81**
See PRACTICE—SERVICE. 4.

PRACTICE—JOINDER OF CAUSES OF ACTION.

1.——*Action for recovery of land—Different holdings—O. XVI. r.* 2.] Leave was given to join with an action for recovery of land for non-payment of rent, four similar causes of action in respect of four different holdings held by the defendant under the plaintiff. GROGAN *v.* BYRNE **[Q. B. D. XII. *M.* 294**

2.——*Action for recovery of land and detinue of stock on same—O. XVI. r.* 2.] Leave to issue a writ of summons, joining therein claims for the recovery of land under O. XVI., r. 2, and for detinue of stock on the lands, or the value thereof, was given. ANON. - - - **C. P. D. XII. *M.* 36**

3.——*Misjoiner of separate causes of action and of separate Plaintiffs—Action for seduction* per quod *and action for assault and battery—O. XVI., r.* 1.] Where by the writ of summons and statement of claim it appears (1) that A. B., one plaintiff, sues for the seduction by the defendant of his daughter, C. D., the other plaintiff, *per quod servitium amisit*, and (2) that C. D., by her next friend A. B., sues the defendant for assault and battery, whereby the defendant ravished and carnally knew her, the subject of both causes of action being the same alleged act or acts:—*Held*, that the plaintiffs must elect as to which plaintiff should maintain his or her action against the defendant, and that the other plaintiff and other cause of action should be struck out. CUDDY *v.* M'MAHON - **Q. B. D. XXVII. 101**

4.——*O. XVI., rr.* 1, 2, 5—*Action for recovery of land, mesne rates, and wrongful conversion.*] Leave was given to join in a writ of summons claims for recovery of a house and farm, mesne rates, and wrongful conversion. BARRETT *v.* M'CARTHY - - - **Q. B. D. XII. *M.* 242**

5.——*O. XVI. r.* 2.] The Court gave leave to join in a statement of claim a cause of action for the recovery of an undivided moiety of a farm with a claim for the recovery of furniture and stock, in an action by an administrator. GEERAN *v.* COONEY - - - **Q. B. D. XII. *M.* 73**

PRACTICE (Since the Judicature Acts)—JOINDER OF CAUSES OF ACTION—*continued.*

6.——*O. XVI., r.* 2.] Leave was given to join the following causes of action:—(1), possession of house and mesne profits; (2), damages by removal of fixtures; (3), money lent; (4), bill of exchange. OLIVER *v.* CRAIG - **Q. B. D. XIV. 77**

7.——*O. XVI., r.* 2.] Leave was given to join with an action for the recovery of premises (which had been let furnished) a claim for the recovery of the furniture. INDIA-RUBBER TELEGRAPH COMPANY *v.* HENNELLY **[Q. B. D. XIII. *M.* 121**

PRACTICE—JUDGMENT.

1.——*Admissions—Action not set down—O. XXIX., r.* 9—*O. XXVIII., r.* 10.] Upon admissions in a statement of defence, in an action to take the accounts of partnership dealings, and to wind up the affairs of the partnership, and upon a notice of motion for a decree, an order will, under O. XXXIX., r 9, be made upon an ordinary motion without setting down the action. GUYNET *v.* MACCORMAC - **V. C. XV. 17**

2.——*Admissions — Administration — Receiver — Injunction — Demurrer — Judicature Act, sched. r.* 25—*O. XVIII., r.* 10—*O. XXXIX., r.* 9.] A statement of claim alleged a covenant in a lease by R. A. T., for herself, her executors, administrators, and assigns, during the continuance of the demise, to pay to the plaintiff the rent reserved. The defendant was executrix of the lessee, and in the statement of claim it was stated, "there is now due and owing to the plaintiff, by the defendant, as such executrix, the sum of £35, being one half-year's rent out of said hotel premises, and the further sum of £15, being one half-year's rent out of said farm of land." To this the statement of defence answered: "The defendant does not admit there is any rent due by her as such executrix, as alleged, to the plaintiff":—*Held*, that this was a bad defence, but not an admission on the pleadings. A statement of claim alleged on covenant to keep in repair, that R. A. T. did not, during the continuance of the demise, keep the said hotel premises and the out-offices in repair, and since her death the defendant did not keep them in good and tenantable repair, and she removed fixtures and deteriorated the premises. To this defendant answered: "The defendant avers that the said R. A. T. did, during the continuance of the said demise, keep the hotel premises and out-offices belonging thereto in good and tenantable repair, and denies that the same were, at the time of her death, at all out of repair":—*Held*, a good denial. To the allegation that defendant removed fixtures and otherwise injured and deteriorated the premises, the defendant's answer was: "The defendant denies that she has removed fixtures otherwise than legally entitled so to do, or that she has otherwise injured or deteriorated the premises":—*Held*, that this denial raised a question of law, and that that proceeding was not the mode of trying such a question. In answer to the allegation that defendant "refused to give up possession of the premises on the determination of the lease, although demanded from her; and she held the same till she was evicted, whereby the plaintiff was deprived of the use, &c., of same, and in consequence they remained unlet, and the trade of the said hotel was greatly injured," the defence said: "The defendant denies that it is through any conduct of her, whether personally or as executrix, that the plaintiff was deprived of the use or enjoyment of the said premises, or that the said premises remain unlet, or that the trade of the said hotel was greatly injured":—*Held*, that this, although a very unsatisfactory denial, should not be treated as an admission. MACMAHON *v.* THOMPSON **[V. C. XIII. 92**

3.——*Admissions — Allegations in statement of claim—O. XVIII., r.* 10—*O. XXXIX., rr.* 8, 9.] In an action for recovery of land for non-payment of rent, the statement of claim alleged that "from the 1st November, 1872, to the 1st November, 1876, the defendant held from the plaintiffs a certain farm of the plaintiff's" as tenant to them from year to year, at a certain yearly rent. The statement of defence was as follows: "The defendant does not hold the premises in

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PRACTICE (Since the Judicature Acts)—JUDGMENT— *continued.*

the statement of claim mentioned, as tenant to the plaintiffs, as alleged." On a motion, on behalf of the plaintiffs, for liberty to mark judgment, notwithstanding the defence delivered, inasmuch as all the allegations in the statement of claim had been admitted by the defendant:—*Held*, that the plaintiffs were entitled to mark judgment. CHURCH TEMPORALITIES COMMISSIONERS *v.* M'AULEY
[E. D. XIII. 123

4. —— *Admissions—Defence of* plene administravit præter—*Judgment of assets* quando acciderint—*O. XXXIX., rr.* 1, 9.] An application for judgment of assets *quando acciderint* (the defendant having pleaded *plene administravit præter*) ought to be made on summons. M'CUMISKEY *v.* GRANT
[E. D. XV. 12

5. —— *Admissions — Specific performance — Agreement, construction of — Judicature Act, sec.* 38 — *O. XXXIX., r.* 9.] The plaintiff brought an action for the specific performance of an agreement, executed by the defendant, whereby he agreed "to give up possession, on the 12th November, 1879," of a certain house, formerly occupied by the plaintiff. In his statement of defence, the defendant admitted the agreement, but denied that thereby he undertook to assign to the plaintiff his interest in the house therein mentioned. Upon motion, on behalf of the plaintiff, for judgment, under O. XXXIX., r. 9, and that the relief sought by the statement of claim should be granted:—*Held*, that, without deciding as to the power of the Court to grant such an application, it was impossible to say that the agreement in question was one to assign, and not merely to give up possession, without reference to any title, and, consequently, that the Court would not decree specific performance of such a contract, and that the application should be refused. BRANNIGAN *v.* M'CANN
[E. D. XIV. 25

6. —— *Death of Defendant after verdict—O. XLIX., r.* 4—*C. L. P. Act*, 1853, *s.* 159.] After a verdict in favour of the plaintiff, but before judgment signed, the defendant died, intestate, and administration was taken out to him:—*Held*, that the plaintiff's proper course was to sign judgment, under sec. 159 of the C. L. P. Act, 1853. QUEENSTOWN TOWING CO. *v.* BROWN - - - - - C. P. D. XVII. *M.* 86

7. —— *Marking on verdict two years old.*] Where the defendant had pleaded, but had allowed a verdict to go against him by default, leave to mark judgment after the lapse of two years was granted. ANON.
[E. D. XXIV. *M.* 52

8. —— *Motion for—Specially indorsed writ—Adjournment to enable Plaintiff to file further affidavit—O. XIII., r.* 1.] An adjournment of a motion for final judgment on a specially indorsed writ was granted to enable the plaintiff to file an affidavit in reply to the defendants. KIRWAN *v.* KILCULLEN - - - - - - C. P. D. XII. *M.* 541
MEAGHER *v.* O'CONNELL - - E. D. XII. *M.* 542

9. —— *Motion for—Specially indorsed writ—Admission by Plaintiff of defence to part of claim—Affidavits in support of motion—O. XIII., rr.* 1, 3, 4.] A motion for leave to sign final judgment was refused, where the plaintiff, by his affidavit, reduced the amount claimed in the writ. *Bellew* v. *Markey* (XII., 52) followed. PALMER *v.* M'ENEANEY
[Q. B. D. XIII. *M.* 89

10. —— *Motion for—Specially indorsed writ—Affidavit—Denial of defence—O. II., r.* 3—*O. XIII., r.* 1.] The Court refused to grant final judgment on a specially indorsed writ where the plaintiff's affidavit averred that the defendant "had no legal defence on the merits"; but without costs. HENZELL *v.* MARTIN - - C. P. D. XV. *M.* 233

11. —— *Motion for—Specially indorsed writ—Affidavit in reply to Defendant's, when admissible—Leave to defend—Terms of lodging money in Court—O. XIII., rr.* 1, 6.] It lies in the discretion of the Court or Judge to allow a plaintiff to file an affidavit in reply to the defendant's affidavit on a motion for leave to sign final judgment under O. XIII., r. 1, and such

PRACTICE (Since the Judicature Acts)—JUDGMENT— *continued.*

an affidavit in reply is inadmissible unless the plaintiff has previously obtained leave to file it. Terms were imposed on giving leave to defend, that the defendant should lodge money in Court, where the defendant, sued on a covenant for the amount secured by a deed of mortgage, alleged that he was only a surety, and had signed the deed merely as a witness. SMITH *v.* M'ARDLE - - - Q. B. D. XII. 51

12. —— *Motion for—Specially indorsed writ—Affidavit of Plaintiff's solicitor—O. II., r.* 3—*O. XIII., r.* 1.] Where upon defendant's own admission of liability, made to the plaintiff's solicitor, it plainly appears that there is no defence to the action, and the solicitor makes an affidavit verifying those admissions, and deposing that in his belief the defendant has no substantial defence to the action, the debt or cause of action will be deemed sufficiently sworn to and verified, within the meaning of O. XIII., r. 1, so as to entitle the plaintiff to leave to sign final judgment for the amount of his claim. ROCHE *v.* SULLIVAN - - Q. B. D. XII. 63

13. —— *Motion for—Specially indorsed writ—Affidavit not denying defence to action—Motion refused, but renewed in new affidavit—O. XIII., r.* 1.] A motion for final judgment was refused because the plaintiff's affidavit did not state that the defendant had no defence to the action. The plaintiff renewed the application on an affidavit which contained a statement to that effect:—*Held*, that the motion should be refused with costs, the former motion having been for the same object, and therefore not renewable. This was affirmed by the Court of Appeal. KIELY *v.* MASSY - - C. A. XV. *M.* 22

14. —— *Motion for—Specially indorsed writ—Affidavit in support of motion—Defence as to part of claim—Judgment for residue—O. II., r.* 3—*O. XIII., rr.* 1, 3, 4.] The deponent to an affidavit in support of a motion calling on the defendant to show cause why the plaintiff should not be at liberty to sign final judgment under O. XIII., r. 1, for the amount specially indorsed on the writ of summons, or for so much thereof as the Court should deem meet, must swear that there is no defence, in his belief, to any portion of the plaintiff's claim, and if there is a defence as to part of the plaintiff's claim admitted upon the affidavit, the motion will be refused. Rule I. of O. XIII. does not contemplate that where there is admittedly a question as to part of the claim, the plaintiff should ask for judgment for the balance, and rules 3 and 4 only apply to cases where the plaintiff makes a *primâ facie* case as to the whole of his claim, and the defendant makes defence as to part, and not to cases in which the plaintiff admits upon his affidavit that there is or may be a defence as to part. LORD BELLEW *v.* MARKEY
[E. D. XII. 52

15. —— *Motion for—Specially indorsed writ—Affidavit in support of motion—Defence as to part of claim—Judgment for residue—Joinder of claims against husband and wife and husband alone—O. XIII., rr.* 1, 3, 4, 5—*O. XVI., r.* 4.] In an action of a writ of summons specially indorsed under O. II., r. 3., joining two causes of action, one of them against a husband and wife and the other against the husband separately, the plaintiff moved under O. XIII., r. 1, calling on the husband to show cause why final judgment should not be signed against him for the portion of the claim to which he was separately liable, grounding the application on an affidavit stating that in his (the plaintiff's) belief there was no defence to that portion of the claim, but not stating anything to satisfy the Court that there was no defence to the remaining portion thereof:—*Held*, that the plaintiff should be empowered to sign judgment for the portion of the claim to which there was no defence. *Lord Bellew* v. *Markey* (XII. 52), commented on. M'ALLISTER *v.* ALLEN - - Q. B. D. XII. 49

16. —— *Motion for—Specially indorsed writ—Affidavit verifying cause of action.*] On a motion for final judgment, under O. XIII., r. 1, the plaintiff's affidavit stated "that the sum of £26 6s. 6d., being the sum for which the plaintiff now seeks judgment, is justly due and owing to the plaintiff over

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PRACTICE (Since the Judicature Acts)—JUDGMENT— *continued.*

and above all just and fair allowances":—*Held*, that the plaintiff's affidavit was insufficient, as not verifying the cause of action within the words of the rule. M'CONVILLE *v.* NOLAN [E. D. XVII. 24

17. —— *Motion for—Specially indorsed writ—Appearance of solicitor on motion—Costs—O. II., r. 3—O. XIII., r. 1.*] Where the solicitor is not present when a motion for final judgment is moved, no costs will be given if he be successful. CHURCH *v.* DUTHIE - - - E. D. XII. *M.* 120

18. —— *Motion for—Specially indorsed writ—Application after delivery of defence and pleadings closed by default of reply—Jurisdiction to make order—Rules, June*, 1891, *O. XIV.*] The writ, in an action for recovery of lands for non-payment of rent, was served on the 10th November, 1891; appearance was entered, and on the 30th a defence was delivered. On notice, dated 15th January, 1892, plaintiff moved for final judgment grounding the application on two affidavits filed on the 15th January, 1892—one verifying the cause of action, &c., sworn on the 17th December, 1891: the other, sworn on the 13th January, explaining that the delay was caused by negotiations for a settlement, and the Christmas holidays:—*Held* (*diss.* Gibson, J.), that the motion was out of time. *Per* O'Brien, J.:—Motion for final judgment must generally be made before defence is in ordinary course delivered, and no cause of delay arising after that time forms ground of excuse. *Per* Holmes, J.: Motion for final judgment must generally be made before joinder of issue in default of reply, but if special circumstances be shown, the application may be received even after that date: no sufficient excuse, however, was shown in the present case to justify delay. *Per* Gibson, J.: An application for final judgment may be made even after joinder of issue in default of reply, if the plaintiff shows circumstances justifying the delay: such circumstances were shown in the present case. ANNALY *v.* COMYN [Q. B. D. XXVI. 45

19. —— *Motion for—Specially indorsed writ—Application made after statement of claim and delivery of defence—Rules, June*, 1891, *O. XIV., r.* 1.] Where the plaintiff, after appearance by defendant, takes a deliberate step to have an action tried by a jury by serving a statement of claim, and the defendant has served a statement of defence thereto, it is too late to move for final judgment under O. XIV. The indorsement on a specially indorsed writ should be headed by the words "Statement of Claim." BROWN & Co. *v.* REID [Q. B. D. XXVI. 123

20. —— *Motion for—Specially indorsed writ—Arrears of rent—Originating notice—Land Law (Ir.) Act*, 1881, *ss.* 8, 13, 60—*O. XIII., r.* 1.] Where an application is made under O. XIII., r. 1, for leave to sign final judgment for the sum indorsed on the writ of summons for arrears of rent (one gale due in March, 1881, and the other in September), the Court will not stay the order, because the defendant has, under the Land Law Act. 1881 (44 & 45 Vic., c. 49) served an originating notice to fix the fair rent of the holding, and had the said notice recorded under Sec. 60 of that Act. WARBURTON *v.* CONROY - - C. P. D. XV. 90

21. —— *Motion for—Specially indorsed writ—Balance of account due whether for sale or commission—O. XIII., rr.* 3, 4.] On an application to sign judgment on a writ specially indorsed with an amount demanded as the balance of an account for goods sold and delivered by the defendant to the plaintiff, the defendant filed an affidavit, alleging that the goods sent to him by the plaintiff were to be sold by him as auctioneer on commission for the plaintiff, but admitted a balance due on that head to the plaintiff of £4 4s. 1d.:—*Held*, that, it being a question of fact for the jury whether the goods were sent as a purchase or for auction on commission, final judgment should not be allowed to be signed even for the amount admitted. TOBIN *v.* CONNOLLY [E. D. XII. 137

22. —— *Motion for—Specially indorsed writ—Complicated devolution of title.*] Where a plaintiff by his writ claimed

PRACTICE (Since the Judicature Acts)—JUDGMENT— *continued.*

rent in a personal action against a defendant, and gave the date of the lease under which the defendant held, and particulars of the lands, gale days, and amounts due, but omitted to state how the lessor's interest became vested in the plaintiff, or to show the same by affidavit:—*Held*, reversing the judgment of the Queen's Bench Division, that even if the writ were specially indorsed, there was no verification of the cause of action, and that final judgment was not intended to apply to a complicated case of devolution of title. O'HANRAHAN *v.* HAYDEN - - C. A. XXVII. 17

23. —— *Motion for—Specially indorsed writ—Copy affidavit served without jurat—Omission of signature of deponent—13 Vic., c.* 18, *s.* 44—141 *G. O.*, 1854—*Remittal—Defendant resident in Scotland.*] A motion for final judgment was refused where the served copy of the affidavit on which it was grounded did not contain the jurat or the deponent's signature. The action was remitted. M'ALPINE *v.* CRAIG [Q. B. D. XV. 51

24. —— *Motion for—Specially indorsed writ—Default of pleading—Statement of claim dispensed with—Statement of defence, whether voluntary—O. XIII., r.* 1—*O. XX., rr.* 1, 2—*O. XXI., rr.* 2, 3—*O. XXVIII., rr.* 1, 2, 3—*O. XXXIX., r.* 1.] Where a defendant entered an appearance to a specially indorsed writ of summons for a liquidated claim dispensing with delivery of a statement of claim, and the plaintiff accordingly delivered none, the plaintiff, no defence having been delivered within eight days after the appearance, entered final judgment for the amount claimed, as on default of pleading, under O. XXVIII., r. 2. The defendant having moved to set aside the judgment, and for that purpose having filed an affidavit of merits:—*Held* (reversing the Queen's Bench Division), that the plaintiff was entitled to sign judgment as by default, under O. XXVIII., r. 2; but that as the defendant had sworn to merits, the judgment, though regular, should be set aside, the defendant paying the plaintiffs costs of signing same. *Hooper v. Gibbs* (W. N. 1876, p. 10), commented on and not followed. *Robertson* v. *Howard* (3 C. P. D. 280), and *Maher* v. *Taylor* (XII. 74), considered. GRIMSHAW BRIDGE PAPER CO. *v.* M'DOWELL - Q. B. D. XII. *M.* 339; C. A. XIII. 1

25. —— *Motion for—Specially indorsed writ—Delay in moving—Statement of defence delivered—Leave to defend—Terms of lodging money in Court—O. XIII., rr.* 1, 4, 6.] On Feb. 12 the defendant entered an appearance to a writ of summons, specially indorsed, by which the plaintiff claimed £250, the amount of a promissory note made by the defendant, with interest. A statement of claim having been required, the plaintiff, on Feb. 18, delivered as such a notice that his claim was that indorsed on the writ. On Feb. 23 the defendant delivered a statement of defence, and on Feb. 27 the plaintiff served notice of motion for leave to sign final judgment under O. XIII. r. 1. In opposition to the motion it was deposed that the defendant, as surety for another party, signed the note in blank, on the promise and understanding that it was to be filled up for £60 only, instead of £250—*Held*, that the motion was not made too late, and that the defendant should be allowed to defend only on the terms of lodging in Court the sum of £60. SKETCHLEY *v.* CORRIGAN [Q. B. D. XII. 50

26. —— *Motion for—Specially indorsed writ—Interest on a bill of exchange—O. II., r.* 3—*O. XIII., r.* 1.] A motion for final judgment on a specially indorsed writ for the amount of a bill of exchange, and interest, was granted, although the interest was not calculated. MUNSTER BANK *v.* FULHAM. [E. D. XV. *M.* 23

27. —— *Motion for—Specially indorsed writ—Laches of plaintiff in suing—O. XIII., r.* 1.] The defendant, as surety, signed a joint and several promissory note in December 1878, payable on the 1st of November, 1879. No application was made to him for payment, prior to the issue of the writ in the present action of the 6th of May, 1884. On a motion for final judgment, the Court refused to allow it to be marked, on the ground that the great delay of the plaintiff in suing rendered

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PRACTICE (Since the Judicature Acts)—JUDGMENT—*con.*

it impossible for the Court to be satisfied that there was no defence to the action, although the defendant's affidavit resisting the motion disclosed none. NEWRY LOAN CO. *v.* BRADY [E. D. XVIII. 53

28. —— *Motion for—Specially indorsed writ—Leave to defend—O. XIII., r. 3—O. XXI., r. 3—O. XXVIII., r. 2.*] Where no rule is made upon a motion for leave to enter final judgment on a specially indorsed writ of summons, under O. XIII., r. 1, leave to defend is thereby impliedly given to the defendant. If the defendant thereupon fails to deliver a statement of defence, the plaintiff may mark final judgment, though he has not delivered a statement of claim or notice in lieu thereof. *Margate Pier Co.* v. *Perry* (W. N. 1876, 52) followed. RAE *v.* LANGFORD - - E. D. XV. 105

29. —— *Motion for—Specially indorsed writ—Leave to file affidavit in reply to defendant's affidavit—O. XIII., r.* 1.] The Court directed a motion for final judgment to stand over, with liberty to the plaintiff to file such an affidavit as he might be advised, in answer to one of the defendant denying his liability. EGAN *v.* PEYTON - Q. B. D. XII. *M.* 185

30. —— *Motion for final—Specially indorsed writ—Liquidated demand—O. XIII., r.* 1.] A plaintiff having, in an action for goods sold, by mistake allowed credit for £5—which was really never received—and the defendant having paid the amount claimed, with costs, the plaintiff brought a second action to recover this sum:—*Held*, that he could not sign final judgment, for that though in form the action was for a liquidated sum, still in substance it was to set aside a transaction for fraud, as otherwise he was not entitled to split the cause of action. BLIZARD *v.* MULLOY - - E. D. XXI. 11

31. —— *Motion for final—Specially indorsed writ—Liquidated demand—Claim for noting bill of exchange—Promissory note given to secure composition on debt, including charge for noting—O. XIII., r.* 1—*O. II., r.* 3.] Where the plaintiff, by the writ of summons, claimed to recover the amount of bills of exchange, together with a sum charged for noting, and it appeared that the defendant, under an arrangement with his creditors, had given promissory notes to secure payment of a composition on the debt, including the charge for noting:—*Held*, that the plaintiff's demand was liquidated, within O. II., r. 3, and that they were entitled to sign final judgment under O. XIII., r. 1. NORTHERN BANKING CO. *v.* CHAPMAN [Q. B. D. XIV. 21

32. —— *Motion for—Specially indorsed writ—Motion to remit—Claim partly admitted, in part disputed—Judgment for part admitted—Amendment of writ—O. XIV., rr.* 1, 4, *Rules*, 1891—*C. L. P. A. Act*, 1870.] Where a writ is specially indorsed for a liquidated amount, which the defendant in part admits and in part disputes, the Court may allow judgment to be marked for the amount so admitted under O. XIV., r. 4, and for that purpose may amend the indorsement. In such case the Court will not remit the action for trial to an inferior Court, as to the residue of the plaintiff's claim, under the C. L. P. A. Act, 1870, but such final judgment for part may be awarded without prejudice to the plaintiff's right to pursue his remedy (if any) for the residue. QUINN *v.* DONOGHUE [Q. B. D. XXVI. 10

33. —— *Motion for—Specially indorsed writ—No rule on motion—Leave to defend—Time for delivery of defence—O. XIII., r.* 1—*O. XXI., r.* 3.] Where on a motion for final judgment on a specially indorsed writ, under O. XIII., r 1, no rule is pronounced, leave to defend is thereby impliedly given, and the defendant is not entitled to a statement of claim, though demanded, but must deliver a statement of defence within eight days of the order. *Rea* v. *Langford* (XV., 105) followed. OGILVY *v.* O'DONNELL C. P. D. XVI. 53

34. —— *Motion for—Specially indorsed writ—Notice of motion after defence filed—O. XIV., rr.* 1, 3.] Once a statement of defence of any kind is filed in the ordinary course, it is too late for the plaintiff to institute proceedings under O. XIV. for final judgment. BURTON *v.* EASTWOOD [E. D. XXVII. 19

PRACTICE (Since the Judicature Acts)—JUDGMENT—*con.*

35. —— *Motion for—Specially indorsed writ—Original writ lost.*] Where the original writ was lost, a conditional order for final judgment was made. CAWLEY *v.* FARRELL [C. P. D. XIII. *M.* 90

36. —— *Motion for—Specially indorsed writ—Promissory note—Parol agreement—O. XIII., r.* 1.] In an action on a promissory note, the defendant alleged that the note was made conditional on a contemporaneous parol agreement that if certain monthly instalments were paid, and renewals for the balance of the debt and interest were given from time to time, the payee would not enforce payment of the note; and that the defendant was ready and willing to perform such conditions. On motion for leave to mark final judgment under O. XIII., r. 1:—*Held*, that the defendant should not be precluded from defending, and that the motion should be refused. LYSTER *v.* CONNOLLY - Q. B. D. XII. 71

37. —— *Motion for—Specially indorsed writ—Payment, after action, of part of sum claimed—O. XIII., r.* 1.] A defendant appeared to a specially indorsed writ of summons, and subsequently paid to the plaintiff a sum of money on account of the debt claimed in the action. Upon motion on behalf of the plaintiff for liberty to sign final judgment under O. XIII., r. 1:—*Held*, that the plaintiff might sign final judgment for the amount indorsed on the writ. SCOTT *v.* M'MULLEN - - - - - E. D. XIV. 26

38. —— *Motion for—Specially indorsed writ—Promissory note—O. XIII., r.* 1.] The Court will not give leave to sign final judgment under O. XIII., r. 1, in an action on a bill of exchange or promissory note, unless the bill or note is produced in Court and marked by the Registrar, even though the cause of action is sufficiently verified in the plaintiff's affidavit. O'FLYNN *v.* M'EVOY - E. D. XVIII. 90

39. —— *Motion for—Specially indorsed writ—Renewal of refused motion.*] When a motion for leave to sign final judgment has been refused with costs, though on a technical objection, raised *in limine*, that the plaintiff's affidavit has not been filed, a new motion for the same purpose cannot be instituted. FRENCH *v.* MULCAHY; FRENCH *v.* WALSH [Q. B. D. XV. 46

40. —— *Motion for—Specially indorsed writ—Subsequent amendment by alteration of amount claimed—O. XIII., r.* 1.] Leave to sign final judgment on a specially indorsed writ, which had been amended as to the amount claimed, by leave of the Court, was granted. NELSON *v.* OLIVER [E. D. XII. *M.* 243

41. —— *Motion for—Specially indorsed writ—Verification of cause of action—O. XIII., r.* 1.] On a motion for final judgment under O. XIII. r. 1, the plaintiff, in his affidavit, stated that "the defendant herein is indebted to me in the sum of £24 16s., as per particulars specially indorsed on the writ of summons herein":—*Held*, that the reference to the writ, wherein the cause of action was correctly set forth, was a sufficient verification of the same, within the rule. *M'Conville* v. *Nolan* (XVII. 24) distinguished. MURPHY *v.* NOLAN [C. A. XXI. 9

42. —— *Setting aside—Affidavit of merits—O. XXVIII., r.* 14.] As a general rule, a judgment by default regularly marked will not be set aside unless on an affidavit of merits. But, under special circumstances, as where the action has been instituted by direction of the Court of Bankruptcy, in order to determine a question of law, the rule may be dispensed with, provided it is shown that the omission to deliver a statement of defence occurred through inadvertence. QUAIN *v.* FITZGERALD - - - - - E. D. XIX. 58

43. —— *Setting aside—By default—O. XXVIII., r.* 14.] A judgment, regularly marked without surprise, will not be set aside where the plaintiff might be injuriously affected thereby in his relationship with a third party not before the Court, and who could not be bound by any order made. JACKSON *v.* M'KELVEY - - - - - C. P. D. XVIII. 86

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PRACTICE (Since the Judicature Acts)—JUDGMENT— *continued.*

44. —— *Setting aside—Effect on prior execution, and conveyance by sheriff of chattel interest in land.*] A plaintiff, in default of defence, marked judgment for £400, and issued execution. The sheriff seized and sold the interest of the defendants in a farm of land, held by a tenancy from year to year. At the sale the plaintiff became the purchaser, and a conveyance to him was duly executed by the sheriff. Subsequently on it being proved that the amount really due by the defendants was only £126, and that the default in delivering a statement of defence occurred through inadvertence, the Court set aside the judgment, and also the sale of the farm by the sheriff thereunder, upon terms of the defendants paying the amount really due:—*Held*, affirming the order of the Queen's Bench Division, that the Court had jurisdiction to set aside the sale and sheriff's conveyance; the plaintiff himself, who was aware of the facts, having been the purchaser. *Semble* (*per* Barry, L.J.), that the Court, in all cases in which a judgment is set aside, has jurisdiction also to set aside a sale by the sheriff thereunder; though it would be reluctant to exercise this power when a stranger has *bonâ fide* purchased from the sheriff. FOX *v.* DRAKE
[C. A. XX. 6

45. —— *Setting aside—Inadvertence—Costs—Land Law Act*, 1881, *s.* 15.] The Court will set aside a judgment marked, owing to a mistake of the defendant's solicitor, if any possible question for trial is shown to exist, but in doing so will impose stringent terms. ROBERTS *v.* O'BRIEN
[C. P. D. XVIII. 98

46. —— *Setting aside—And execution—Non-service of writ—Judicature Act*, 1877, *sec.* 27 (7).] A judgment which was marked against a defendant in America, and execution thereon, the writ having been served on his wife in Ireland, and the plaintiff having notice of the defendant's absence, was set aside with costs. M'BIRNEY *v.* DUNNE
[C. P. D. XII. *M.* 74

47. —— *Setting aside—Regularly marked—Inadvertence—Affidavits of merits—Form—"Merits"—Consent to vacate tendered and refused—Costs—O. XXVIII., r.* 14.] Where a judgment has been regularly obtained, it will not be set aside without an affidavit of merits. The affidavit need not be made in particular form, or by any particular person, if the Court is satisfied with its sufficiency. "Merits" does not mean a meritorious, but a legal defence. *Quære*, whether a consent to set aside proceedings, on terms of defendant paying all costs in the action up to date, should be refused by plaintiff? CLARKE *v.* CITY OF DUBLIN STEAM PACKET CO. - - - - Q. B. D. XXV. 21

48. —— *Setting aside—Service of writ of summons—Copy without record number and letter—O. I., r.* 2.] It is not necessary that the copy writ served should have the record number and letter filled up, and a judgment entered after the defendant had pointed out the omission to the plaintiff's solicitor, and stated that when amended he would enter an appearance, was not set aside, no costs being given. FERGUSON *v.* LISTON - - - - - E. D. XV. *M.* 627

49. —— *Setting aside—Surprise—Absence of notice of proceedings—Want of good faith.*] Where an order for substitution of service has been strictly complied with, but no notice has reached the defendant residing out of the jurisdiction, and where the plaintiff's solicitor has studiously avoided giving notice to an agent in constant communication with the defendant, a judgment obtained in default of appearance will be set aside on the grounds that the plaintiff has acted in violation of good faith, although there is no irregularity in any of the proceedings. BRABAZON *v.* BRABAZON
[V. C. XVII. 9

50. —— *Stay on execution—Order for payment by instalments—Priority of solicitor's costs—O. XLI., r.* 15.] A verdict having been found for the plaintiff for £50 in an action under Lord Campbell's Act, the Judge, at the trial, directed that judgment should be entered for the plaintiff for the said sum with costs, the damages and costs to be paid by yearly instalments of £20, said instalments, so far as the damages should extend, to be paid into the hands of the plaintiff directly, and to be so paid in priority to the costs:—*Held*, that this amounted to an absolute judgment, and that the direction as to payment by instalments must be regarded, not as part of the judgment, but as a separate order; that the gravest doubts existed whether the Judge had any jurisdiction to make such order, but that, assuming that he had, it must be regarded as a stay on execution under O. XLI., r. 15, which the Court could remove, under the same order; and that the order giving priority to the damages over the solicitor's costs was made without jurisdiction, and was a mere nullity. BRIEN *v.* SULLIVAN
[E. D. XVIII. 101

PRACTICE (Since the Judicature Acts)—JUDGMENT— *continued.*

51. —— *Vacating.*] A judgment which has been entered up out of Court may be vacated if merits are shown, and leave given to defend. MALLEY *v.* STONEY
[Q. B. D. XXVI. *M.* 324

52. —— *Verdict for Plaintiff on material issues—Direction for Defendant on immaterial issues—Leave to Plaintiff to move to change verdict—Conditional order, form of—Judgment* non obstante verdicto—*C. L. P. Act*, 1853, *s.* 164—88 *G. O.* 1854.] Where the findings of a jury are for a plaintiff on the material issues, and the Judge directs a verdict for the defendant on immaterial issues, and reserves leave to the plaintiff to move to change the verdict into one for him, the plaintiff should, in addition to so moving, move to enter up judgment *non obstante verdicto*, the finding of the jury being altogether in his favour. FITZPATRICK *v.* DUBLIN (LORD MAYOR, &C.)
[C. P. D. XIII. 47

—— Amendment - - - XXVII. *M.* 511
See PRACTICE—AMENDMENT. 5.

—— Motion for final after defence filed - XXVII. 95
See PRACTICE—TIME. 8.

—— Motion for - - - - - - XIII. 66
See ARBITRATION. 11.

—— Motion for final—Serious question of law
[XXVI. 59
See TITHE RENT CHARGE. 1.

—— Motion for—Specially indorsed writ—Amendment of writ.
[XV. 38
See PRACTICE—AMENDMENT. 9.

—— Motion for—Specially indorsed writ—Husband and wife
[XII. *M.* 161
See HUSBAND AND WIFE. 1.

—— Motion for—Specially indorsed writ—Part of claim unliquidated - - - - XXIV. 76
See PRACTICE—AMENDMENT. 17.

—— Motion for—Specially indorsed writ
See Cases under PRACTICE—WRIT SPECIALLY INDORSED.

PRACTICE—MODE OF TRIAL—*Trial without jury—Evidence by affidavit—O. XXXV., r.* 3.] In an action against an administrator for goods sold and delivered to a deceased intestate, the Vice-Chancellor directed the action to be tried without a jury, evidence to be by affidavit. BLACK *v.* DIVER
[V. C. XII. *M.* 309

PRACTICE—NEW TRIAL.

1. —— *Action for assault—Inadequacy of damages—Question of costs considered by the jury.*] A new trial, applied for in an action for assault, on the ground of inadequacy of damages, was refused, as in such an action the jury are the proper judges of the amount of damages. QUINLAN *v.* MURNANE
[C. P. D. XIX. 49

2. —— *Misdirection—Consent to judgment—Judicature Act, sch. r.* 32—*O. XXXIX., r.* 8.] Where a plaintiff has consented, at the trial, to judgment being entered for the defendants, without costs, the Court will refuse a motion by the plaintiff for a new trial, on the ground of misdirection; but if the plaintiff merely took no objection to judgment being so entered, he is not thereby bound as an assenting party. PHILPOTT *v.* CORK AND MACROOM RAILWAY CO.
[E. D. XIII. 155

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PRACTICE (Since the Judicature Acts)—NEW TRIAL—*continued.*

3. —— *Security for costs—Matrimonial cause—O. XXIX., r. 5—O. XXXIX.—O. LXX., rr.* 46, 91.] In proceedings for divorce by a wife against her husband, in the Probate and Matrimonial Division, the jury found against the respondent, who was condemned to pay the petitioner's costs. The respondent having applied, under O. LXX., r. 46, to the Queen's Bench Division for a new trial, the Court, on the application of the petitioner, ordered the respondent to give security for the petitioner's costs of the new trial motion, but refused to make any rule as to the costs of the previous proceedings. RIORDAN *v.* RIORDAN - - **Q. B. D. XXVII. 82**

4. —— *Surprise.*] An affidavit stating surprise may not be used by the mover of a new trial motion unless it had been mentioned in the notice of motion. MYERS *v.* BURKE [**Q. B. D. XXVI.** *M.* **304**

—— Setting aside verdict - - - **XXVI. 53**

See CARRIER. 10.

PRACTICE—NEXT FRIEND.

1. —— *Action commenced by—Discharge of, on minor's attaining age*—Dominus litis—*Right to enter* nolle prosequi.] In an action commenced by A. B., a minor, by C. D., his next friend, A. B., on coming of age, and before judgment given in the suit, caused a side bar rule to be entered, entitled in the cause of "A. B. and C. D., his next friend, plaintiff; E. F., defendant," changing the attorneys appointed by the next friend, and on the same day entered a *nolle prosequi* entitled in the cause of "A. B., plaintiff; E. F., defendant," but without any order discharging the next friend having been made:—*Held*, that on motion by the next friend, the side bar rule should be set aside, on the ground that the attorney in the cause was the attorney not of the minor but of the next friend, and that without the authority of the next friend a rule to change the attorney could not be regularly entered; and that the *nolle prosequi* should be set aside on the same ground, and also because it was a nullity, being entered in a non-existing cause. ALMACK *v.* MOORE [**E. D. XII. 42**

2. —— *Consent to act—Reference to affidavit to ground motion—O. XV., r.* 8—132 *G. O.* 1854.] Where the plaintiff in an action is an infant, the consent of his next friend to act should be filed at the same time as the writ is issued. ERWIN *v.* BLYTHE - - - - - **E. D. XVII. 24**

3. —— *Guardian* ad litem—*Consent of—Infant.*] A motion for liberty to file a consent by the next friend of a minor plaintiff to act as guardian is unnecessary. BARRY *v.* COLLINS [**E. D. XII.** *M.* **59**

PRACTICE—NOTICE OF TRIAL.

1. —— *Reply—Close of pleadings—O. XXIV.—O. XXXV., r.* 2.] A plaintiff, having delivered a reply joining issue on the defendant's statement of defence and traversing his counterclaim, and having at the same time served notice of trial, the defendant moved to set aside the notice of trial as irregular, under O. XXXV., r. 2, on the ground that the pleadings had not been closed previously. The Vice-Chancellor having refused to set aside the notice of trial, following *Clarke* v. *Grimshaw* (XII., 67):—*Held* (Fitzgibbon, L. J., *dis.*), that the plaintiff had a right to serve the notice of trial along with his reply, and that the decision of the Vice-Chancellor should be affirmed. *Warnock* v. *Harvey* (6 L. R. Ir. 339), and *Catheart* v. *Duke* (6 L. R. Ir. 340) not followed. WILSON *v.* LOWE - - - - - **C. A. XV. 1**

2. —— *Service along with reply—Close of pleadings—O. XXXV., rr.* 2, 3—*O. XXIII., r.* 3—*O. XXIV.*] A plaintiff has always a right to serve a notice of trial with his reply, even though the reply may contain a special plea to a counter-claim of the defendant. CLARKE *v.* GRIMSHAW **C. P. D. XII. 67**

3. —— *Short notice—Venue changed—Consent—Assizes—Appeal.*] Notice of trial in Dublin in an action had been duly served, and pending this notice the venue was by consent changed to Londonderry, the action to be tried at the Assizes. Application was made to one of the going Judges of Assize at Lifford for leave to serve short notice of trial, which was granted. A verdict having been found for the plaintiff at the trial, the defendant appealed from the order allowing short notice of trial. The appeal was dismissed. BROWN AND CO. *v.* REID - - - - - **C. A. XXVI. 133**

PRACTICE (Since the Judicature Acts)—NOTICE OF TRIAL—*continued.*

PRACTICE—PARTICULARS.

1. —— *Action of crim. con—Sufficiency of affidavit—Special circumstances, what constitute.*] In an action for crim. con. particulars will be ordered to be given of the time and place of the acts complained of, upon an affidavit by the defendant denying the acts and disclosing special circumstances entitling him to the order. The Court will require a very full statement by the defendant indicating that the information is required in good faith, denying all knowledge of the acts, and showing that he would be placed at a disadvantage if particulars were not furnished. *Per* Lord Ashbourne, C.: The defendant's absence from the country at the time of the alleged acts would amount to a special circumstance within the rule. *Per* Fitzgibbon, L.J.: It is sufficient as a special circumstance that the applicant affirms that he is innocent of and knows nothing of the alleged charges against him. *Ecklin* v. *Brady* (10 Ir. Jur. N. S. 188) overruled. *Lagan* v. *Gibson* (X. 6; I. R., 9; C. L. 507) and *Joynt* v. *Jackson* (XIV. 55) disapproved. KEENAN *v.* PRINGLE **Q. B. D. XXV. 13; C. A. XXV. 3**

2. —— *Places and dates of alleged acts—Action for crim. con.—Special circumstances.*] In an action for criminal connection the statement of claim averred the cause of action generally, without specifying the dates when, or the places where, the acts alleged were committed. Upon motion on behalf of the defendant for an order that the plaintiff should furnish particulars of time and place:—*Held*, that, without deciding that upon special circumstances the Court would not make such an order, the motion should be refused. *Lagan* v. *Gibson* (X. 6), and *Ecklin* v. *Brady* (10 Ir. Jur. N. S. 188), followed. JOYNT *v.* JACKSON [**E. D. XIV. 55**

PRACTICE—PARTIES.

1. —— *Action for the recovery of land—Death of sole defendant before trial—New defendant a minor—Legal representative of deceased defendant—Person in possession by himself and his tenants—Service of writ on persons in actual possession—O. IX., r.* 13—*O. XVII., r.* 9.] Where the sole defendant in an action for the recovery of land dies, after he has obtained an order that the plaintiff do give security for costs, the plaintiff, although he has not complied with the order for security, is entitled to have a new defendant substituted. HOWARD *v.* HOWARD [**Q. B. D. & C. A. XXVII. 6, 7 note**

2. —— *Action on promissory note—Judicature Act*, 1877, *sched. r.* 19—*O. XXVI., r.* 5—*O. XV., r.* 5.] In an action against three defendants on a joint and promissory note, the writ was served on two of them; an application to strike out the name of the third, who had left the country, was granted, the writ to be re-served on the two who had been served, and the costs incurred to be paid by the plaintiffs. KIRWAN *v.* MACARTNEY - - **E. D. XII.** *M.* **110**

3. —— *Adding co-defendant—Joint liability—Judicature Act, sched. r.* 19—*O. XV. r.* 17.] On an application by a defendant, under the Judicature Act, sched. r. 19, to compel the plaintiff to join other parties as co-defendants in the action on the ground of their joint liability with him, he must establish that joint liability by clear and distinct evidence. WHITE *v.* WORKMAN - **E. D. XVI. 97**

4. —— *Adding co-defendants—Agency—Two causes of action—Breach in respect of one out of the jurisdiction—Judicature Act, sched. r.* 19—*O. XV., rr.* 3, 4.] Where, in an action against a railway company for breach of contract in not carrying the plaintiff's pigs safely, from a station in Ireland to Liverpool, and for wrongful conversion, the defendants, by answers to

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PRACTICE (Since the Judicature Acts)—PARTIES—*con.*

interrogatories showed that the alleged conversion took place wholly in England, and was committed by another railway company without their sanction, leave was granted to the plaintiff to add the latter company as co-defendants. CREATON *v.* MIDLAND GREAT WESTERN OF IRELAND RAILWAY CO. [E. D. XVI. 94

5. —— *Adding plaintiff—Rules, June*, 1891, *O. XVI., r.* 11.] The Court may add a plaintiff at any stage of the action, though it may necessitate entirely new pleadings, and though the plaintiff knew that the co-plaintiff ought to have been joined. DIXON *v.* LIMERICK (MAYOR OF). - E. D. XXVI. *M.* 324

6. —— *Amendment of claim—Marriage of female defendant before defence delivered—O. XLIX., r.* 4.] The Court gave leave to amend the statement of claim by changing the name of a female defendant who had married before the defence was delivered. PATTON *v.* COOTE - Q. B. D. XVI. 104

7. —— *Death of sole defendant in an action to recover land —Security for costs—Rules, June*, 1891, *O. XVII., r.* 9—*Form of order to enable the plaintiff to continue proceedings.*] Where the sole defendant in an action for the recovery of land dies after he has obtained an order that the plaintiff do give security for costs, the plaintiff, although he has not complied with the order for security, is entitled to have a new defendant substituted. HOWARD *v.* HOWARD Q. B. D. XXVI. 119

8. —— *Death of sole plaintiff and sole defendant—Rules, June*, 1891, *O. XVII., r.* 4.] The Court will, on the application of the personal representative of the sole plaintiff, and after the death of the sole defendant, where the cause of action survives, continues the action against the personal representative of the deceased defendant on *ex parte* application. SELLORS *v.* GOODE - - - Q. B. D. XXVI. 111

9. —— *Defendant dying intestate after making of decree, and before accounts taken—Refusal of next of kin to take out administration—O. XV., r.* 13.] In an action by a judgment mortgagee for payment a decree for sale of the land was made. Subsequent to the decree the mortgagor died intestate, and his next of kin, alleging that the estate was insolvent, refused to take out letters of administration. On an application by the plaintiff under O. XV., r. 13, that the proceedings should be carried in the absence of any person representing the estate of the defendant, or to appoint a representative for the purposes of the suit:—*Held*, that the whole of the adverse interest in question being unrepresented, the application should be refused. IRVINE *v.* MARTIN - - V. C. XVIII. 21

10. —— *Demurrer—Prayer for relief—O. XXVII., r.* 1.] To a statement of claim by the plaintiff A. claiming in respect of work and services rendered, payment by the defendant B., on foot of special contracts, and upon a *quantum meruit* alternatively, B. took defence, alleging that the services were rendered, not by A. individually, but by the firm of A. and C. Whereupon A. amended his statement of claim, by averring that the defendant B. alleges that a partnership formerly existed between the plaintiff and C., and that portion of plaintiff's claims accrued during the existence of such partnership, until a date specified, when it was dissolved by mutual consent, the terms of which dissolution were contained in a letter, which was set forth, and, according to the plaintiff's construction, practically released or assigned to A. the share or interest of C. in the partnership demand sued for, or authorised A. to receive it into his own hands exclusively, to be by him applied or appropriated according to certain terms specified. And this amendment was followed up by making C. a party defendant. But while all the original paragraphs of the statement of claim stated the contracts to have been made by A. alone, the amended pleading, leaving those statements unaltered, did not even state in terms that any of the work was done by the firm, or under circumstances that would constitute it partnership work, or that any part of the demand constituted partnership assets, or that C. had any interest in or claim upon it, or that it was then subject to the provisions of the letter referred to; nor was there any specific claim or relief added in terms as against C. On demurrer to the statement of claim, as amended:—*Held*, that the demurrer should be overruled, both in so far as it depended on an objection that C. had been made a defendant instead of a co-plaintiff, and in so far as it rested on the absence of a claim for relief, specific or general, against him; for that, if a pleading be reasonably susceptible of the construction required for its validity, it should receive that construction, and, so construed, it showed a sufficient interest in C. to make him a proper and necessary party to the suit, and a claim for relief that should be taken to mean a claim for payment to A. exclusively, according to the terms of the letter referred to, and his discharge from any claim against B. by C.; while neither the absence of a prayer for relief in terms, nor (*semble*) a misjoinder or non-joinder of parties, for which another remedy is open, could be objected to on demurrer. SANDES *v.* THE DUBLIN UNITED TRAMWAYS COMPANY [Q. B. D. XVII. 79

[This was reversed on appeal—12 L. R., Ir., 424.]

11. —— *Indemnity to defendant where no personal representative of a deceased person—Unproved will—Staying proceedings—O. XV., rr.* 13, 17, 18.] Where it appeared that a deceased person, who was interested in the matters in dispute in the action, had no legal representative, and the defendants claimed to be protected from liability on any claim in respect of said matters by such representative, it was ordered that the action should be stayed until such personal representative should be raised, upon which notice according to Form No. 1, App. B. of the Rules of Court, might be served by the defendants, with liberty to the defendants to bring into Court the money in dispute. CAREY *v.* GOODBODY - - - - C. P. D. XII. 72

12. —— *Partners—Suing partners in name of firm—Marking judgment—Service on one partner only—Judicature Act*, 1877, *sec.* 61, *sch. r.* 10—*O. XI., r.* 3, 4—*O. XII., r.* 4—*O. XLI., r.* 8.] A motion for leave to mark judgment on a specially indorsed writ, served on one only of two defendants who were partners, there being no appearance, was refused. SMITH *v.* SMITH - - Q. B. D. XII. *M.* 46

13. —— *Pleading—Counter-claim against plaintiff in original action together with third party—New party, connection of, with original cause of action—Judicature Act, sec.* 27 (3).] In order to sustain a counter-claim for goods bargained and sold for money due upon accounts stated, &c., against a plaintiff in an original action, together with a new party, it must be shown that the third party, made a defendant to the counter-claim, is connected with the original cause of action; and it is not sufficient to aver that the plaintiff (by original action) is in partnership with such new party. O'CONNOR *v.* ANDERSON [E. D. XIV. 14

14. —— *Specially indorsed writ—Rules, June*, 1891, *O. XX., r.* 2—*Amended statement of claim against executor personally.*] Where there are two claims against an executor, one as executor, the other against him personally, the allegations that both claims have reference to the same estate may appear either in the writ, statement of claim, or by affidavit. ROCHE *v.* GALLIGAN - - - - E. D. XXVI. 138

15. —— *Suggestion of death—Revivor of judgment*—Ex parte *motion—O. LII., r.* 2.] Leave to enter a suggestion of the death of a party against whom a judgment had been entered, and to revive the judgment against the executrix of the deceased will not be granted *ex parte* except upon an affidavit setting forth grounds upon which the party applying is apprehensive of mischief by reason of proceeding upon notice in accordance with O. LII., r. 2. FITZPATRICK *v.* DEVLIN E. D. XII. 45

16. —— *Summons.*] In a summons for directions to fix the mode of trial, where there are several defendants, the names of all the defendants should be mentioned. PURCELL *v.* FLATTERY - - - V. C. XII. *M.* 394

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PRACTICE (Since the Judicature Acts)—PARTIES—*con.*

17. —— *Transmission of interest* pendente lite—*Amendment by addition of parties after decree made—O. XLIX., r. 3.*] Where the plaintiffs, in an action to raise the moneys secured by a deed of mortgage, assigned their interest *pendente lite*, the assignee was made a party even after decree; and as the application for the purpose was so made after decree, by the nominal plaintiff, the assignee was added as a party defendant, adopting the course pursued in *Campbell* v. *Holyland* (L. R. 7, Ch. D. 168.) PATCHELL *v.* FULTON - **E. XV. 43**

—— Adding new party—Action to establish title **[XXVI. 101**

See ACTION. 4.

—— Amendment - - - - - **XIII. 58**

See SETTLEMENT—VOLUNTARY SETTLEMENT. 2.

—— Death of defendant pending appeal—Revivor **[XXVII. 34**

See PRACTICE—APPEAL. 1.

PRACTICE—PAYMENT INTO COURT.

1. —— *Along with traverse of Plaintiff's title—Judicature Act, sched. r. 28.*] Circumstances under which a plea of payment into Court was allowed along with a traverse of the plaintiff's title stated. COSTELLOE *v.* COLGAN **[C. P. D. XIII. 61; C. A. XIII. *M.* 373**

2. —— *Exceptional circumstances.*] Payment into Court will not be ordered where it is clear that a pleadable defence exists, save in very exceptional circumstances. The swearing of the plaintiff that he believes the defendant will make away with his goods is no such circumstance. MALLEY *v.* STONEY **[Q. B. D. XXVI. *M.* 324**

3. —— *In satisfaction—Judicature Act, sched. r. 30.*] Where a defendant pays money into Court generally, in satisfaction of several causes of action, the Court will not exercise its discretion to compel the delivery of particulars allocating the amount paid in to the separate causes of action, unless satisfied that, by reason of the causes of action being entirely distinct, serious embarrassment is caused. LETTERS *v.* FOLEY **[Q. B. D. XXIII. 8**

PRACTICE—PAYMENT OUT OF COURT.

1. —— *Counter-claim—Issue joined.*] Where money is lodged in Court, on revocation of a judgment, though the defence be limited to a sum outside the amount lodged in Court, if a counter-claim be entered and issue joined, the money so lodged will not be paid out of Court. STANNER *v.* BEAMISH **[Q. B. D. XXVI. *M.* 334**

2. —— *Money lodged in Court—Verdict for Defendants—Costs not taxed.*] Where the defendants lodged a sum of £50 in Court to meet any possible claims outside the special contract pleaded, and where the plaintiff went to trial without drawing out the sum so lodged, and the defendants succeeded in the action, the jury negativing all claims outside the special contract:—*Held*, that inasmuch as the plaintiff was at liberty at any time before the hearing to withdraw the money lodged, his right to do so was not prejudiced by the verdict found for the defendants. HASSARD *v.* RATHMINES AND RATHGAR IMPROVEMENT COMMISSIONERS **[E. D. XXV. 15**

3. —— *Chamber Motion—O. LIII.*] An application for the transfer to a legatee, who has attained 21, of stock standing to her separate credit should be made in Chamber. DOYNE *v.* UNIACKE - - - - **V. C. XII. *M.* 46**

4. —— *Libel—Plea of apology and payment into Court.*] In an action for libel the defendant pleaded a denial of the defamatory sense imputed, or that the words complained of were published in relation to the plaintiff's office; that, admitting that it was so published, he denied the actual malice or gross negligence, and pleaded an apology published, and lodged £25 in Court in full satisfaction of the plaintiff's claim:—*Held*, that the money should not be drawn out of Court before the verdict, as the plaintiff was only entitled to it on the other allegations in the plea being proved. O'CONNELL *v.* ARNOTT **[E. D. XV. *M.* 311**

PRACTICE (Since the Judicature Acts)—PAYMENT OUT OF COURT—*continued.*

5. —— *Pleading payment into Court with traverse of cause of action and counter-claim—Plaintiff's right to draw out money and proceed with action—O. XXX., rr. 1, 4.*] Where a defendant traversed the cause of action and paid money into Court in satisfaction of the whole of the plaintiff's claim, and also delivered a counter-claim:—*Held*, that the plaintiff was entitled to draw out of Court the money lodged, though not accepting it in full satisfaction, and to proceed with the action. MULCAHY *v.* PERRY - - - **E. D. XV. 41**

PRACTICE—PENDING LITIGATION.

1. —— *Appeal—Continuance under old practice.*] A motion under sec. 25 of the Judicature Act, 1877, to have proceedings carried on under the old system, was granted. MIDDLETON *v.* CLARENCE - - - - - **C. A. XII. *M.* 73**

2. —— *Continuance under Judicature Act—Counter-claim—Transfer of action—Judicature Act, s. 36 (5)—Rules of Court, App. (C.), Form 16.*] In an action of ejectment on the title, commenced before the 1st January, 1878, leave was given to proceed under the Judicature Act in order to enable a counter-claim to be delivered, relying on an agreement for a lease, and claiming specific performance. *Quære*, whether sec. 36 (5) of the Judicature Act, by which causes and matters for specific performance of contracts are assigned to the Chancery Division, applies to counter-claims? SMITH *v.* LEVINGE **[E. D. XII. 42**

3. —— *Continuance under Judicature Act—Counter-claim—Accounts—O. XXXIII.*] The Court ordered an action for work and labour, goods sold, money received, and on accounts stated, to be carried on under the new procedure, and that the summons and plaint should stand for a statement of claim. NEILLSON *v.* LAHIFF - - - **E. D. XII. *M.* 74**

4. —— *Judicature Act, 1877—Dismissal for want of prosecution—O. XXXV., rr. 3, 4—O., Jan. 3, 1878.*] In an action pending at the time the Judicature Act, 1877, commenced, but in which no steps had been taken for nearly a year, on the application of the defendant it was ordered that the action should be continued under the new practice; the action to be dismissed, with costs, unless the plaintiff served notice of trial within ten days. INNIS (EXECUTORS OF) *v.* GALLAGHER **[E. D. XII. *M.* 36**

5. —— *Notice of appeal—Leave to mark judgment—O. LVIII., rr. 6, 12.*] A trial of an action took place in December, 1877, and a verdict was found for the defendant. In January, 1878, the plaintiff moved for a conditional order for a new trial, which was refused. He then served notice of appeal. Leave was subsequently given to the defendant to mark judgment, although the appeal was pending, the practice being under the old system. M'INTYRE *v.* HENDERSON **[Q. B. D. XII. *M.* 58**

6. —— *Proceedings in error—Judicature Act, s. 25.*] An application to have an action which was pending at the time of the passing of the Judicature Act listed for hearing after the passing of it, and in which there had been proceedings in error, was granted. CONWAY *v.* BELFAST AND N. C. RAILWAY CO. **[C. P. D. XV. *M.* 139**

7. —— *Proceeding under new practice.*] Leave was given to proceed under the new practice where the defendant desired to deliver a counter-claim. RICHARDSON *v.* MAHON **[C. P. D. XII. *M.* 47**

PRACTICE—RECEIVER.

1. —— *Appointment of.*] A receiver will not be appointed over property which the owner or his agent is managing to the best of his ability for the interest of all the parties, even though arrears of interest are due to incumbrancers, the owner being unable to collect the rents in consequence of the disturbed state of the country. BRABAZON *v.* BRABAZON **V. C. XVII. 9**

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PRACTICE (Since the Judicature Acts)—RECEIVER— *continued.*

2. —— *Appointment of — Absence of Receiver-Master — Judicature Act, 1877, sec. 75.*] The Lord Chancellor has no jurisdiction to make an order for the appointment of a receiver in the absence from town of the Receiver-Master. GOVERNOR AND COMPANY OF THE BANK OF IRELAND *v.* NORWOOD [C. XII. *M.* 133

3. —— *Equitable execution—Form of order—C. L. P. Act, 1853, ss. 132-134—Judicature Act, s.* 28 (8).] A receiver may now be appointed by way of equitable execution, over the interest of a judgment debtor in funds to which the latter is entitled only for an estate for life. BEAMISH *v.* STEPHENSON [E. D. XX. 45

4. —— *Equitable execution—Civil Service pension—Apportionment of pension—Prior instalment order.*] The Court has jurisdiction—which it will exercise in a proper case—to appoint a receiver by way of equitable execution over the entire of a Civil Service pension, and to limit the amount to be paid to the judgment creditor, by directing the receiver to pay a portion only of such pension to the judgment creditor, and to hand over the residue to the debtor. MOLONY *v.* CRUISE [E. D. XXVI. 52

5. —— *Equitable execution—Salary of workhouse chaplain—Costs.*] The Court made an order appointing an equitable receiver over the salary of a workhouse chaplain, the Poor Law Guardians to pay the costs. SMITH-BARRY *v.* HANLEY [E. D. XXIV. *M.* 360

6. —— *Equitable execution*—Ex parte *motion—O. L., r. 27.*] The Court refused to appoint a receiver by way of equitable execution where, in the affidavit upon which the application was grounded, the amount over which it was sought to appoint the receiver was stated as a sum ascertained upon information and belief only, and so indefinitely that the Court was unable to see that it would become unnecessary for the receiver to take an account. CINNAMOND AND MOORE *v.* LEWIS [Q. B. D. XXVII. 44

7. —— *Reference to appoint new receiver on death of former receiver—Notice—Costs.*] An application for a reference to appoint a new receiver, on the death of a former receiver, should be on notice. Both parties served and appearing merely to consent will not get their costs. FITZPATRICK *v.* KNARESBOROUGH - - - - - - R. XIV. 35

—— Equitable Execution - - - - XXII. 49

See ASSIGNMENT OF DEBT. 4.

—— Lease made by Land Judge—Parties to sue lessee on covenant - - - - - XXIII. 76

See LANDLORD AND TENANT—LEASE. 24.

PRACTICE—REPLY

1. —— *Delivery of, after the time, without leave—Effect of—Waiver of irregularity—O. XXIII., r.* 1—*O. XXVIII., r.* 12—*O. LIX.*] Appearing at the trial, though objection be taken before the examination of witnesses, constitutes a waiver of a default in pleading made by the opposite party. MOLONY *v.* DALY - - - E. D. XV. 80

2. —— *Departure—Raising a new ground of claim—Reply of set-off to counter-claim of set-off in action for rent—Judicature Act, sched. r.* 22—*O. XVIII., r.* 12—*O. XXVI., r.* 1.] In an action for rent the defendant pleaded a counter-claim for work and labour done. The plaintiff by his reply set up a set-off for goods sold, money lent, money paid, money received, and money due on accounts stated. An order of the Common Pleas Division refusing to set aside this reply was affirmed. CUMMING *v.* LYNCH - C. A. XVII. *M.* 21

3. —— *Departure—Inconsistent pleading—Setting aside, as raising different ground of claim—Judicature Act, sched. r.* 22—*O. XVIII., r.* 12—*O. XXVI. r.* 1.] A plaintiff cannot by his reply put forward a different claim from that contained in the statement of claim. He should amend his

PRACTICE (Since the Judicature Acts)—REPLY—*con.*

statement of claim under O. XXVI., r. 1. A plaintiff cannot plead a set-off to a counter-claim. DUCKWORTH *v.* M'CLELLAND - - - - - C. P. D. XII. 169

4. —— *Embarrassing—Contract, how far necessary to set out—Connection between allegations in statement of claim and reply—Settling of issues—Judicature Act, sched. rr.* 25, 27—*O. XVIII, rr.* 10, 14.] To a statement of claim setting out the terms of a contract between the plaintiff and the defendant, and claiming damages for breach of the contract by the defendant, the defendant filed a counter-claim claiming damages from the plaintiff for breach by the plaintiff of the same contract; the plaintiff by two paragraphs of his reply to the counter-claim pleaded that the defendant would not permit the plaintiff to complete the contract "upon the terms agreed upon between the plaintiff and the defendant on that behalf," and went on to state certain particulars in which the plaintiff alleged that the contract had been broken by the defendant, but the defendant did not either expressly refer to the contract as stated in the statement of claim or of defence, or set forth the terms of the contract upon the breach of which by the defendant he relied. Upon a motion to set aside these paragraphs of the reply:—*Held*, that the paragraphs objected to should be set aside as embarrassing, inasmuch as the reply, not containing any express reference to the statement of claim or of defence, must be taken by itself, and should have either traversed the contract relied upon in the defendant's counter-claim so as to raise an issue of fact, or have set forth the terms of the contract upon which the plaintiff relied so as to raise an issue of law. The conditions under which issues for trial will be settled by the Court considered. O'GRADY *v.* WARDEN [E. D. XII. 150

5. —— *Extension of time for delivery—Application on summons—O. XXIII., r.* 1—*O. LII., r.* 7—*O. LIII., r.* 2.] Leave was given, on a summons, for an extension of time for delivering a reply, where it was anticipated that there would be a difficulty about the service of it. BLACKLEY *v.* COSGRAVE - - - C. P. D. XIII. *M.* 123

6. —— *Extension of time for delivery—Motion for judgment—O. XXIX., r.* 9.] Where a plaintiff made default in delivering a reply to the defendants' statement of defence, and the defendants moved for judgment under O. XXXIX., r. 9, the Court refused to allow judgment to be entered up, and allowed the plaintiff an extension of time to reply, on paying the costs of the motion. *Thornton* v. *Clinch* (10 L. R. Ir. 378), explained. M'MANNION *v.* WATERFORD AND LIMERICK RAILWAY CO. - - - - E. D. XVIII. 39

7. —— *Raising new ground of claim—Reply of set-off and counter-claim to counter-claim of set-off—O. XVIII., r.* 12—*O. XXVI., r.* 1.] In reference to pleading a defence a counter-claim is to be treated as a cross-action; and therefore, to a plea of set-off and counter-claim for money due by the plaintiff, the plaintiff may in his reply, as a defence to such set-off, plead a new matter of set-off as against the defendants by way of accord and satisfaction. *Cuming* v. *Lynch* (XVII., M. 21), followed. KIDD *v.* KIDD [E. D. XVIII. 5

8. —— *Raising new claim—Set-off in reply to defence of set-off—O. XIX., r.* 17.] Where, in an action on money counts, the defendant pleads a debt due by the plaintiff to him, as a defence by way of set-off to the plaintiff's claim, the plaintiff in his reply cannot set-off to this another debt due by the defendant to him, but not included in his original demand. TAGGERT *v.* HUNTER - - E. D. XXVII. 95

PRACTICE—SALE—*Application to sell premises—Affidavit of amount due—By whom—County Court jurisdiction.*] Where liberty to sell is sought, in order to satisfy a judgment, there must be an affidavit by the plaintiff of the amount due. The Court will make no order on such an application if the County Court has jurisdiction in the matter. HAGGARTY *v.* CONNOR [V. C. XXVII. 126

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PRACTICE (Since the Judicature Acts)—SECURITY FOR COSTS.

1. —— *Drawing out money lodged—Costs of an unopposed motion.*] An order was made for security for costs, and £40 was lodged in Court in pursuance of it. In the action the defendant succeeded, and his certified costs amounted to £46. The Court refused to pay the £40 to the defendant on an *ex parte* motion; and when the motion was moved on notice, which did not contain any application for the costs of the motion, and as the plaintiff did not appear, it was granted without costs. KELLY *v.* KELLY - **E. D. XII.** *M.* **74**

2. —— *Liquidator—Company—O. LV.*] An order was made that the liquidator of a company, who was bringing an action against the defendant for money alleged to be due on calls, should give security for costs, the amount to be fixed by the master. (By Chatterton, V.C.) CORK SHIPPING CO. *v.* FOTHERINGHAM - - - **Vac. J. XII.** *M.* **161**

3. —— *Motion to discharge order regularly obtained—Rules, June, 1891, O. XXIX, r. 4—Plaintiff temporarily resident within the jurisdiction—Permanent residence—Change in practice on orders for security by Rules of* 1891.] Where a plaintiff, a British subject hitherto ordinarily resident abroad, but now within the jurisdiction, does not satisfy the Court of his intention of remaining within the jurisdiction permanently after the trial of the action, though he may be defeated therein:—*Held* (*per* Harrison and Holmes, JJ.), that he must be regarded as being only temporarily within the jurisdiction within the meaning of O. XXIX, r. 4. Also (*per* Harrison and Holmes, JJ., O'Brien, J., *diss.*), the Court, on deciding on the quality of the residence, will look to the probabilities of the plaintiff remaining within the jurisdiction in the possible event of his failing in his action. *Per* O'Brien, J.:—The question of the quality of the residence of the plaintiff is entirely a question of present intention to be decided in the present, and if that exists to the satisfaction of the Court on the hearing of the motion, the residence is permanent, and future possibilities cannot be regarded. The rules of practice as laid down in *Redondo* v. *Chaytor* (L. R. 4 Q. B. D., 453), have been changed in Ireland by the rules of June, 1891. *Michaels* v. *Empire Palace Co., Ltd.* (8 *Times* L. R., 318), considered. HOWARD *v.* HOWARD - - - - **Q. B. D. XXVI. 101**

4. —— *Plaintiff out of the jurisdiction—Residence within the jurisdiction.*] The Court will order that security for costs be given if the plaintiff goes beyond the jurisdiction or leaves the country. Goods of the plaintiff within the jurisdiction must be accurately described to defeat the motion, and a "right to reside in a house" within the jurisdiction is not to have a residence within it. BULL *v.* WALLIS **[E. D. XXVI. 114**

5. —— *Plaintiff resident out of the jurisdiction—41 Geo. III., c. 90, s. 5—Judgments Extension Act, 1868—Judicature Act, s. 71.*] A plaintiff resident out of the jurisdiction must give security for costs when applying under the Judgments Extension Act, 1868. NICHOLSON *v.* WOOD **[R. XVIII.** *M.* **646**

6. —— *Plaintiff resident out of the jurisdiction—Waiver of right to order—Delay—Necessitating delivery of statement of claim—Time when order may be made—Fixing amount of security—C. L. P. Act,* 1853, *s.* 52—52 *G. O.*, 1854—*O. LV.*] Where, after service of a preliminary notice requiring a plaintiff, resident out of the jurisdiction, to give security for costs, and of an accompanying affidavit of merits, the defendant allows the time for the delivery of a statement of claim by the plaintiff to expire, without moving for an order to compel him to give such security, the defendant is entitled to move for the order, notwithstanding that the plaintiff was obliged to deliver a statement of claim. HEIL *v.* LAZENBY - - - - - - - **Q. B. D. XVII. 10**

7. —— *Trustee residing in England—Waiver of right by appearance demanding statement of claim—Trustee—Duty of—Dispute between—Danger to trust estate.*] The plaintiff who resided permanently in England, was one of two trustees

PRACTICE (Since the Judicature Acts)—SECURITY FOR COSTS—*continued.*

between whom serious quarrelling arose, so that the trust estate was in danger:—*Held*, that the plaintiff was right to apply that the estate should be administered in this Court; and further that he should not be compelled to give security for costs. *Semble*, that, as the defendant had appeared demanding a statement of claim, this waived any right to require security for costs. CARTER *v.* STUBBS **[R. XIII. 138**

—— New Trial Motion—Action for Divorce - **XXVII. 82**
See PRACTICE—NEW TRIAL. 3.

PRACTICE—SEQUESTRATION.

1. —— *Action against Sequestrator—Injunction—Reference to ascertain damages—Delay—Costs.*] A sequestrator under the Court of Chancery applied for an injunction to restrain an action at law for a distress levied on a tenant in the discharge of his duties, and to have the matter referred to the Receiver-Master to inquire and report whether the sequestrator was justified in making the distress, and, if not so, to estimate the damages:—*Held*, that the sequestrator was entitled to the injunction, but that the only matter that should be referred to the Receiver-Master was the ascertainment of the amount of damages. LITTLE *v.* KIRKWOOD - **V. C. XII. 21**

2. —— *English judgment—41 Geo. III., c. 90—Sequestration in Ireland—Peer—O. XLIII., r. 7.*] The Court of Chancery in Ireland has no power to issue a writ of sequestration on foot of an English judgment enrolled in Ireland under 41 Geo. III., c. 90. KILWORTH *v.* MOUNTCASHEL **[R. XXVII. 17**

PRACTICE—SERVICE.

1. —— *Indorsement of—Writ of summons—Indorsement of service on duplicate—Destruction of original—Form of order.*] Where a process-server stated that he had duly served a copy of a writ upon a defendant, and when he showed to him the original, the defendant seized it and threw it into the fire, leave was given to have the service indorsed upon a duplicate. THOMAS *v.* COYLE - **Q. B. D. XXVI.** *M.* **682**

2. —— *Indorsement of—Writ of summons—Motion to extend time for making indorsement of service and to enter final judgment—O. LVII., r. 6—O. VIII., r. 2.*] Where a writ of summons was served on February 18th, 1881, and the indorsement of the date of service was not made within 3 days after service thereof, nor until November 23rd following:—*Held*, that, after the lapse of time that had occurred, the time for making the indorsement should not be enlarged, under O. LVII., r. 6. MARQUIS OF CONYNGHAM *v.* MONAGHAN **[C. P. D. XV. 121**

3. —— *Notice of motion for final judgment—O. XXIX., r. 4.*] Dropping a notice of motion, under O. XXIX., r. 4, in the letter-box of the defendant's solicitor's office, after knocking and receiving no answer, is not good service. DE FREYNE *v.* MACDERMOTT ROE - - - - **E. D. XXIV. 8**

4. —— *Out of the jurisdiction—Interpleader summons—Ex parte application—O. XI., r. 10—O. LVII.—O. LXXXVI., r. 1.*] The Court or a Judge will, upon an *ex parte* motion, give leave to serve an interpleader summons out of the jurisdiction. KEANE *v.* CROZIER **Q. B. D. XXVII. 81**

5. —— *Out of the jurisdiction—Notice of motion to set aside judgment.*] When it becomes necessary after final judgment in a suit to serve a party who is out of the jurisdiction personally, it is not necessary to obtain the leave of the Court before doing so. M'CRACKEN *v.* CAMPBELL - **E. D. XIX. 69**

6. —— *Out of the jurisdiction—Writ of summons—Affidavit—Necessary averment—Balance of convenience—Judicature Act, s.* 33.] The affidavit on which a motion to serve a writ of summons out of the jurisdiction is grounded, in addition to stating that the defendant is a British subject, and that the cause of action has arisen within the jurisdiction, should show that the action can be more conveniently tried in this country than elsewhere. LIVINGSTONE *v.* ANCKETELL **[E. D. XVII. 21**

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PRACTICE (Since the Judicature Acts)-SERVICE—*con.*

7. —— *Out of the jurisdiction—Writ of summons—Cause of action—Contract—Breach within the jurisdiction—O. X., r. 1.*] The plaintiff sued on a bond made by the defendant to him to secure payment of a debt and interest, and also premiums on a policy of insurance. The plaintiff resided in Ireland at the date of the execution of the bond, and was described in it as "of Garden Hill, Co. Dublin:"—*Held*, that the bond amounted to a covenant to pay the debt and interest, etc., in Ireland, and the non-payment was a "breach within the jurisdiction" of the contract so made. MOORE *v.* TORRENS [C. P. D. XIV. 29

8. —— *Out of the jurisdiction—Writ of summons—Concurrent writ—O. I., r. 3—O. V., r. 2—O. X., rr. 1, 2.*] When a writ of summons has been already issued, the Court will, on the same motion, give liberty to the plaintiff to issue a concurrent writ for service out of the jurisdiction on a co-defendant. CARROLL *v.* JENKYN - - V. C. XII. 22

9. —— *Out of the jurisdiction—Writ of summons—Concurrent writs—Judicature Act, s. 33—O. I., r. 3—O. V., r. 2—O. X., rr. 1, 2.*] Leave was given to issue two concurrent writs for service out of the jurisdiction; one defendant, resident in London, to have the usual time in such case for appearance, the other, resident in Antwerp, to have a calendar month. GERNON *v.* GERNON R. XII. *M.* 87

10. —— *Out of the jurisdiction—Concurrent writs—Leave to issue and serve—Defendants out of the jurisdiction—O. I., r. 3—O. V., rr. 1, 2.*] Liberty to issue concurrent writs for service on defendants in England, India, and America was granted; those in England to have 14 days to appear; and liberty to serve them out of the jurisdiction personally was granted. TRAILL *v.* PORTER - - V. C. XII. *M.* 109

11. —— *Out of the jurisdiction—Writ of summons—Contract to supply news—Transmission through the Post Office—Breach, where occurring.*] A contract by a London company to collect and supply news to a newspaper proprietor in Dublin, and to effect arrangements for its transmission, is not fulfilled by the delivery of the news at the London Post Office for transmission. When false news has been sent, the breach of the contract occurs on the receipt of the false news in Dublin. *Per* Fitzgibbon, L.J.: "Transmission" means the sending anything from one person to another or from one place to another, and involves its reaching the journey's end as well as being started on the journey. Judgment of the Queen's Bench Division affirmed. GRAY *v.* PRESS ASSOCIATION - Q. B. D. XXI. 62; C. A. XXI. 73

12. —— *Out of the jurisdiction—Writ of summons—Defendant resident in England—Obligation or liability affecting land situate within the jurisdiction—Execution of trusts according to the law of Ireland—Limiting relief to property within the jurisdiction—Balance of convenience—O. XI., r. 1*] A declaration that a trustee has committed a breach of trust by removing purchase monies out of the jurisdiction, is within O. XI., r. 1, (B. & D.). The liability of a trustee is indivisible in applications under that rule. ATTORNEY-GENERAL *v.* DRAPERS' COMPANY - R. & C. A. XXVII. 4, 6 note

13. —— *Out of the jurisdiction—Writ of summons—* Ex parte *application—Affidavit—Costs—Rules, June, 1891, O. XI., rr. 1, 2, 4.*] An order obtained *ex parte* for service out of the jurisdiction will be discharged if the party obtaining the order do not make a complete and explicit statement of all the material facts in question. But where there are several defendants, and the facts are fully disclosed as to some and not as to others, the order may be upheld against the former though discharged as against the latter, and the costs of the application apportioned between the successful parties. THE ATTORNEY-GENERAL *v.* THE IRISH SOCIETY - R. XXVI. 56

14. —— *Out of the jurisdiction—Writ of summons—Foreign subject—Notice in lieu of service.*] Although there is no provision in the Irish Common Law Procedure Acts corresponding to the 19th sec. of the English Act, still where a defendant residing out of the jurisdiction is a foreign subject the proper course is not to serve him with the writ personally, but with notice thereof according to the English practice. CRAIK *v.* KORTH - - - - E. D. XVII. 45

15. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve writ—Separate motions—Judicature Act, s. 33—O. I., r. 3—App. A., Pt. I., Form 3.*] To serve a person resident out of the jurisdiction with a writ of summons under the Judicature Act, leave to issue the writ in the Exchequer Division must first be obtained by motion, founded on an affidavit stating the facts; and after the issue of the writ, another motion must be made for leave to serve the writ out of the jurisdiction, also founded on an affidavit setting out facts sufficient to bring the case within sec. 33 of the Judicature Act. CARLISLE *v.* LANCASHIRE AND YORKSHIRE, AND LONDON AND NORTH-WESTERN RAILWAY COMPANIES - E. D. XII. 41

16. —— *Out of the jurisdiction—Writ of summons—Leave to issue for service—Defendants out of the jurisdiction—Time for appearance.*] Leave to issue a writ for service out of the jurisdiction was given. The time limited on the writ for appearance in the case of railway companies having Irish agents is the same as in that of defendants resident within the jurisdiction. DUTTON *v.* GREAT NORTHERN RAILWAY CO. OF ENGLAND - - - - - E. D. XII. *M.* 75

17. —— *Out of the jurisdiction—Writ of summons—Leave to issue writ for service out of the jurisdiction—Leave to serve it—O. I., r. 3—O. X., r. 2—Judicature Act, 1877, s. 33.*] Motions for leave to issue a writ for service out of the jurisdiction, and for leave to serve it, should be made separately. The Clerk of the Rules was directed to recite the former order in the latter order. JURY *v.* LIVE STOCK INSURANCE CO. OF GREAT BRITAIN - - - C. P. D. XII. *M.* 36

18. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve writs out of the jurisdiction.*] Where the defendant was out of the jurisdiction, leave was given, on the same motion and affidavit, to issue the writs for service out of the jurisdiction, and to serve them. GOFF *v.* OLIPHANT; GOFF *v.* LEES - - - Q. B. D. XII. *M.* 73

19. —— *Out of the jurisdiction—Writ of summons—Leave to issue for service abroad—Breach of contract within jurisdiction—Judicature Act, s. 33—O. I., r. 3—O. X., r. 1.*] An action was brought to recover the amount of a marine policy of insurance, taken out, on behalf of a ship and cargo, through N., a marine broker in Belfast, who was paid the premium thereon. The defendants were the underwriters, who signed the policy in London; and by their affidavit they stated that they knew of no persons in the transaction, except R., who took out the policy. The plaintiff's case was that by the policy the defendants undertook to pay the plaintiff, as owner of the ship, £100, and it was the duty of the defendants, wherever he was, to pay him. He resided in Belfast:—*Held* (reversing the order of the Common Pleas Division), that the breach of contract was the non-payment of the money at Belfast, and that the custom of Lloyd's, that the money should be payable only in London, did not bind the plaintiff so as to prevent him proceeding with his action in Ireland. WARD *v.* HARRIS [C. A. XV. *M.* 22

20. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve writ—Defendant out of the jurisdiction—Judicature Act, 1877, sec. 33, sched. r. 10—O. I., r. 3.*] Leave was given by one motion to issue a writ for service out of the jurisdiction, and to serve it personally. GOFF *v.* DAVIES [Q. B. D. XII. *M.* 88

21. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve writ—Defendant out of the jurisdiction—O. I., r. 3—O. X. r. 1.*] Liberty to issue a writ for service out of the jurisdiction, and to serve it, should be applied for in one motion. BALDWIN *v.* BALDWIN - V. C. XII. *M.* 109
TOBIN *v.* SPILLANE - - C. P. D. XII. *M.* 110

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PRACTICE (Since the Judicature Acts)—SERVICE—*con.*

22. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve—Defendant out of the jurisdiction—Judicature Act, sec.* 33—*O. I., r.* 3.] Leave to substitute service on a writ of summons must be applied for after the writ has been issued. HAYES *v.* DILLON - C. P. D. XIII. *M.* 91

23. —— *Out of the jurisdiction—Writ of summons—Leave to issue writ for service out of the jurisdiction—Defendant not a British subject—Judicature Act,* 1877, *sec.* 33—*O. I., r.* 3—*O. X., r.* 2.] Leave was given to issue a writ for service on a defendant, who was not a British subject, out of the jurisdiction, the affidavit stating that the cause of action arose within the jurisdiction. LESAGE *v.* DE FRITH [V. C. XII. *M.* 161

24. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve writ—Defendant out of the jurisdiction—Judicature Act,* 1877, *s.* 33—*O. I., r.* 3—*O. X., rr.* 1, 2.] Leave to issue and serve a writ out of the jurisdiction can be given by one and the same order; but where different times for appearance are stated for different defendants, concurrent writs should be applied for. TRAILL *v.* PORTER [V. C. XII. *M.* 87

25. —— *Out of the jurisdiction—Writ of summons—Leave to issue and serve—Defendant out of the jurisdiction—O. I., r.* 3—*O. X., r.* 1.] The Exchequer Division will only grant leave to issue a writ for service out of the jurisdiction in the first instance. DEVLIN *v.* WHELAN - E. D. XII. *M.* 110

26. —— *Out of the jurisdiction—Writ of summons—Leave to issue writ out of jurisdiction—Leave to serve it—Affidavit—Judicature Act,* 1877, *sec.* 33—*O. I., r.* 3—*O. X., r.* 2.] The affidavit to ground a motion for leave to issue a writ of summons out of the jurisdiction must show the amount or value of the claim or property affected, and facts from which it can be inferred that the action can be more conveniently and properly tried in Ireland. A subsequent motion to serve the writ out of the jurisdiction cannot be made on the former affidavit, but on one entitled between the parties plaintiff and defendant. The two motions for leave to issue, and for leave to serve, the writ out of the jurisdiction, should be made separately. WOOD *v.* HESMONDALGH [E. D. XII. *M.* 22

27. —— *Out of the jurisdiction—Writ of summons—Leave to issue for service out of jurisdiction—Leave to serve it—Judicature Act,* 1877, *sec.* 33—*O. I., rr.* 3, 4—*O. X., rr.* 1, 2, 3—*Service of orders.*] Motions for leave to issue writ for service out of the jurisdiction, and for leave to serve it, should be made separately, the latter on an affidavit entitled between the parties. An absolute order for personal service was made, copies of the two orders to be served on the defendant, who was to have fourteen days to appear. STEPHENS *v.* BLACK [Q. B. D. XII. *M.* 34

28. —— *Out of the jurisdiction—Writ of summons—Libel.*] Leave was given to the plaintiff to issue and serve out of the jurisdiction a writ of summons claiming an injunction to restrain the defendant, resident in England, from sending libels to the plaintiff, resident in Ireland, and publishing the same within the jurisdiction, and also claiming damages. TREVETHICK *v.* LEARY - - Q. B. D. XXVII. *M.* 623

29. —— *Out of the jurisdiction—Writ of summons—Libel published in England—Injunction—Rules, June,* 1891, *O. XI., r.* 1 (*g.*).] The Court has no power to give leave to issue and serve out of the jurisdiction a writ of summons claiming damages for libel against the registered proprietor and publisher of the *Times*. JEWELL *v.* WALTER [E. D. XXV. *M.* 586

30. —— *Out of the jurisdiction—Writ of summons—O. I., r.* 4—*Title of affidavit.*] The affidavit in support of an application for leave to issue a writ for service out of the jurisdiction must be entitled as follows:—"In the matter of an intended action between" the parties "and in the matter of the Supreme Court of Judicature (Ireland) Act, 1877." BLAKE *v.* LEVER [E. D. XV. 3

PRACTICE (Since the Judicature Acts)—SERVICE—*con.*

31. —— *Out of the jurisdiction—Writ of summons—Personal service—Defendant abroad.*] Where the defendant was a partner in a Liverpool firm but had gone to reside abroad, the Court refused to allow substitution of services of the writ of summons on the firm in Liverpool, and ordered personal service on the defendant abroad. MOORE *v.* JOHNSTON [Q. B. D. XXVI. 92

32. —— *Out of jurisdiction—Substitution—Form of order.*] Where repeated attempts had been made to effect personal service of a writ of summons on a defendant out of the jurisdiction, the Court allowed substitution of service by registered letter addressed to the residence of the defendant, containing copies of the writ and order. SEATON *v.* CLARKE [Q. B. D. XXIV. 82

33. —— *Out of the jurisdiction—Writ of summons—Substituted service—O. X.—O. XI.—O. LXVII., rr.* 6, 7.] In an intended action the defendant, who was usually resident within the jurisdiction, was temporarily resident in London, where his address could not be discovered by the plaintiffs, but where a firm of solicitors was transacting business for him: the Court gave leave to issue a writ and serve it out of the jurisdiction, by sending a copy of the writ and order to the defendant at his solicitors. PIM BROTHERS *v.* WYLIE [Q. B. D. XXVII. 27

34. —— *Out of the jurisdiction—Summons—Execution six years since judgment—O. XLI., r.* 19—*O. LIII., r.* 2.] Leave to issue and serve personally out of the jurisdiction a summons to revive and issue execution upon a judgment six years after its date, upon a defendant in Paris, was granted, the defendant to have one month to appear, and the judgment was subsequently revived. JOHNSTONE *v.* MASSEY [Q. B. D. XII. *M.* 242, 296, and 310

35. —— *Substitution — Writ of summons — Action for* £18.] The Court refused to give leave to substitute service of a writ for £18, it being within the Civil Bill Jurisdiction. BURKE *v.* PENTONY - - - Q. B. D. XXVI. *M.* 389

36. —— *Substitution—Writ of summons—Agency* quoad hoc—*O. VIII., r.* 4—*O. IX.*] Where, after a defendant had gone to America, his wife continued to reside on and manage his farm, and negotiated with the plaintiff *quoad* the matters in respect of which the action was brought, but, though she had heard from him by letters, was unaware of his present address:—*Held*, that the service of the writ of summons should be substituted by serving her as the defendant's agent. ANDERSON *v.* BELL - - - - - - - C. P. D. XV. 18

37. —— *Substitution — Writ of summons — Cause of action, where arising.*] In an action, where the contract arose in Ireland, and the breach in Scotland:—*Held* (affirming the decision of the Exchequer Division), that the cause of action arose in Ireland, and that the order to substitute service of the writ was rightly made. HILL *v.* FRAZER [C. A. XII. *M.* 101

38. —— *Substitution—Writ of summons—Company having its registered office in England, but having an office and carrying on business in Ireland—Companies' Act,* 1862—*O. XI., r.* 1.] A limited liability company had their registered office in England, but carried on business in Ireland, and had an office in Dublin:—*Held*, that service of a writ of summons, in an action for breach of a contract entered into in England, might be effected by substituting service on the manager of the Dublin office, and by sending a copy of the writ in a registered letter to the registered office of the company in England. CRAWFORD *v.* WRIGHT AND BUTLER [E. D. XXVII. 75

39. —— *Substitution—Writ of summons—Defendant out of the jurisdiction—Jurisdiction of Recorder—Amount of claim—Medical fees—Rules, June,* 1891, *O. IX., r.* 5—*O. XI., rr.* 1, 2.] The Court of Appeal affirmed, as being within the discretion of the Court, an order of a Judge of the Queen's Bench Division refusing to grant a motion for substitution of service the defendant being out the jurisdiction, where the claim was one properly to be dealt with by the Recorder. SMITH *v.* LIPTON - - - - C. A. XXVI. 91

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PRACTICE (Since the Judicature Acts)—SERVICE—con.

40. —— *Substitution—Writ of summons—Defendant out of the jurisdiction—Agent—Rules, June, 1891, O. LXVII., r. 7—"or otherwise."*] In an action to recover money due to the Grand Jury by a cess collector, the defendant, who was tenant of a farm, house, and garden in Donegal, left the country, his whereabouts being unknown. After his departure the farm was managed by his wife, who lived in the house. On her subsequently leaving the country it was managed by the defendant's brother-in-law, H., who paid the rent and obtained receipts from the agent in the name of the defendant:—*Held*, that service should be substituted by serving the writ on H. personally. GROVE *v.* BOYLE - - **E. D. XXVI. 22**

41. —— *Substitution—Writ of summons—Defendant resident in Scotland—Agency within the jurisdiction—Cause of action, where arising—Policy of assurance executed in Edinburgh—Proposal signed in Dublin—Action for payment—O. X., r. 1.*] The defendants, an incorporated British Company, resided in Scotland, but had an agent in Dublin for the purpose of receiving proposals for life insurance, and of receiving and transmitting to them premiums paid on policies, while he, also, in some cases, received from them money for the settlement of claims arising under policies and applied it as directed. H. signed a proposal (which was to form part of the contract) for a policy in the office of the agent in Dublin, and paid the first year's premium in Dublin. The policy was subsequently signed and sealed in Edinburgh, but was delivered to H. in Dublin. The amount of the policy was thereby made payable out of the funds and property of the company, who had no property of any kind in Ireland. H. died in Dublin, and his personal representative having brought an action there to recover the amount of the policy:—*Held*, that the plaintiff was entitled to an order for service of the writ of summons upon the defendants through the medium of a registered letter, and by serving their Dublin agent. HAYES *v.* ACCIDENT INSURANCE ASSOCIATION - - **Q. B. D. XII. 71**

42. —— *Substitution—Writ of summons—Leave to issue writ—Leave to serve—Defendant out of the jurisdiction—Judicature Act, 1877, s. 33, sched. r. 10—O. I., r. 3—O. IX.—O. X.*] The Court of Queen's Bench did not consider it necessary to obtain leave to issue writs, where it was intended to substitute service on agents resident within the jurisdiction; it would be otherwise if it was intended to serve personally a defendant out of the jurisdiction. The indorsement on the writ of the time limited for the defendant to appear is not necessary. WRIGHT *v.* DRAPERS' COMPANY; HURLEY *v.* LEEMAN **[Q. B. D. XII. *M.* 58**

43. —— *Substitution—Writ of summons—Leave to issue and serve—Substitution of service—O. I., r. 3—O. X., r. 3.*] The Exchequer Division refused to give leave to substitute service of a writ of summons issued without leave; and the Common Pleas Division gave leave. DOWLING *v.* MIDLAND RAILWAY COMPANY - **E. D. and C. P. D. XII. *M.* 297**

44. —— *Substitution—Writ of summons—One motion in different actions—Affidavit.*] Leave to substitute service of writs was given in one motion, grounded on one affidavit, where there were several similar actions; the affidavit to be stamped for each, and separate order to be made. HARE *v.* ANDERSON **[Vac. J. XV. *M.* 195**

45. —— *Substitution—Writ of summons—Personal service attended with danger—Affidavit.*] On application for substitution of service on the ground of personal service being attended with danger, there must be stated in the affidavit established facts, as contra-distinguished from general statements, which will satisfy the Judge that the attempt to effect personal service would be attended with danger. ANON.; BARNES *v.* LAWRENCE; BOURKE *v.* CONNOLLY **[C. P. D. XV. *M.* 323, 324**

46. —— *Substitution—Writ of summons—Rules, June, 1891, O. IX., r. 5—O. XI., rr. 1, 2—O. LXVII, r. 7—O. X., r. 1—Proper persons for substitution of service—C. L. P. Act, 1853, s. 34—Judicature Act, s. 33—Libel.*] Where a writ in the ordinary form was issued without leave of the Court in an action for libel against a newspaper company not within the jurisdiction, and the plaintiff obtained an order for substitution of service upon a news-vendor within the jurisdiction:—*Held*, that (in cases where the defendant is outside the jurisdiction) O. XI., r. 2, governs and limits O. XI., r. 5; that service out of the jurisdiction is permissible only in the cases mentioned in O. XI., r. 1; and that substituted service (where the defendant is without the jurisdiction) is only permissible where personal service outside of the jurisdiction is legally possible. An action for libel cannot now be instituted in Ireland against a person not within and not domiciled within the jurisdiction. O'CONNOR *v.* STAR NEWSPAPER COMPANY - - - **Q. B. D. XXV. 74**

47. —— *Substitution—Writ of summons—Service on defendant's mother—Absence of three attempts to effect personal service.*] Where, owing to the disturbed state of the county, a writ was unable to be served on the defendants, and only two attempts were made to serve it, which was effected by serving the defendant's mother, the Court held the service good. HODSON *v.* HANLEY - - **C. P. D. XV. *M.* 233**

48. —— *Substitution—Writ of summons—Agent—Solicitor for owner of estate paying charge thereon to defendant out of jurisdiction—Collusion—C. L. P. Act, 1853, sec. 34—Appeal—Matters in discretion of Court—Interlocutory order in action commenced prior to Judicature Act—O., Jan. 3, 1878—Judicature Act, ss. 24, 25, sched. Rule 35—Supplemental affidavits—Costs.*] Before the coming into operation of the Judicature Act, an action was commenced, and a conditional order for substitution of service of the summons and plaint obtained, which, after the coming into operation of that Act, was made absolute, directing service to be had, under the C. L. P. Act, 1853, sec. 34, on an alleged agent of the defendant, who resided out of the jurisdiction. The alleged agent appealed, and by a supplemental affidavit sworn for the purpose of the appeal motion, established, for the first time, that though he received the rents of an estate on which the defendant's jointure was charged, from the land-agent who collected them, and transmitted to the defendant the amount of her jointure, by quarterly payments out of the rents, he merely did so as solicitor for the owners of the estate, and in order to enable him, after payment of that paramount charge, to divide and distribute the residue among various persons, beneficially interested therein, in proportions to be duly adjusted, for which purpose he had been appointed by the owners of the estate only:—*Held*, that though substitution of service on an agent, under the C. L. P. Act, 1853, sec. 34, is a discretionary matter, and though the conditional order was made before the coming into operation of the Judicature Act, an appeal lay from the subsequent order, making it absolute; that the order of the Court below should be reversed, on the ground that the appellant was not an agent of the defendant under the C. L. P. Act, 1853, sec. 34, and that no costs of the appeal should be given, as the reversal was caused by material information, supplied by the appellant subsequent to the order appealed from, and making a substantially new case on his behalf. SWANZY *v.* SOUTHWELL **[C. P. D. XII. 14; C. A. XII. 25**

49. —— *Substitution—Writ of summons—Minor.*] Service of a writ on a minor defendant cannot be substituted, but must be effected personally. (By Johnson, J.) COOK *v.* DELANDRE - - - **Vac. J. XXIV. *M.* 595**

50. —— *Substitution—Writ of summons—Leave to issue writ—Leave to serve it—Judicature Act, 1877, s. 33—O. I., r. 3—O. IX—O. X.*] In every case where it is intended either to serve the defendant resident out of the jurisdiction personally, or by substituting service on an agent within it, it is necessary first to make an application for leave to issue the writ, and afterwards, for leave to serve it. CARLISLE *v.* LANCASHIRE AND YORKSHIRE RAILWAY CO.; FAHY *v.* OOLA HILLS SILVER AND LEAD MINING COMPANY - **E. D. XII. *M.* 48**
BEECHER *v.* COLLINS - - **C. P. D. XII. *M.* 49**

51. —— *Substitution—Wife as agent.*] The defendant, in April last, had emigrated to the United States, and before

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PRACTICE (Since the Judicature Acts)—SERVICE—*con.*

doing so had, in March, mortgaged his farm to his wife's father for £300. The mortgage was produced. His wife remained living on and working the farm. She stated she was not aware of her husband's address, and was not in a position to communicate with him: the Court confirmed a conditional order to substitute service of a writ on the defendant's wife, holding that the fact of her working the farm constituted agency. REAL & HAYES *v.* RYAN
[Q. B. D. XXVII. *M.* 522

52. —— *Writ of summons—Mistake—Indorsement of service—O. VIII., rr.* 2, 5.] Where the original writ of summons was served on the defendant by the process-server, by a mistake, in the place of the copy thereof:—*Held*, that the officer of the Court was at liberty, in marking judgment, to dispense with the production of the original writ.
ADAMS *v.* FLYNN - - - - E. D. XXIV. 36

53. —— *Writ of summons—One motion in different actions by the same plaintiff—Affidavit.*] A motion, in several actions to recover land for non-payment of rent by the same plaintiff against different defendants, that the service made of the writs of summons should be deemed good, may be grounded, where the facts are alike in all, on a single affidavit, entitled in each action separately and stamped for each, and a single order may be made thereupon. COCHRANE *v.* M'ELLANEY - - - - Q. B. D. XV. 46
ORKNEY *v.* SHANAHAN - Q. B. D. XV. 46; note

54. —— *O. LXIV., r.* 9—*Long Vacation.*] A pleading or notice served on the 1st August after 2 o'clock if a Saturday, or after 5 o'clock if any other day, will be deemed to be duly done on the first day (16th October) of the following sittings, and not to have been served during the Long Vacation. CLEARY *v.* EAGER - - - - - E. D. XXVII. 9

—— Action for recovery of land on non-payment of rent.
[XIV. 51

See PRACTICE—WRIT OF SUMMONS. 11.

—— Affidavit of—Death of Process Server - XIII. *M.* 374

See PRACTICE—WRIT OF SUMMONS. 10.

—— Notice of motion for Attachment.

See PRACTICE—ATTACHMENT. 1, 2.

—— Out of the jurisdiction — Originating summons under Vendor and Purchaser Act, 1874 - XII. 21

See VENDOR AND PURCHASER ACT, 1874. 1.

—— Personal service—Affidavit of - - XVIII. 102

See PRACTICE—WRIT OF SUMMONS. 9.

—— Substitution—Statement of claim - - XVI. 105

See PRACTICE—CLAIM. 8.

PRACTICE—STAYING PROCEEDINGS.

1. —— *Companies Act*, 1862, *s.* 85—*Judicature Act*, 1877, *s.* 27 (5).] A motion *ex parte* was granted staying proceedings against a company pending an application to the Court to wind up the company. ANDERSON *v.* CARRICK GAS CO.
[Q. B. D. XXVII. 18

2. —— *Contemporaneous actions against principal and surety—Consolidation—O. L., r.* 6.] The defendants in the first of these actions were sureties for the defendant in the second. On the same day the principal debtor and the sureties were served with writs for the same sum. On the amount for which the defendants in the first action were liable being lodged in Court by the defendants in the second action it was ordered, without the defendants in the first action swearing that they had a good defence, that the first action be stayed, and that the writ in the second action be amended by adding the defendants in the first action as parties. NEWRY FOUNDRY CO. *v.* DOUGHERTY. SAME *v.* LAFFERTY
[E. D. XII. 74

PRACTICE (Since the Judicature Acts)—STAYING PROCEEDINGS—*continued.*

3. —— *Non-suit—Staying proceedings in second action for same cause—O. XL., r.* 6.] A non-suit under O. XL., r. 6, is the same in effect as a judgment for the defendant, and if a second action is begun for the same cause, the non-suit in the first action should be pleaded in estoppel. The old rule, followed in *Hoare* v. *Dickson* (18 L. J. C. P. 168), that proceedings will be stayed until the costs of the previous action are paid, if the causes of action are substantially the same, only applies now in actions to recover land on title, where the plaintiff can bring a fresh action on a new title, notwithstanding judgment against him. BYWATER *v.* DUNNE - - - - - E. D. XVII. 15

4. —— *On writ of summons—Petition in County Court concerning same cause of action*—40 & 41 *Vic., c.* 56, *s.* 33—*Judicature Act, s.* 27 (5).] Proceedings on writ of summons were stayed, when a petition under Trustee Relief Act and County Courts and Officers Act, 1877, concerning same cause of action awaiting hearing in County Court. DOHERTY *v.* GLOVER
[C. P. D. XIII. 98

5. —— *Second action between same parties and for same cause of action—Costs.*] An action will be stayed where a prior action between same parties and for same cause of action is pending unless the costs of the first action are paid within time limited by the order. The costs of the application to stay the second action will not generally be given to the applicant unless before institution of the motion he has applied out of Court for the costs of the first action. POHLMANN *v.* QUIRKE
[Q. B. D. XXVI. 111

6. —— *Several actions listed against same defendants—Verdict in two for defendants.*] Where there had been seven actions listed for hearing at the suit of different plaintiffs against the same defendants, and all arising out of the same state of facts, and two of these had been determined in favour of the defendants; an order was made to stay the hearing of the remaining five actions until a new trial motion in one of the cases already decided should be determined in favour of the plaintiff, or until further order. (By O'Brien, J.)
O'MALLEY *v.* STEELE - - - N. P. XXVI. 127

7. —— *Till costs of former action paid—Action against builder and contractor for same cause as in former action against his employers.*] The Court will not stay proceedings till the costs of a former action, involving the same question, have been paid, where the present defendant was not a party to the former action. RYAN *v.* ADAMS - E. D. XV. 21

—— Against Justice of the Peace - - XIV. 94

See JUSTICES—JURISDICTION. 7.

—— Pending in another Court - - - XIII. 74

See PRACTICE—INJUNCTION. 6.

PRACTICE—STRIKING OUT PLEADINGS.

1. —— *Defence.*] A statement of defence which disclosed no reasonable defence to an action was set aside with costs. BURTON *v.* EASTWOOD - - E. D. XXVII. 20 note

2. —— *Defence—Counter-claim—Judicature Act, sch. rr.* 22, 23—*G. O. XVIII., r.* 4.] By way of defence to a claim, brought by the executrix of a testator against the defendant, as a legatee in a suit for the administration of the estate, it was stated that "the defendant occupied a house and lands of the testator's in which the defendant had a large quantity of household furniture which was his own exclusive property, but which, during the absence of the defendant, the testator moved to his own residence. There was also a quantity of jewellery and books, and other matters of the like nature of the value of about £60 "at the testator's residence" at the time of his death. Some of the said furniture, jewellery, and books of the defendant have been sold since testator's death, but no part of the produce thereof has been paid to the defendant, and he accordingly claims a return of such of the articles aforesaid as have not yet been sold, and the value of those which have been sold":—*Held*, that this was neither a statement of defence nor a counter-claim, and that it should be struck out. ROBINS *v.* M'DONNELL - V. C. XIII. 91

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PRACTICE (Since the Judicature Acts)—STRIKING OUT PLEADINGS—*continued.*

3.——*Embarrassing—Irrelevant allegations—Matters of evidence—Judicature Act, sch. rr.* 23, 28—*O. XVIII., r.* 16.] In an action to recover damages for the detention of the plaintiff's goods, and wrongfully refusing to give certificates or warrants for delivery of goods warehoused with the defendants since the passing of the Dublin Port and Docks Act, 1869 (32 and 33 Vic., c. 100), the statement of claim began by a lengthy recital of the several sections of the statute imposing on the defendants the duty of delivering such certificates or warrants in respect of goods warehoused thereunder, subject to certain provisions as to liens in respect of various specified liabilities; it then introduced a description, like an advertisement, of the plaintiff's firm, their trade, connections, and reputation, and after detailing at much length the facts in reference to the detention of the goods (which were not expressly stated to have been delivered to, or demanded from, the defendants), and refusal to give the certificates or warrants, with a view to showing that a lien had been set up by the defendants without a foundation in law, in respect of claims which had no foundation in fact, it alleged that the defendants' book-keeping and accounting departments had been for many years thoroughly disorganised, and that no proper accounts had been kept there for many years, and that they furnished accounts which were not due, but without disclosing as to same any relevancy to the particular transaction out of which the action arose:—*Held*, that the statement of claim was indefinite, embarrassing, and calculated to delay the fair trial of the action, and that same should be set aside. COYLE *v.* DUBLIN PORT AND DOCKS BOARD [C. P. D. XIII. 9

4.——*Embarrassing reply—Inconsistent—Raising a different ground of claim—O. XVIII., r.* 12.] The statement of claim in an action for recovery of land alleged a title to the premises sought to be recovered in the plaintiff under a demise of the 15th Nov., 1864. The statement of defence alleged that this demise had been surrendered. In the 6th and 7th paragraphs of his reply, the plaintiff alleged a title in himself as representing the lessor in a lease of the 29th June, 1875. On motion by the defendant:—*Held*, that the plaintiff's reply should be set aside, as having made a case wholly different from that made by the statement of claim. *Hall* v. *Eve* (4 Ch. Div., 341) distinguished. O'FARRELL *v.* STEPHENSON - - - - E. D. XII. 81

[This was affirmed on appeal. 4 L. R. Ir. 715.]

5.——*General denial of allegations in statement of claim—Conditions precedent—"Puffer"—Judicature Act, sch. rr.* 23, 25—*O. XVIII., rr.* 10, 14, 19—*App. C., Forms* 11, 14, 19.] To a statement of claim alleging that the defendant had purchased certain premises at a sale by auction, the defendant delivered a statement of defence, the 1st paragraph of which was: "The defendant denies all and every the allegations in the several paragraphs of the statement of claim respectively contained":—*Held*, that this paragraph amounted to the general issue, and was therefore inadmissible. The 2nd paragraph of the statement of defence alleged that the auction was not *bonâ fide*, because several biddings were made by a "puffer":—*Held*, that though the word puffer had received a statutory meaning by section 3 of 30 & 31 Vic., c. 48, the meaning there given was only for the purposes of that statute; that there was nothing to show that the word was employed in this sense in the statement of defence, and, consequently, that it was ambiguous and that the paragraph containing it should be struck out. *Semble*, that a general averment of the performance of conditions precedent, as before the Judicature Act, is still legitimate. JONES *v.* QUINN - - - - - - E. D. XIII. 16

6.——*Embarrassing—Numbering of separate defences—Paragraphs, whether to be taken separately or as one defence—Judicature Act, sch. r.* 23—*O. XVIII., r.* 3—*O. XXVII., r.* 2.] Where a statement of defence consisted of three paragraphs numbered consecutively, and it was doubtful whether the three paragraphs constituted three separate defences or a single defence, an application was made to set aside the statement of defence as embarrassing, inasmuch as the plaintiff could not with safety either demur to one paragraph, if the three paragraphs constituted a single defence, or join issue on the whole defence, if the paragraphs were to be construed as constituting three separate defences; but on counsel for the defendant alleging that the three paragraphs constituted but a single defence, a note to that effect was directed to be inserted in the order, and the Court made no rule on the motion. HENRY *v.* HENRY E. D. XII. 84

——Counter-claim - - - - - XIII. 12

See PRACTICE—COUNTER-CLAIM. 6.

PRACTICE—THIRD PARTIES.

1.——*Costs of—O. XV., rr.* 18, 21—*Judicature Act, s.* 53.] A person on whom the defendant had served notice under O. XV., r. 18, obtained liberty to defend the action as to certain causes of action in tort, and the question of his costs was reserved. The jury having found for the defendant on all these causes of action, and the Judge who tried the case being of opinion that no witnesses were called for the defence unnecessarily:—*Held*, that the defendant should pay all costs properly incurred by the notice party; and that in ascertaining the defendant's costs of the same causes of action to be paid by the plaintiff, the witnesses called by the notice party should be taken to be witnesses for the defendant. BRUNKER *v.* NORTH [E. D. XV. 10

2.——*Directions as to mode of trial—Refusal of Court to settle issue—Discharge of third party—O. XV., rr.* 18, 21.] The lessors on the termination of a lease sued the lessee for breach of the covenant to deliver up the premises in proper repair. The defendants, under O. XV., rr. 18, brought in as a third party the representative of a person to whom the lease had been assigned. It appeared that the buildings originally erected by the lessee were of an unsubstantial nature, and that this was the chief cause of their being out of repair on the termination of the lease. On a motion under O. XV., r. 21, to settle the issue between the parties:—*Held*, that the third parties were improperly brought into the action, and that the Court should now, by refusing to give directions as to the mode of trial, discharge them, the question being different as between them and the defendant, and between the plaintiff and the defendant. In order that third parties should be properly brought in under O. XV., it is not necessary that they should be interested in all the questions in the action; but there must be some one question arising between them and the defendants, which is substantially identical with that at issue between the defendants and the plaintiffs; and where this is not the case, the Court can, by refusing to settle the issues, discharge the third parties. WATERFORD TURKISH BATH CO. *v.* BARTER [E. D. XVII. 61

3.——*Form of order—O. XV., r.* 21.] The form of the order for the addition of a third party given. M'SWENY *v.* WATERFORD AND LIMERICK RAILWAY CO. Vac. J. XVII. 94

4.——*Notice—Application for—Service—Rules, June*, 1891, *O. XVI., r.* 49.] In the Common Law Divisions an application by the defendant for a third party notice pursuant to O. XVI., r. 49, should be made *ex parte*. ULSTER STEAMSHIP CO. *v.* WORKMAN, CLARKE AND CO. - Q. B. D. XXVI. 111

5.——*O. XV., rr.* 18, 21—*Form of order.*] In an action of *quare clausum fregit* and conversion of goods, the defendants claimed indemnity from a third person on the ground that they had done the acts complained of at the invitation of that person, and on her representation that the lands and goods were her's. The Court allowed the third person to defend the action; compelled the defendants to admit on the record the doing of the acts; and directed the defence to be amended by alleging title in the third person. BOYD *v.* DOOLEY [E. D. XV. 4

6.——*When leave to bring in will not be given—O. XVI., r.* 53.] Where a defendant has a remedy over against a third party, of the same nature, arising from the same cause, and

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PRACTICE (Since the Judicature Acts)—THIRD PARTIES—*continued.*

where the third party's defence will be the same as that between plaintiff and defendant, leave may be given to bring in such third party; but where the inconvenience of such a course is sufficient to counterbalance the advantage, the Court, in the exercise of its discretion, will dismiss such third party. *Waterford Turkish Bath Co.* v. *Barter* (XVII. 61) approved and followed. GREVILLE *v.* HAYES
[E. D. XXVII. 128

PRACTICE—TIME.

1. —— *Extension—Application for—Notice.*] Applications to extend time to plead must be on notice. FERGUSON *v.* TAGGART - - - - Q. B. D. XXVII. 134

2. —— *Extension—To deliver defence—Joinder of claims assignable to Chancery and Queen's Bench Divisions—O. XXI., r. 1—O. LVII., r. 6.*] An extension of a week was added to the time limited for delivering a defence, where through the joinder of claims assignable to the Chancery and Queen's Bench Divisions, the facts were complex. ALLEYN *v.* ALLEYN
[Q. B. D. XII. *M.* 88

3. —— *Extension of—To appear—Summary Procedure on Bills of Exchange Act—Action in another Division—O. LVII., r. 6.*] The Queen's Bench Division granted an extension of time to move for leave to appear, there being no Judge sitting for the Common Pleas Division; and directed that notice should be served forthwith, and that pending the motion no judgment should be marked. CLOHESSY *v.* CLOHESSY
[Q. B. D. XII. *M.* 88

4. —— *Extension of—For entering action for trial—O. XXXV., rr. 11, 15—O. LVII., r. 6.*] When the practice under the Judicature Act was new, the Court granted an extension of time to enter the action for trial under O. LVII., r. 6. MAXWELL *v.* BRYERS - [E. D. XII. *M.* 49

5. —— *Extension of—Entering appearance—Action for recovery of land—O. XII., r. 8.*] A motion *ex parte* for the extension of time to enter an appearance in an action to recover land, where it appeared that the delay occurred through negotiations taking place, was refused; the defendant, however, to apply on summons, a stay to be put meanwhile on the plaintiff's power to mark judgment by default. CUTTIFORD *v.* ELLIS - - [Q. B. D. XIII. *M.* 89

6. —— *Extension of—Delivery of statement of claim—Varying order of Court—O. LVII., r. 6.*] In an action to recover £5 19s. for tithe-rent, in which an order had been made that a statement of claim be delivered on the 24th February, or in default that the action stand dismissed with costs, the plaintiff, through inadvertence, omitted to deliver the statement of claim upon the day named in the order, but delivered it the following day. Upon a motion to vary the order, by ordering that the time for delivery of the statement of claim be held to have been extended to the 25th of February:—*Held*, that the motion should be refused. CHURCH TEMPORALITIES COMMISSIONERS *v.* MOORE
[E. D. XIII. 124

7. —— *Long Vacation—Substitution of service—Time for showing cause.*] When a certain time is limited for showing cause against making absolute an order for substitution of service of a writ of summons, such period of time runs during the Long Vacation. (By Palles, C.B.) MANNING *v.* HOUGHTON - - - - - - Vac. J. XXI. 43

8. —— *Motion for final judgment—After defence filed—O. XIV.—Costs.*] Where a defendant, on the very last day for so doing, files a merely formal defence, and the plaintiff, on the same day, serves a notice of motion for final judgment, and the defendant does not file any affidavit opposing the motion, the Court will grant the motion for final judgment, but will make the plaintiff pay the defendant's costs of filing the defence. GUARDIANS OF OUGHTERARD UNION *v.* BLAKE-FOSTER - - - - - - E. D. XXVII. 95

PRACTICE (Since the Judicature Acts)—TIME—*continued.*

9. —— *Notice of motion—Showing cause against Master's report—Power of Court to amend—Affidavit.*] The Court has power to extend the time for serving notice of motion to show cause against a report of the Master, notwithstanding that the time is specified in the General Orders of 1854, to which the rules under the Judicature Act do not apply. Where the notice was served in the proper time, but for 10 days after date:—*Held*, that this was substantially the same as if it had not been served until two days previous to the time fixed for the motion, but that this, being an irregularity only, and not a nullity, the Court had power to waive it. The affidavits referred to in a notice of motion cannot be used on the motion if filed after the notice is served. M'CAUL *v.* CALLAN
[E. D. XVII. 45

10. —— *Sunday—Seven days' notice of production*—20 & 21 *Vic., c.* 79, *s.* 70.] A notice to admit a copy of a will, served seven days before the trial, was held good, though one of these days was Sunday. DAVIES *v.* DAVIES
[Q. B. D. XIII. *M.* 90

—— Amendment of chief clerk's certificate - XXV. 5
See PRACTICE—AMENDMENT. 1.

—— Appeal.
See PRACTICE—APPEAL. 2, 6, 11, 12.

—— Appearance.
See PRACTICE—APPEARANCE. 1—3.

—— Delivery of defence.
See PRACTICE—DEFENCE. 3, 4, 12.

—— Extension of for filing defence—Costs XXVI. 115
See PRACTICE—COSTS. 11.

—— Setting aside defence - - XVII. *M.* 126
See PRACTICE—DEFENCE. 6.

PRACTICE—TRANSFER OF ACTION.

1. —— *Actions in different Courts respecting the same subject matter.*] An order was made attaching to the Vice-Chancellor's Court, in which an action for an injunction was already pending, a petition for the winding up of the company (which was already in that Court), and an action in the Court of the Master of the Rolls by the Attorney-General, at the relation of Davis against the company and the Bray Township Commissioners. *Re* BRAY PAVILION Co. (By Fitzgibbon, L.J., for Ball, C.) - - - - - C. XIII. *M.* 236

2. —— *From Chancery Division—Action for goods sold—Matter of account—Judicature Act*, 1877, *ss.* 35, 36, 37 (2), 38—*O. L., r.* 3.] The Court refused to transfer an action, which was a mere matter of account, from the Chancery Division. DIVER *v.* BLACK - - - - V. C. XII. *M.* 133

3. —— *From Civil Bill Court—Employers' Liability Act*, 1880.] Unless exceptional or complicated circumstances arise, an action, under the Employers' Liability Act, 1880, commenced in the Civil Bill Court will not be removed into the Superior Court. (By Johnson, J.) M'MENAMIN *v.* M'ELWEE
[Vac. J. XVII. *M.* 545

4. —— *From Civil Bill Court—Employers' Liability Act*, 1880, *ss.* 3, 6—40 & 41 *Vic., c.* 56, *s.* 57.] Where an action has been brought in the County Court under the Employers' Liability Act, 1880, and is required to be removed into the High Court under sec. 6 (1), an application may be made *ex parte* for a conditional order for the purpose under the County Officers and Courts Act, 1877, *s.* 57. While the circumstance that more than £50 is claimed will not be *per se* a ground for refusing to remove the action, the Exchequer Division, in accordance with its analogous practice in reference to remitting actions to the County Court under the C. L. P. A. Act, 1870, will consider the case "fit to be tried" in the High Court, if reasonably satisfied that the plaintiff ought, should he succeed at all, to recover a large sum, more than that amount. MAGEE *v.* MARTIN - - E. D. XVI. 5

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PRACTICE (Since the Judicature Acts)—TRANSFER OF ACTION—*continued.*

5. —— *From Civil Bill Court—To Chancery Division—Suits in both Courts affecting the same premises*—Ex parte *motion*—40 & 41 *Vic., c.* 56 *s.* 35.] Where suits had been commenced in the County Court and the Court of the Master of the Rolls for realisation of two different mortgages affecting the same premises, an order transferring the suit from the County Court to the Master of the Rolls was made on an *ex parte* motion. PROVINCIAL BANK *v.* FULTON [C. XIII. *M.* 373

6. —— *From Exchequer Division to Queen's Bench Division—Consolidation—O. L., r.* 3, 6.] Where an action was brought in the Queen's Bench Division to recover money on foot of a guarantee, and the defendant therein brought another action, entirely distinct and disconnected, against the plaintiff in the former, in the Exchequer Division, to recover damages for breach of contract and negligence in reference to a sale by auction; and no order of the Exchequer Division for the transfer of the latter action having been obtained, the plaintiff in the former moved that they should be consolidated, under O. L., r. 6:—*Held*, that there was no power to transfer the action from the Exchequer Division on the motion, and that neither were the actions such in their nature as ought to be consolidated. O'GORMAN *v.* HARDING [Q. B. D. XVIII. 93

7. —— *To Chancery Division—Action for rent—Counter-claim to set aside lease—Judicature Act, s.* 36 (5)—*O. II., r.* 3.] Where a plaintiff claimed for rent due under a lease, and the defendant, admitting the lease and the rent being due, counter-claimed damages for non-performance of an agreement, and that the lease should be set aside, on the application of the plaintiff the action was transferred to the Chancery Division. WILSON *v.* CONNOLLY - - - E. D. XVI. 104

8. —— *To Chancery Division—Action to recover land on title—Counter-claim for specific performance—Judicature Act, ss.* 35, 36, 37, 38—*O. L., r.* 3.] The Court refused a motion to transfer to the Chancery Division an action to recover land on the title in which the defendant pleaded a counter-claim for specific performance of a lease of the land. RANFURLY *v.* DICKSON - - - - Q. B. D. XVI. *M.* 105

9. —— *To Chancery Division—Ejectment and counter-claim for specific performance—Judicature Act, ss.* 36, 37—*O. L., r.* 1—*O. XXXV., r.* 2—*O. XVIII., r.* 18.] Where, to an action of ejectment on the title a counter-claim was filed by the defendant, claiming the specific performance of a contract to give the defendant a lease of the lands; and the defendant moved to transfer the cause to the Chancery Division, on the ground that the only question in issue was one of specific performance, which by sec. 30 of the Judicature Act, is within the exclusive cognizance of that Division:—*Held*, that the action should be transferred to the Chancery Division, *Holloway v. York* (2 Ex. Div., 333), followed. O. XVIII., r. 18, as to the particularity with which letters from which it is attempted to deduce a contract for specific performance, should be stated in pleadings under the Judicature Act, discussed. SMYTH *v.* LEVINGE - - - - - E. D. XII. 28

10. —— *To Chancery Division—Partnership accounts—Judicature Act*, 1877, *ss.* 36 (5), 38—*O. L., r.* 3.] Upon a motion to transfer an action upon partnership accounts to the Chancery Division, the two Judges of the Court were divided in opinion, and the junior withdrawing his judgment, the action was not transferred. FAY *v.* BULFIN - Q. B. D. XII. *M.* 294

11. —— *To Civil Bill Court—Equity side—Administration summons—Residence of Parties—Costs of administration*—40 & 41 *Vic., c.* 56, *ss.* 33, 40.] The Court, in an administration summons, when determining whether it will send the case to the County Court or not, will not consider the fact that the plaintiff resides in one county, the defendant in another, and persons entitled to distributive share of the assets reside in a foreign country, a reason to retain the case in Court when of opinion that it is otherwise a proper case for the inferior Court. *Semble*, the costs of administration in the County Court might

PRACTICE (Since the Judicature Acts)—TRANSFER OF ACTION—*continued.*

in certain circumstances be an element to be considered by the Court in deciding whether it should retain a case or not. REAGAN *v.* FLOOD - - - V. C. XII. 122

12. —— *To Civil Bill Court—Case unfit for superior Court*—40 & 41 *Vic., c.* 56, *s* 36.] Where a suit for an account of moneys, amounting only to £70, was brought in the Chancery Division, it was transferred to the County Court, no costs theretofore incurred being allowed to the plaintiff. M'CABE *v.* TERVAN - - - - - V. C. XVII. 96

13. —— *To Civil Bill Court—Equity suit to have absolute assignment declared a mortgage*—40 & 41 *Vic., c.* 56, *ss.* 33, 36.] The Court refused to transfer an action to have an absolute assignment of lands, declared to be a mortgage, to the Civil Bill Court. FLAHERTY *v.* HAYES - - R. XVIII. *M.* 646

14. —— *To Civil Bill Court—Injunction*—40 & 41 *Vic., c.* 56, *s.* 33 (*l*).] Where an action is brought in the Chancery Division to obtain an injunction, there is no jurisdiction under 40 & 41 Vic., c. 56, s. 33 (l), to transfer the action to the County Court. BOYLE *v.* MASTERSON - C. A. XXIV. 69

15. —— *To Civil Bill Court—Costs*—40 & 41 *Vic., c.* 56, *s.* 36.] When a plaintiff instituted an action in the Chancery Division which was clearly within the jurisdiction of the County Court, he was ordered to pay the costs of the motion to remit and all additional costs incurred owing to his having commenced proceedings in the superior Courts. CAMPBELL *v.* WHITESIDE [V. C. XIX. 65

—— Action on deposit receipt - - XXII. 46

See DONATIO MORTIS CAUSA. 2.

PRACTICE—VENUE.

1. —— *Change of—Affidavit not filed*—132 *G. O.*, 1874.] A motion was heard grounded on an affidavit which had not been filed. DICKIE *v.* M'IVOR - - Q. B. D. XV. *M.* 22

2. —— *Change of—Appeal from order to change—Costs—Judicature Act, s.* 33.] The plaintiff obtained from a Judge of the Queen's Bench Division an order to change the venue of an action, which he had laid in Dublin, to Clare, the local venue. An appeal by the defendants from this order, where they did not show that they were in any way damnified by the change of venue, was dismissed with costs. BRADY *v.* ROYAL INSURANCE CO. - - C. A. XIII. *M.* 372

3. —— *Change of—To original venue—Application by plaintiff.*] On an application by a plaintiff to have the place of trial rechanged to the original venue laid by him, on the ground that the case was adjourned *pro defectu juratorum*, and that the delay would prejudice his interests, the Court will refuse the application on the ground that a *tales* was not prayed for by the plaintiff at the trial, unless such refusal can be shown to be productive of peculiar hardship to the plaintiff. BELL *v.* ALEXANDER - E. D. XXIV. 77

4. —— *Change of—Application for, when movable—Judicature Act*, 1877, *sec.* 33.] A motion to change the venue was heard after the service of the statement of defence, but before issue had been joined. SULLIVAN *v.* SULLIVAN [E. D. XII. *M.* 296

5. —— *Change of—Costs—Judicature Act*, 1877, *sec.* 33.] Where a plaintiff, without reasonable excuse, lays a venue different from that contemplated by the Act, he must pay the costs of the motion to change it. M'ILWEE *v.* MONEY [E. D. XII. *M.* 89

6. —— *Change of—Costs—Judicature Act*, 1877, *s.* 33.] An action was sent for trial to the local venue, costs to be costs in the cause. LYNCH *v.* BURKE [Q. B. D. XII. *M.* 202

7. —— *Change of—Local venue—Costs.*] A venue was changed where it appeared that the action could be more temperately and therefore more properly tried in the new venue, the defendant undertaking to pay, in any event, the expenses of such additional witnesses as the judge at the trial should certify. O'CONNELL *v.* ARNOTT - E. D. XV. *M.* 311

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PRACTICE (Since the Judicature Acts)—VENUE—*con.*

8. —— *Change of—Motion, when to be made—Issues before the Court—Time for replying to amended counter-claim—O. XXIII., r. 1—O. XXVI., rr. 2, 3, 4.*] A defendant had amended his statement of defence and counter-claim, and on the ninth day after the delivery of the amended pleading, the plaintiff not having meanwhile taken any step, served a notice of motion to change the venue. The plaintiff stated that he wished to answer the amended pleading, and that if he did so material alterations might be made in the issues, which would have an important bearing on the question of venue; and also alleged that his delay was caused by the want of a document which was in the defendant's hands, and for the production of which he had asked:—*Held* (Dowse, B., *diss.*), that the motion to change the venue was not prematurely instituted, as, from the length of time allowed by the plaintiff to lapse without his applying for leave to plead or amend the former pleading (eight days being a reasonable time within which to do so), the defendant was entitled to assume that the plaintiff elected to abide by his original reply, without amendment; but, that, under the circumstances of the case, the motion should be allowed to stand over, pending the production of the document required by the plaintiff, in order that he might be in a position to plead to the amended counter-claim. *Boddy* v. *Wall* (L. R. 7 Ch. D. 164), discussed and applied. BARCLAY *v.* M'HUGH [E. D. XIII. 31

9. —— *Change of—Motion by Plaintiff—Costs.*] Where a plaintiff moved to change the place of trial which he has himself laid, it is the usual, though not the invariable, rule to oblige him to pay the costs of the motion. NATIONAL BANK *v.* DONOGHUE - - - E. D. XIX. 68

10. —— *Change of—Motion by Plaintiff—Costs—Judicature Act, s. 33*] The Court will permit the plaintiff to change a venue selected by himself, when retaining the venue laid would unduly delay the trial of the action, and will make the costs of both parties costs in the cause. MOONEY *v.* SMITH - - - - C. P. D. XVII. 110

11. —— *Rules, June, 1891, O. XXXVI., r. 1.*] Where no venue is named in a specially indorsed writ, and no statement of claim is put in, the venue will be fixed for Dublin, but may be changed on application. STANNER *v.* BEAMISH [Q. B. D. XXVI. *M.* 334

12. —— *Change of—Prejudicing jurors—Costs—Judicature Act, s. 33—O. I., r. 1.*] Although it is contemplated by the Judicature Act, s. 33, that, so far as shall be reasonably consistent with the convenient and speedy discharge of the business, actions should be tried in the county where the causes of action arose, the former practice as regards the costs of motions for change of venue will be still adhered to in this Division, when the plaintiff has not proposed that the trial should take place in such county. FOX *v.* FENTON Q. B. D. XII. 64

13. —— *Option of plaintiff to select county—Demurrer—Action for recovery of land—C. L. P. Act, 1853, ss. 62, 196—Judicature Act, s. 33—O. I., r. 1.*] By the operation of the Judicature Act "venue," in its technical sense, has been abolished, and the rules which heretofore regulated it in pleading and practice have ceased to exist; nor is it now necessary for the plaintiff to allege any venue in his pleading, or if he does so, to allege or prove that the traversable facts on which he relies took place in the county in which the action is to be tried. All actions, including those for the recovery of the possession of land, or in the nature of real actions, are now transitory, but the Court will, in its discretion, giving effect to the policy of the statute, order that the trial shall take place where the cause of action substantially arose, unless the ends of justice require that the trial should be elsewhere. CUSSEN *v.* MOLONEY - Q. B. D. XII. 65

—— Local—Landlord and tenant - XII. *M.* 241
See LANDLORD AND TENANT—LEASE. 22.

PRACTICE (Since the Judicature Acts)—WRIT OF DELIVERY—*O. XLVIII.—C. L. P. A. Act, 1856, s. 80.*] The Court granted a writ of delivery under O. LXVIII., considering it better that application should be made for it. SMITH *v.* PALMER - - - - C. P. D. XV. *M.* 23

PRACTICE—WRIT OF POSSESSION—*Renewal of—Forcible possession retaken—Motion on notice—O. XLVII., r. 1.*] A motion for the renewal of a writ of possession must be made on notice, and in an exceptional case will be granted, although two years have elapsed since the writ was issued. GANLEY *v.* DOYLE - - - C. P. D. XVII. 100

—— *Habere* out of return - - - XII. *M.* 58
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 41.

PRACTICE—WRIT OF SUMMONS.

1. —— *Action for recovery of land—Omission of residence of Defendants—Waiver—Entry of appearance—Costs—Form No. 1, Part 1, App. A, Rules of Court.*] Writs which do not give the address of the defendants are irregular, but the irregularity can be waived by entry of appearance. WHITFIELD *v.* DALY - - - - - Q. B. D. XII. *M.* 134

2. —— *Amendment—Parties—Judicature Act, 1877, sched. r. 19—O. XXVI., r. 5.*] The Court refused leave to amend a writ by substituting the name of the plaintiff's husband as plaintiff, but set aside the writ. KIRBY *v.* ARTHUR [E. D. XII. *M.* 75

3. —— *Indorsement—Action for recovery of land—23 & 24 Vic., c. 154, sec. 60—O. VIII., r. 1, April, 1878.*] An action was brought for recovery of land on non-payment of rent, and the writ of summons was indorsed with a claim for £3 for costs, if the action was settled within five days; there was no appearance entered, and the officer declined to mark judgment. Leave was obtained to amend the writ, which was done by claiming £2 10s. if the action was settled within ten days. There being again no appearance after the amended writ was served on the defendant, the officer declined to mark judgment:—*Held*, that he should mark judgment. O'BRIEN *v.* NEWPORT [E. D. XII. *M.* 311

4. —— *Indorsement of excessive claim for costs—O. II., r. 4.*] An indorsement of £3 10s. for costs on a writ was held to be excessive, and the writ was ordered to be amended by changing it to £2 10s. JACOBS *v.* MONCK Q. B. D. XVII. *M.* 634

5. —— *Indorsement of excessive claim for costs—O. II., r. 4.*] A writ of summons indorsed with an excessive claim for costs will, on the application of the defendant before appearance, be set aside as irregular, with costs. ROBERTS *v.* CASEY [Q. B. D. XXII. 8

6. —— *Indorsement of liquidated demand—Action under Summary Procedure on Bills of Exchange Act—Irregularity—Waiver by appearance—Judicature Act, s. 3—O. II., rr. 3, 4—O. XXVI., r. 10—Rules of Court, App. A, Part 2, s. 3.*] A defendant appearing to a writ of summons waives his right to have the writ set aside for irregularity. *Semble*, a writ under the Summary Bills of Exchange Act, the indorsement on which does not state the amount of claim for costs, and that further proceedings will be stayed upon payment of the amount claimed for the debt and costs within four days from service as required by O. II., r. 4, may be set aside on the application of the defendant before appearance. ALLEN *v.* QUIGLEY [E. D. XII. 46

7. —— *Lodging copy with officer—Judicature Act, 1877, sched. r. 8—O. IV., r. 2.*] An order was made that the proper officers should receive copies of the writ *nunc pro tunc* which were not lodged within the two days prescribed; the plaintiff's attorney not to charge costs in respect thereof. TAYLOR *v.* STACK - - Q. B. D. XII. *M.* 73

8. —— *Lodging copy writ with officer—Extension of time—O. IV., r. 2—O. LVII., r. 6.*] A motion for extension of time for leaving a copy writ of summons with the officer, which had not been done within the two days, was granted. DIXON *v.* RUSSELL - - - - E. D. XII. *M.* 23

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PRACTICE (Since the Judicature Acts)—WRIT OF SUMMONS - *continued.*

9. —— *Service—Affidavit of service—O. VIII., r.* 5.] The affidavit of service of a writ of summons stated that the deponent personally served the writ on the defendant by placing the writ on the ground within 20 or 30 yards of him, and holding up the original, he having run away for the purpose of evading service:—*Held*, insufficient as personal service. An affidavit of service is defective which merely states that the writ was "personally served," without adding "by delivery to" or "by leaving a copy with him." O'SULLIVAN *v.* MURPHY **[E. D. XVIII. 102**

10. —— *Service—Death of process-server before making affidavit—O. XVIII., r.* 2.] A process-server had died after indorsing the service on the writ, but before making the affidavit of service. The defendant admitted the sum claimed, and paid a sum on foot of it. A motion for final judgment was refused. ROBERTSON *v.* CHADWICK **[Q. B. D. XIII. *M.* 374**

11. —— *Service other than personal in action for recovery of land for non-payment of rent—Implied repeal of Statute by Judges' Rules—Landlord and Tenant Act*, 1860, *sec.* 56—*Judicature Act*, 1877, *sec.* 61, *sched. r.* 11—*Judges' Rules* (*June* 1879), *O. VIII., rr.* 4, 5—184 *G. O.*, 1854.] The provisions of the Landlord and Tenant Act, 1860, with respect to the mode of service of ejectments for non-payment of rent, have not been impliedly repealed or superseded by the supplemental rules of June, 1879, prescribed under the powers conferred by the Judicature Act, 1877. *Per* Palles, C.B.: Rules 4 & 5 of O. VIII. (June, 1879), do not apply to the service of writs of summons for recovery of land, either by reason of non-payment of rent, or for overholding, or otherwise; and the service of such writs is regulated, if for non-payment of rent, by the provisions of the Landlord and Tenant Act, 1860, and in other cases by the 184th G. O., 1854. *Lawe* v. *Murphy* (XII. 68) and *Ulster Bank* v. *M'Kinney* (XIII. M. 90), considered. TRINITY COLLEGE, PROVOST AND FELLOWS OF, *v.* LYONS; HUDSON *v.* LINDSAY **[C. A. XIV. 51**

12. —— *Setting aside—Suit beneath dignity of Court.*] A writ of summons which claimed a sum of £1 7s. 11d. was set aside as being beneath the dignity of the Court, on account of the smallness of the sum claimed. KILLEN *v.* GARVEY **[E. D. XVII. 62**

—— Ejectment for non-payment of rent—Indorsement **[XII. 68**

See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 14.

PRACTICE—WRIT SPECIALLY INDORSED.

1. —— *Action for recovery of land—O. III., r.* 6.] When in an action for the recovery of rent the plaintiff was alleged to be described under the words "and others" in the indorsement of a writ purporting to be specially indorsed under O. III., r. 6, as a party entitled to rent on a covenant in a lease, although there was also indorsed an allegation of tenancy between the plaintiff and defendant, the Court refused to grant an application for final judgment, and declined to look at the affidavit of the plaintiff that was alleged to verify and identify the plaintiff as the party entitled. BEAUFORD *v.* LEDWITH **[Q. B. D. XXVII. *M.* 647**

2. —— *Action for recovery of land—Landlord and tenant—O. III., r.* 6—*O. XIV., r.* 1.] In an action for the recovery of land by a landlord against tenants on the expiration of a lease, the Court refused to allow final judgment on a writ purporting to be specially indorsed under O. III., r. 6, where the indorsement showed that the plaintiff was not the original lessor, and there was no allegation that the defendants were or had been tenants to the plaintiff. CULLEN *v.* JACKSON **[Q. B. D. XXVII. 81**

3. —— *Action for rent—Devolution of lessor's title—Sufficiency of affidavit verifying claim—Rules of the Supreme Court, Ireland*, 1891—*O. XIV., r.* 2—*Costs.*] Where a plaintiff by his writ claimed rent in a personal action against

PRACTICE (Since the Judicature Acts)—WRIT SPECIALLY INDORSED—*continued.*

a defendant, and gave the date of the lease under which the defendant held, and particulars of the lands, gale days, and amounts due, but omitted to state how the lessor's interest became vested in the plaintiff or to show the same by affidavit:—*Held*, that even if the writ were specially indorsed, there was no verification of the cause of action, and that final judgment was not intended to apply to a complicated case of devolution of title. O'HANRAHAN *v.* HAYDEN - **C. A. XXVII. 17**

4. ——*Action for rent—O. II., r.* 3—*O. XIII., r.* 1.] A writ of summons indorsed for rent due out of lands named at a given date is specially indorsed within O. II., r. 3, though the contract of tenancy be not stated. CANTILLON *v.* HISTON **[E. D. XV. 56**

5. —— *Action for rent—Devolution of title—O. II., r.* 3—*O. XIII., r.* 1.] A writ of summons for arrears of rent due out of premises held under a lease is specially indorsed under O. II., r. 3, although the lease is not stated in the indorsement, and final judgment under O. XIII., r. 1, will be given in such a case. *Cantillon* v. *Histon* (XV. 56) followed. The affidavit in support of the motion need not set out the various steps in the devolution of the title from the original lessors to the plaintiff in the action. Gibson, J. (*diss*): The indorsement should state the lease under which the parties sue. BURTON *v.* ALLEN - - - - - **Q. B. D. XXIII. 81**

6. —— *Amendment—Claim—Rules*, 1891, *sched. C, sec.* 7, *form* 1.] Where a writ purported to be specially indorsed for the recovery of possession of a house held under a weekly tenancy, which had been determined by a notice to quit, but did not state who the landlord was, or who were his tenants, or how the tenancy arose, or to whom the rent was payable; the Court held the indorsement insufficient, as not complying with Schedule C, sec. 7, form 1, of the Rules of 1891, and as not showing any privity between the plaintiff and defendant. They refused the motion for final judgment, but allowed plaintiff to amend the writ and then use it as a statement of claim, the plaintiff's solicitor undertaking not to ask costs against defendant. SHADE *v.* OLIA **[E. D. XXVII. *M.* 522**

7. —— "*Balance due for price of goods sold*"—"*Balance of account*"—*O. XII., r.* 3—*O. II., rr.* 2, 3—*App. A. s.* 5, *No.* 1.] "Balance due for the price of goods sold" (the dates and nature of the demand being stated) is a good special indorsement upon a writ of summons within O. II., r. 3, and a plaintiff may mark final judgment when a writ is so indorsed under O. XII. r. 3. M'CAWLEY *v.* CAMPBELL **[C. P. D XIII. 84**

8. —— *Claim for taxed costs—Final judgment upon default of appearance—O. XII., r.* 3—*O. II., r.* 3.] *Quære*, whether a claim for taxed costs constitutes a debt or liquidated demand in money which can be specially indorsed, under O. II., r. 3, and upon which final jugdment in default of appearance may be signed under O. XII., r. 3? SPRATT *v.* LONERGAN - - - - **Q. B. D. XIV. 86**

9. —— *Full amount not claimed—Credits, whether necessary to state—O. II., r.* 3—*O. XIII., rr.* 1, 3—*App. A., Part II., s.* 5, *forms* 5, 6—*Statement of claim demanded bonâ fide.*] An indorsement claiming only a portion of a sum to which a title is made by the indorsement, but without stating particularly any credit given, is a good special indorsement under O. II., r. 3, where a defendant *bonâ fide* desired a statement of claim in order to enable him to determine how much he was in the plaintiff's debt, and what credits he was allowed, no likelihood of prejudice by delay to the plaintiff being suggested. No order was made on a motion to sign judgment, on a specially indorsed writ. THE HIBERNIAN JOINT STOCK CO. *v.* M'DONNELL - **C. P. D. XII. 106**

10. —— *Judgment by default—Irregularity—Laches—Costs.*] A claim for money payable for medical attendance and medicines bestowed and provided by the plaintiff at the defendant's request, is a "debt or liquidated demand" within the meaning of O. II., r. 3; but, where not even the initial and

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PRACTICE (Since the Judicature Acts) — WRIT SPECIALLY INDORSED—*continued.*

terminal dates between which the services were rendered are indorsed on the writ of summons, it is not specially indorsed within the meaning of O. XIII., r. 1. Where a judgment is irregularly marked, laches will disentitle the defendant to the costs of a motion to set it aside. KILGARIFF *v.* M'GRANE - - - - - E. D. XV. 100

11. —— *Landlord and tenant—Writ claiming for use and occupation—Plaintiff's affidavit relying on defendant's covenant in lease—O. XIII., r.* 1.] Where the writ of summons was specially indorsed, claiming two half-years' gales of rent due to the plaintiff for the use and occupation of the lands, and the plaintiff, in his affidavit in support of a motion for leave to sign final judgment under O. XIII., r. 1, alleged the existence of a lease of the said lands made by him to the defendant and executed by the defendant, in which the defendant covenanted to pay the said rent, and the plaintiff claimed the rent as due under said lease:—*Held*, that the motion should be refused. HARTFORD *v.* MAHER C. P. D. XVI. 53

12. —— *Leave to sign final judgment—O. II., r. 3—O. XIII., r. 1—O. XX., r. 2—Rules of Court, App. A., Part II., ss.* 2, 5.] The indorsement on a writ was as follows:—"Special indorsement under Order II., r. 3. The plaintiff's claim is for the return of £60, money deposited with the defendant as stakeholder":—*Held*, that the writ was not specially indorsed. CONNON *v.* M'ERLEAN - E. D. XII. *M.* 120

13. —— *Liquidated demand—Claim by surety against principal debtor for debt and costs—Signing judgment for part of claim—O. II., r.* 3, 4—*O. XIII., r.* 1—*App.* (*A*), *Part II., ss. II., III.—Rules, April*, 1878, *O. VIII.*] A portion of a sum claimed by a specially indorsed writ of summons was stated in the indorsement to be due to the plaintiff on account of money paid by the plaintiff for the defendant as his surety at his request, and costs. On motion to sign final judgment under O. XIII., r. 1:—*Held* (reversing the Court of Exchequer): that the claim, though including the costs, was a liquidated demand within O. II., r. 3, and that the plaintiff should have leave to sign final judgment for the entire amount under O. XIII., r. 1. *Garrard* v. *Cottrell* (10 Q. B. 679) followed. BORLAND *v.* CURRY.
[E. D. XII. 149; C. A. XIII. 23

14. —— *Liquidated demand—Surety and co-sureties—Notice to third parties for contribution—O. II., r.* 3—*O. XIII., r.* 1—*O. XV., rr.* 17, 18—*App.* (*A*), *Part II., s. V., form* 2—*App.* (*B*), *form* 1.] By a mortgage deed a principal creditor, and four sureties, were made jointly and severally liable for the payment of principal and interest, if the interest were not paid by a certain day. The writ of summons, in an action by the lenders against one of the sureties, claimed by the indorsement the principal and interest as due under a covenant, without stating either that there were other sureties, or that default had been made by the principal debtor. On motion to sign final judgment under O. XIII., r. 1:—*Held*, that the writ was properly indorsed under O. II., r. 3, and that judgment might be signed, notwithstanding that the defendant wished to give notice to his co-sureties of a claim for contribution under O. XV., rr. 17, 18. On a further application to postpone the signing of judgment in order to allow the co-sureties to be brought in:—*Held*, that this could not be done, inasmuch as the action was terminated by the order which had been made. CALDWELL *v.* WREN - Q. B. D. XII. 146

15. —— *Money paid "as surety"—O. II., r.* 3—*O. XIII., r.* 1.] An indorsement on a writ of summons "for cash lent, and money paid by the plaintiff for the defendant as his surety"—not specifying how such liability as surety arose—is not a special indorsement. AHERN *v.* O'DONOVAN
[C. P. D. XV. 7

16. —— *Motion for judgment—Defence to part of claim—Appearance for partners—Amendment—O. II., r.* 3—*O. XI., r.* 3—*O. XIII., rr.* 1, 4.] The plaintiffs claimed under a writ of summons, indorsed as follows:—"1877, May 8th, To goods and hire of sacks, £46 18*s*." The defendants' partners, sued in the name of their firm, appeared in that name, instead of individually in their own names. Subsequently their solicitor wrote to the plaintiff's solicitor that they claimed certain credits, and the latter replied that there was no reason for allowing same, and that a motion for final judgment would be instituted. On a motion made accordingly, under O. XIII., r. 1, and to set aside the appearance as having been entered contrary to O. XI., r. 3, the defendants admitted their liability to the extent of £30:—*Held*, that the indorsement was a special indorsement within O. II., r. 3; that the irregularity in the entry of the appearance was waived by the subsequent correspondence; and that the defendants should be allowed to amend the appearance, and that on lodging £30 in court they should be allowed to defend as to the residue of the claim. BROWN *v.* BALLANTINE - - - Q. B. D. XII. 70

17. —— *Motion for final judgment—Lost cheque—Judgment with condition of indemnity—O. II., r.* 3—*O. XIII., rr.* 1, 3—*C. L. P. Act*, 1856, *s.* 90.] Where a bill of exchange, drawn by the defendant, has been paid by the plaintiff as acceptor, the consideration for which was a cheque drawn by the defendant in favour of the plaintiff, but lost after it was delivered to him, and without his having obtained payment thereof:—*Quære*, whether a claim for the amount of the bill of exchange can be made the subject of a specially indorsed writ within O. II., r. 3, so as to enable the plaintiff to move for leave to sign final judgment summarily under O. XIII.? FITZSIMONS *v.* TRIMBLE
[Q. B. D. XII. 111

18. —— *Necessity of stating date—O. II., r.* 3—*O. XIII., r.* 1—*App.* (*A.*), *Part II., s. V., form* 1.] The indorsement on a writ of summons stated that the plaintiff claimed a certain sum as "the price of lambs sold by the plaintiff to the defendant at the fair of Banagher, of which the following are particulars, 80 lambs at £1 11*s*. 10½*d*. each, £127 10*s*.," but did not state the date of the transaction. On motion to sign final judgment under O. XIII., r. 1:—*Held*, that the indorsement was defective in not giving the date of the transaction; and that leave to sign judgment should be refused. JACKSON *v.* KELLY - - - - - E. D. XII. 136

19. —— *No signature—Application to Court—Rules, June*, 1891, *O. XIV.*] The officers refused to mark judgment on a specially indorsed writ which was not signed in accordance with O. XIV. The Court refused to direct them to do so on an *ex parte* motion; but directed notice to be served on the defendant. DICKENSON AND FOSTER *v.* CRANFIELD. E. D. XXVI. 134

20. —— *Notice referring to, as statement of claim—Demurrer O. II., r.* 3—*O. XX., r.* 2.] An indorsement, whether general or special, on a writ of summons, is not a pleading, nor can it be made so by reason of notice to the defendant, under O. XX., r. 2, referring thereto as a statement of claim: and such indorsement, coupled with the notice, cannot be demurred to. The plaintiff indorsed his writ of summons as follows:—"The plaintiff's claim is for £203 for work and labour done and money expended by the plaintiff for the defendant, as attorney and solicitor, between the months of January 1873 and January 1879, as appears by the account furnished in June, 1879." The defendant, having required the delivery of a statement of claim, was served by the plaintiff with a notice, under O. XX., r. 2, that the particulars of his claim appeared by indorsement on the writ of summons. The defendant having demurred:—*Held*, that the demurrer did not lie; following *Maher* v. *Taylor*, (XII., 74), *Macken* v. *Murphy* (XIII., 49). *Robertson* v. *Howard* (3, C. P. D., 280) not followed. *Quære*, whether the indorsement was sufficient as a special indorsement under O. II., r. 3? COPPINGER *v.* LYNE - E. D. XIV. 10

21. —— *Notice that claim sufficiently appears by—Indorsement equivalent to pleading—Demurrer—Action on bill of exchange—Showing title to sue—O. XX., r.* 2—*App. A., Part II., s. V., form* 4.] An indorsement on a writ of summons was as follows:—"The plaintiff's claim is against the defendant as acceptor of the two undermentioned bills

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PRACTICE (Since the Judicature Acts)—WRIT SPECIALLY INDORSED—*continued.*

of exchange," then setting out the bills. The plaintiff delivered as his statement of claim, under O. XX., r. 2, a notice to the effect that his claim was that which appeared by the indorsement. A demurrer by the defendant that there were no facts stated, or appearing by implication, enabling the plaintiff to sue, was overruled. *Maher* v. *Taylor* (XII., 74) followed. KIRWAN *v.* COEN [C. P. D. XII. *M.* 295

22. —— *Notice that claim sufficiently appears by—Indorsement, whether equivalent to pleading—Demurrer—Action on bill of exchange—Showing plaintiff's title to sue—O. XX., r. 2—App. A., Part II., s. V., form 4—Acceptance of Bills of Exchange Act*, 1878.] Where a writ of summons has been specially indorsed in a manner similar to any of the indorsements given in App. A., Part II., s. V., of the Rules of Court, and where the indorsement is sufficient under O. II., r. 3, as a special indorsement, and a notice has been served by the plaintiff under O. XX., r. 2, that the plaintiff's claim appears by the indorsement upon the writ of summons, a demurrer will not lie, on the ground that the special indorsement does not disclose the plaintiff's title to sue. If the defendant is not satisfied with the title shown, his remedy is not by demurring, but by applying to the Court for an order to compel the plaintiff to deliver a further statement of claim. MAHER *v.* TAYLOR - - E. D. XII. 74

23. —— *Notice that claim sufficiently appears by—Indorsement, whether equivalent to pleading—Demurrer—Withdrawal of notice—Delivery of second statement of claim in lieu of notice—Amendment of first claim by second—O. XX., r. 2—O. XXVI., rr. 1, 8.*] In an action commenced by a writ of summons with a special indorsement, sufficient as such under O. II., r. 3, the plaintiff served notice, under O. XX., r. 2, that his claim appeared thereby. The defendant demurred thereto, and delivered a counter-claim. Thereupon the plaintiff served notice withdrawing his notice under O. XX., r. 2, and at the same time delivered a statement of claim. On motion by the plaintiff that the demurrer and counter-claim should be set aside, and cross motion by the defendant that the subsequent statement of claim should be set aside:—*Held*, that it was not competent for the plaintiff to withdraw his notice served under O. XX., r. 2; that the subsequent statement of claim could not be taken to be an amendment within the meaning of O. XXVI., or as a further statement of claim under O. XX., r. 2; and that a demurrer did not lie to the writ of summons, notwithstanding the plaintiff's notice that his claim appeared by the special indorsement thereon. *Maher* v. *Taylor* (XII., 74) followed. *Robertson* v. *Howard* (3, C. P. D., 280) disapproved. MACKEN *v.* MURPHY [E. D. XIII. 49

24. —— *Order III., r. 6—Form of indorsement—Married woman—Averment of separate estate.*] A writ specially indorsed with a claim on contract naming a married woman and her husband as defendants, will be set aside unless the indorsement contains a statement that she was possessed of separate estate at the time of entering into the contract. NORWOOD *v.* JOHNSON - - - Q. B. D. XXVII. 70

25. —— *O. XIV.—Married Women's Property Act*, 1882—*Separate estate.*] To obtain final judgment on a specially indorsed writ against a married woman, it must be averred in the writ that she was possessed of separate property at the time she made the contract. BYRNE *v.* RYAN AND WIFE [Q. B. D. XXVII. 45

26. —— *O. XX., r. 2.*] The claim indorsed on a writ of summons was for £154 14s., balance due on foot of wages for three and a half years; and the particulars stated the dates, the credits allowed, and how they were calculated:—*Held*, a good special indorsement, and sufficient as a statement of claim. GILSENAN *v.* WALSH - - E. D. XVI. 118

27. —— *Particulars not given—O. II., r. 3.*] A specially indorsed writ must state the dates and particulars of sums admitted to have been paid on account, and is not cured by the statement of these facts in the affidavit of the defendant in reply. PHELAN *v.* SHANKS - C. P. D. XVIII. 13

PRACTICE (Since the Judicature Acts)—WRIT SPECIALLY INDORSED—*continued.*

28. —— "*Statement of claim*"—*Signature—Rules, June*, 1891, *O. II., rr. 2, 3—O. XXVII., r. 2—Form No. 2, App. A.*] *Quere*, whether the words "statement of claim" at the head of the indorsement and signature at foot thereof, are essential to a specially indorsed writ? ALEXANDER *v.* M'FERRAN [Q. B. D. XXVI. 21; C. A. XXVI. 33

29. —— *Statement of nature of goods sold and date—Account furnished—Judgment—O. II., r. 3—O. XIII., r. 1—App. (A.), Part II., sec. V.*] The indorsement on a writ of summons stated the plaintiff claimed a certain sum as the "balance of account of goods sold, as follows: Jan. 1st, 1887, amount of balance of account due and furnished £34 11s. Jan. 17th, credit cash £12 10s. Total £22 1s." On motion to sign final judgment under O. XIII., r. 1:—*Held*, that the indorsement constituted a good special indorsement. PIM *v.* CORCORAN - - - - - - C. P. D. XII. 136

30. —— *What constitutes—O. II., r. 3—O. XIII., r. 1.*] Where the indorsement of particulars on a writ of summons was as follows: "1877-8-9.—To money paid by the plaintiff for defendant's use or at his request, £59 1s. 7d. 1877, July 28th.—To amount of I.O.U., of this date made by defendant to plaintiff, £45, 1878-9.—To cash lent by plaintiff to defendant, £30 1s. 7d. Total £134 3s. 2d."—*Held*, that the writ of summons was not specially indorsed within O. II., r. 3, O. XIII., r. 1. KERSHAW *v.* COAKLEY [Q. B. D. XIV. 13

31. —— *What it must contain—Motion for final judgment—O. III., r. 6—O. XIV.—O. XIX., r. 4.*] The indorsement on a specially indorsed writ must be headed with the words "statement of claim," and must be signed at the foot. CASSIDY *v.* M'ALOON - - C. A. XXVII. 33

—— Heading - - - - XXVI. 123

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PRACTICE.

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PRACTICE—ADMIRALTY.

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PRACTICE — ADMIRALTY — APPEAL—*Jurisdiction.*] The Court of Appeal in Chancery has jurisdiction to decide, and will decide, on appeal from the Court of Admiralty, on matters of fact, as well as matters of law. THE "JANE." [Ch. A. V. 188

PRACTICE—ADMIRALTY—ARREST.

1. —— An affidavit to lead warrant made by a town agent is sufficient under Ad. O. III., r. 1 (1). THE "ALPHA" [Ad. XXVII. 137

2. —— *Omission on part of Plaintiff to comply with Rule 27, requiring warrant to be filed within six days of service—Defendant not requiring appearance to be entered within same time—Sufficiency of evidence of ownership—Illegal arrest—Delay—Acquiescence—Costs.*] On the 6th of August, 1868, was issued, in a cause of ownership, an Admiralty warrant to arrest a vessel. A copy of the warrant was, on the following day, served on the son of the defendant—a part-owner—who, on that day, became aware of the warrant. No bail was given, and the vessel was arrested on the 27th of August. The defendant did not enter an appearance within six days after the service of the copy of the warrant. In May, 1869, the defendant moved to set the proceedings aside, and to have the vessel released from custody:—*Held*, that the service was irregular; that the vessel could not be discharged out of custody, because the conduct of the parties in not attempting to set the proceedings aside amounted to an acquiescence in the arrest; and that the plaintiff was in a serious default for not having sooner brought the suit to a termination. THE "KATE AND MARY" - - - Ad. III. *M.* 662

3. —— *Suit for wages—Release of vessel—Consul.*] The release of vessel from arrestment was ordered, the Consul of the country she belonged to having protested against the suit, and undertaken to do justice between the plaintiff and defendant. *Re* THE "OBERBURGERMEISTER VON WINTER" [Ad. IV. *M.* 47

PRACTICE—ADMIRALTY—COSTS.

1. —— *Jurisdiction.*] The local Court of Admiralty has power to give the costs of an application to dismiss an action which it has not jurisdiction to entertain. M'CANN *v.* ALLEN [Q. S. XXVII. 64

2. —— *Salvage—Refusal by separate salvors to consolidate.*] Plaintiffs who bring separate suits for salvage services, and who upon an application by the defendants to the Court to have their claims consolidated, refuse to consolidate their claims will not, unless under exceptional circumstances, be allowed their cost of suit. THE "CHARLES" Ad. VI. 14

3. —— *Undefended suit — Insufficient funds — Taxation.*] Where in a suit brought to recover a sum due to the master of the ship for wages and disbursements in repairing her, no appearance was entered on behalf of the ship, the Court made a decree for the plaintiff's demand and costs: and as the fund realised by the sale of the vessel was sufficient to satisfy the plaintiff's demand, it directed, with the assent of the plaintiff's solicitor, that the Marshal should proceed to have his expenses taxed and certified, and that the balance of the fund, after paying the amount so certified, should be paid over to the plaintiff or his attorney, the insufficiency of the fund rendering a taxation of the plaintiff's costs superfluous. THE "THOMAS AND ELIZABETH" - - Ad. *M.* V. 196

4. —— *Witnesses' expenses—Consent.*] A consent to admit documents having been tendered by the defendant and declined, the documents were proved by a witness:—*Held*, that the defendant having got the costs of the witness was not entitled to the costs of the consent. THE "RIVOLI" [Ad. IV. *M.* 454

PRACTICE — ADMIRALTY — DECREE—*Co-owners—Petition.*] When a part-owner of a vessel institutes a suit for a balance due to him by his co-owner, who makes default in appearance, and the vessel has been sold, the Court will, upon the affidavits, and without petition, make a decree for the amount claimed. THE "VILLAGE PRIDE" [Ad. II. *M* 317

PRACTICE — ADMIRALTY — DISCOVERY — *Documents—Affidavits.*] A full affidavit is necessary in applying for discovery of documents. S.S. BENWICK CO. *v.* BANNATYNE [Ad. XXVII. 137

PRACTICE—ADMIRALTY—EVIDENCE.

1. —— *Action for negligence—Pleading—Recovery secundum allegata et probata—Applicability of Common Law Rules to Admiralty Procedure.*] At the hearing of the petition for damages on account of injury done to a cargo of corn by the alleged negligence of the defendant, or of his servants, the plaintiff must adhere to the case made by his petition, and give satisfactory proofs of such negligence. THE "AUSTIN FRIARS" [Ad. III. *M.* 608

2. —— *Nautical assessors—Evidence of expert.*] Where the Court is assisted by nautical assessors, the evidence of a nautical expert will not be received. THE "NAGPORE" [Ad. VIII. 185

PRACTICE — ADMIRALTY — INJUNCTION — *Restraining action at law—Order of Admiralty Court limiting liability of owner.*] After an order has been made limiting the liability of an owner of a ship lost by collision, the Court will grant an injunction to restrain an action at law for damages in respect to goods lost in the ship. THE "TORCH" [Ad. VII. 193

PRACTICE—ADMIRALTY—JURISDICTION.

1. —— *Amount of property salved.*] The Court is not without jurisdiction when the property salved amounts to £1,000, though the property proceeded against does not amount to that sum. THE "EMPIRE QUEEN" - - Ad. III. *M.* 187

2. —— *To remit—Demurrage.*] The Judge in Admiralty has jurisdiction to remit an action for trial in the Dublin Recorder's Court where the amount claimed in the writ is under £50. BULL *v.* PILE (THE "ERMINIA") [Ad. XXVII. 136

3. —— *Power to restrain vessel not registered in Ireland.*] The Court of Admiralty has jurisdiction in a cause of restrain though the vessel be not registered in Ireland. THE "LADY CLERMONT" - - - Ad. IV. *M.* 542

PRACTICE — ADMIRALTY — LIMITATION OF LIABILITY—*Suit to limit liability of owner—Collision.*] Where a ship has been lost by collision, the Court has jurisdiction under the Court of Admiralty (Ir.) Act, 1867, without regard to the ship or proceeds being under arrest, to make an order at the suit of an owner, determining the amount of his liability, and to distribute such amount rateably among the several claimants. Form of an *ex parte* order in such case - - - THE "TORCH" Ad. VII. 193

—— Injunction - - - - - VII. 193

See PRACTICE—ADMIRALTY—INJUNCTION.

PRACTICE — ADMIRALTY — MONITION — *Bail — Priority—Conditional order—Waiver—Jurisdiction.*] A vessel on a voyage to Liverpool was arrested at Queenstown, at the instance of the plaintiff in a suit for necessaries supplied to her. Bail was procured by the assignees of a bottomry bond upon the ship, freight, and cargo, given on the voyage, and payable twenty days after her arrival at the port of discharge, and the vessel proceeded to Liverpool, where she was arrested in a cause of wages, and again arrested by warrant of the English Court of Admiralty in a cause of necessaries, instituted by the plaintiff, in respect of the same claim as that on which the arrest at Queenstown was founded. The vessel was subsequently sold under an order of the Court of Admiralty in England, made at the suit of the assignees as bondholders, but a considerable sum remained due to them. It did not appear that a decree had been obtained in any of the suits instituted in England. The plaintiff proceeded with his suit in the Court of Admiralty in Ireland and subsequently to all the proceedings above mentioned obtained a

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PRACTICE—ADMIRALTY—MONITION—*continued.*

decree in his favour for the amount of necessaries and costs. Having successfully applied to the bail for payment, the plaintiff instituted a motion for an order for a monition against the bail to compel the payment by them of the damages and costs:—*Held*, that the motion should be granted. The bondholders having filed an affidavit to resist the motion, and not having applied for an extension of the time for answering the plaintiff's affidavit:—*Held*, that it was not open to them to contend that the application should, in the first instance, have been for a conditional order. Whether an application for a monition against bail should, in the first instance, be for a conditional order, *quære*. *Semble*, even if the bondholders had obtained a decree in favour of their bond for its full amount, the position of the plaintiff would not have been affected by it. A cause instituted in the Irish Court of Admiralty will not be superseded or suspended by proceedings subsequently taken in the English Court of Admiralty. THE "ONWARD" - - **Ad. VI. 150**

PRACTICE—ADMIRALTY—PARTIES.

1. —— *Death of co-plaintiff—Suggestion—205th G. O.*] One of the plaintiffs in a suit having died, and the cause surviving to his surviving partner, the Court refused to authorise the filing of a suggestion of such death, or to make an order otherwise than in the terms of the 205th rule, which provides that the suit shall proceed at the instance of the surviving plaintiff. THE "LION" - - - - - - **Ad. V. 10**

2. —— *Power of defendant who has not pleaded to dispute the claim.*] A defendant in a suit to recover a claim for seaman's wages, who has entered an appearance, but not pleaded, will not be permitted by the Court to dispute the plaintiff's claim. THE "HELEN" - - - **Ad. V. 23**

PRACTICE—ADMIRALTY—PAYMENT OUT OF COURT.

1. —— *Motion for payment of balance of fund for which warrant had been issued—Petition.*] The master of a ship, defendant in a suit for breach of contract, having a claim for wages and disbursements on the proceeds of the ship and cargo, which had been sold, and who claimed to be part owner, moved for payment to him of the balance of the fund, for which the warrant had been issued. A caveat motion was directed to stand; the Master to file a petition. THE "JOSEPH DEXTER" - - - - - - - - **Ad. III. *M.* 280**

2. —— *Motion to draw money out of Court.*] A motion which was made by the defendant to draw money out of Court which had been lodged, the Court of Chancery in England having made an injunction order against proceedings in the cause by the Admiralty Court, was refused. THE "LION" **[Ad. IV. *M.* 418**

3. —— *Priority of payment of wages and necessaries.*] Where the parties in different suits —for wages and for necessaries— against the same ships, display equal diligence, and the fund is insufficient to pay both in full, the parties suing for wages will be paid their claim with costs in full, before the demand for necessaries. THE "QUEEN" **Ad. III. *M.* 119**

PRACTICE—ADMIRALTY—PLEADING.

1. —— *Amendment of answer — Pleading* de novo.] The pleadings having been concluded and printed, and the case being ready for hearing, the defendant moved to withdraw his answer and plead *de novo*. Leave granted, on payment of all costs of the motion and of those caused by the amendment. THE "CASTIGLIONE" AND CARGO - **Ad. III. *M.* 176**

2. —— *Application to expunge an article.*] The plaintiffs in a cause of damage to cargo, having alleged in their petition as a particular instance of neglect, etc., to which the damage was attributable that the vessel was in a damaged and leaky condition when the cargo was shipped, the defendant's answer denied this statement, and added in its 5th article "that the agent of the shippers of said cargo saw and inspected the said vessel during the shipment of said cargo, and after said cargo was put on board of her, and made no complaint whatever of her state or condition." A motion by the plaintiffs to expunge this article from the record was refused. THE "FORTUNA" - - - - - - - **Ad. VI. 79**

PRACTICE—ADMIRALTY—PLEADING—*continued.*

3. —— *Cause of damage to cargo—Inspection of ship's log—Court of Admiralty (Ireland) Act, 1867, secs. 37, 49—Onus of proof—Surprise.*] The right of the Judge upon the hearing of a cause in the Court of Admiralty to call for and inspect a ship's log, is not taken away by the 37th or 49th sections of the Court of Admiralty (Ir.) Act, 1867. The words "dangers of the seas" occurring in a bill of lading must be taken in the sense in which they are used in policies of assurance. In a cause of damage to cargo, the fact of the damage being admitted as well as proved, and the plaintiff having given evidence, which if unrebutted would establish that due care of the cargo was not taken by the defendant's servants:—*Held*, that it lay upon the defendant to sustain affirmatively the statement in his answer that such damage was the consequence of the excepted perils. In a cause of damage to cargo, the defendant's answer contained a statement, amongst others, that the agent of the shippers of the cargo saw and inspected the vessel during the shipment of the cargo and afterwards, and made no complaint of her condition:—*Held*, that this was an immaterial circumstance. *Semble*, the plaintiff in a cause of damage to cargo not having stated in his petition as a breach of contract, or dereliction of duty, that the master of the ship when he found that the cargo was damaged did not put into some port on the voyage, it was not open to him to rely on this fact at the hearing. THE "FORTUNA" - - **Ad. VI. 80**

4. —— *Collision—Proof—Sailing Rules* 16, 18, 19.] The reason of the rule that a party proceeding to recover damage sustained in a collision, must correctly allege in his petition the facts on which he relies, and must establish in proof the case he sets up in pleading, is inapplicable to the defence of a vessel proceeded against, stated. The defendant having in his answer attributed the collision to the plaintiff's vessel having attempted to cross the bows of his vessel, and the Court upon the hearing being of opinion that the collision was attributable to a different cause:—*Held*, that the defence was not thereby invalidated. The words "stop and reverse" in the 16th of the sailing rules, apply to the engines of a vessel, and do not mean that the vessel is to go astern. THE "BELLE" *v.* THE "MULLINGAR" **[Ad. VI. 153**

5. —— *Collision—Particularity—Inevitable accident.*] The petition in a cause of collision having stated that the plaintiff's vessel had taken up her position in port, and was moored in a proper position, with sails lowered and furled, and that the defendant's vessel, under way and entering the harbour, ran into and struck her, added that "the said collision was altogether the fault of the defendant's vessel, and was caused by the recklessness, carelessness, and mismanagement of those on board of her, and was not caused or contributed to by anything done or left undone by those on board of the plaintiff's vessel, and the said collision was further occasioned by the want of any or sufficient look-out on board the defendant's vessel":—*Held*, upon the hearing, that the plaintiff was not bound to state more precisely the mode in which the collision occurred, and that the recklessness, carelessness, &c., charged, were not to be taken to be confined to the only specified act of negligence, viz., not having a sufficient look-out. Where a plaintiff relies on a breach of any statutory rule of navigation he should specifically plead that the act done or not done was in violation of such particular rule. A defence of inevitable accident can only be sustained by showing that previous measures could not have been adopted to render its occurrence less probable. THE "INDUSTRY" *v.* THE "SECRET" - - - - - - **Ad. VI. 146**

6. —— *Notice of suit—6 & 7 Wm. IV., c. 100, sec. 8.*] In a suit to recover damages on account of a collision, the defendants (the City of Dublin Steam Packet Company) pleaded, as one of the articles of their answer, that "notice of this suit was not given to the owners of said steamer, or left at their office in the City of Dublin, before the commencement of

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PRACTICE—ADMIRALTY—PLEADING—*continued.*

this suit, pursuant to the provisions of the statute in that behalf, and the owners of said steamer rely on the absence of such notice as a bar to this suit." A motion by the plaintiffs to amend the answer by striking out this article was refused. THE "BELLE" *v.* THE "MULLINGAR" - **Ad. VI. 152**

7.——*Setting aside pleadings—Alleged priority—Concurrent suits in rem.*] In a cause of necessaries instituted on account of materials supplied for repairing the vessel which was the subject of the suit, when in the port of Liverpool in April, 1868, the defendants, intervening, pleaded that they were the assignees of a bottomry bond, dated the 13th October, 1870, by which the said ship was hypothecated to secure to a firm in Port Louis, Mauritius, the payment of a sum of money advanced to the master; and that the value of the vessel was less than the sum secured by the said bond; and they claimed priority over the plaintiff's claim; and alleged that the plaintiff was precluded from having his claim satisfied out of the ship. The Court, upon motion by the plaintiff, set aside the defendant's pleadings. THE "ONWARD" - - **Ad. V. 156**

PRACTICE — ADMIRALTY — SECURITY FOR COSTS—*Consolidated actions—Collision.*] Three causes of damage by collision brought respectively by the owners of the cargo of a sunken vessel, the owners of the vessel and the master and crew of the vessel (numbered respectively 255, 258 & 259), against the owners of the colliding ship, and in one of them the ship having been arrested and liberated on bail, were, upon motion by the defendants, consolidated. Pending the hearing of the consolidated causes, and before the plaintiff's case had closed, a motion upon notice was made that the plaintiffs in the consolidated causes be compelled to answer the complaint of the plaintiffs in a cross cause and give security to pay such damage as might be found due in the cross cause. The Court having reserved judgment until the conclusion of the hearing:—*Held*, that the second clause of the 72nd section of the Court of Admiralty (Ir.) Act, 1867, under which the motion was made, applies only to cases in which the owner of one of the colliding ships is the plaintiff in the principal cause. *Semble*, that the 72nd sec. was not applicable to the suit in which the master and crew were plaintiffs. *Held* also, that though the said section was applicable in terms to the cause No. 258, in which the owners of the sunken vessel were plaintiffs, the Court ought not to exercise the discretionary power given to it, since it could not suspend one of the causes without suspending the others, which it had no power to do, and that the motion should be refused with costs. Under the terms of the 18th General Order the filing of a *præcipe* for a warrant or citation is to be deemed the institution of a suit. THE "ANNA LASSEN" *v.* THE "LAKE ST. CLAIR" - - **Ad. VII. 65**

PRACTICE—BANKRUPTCY.

See Cases under BANKRUPTCY.

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PRACTICE—CHANCERY—AFFIDAVIT.

1.——*Affidavit to verify answer—Departure from form prescribed by Chancery (Ireland) Act 1867, sec. 104.*] On special grounds permission will be given to a defendant to make a short affidavit not in the form prescribed by the Ch. (Ir.) Act, 1867, sec. 104, verifying his answer in a cause in which issue has been joined. That affidavit must be confined to statements within his personal knowledge. CROKER *v.* CROKER - - - - **V. C. III. *M.* 238**

2.——*Death of deponent—Omission of statement of it in notice served of affidavit having been sworn.*] When an affidavit was sworn before issue was joined in the cause, and the deponent died before notice of its being sworn was served upon the opposite party, and such notice when served did not contain any mention of the death:—*Held*, that the affidavit could not be used. EVANS *v.* COOK - **R. VIII. 17**

3.——*Extension of time for filing affidavits.*] Affidavits allowed to be filed after time for closing evidence had expired under peculiar circumstances. PERRIN *v.* GOVERNORS OF THE LYING-IN HOSPITAL - - - - **R. IV. *M.* 737**

4.——*Form of—Hearing of cause in which issue is joined—Chancery (Ireland) Act, 1867, sec. 104.*] Affidavits filed by the plaintiff were not in the form prescribed by the Ch. (Ir.) Act, 1867, s. 104:—*Held*, that that section was not imperative, and the plaintiff was allowed to read the affidavits. THOMPSON *v.* LAMBERT - - - - **R. II. *M.* 369**

5.——*G. O. 33—Infant.*] The affidavit, made in support of an application for leave to enter a memorandum of service upon a formal party under G. O. 33, did not state that the party served was not an infant:—*Held*, sufficient. SMITH *v.* M'DONNELL - - - - - **C. II. *M.* 119**

6.——*Irregular in form—Amendment—Trustee Relief Act.*] Some of the paragraphs of an affidavit made after the Chancery (Ir.) Act, 1867, came into operation, and by trustees for the purpose of lodging the trust moneys in Court, were couched in the first person, whereas others were couched in the third. The affidavit was received and filed, but the registrar declined to act upon an attested copy produced for the purpose of entering a side bar rule to lodge the funds:—*Held*, that the Court would not direct the Registrar to act on the attested copy, but that the affidavit should be taken off the file and amended. *Re* ELLIOTT'S TRUSTS - - - - **R. II. *M.* 40**

7.——*Memorandum at foot—165th General Order, 1867.*] An affidavit was filed without the certificate required by the 165th G. O., 1867, and was referred to by counsel on moving the petition:—*Held*, that in this instance, the Court would direct

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PRACTICE—CHANCERY (Before the Judicature Acts)—AFFIDAVIT—*continued.*

the Clerk of the Records and Writs to permit the solicitor to annex the certificate; but that no such permission would be granted in future. DUB. DIOCESAN SOCIETY; *ex parte* M'SORLEY - - - - - - - - **R. II. *M.* 41**

8. —— *Notary Public.*] An affidavit sworn before a Notary Public in New York annexed to the affidavit of the British Consul identifying the Notary Public is sufficient to ground a petition to draw money out of Court lodged under the Trustee Relief Act. *Re* KENAH'S TRUSTS - - **R. I. *M.* 260**

9. —— *Paper.*] Except in a case of inevitable necessity, the Court will not allow affidavits, which are not on the paper prescribed by the G.O., to be filed. M'CARTHY *v.* MULLARKEY **[V. C. II. *M.* 669**

10. —— *Petition by corporation—Verifying affidavit.*] The affidavit verifying a petition under the 15th section of the Court of Chancery (Ireland) Regulation Act, 1850, can, in the case of a company, be made by the solicitor if he had knowledge of the affairs of the company and of the matters referred to. SCOTTISH NATIONAL INSURANCE CO. *v.* EYRE **[C. I. *M.* 246**

11. —— *Sworn before Indian magistrate.*] An affidavit sworn before a magistrate in Bombay, certified by the Home Office to be such, was allowed to be filed without any verification of the signature. FERGUSON *v.* KENYON - **R. I. *M.* 660**

12. —— *Under* 15 *G. O.*, 1867—50 *G. O.*, 1843.] The affidavit to support a motion made under the 15th G. O., 1867, must be made by the plaintiff as well as by his solicitor, the 50th G. O., 1843, being still in force. An affidavit to support a motion under the 16th G. O., 1867, omitted the averment that the matter of the proposed amendment could not, with reasonable diligence, have been sooner introduced into the bill:—*Held*, defective. COLCLOUGH *v.* COLCLOUGH **[V. C. II. *M.* 635**

PRACTICE—CHANCERY—AMENDMENT.

1. —— *Amended bill—Answer—Reckoning of holidays in time limited.*] A plaintiff, when he requires an answer to an amended bill, must serve the defendant with a copy thereof, with an indorsement requiring an appearance to be entered within eight days. Where an answer is not required the defendant must be served with a plain copy of the amended bill. In computing the thirty days allowed for filing a voluntary answer, holidays are to be reckoned, the 2nd G. O. (1843) being inconsistent with the 254th G. O. (1867). CROKER *v.* CROKER - - - - - - **V. C. III. *M.* 196**

2. —— *Amendment of bill—Substitution of parties as defendants—Mistake.*] A person supposed by mistake to be the heir at law, was named as defendant in a bill of complaint. The rightful heir, having been subsequently discovered, and the plaintiff having, by motion, applied for leave to amend his bill, by substituting the name of the rightful heir in the place of the party erroneously supposed to be such, the Court allowed the amendment. WATSON *v.* ARUNDEL **[V. C. IX. 18**

3. —— *Amendment of bill notwithstanding replication filed—16 G. O.*, 1867.] A motion for leave to amend a bill, after replication filed, was refused, it not being shown, within the 16th G. O., 1867, that the proposed amendments were material, or, if material, that the plaintiff had used reasonable diligence for the purpose of introducing them into the bill. CASEY *v.* ARCHBISHOP OF DUBLIN - - - - - **R. X. 59**

4. —— *Amendment of copy decree—Bill dismissed at hearing with costs—Omission of costs in copy decree—Jurisdiction—103 G. O.*, 1867.] On a motion to amend a copy decree by adding a declaration, which had been omitted, that the defendant, in the bill of complaint, was entitled to the costs, to a certain extent, of dismissing it, to be paid by the plaintiff when taxed and ascertained, the bill at the hearing having been dismissed, with costs:—*Held*, that such omission, as an accidental slip on the part of the Registrar, came within the 103rd G. O., 1867.—READ *v.* PURCELL - - - - **V. C. IX. 190**

PRACTICE—CHANCERY (Before the Judicature Acts)—AMENDMENT—*continued.*

5. —— *Introducing printed amendments in bills—Proper procedure.*] Plaintiffs sought to amend their bill by annexing thereto, after the prayer, one page of amendments, printed in italics, on paper of the proper size. The officer refused to receive the amended bill in that form. On motion that he be directed to receive it in that form:—*Held*, that the motion should be refused. The proper mode of introducing printed amendments is to interleave and print it in italics. SANDERS *v.* LISLE - - - - - - **V. C. III. *M.* 155**

6. —— *16th G. O.*, 1867—*Form of affidavit.*] In cases governed by the 16th G. O., 1867, liberty to amend will not be granted unless there be an affidavit establishing, to the satisfaction of the Court, that the proposed amendments could not, with reasonable diligence, have been sooner introduced into the bill. SLATOR *v.* NOLAN - - **V. C. IX. 118**

PRACTICE—CHANCERY—APPEAL.

1. —— *Jurisdiction—Extension of time—Companies Acts.*] Under the Companies Act, 1862, s. 124, the Court of Appeal has no jurisdiction to determine the right to appeal before extending the time for appealing. Liberty to appeal must first be obtained from the Court below. *Re* ETNA INSURANCE CO. *ex parte* NATIONAL PROVINCIAL BANK **Ch. A. VII. 143**

2. —— *Lodging petition of appeal or answer after proper time lapsed.*] On an application by the respondent for liberty to lodge the answer to a petition of appeal which had not been lodged owing to a fatality, and a cross-appeal from the order of the Master of the Rolls, although not brought within statutable period:—*Held*, that the answer might be lodged, but the application for the cross-appeal should be made to the Court of Chancery under the Chancery Appeal Act, 1856, sec. 11. O'CONNELL *v.* O'CALLAGHAN **Ch. A. I. *M.* 631**

3. —— *Petition of appeal—Statement of facts and grounds of appeal—3rd G. O.*, 1871.] Where a petition of appeal did not, in compliance with the 3rd G. O., 1871, state the material facts of the case, and the grounds upon which the order appealed from was sought to be set aside, the Court declined to hear the appeal, but allowed the appellants to file an amended petition. PURDONS *v.* LONGFORD - **Ch. A. XI. 141**

PRACTICE—CHANCERY—APPEARANCE.

1. —— *Appearance entered after time limited in order for substitution of service.*] The defendant, a peer, residing out of the jurisdiction, was served in the manner prescribed by the order for substitution of service, but did not enter an appearance. The officer declined to allow the plaintiff to enter an appearance without special leave given by the Court. On motion:—*Held*, that leave should be given. EYRE *v.* KINGSTON **[V. C. II. *M.* 90**

2. —— *Conditional appearance by defendant.*] Leave was given to a defendant to enter a conditional appearance in order that he might move to discharge an order empowering the plaintiff to enter a special appearance for the defendant. EYRE *v.* KINGSTON - - - **V. C. II. *M.* 104**

PRACTICE—CHANCERY—BILL.

1. —— *Reinstating written bill on file—Filing printed bill after time limited—8th G. O.*, 1867.] A motion was granted that the written copy of a bill which had been removed from the file should be reinstated, and that the plaintiff should thereupon be at liberty to file a printed copy of the bill, notwithstanding that the time for filing same, under 8th G. O., 1867, had expired. *Ferrand* v. *The Mayor of Bradford* (8 De G. M'N & G. 93), followed. CONROY *v.* OWENS - **R. X. 60**

2. —— *33rd G. O.*, 1867—*Copy—Stamp.*] Copies of a bill when served under G. O. 33 (1867), on formal parties, need not be stamped. MURPHY *v.* DOUGHTY - **R. II. *M.* 22**

PRACTICE—CHANCERY—CAUSE PETITION—*Reference under the 15th section of the Chancery Regulation Act.*] Cause petitions under the 15th section of the Chancery Regulation Act, ought to be decided by the Court in the first instance before being referred to the Master, as involving serious questions of law. ANON. - - **C. I. *M.* 24**

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PRACTICE—CHANCERY (Before the Judicature Acts)—CAVEAT—*Setting aside—Irregularity.*] Petitioners filed a *caveat* at a time when the petition under the 27th G. O., 1851, stood dismissed for want of prosecution:—*Held*, that the *caveat* should be set aside. LESLEY *v.* HOGAN [V. C. II. *M.* 90

PRACTICE — CHANCERY — CHAMBERS—*Procedure in Chamber—Unpaid creditor—Summons.*] The proper mode of procedure by an unpaid creditor under the Chancery (Ir.) Act, 1867, s. 147, is by summons. *Re* HUGHES R. V. 89

PRACTICE—CHANCERY—CHARGING ORDERS AND STOP ORDERS.

1. —— *Affidavit by English solicitor to obtain restraining order.*] When an affidavit to obtain a restraining order is made by an English solicitor, it should state that there is an interest in the stock and the danger of its loss, and the form in *Richey and Bewley* (Chancery Acts, p. 267) is not applicable WALLIS *v.* BANK OF IRELAND (GOVERNOR AND CO.) [R. VII. 197

2. —— *Costs—Unascertained interest.*] The respondent was entitled to a proportion not yet ascertained in moneys numbered of Government Stock standing to the credit of another matter. The petitioner in this cause, having obtained a decree with costs, moved that the respondent's share of the fund should stand charged with payment of these costs:—*Held*, that the petitioner was entitled to obtain a charging order on the respondent's share, whatever it was. CLARKE *v.* HINDS - - - - - V. C. II. *M.* 59

3. —— *Jurisdiction—Chancery (Ireland) Act*, 1867, *s.* 170.] Upon a motion under the 170th section of the Chancery (Ir.) Act, 1867, for an order to charge stock standing to the credit of the respondents with liability to the amount of a bond given by them, and to restrain the Bank of Ireland from transferring the stock, or permitting it to be transferred, until further orders upon notice to petitioner:—*Held*, that the 170th section gave jurisdiction to restrain the transfer of the stock, but not to charge it with liability. ROGERS *v.* BOURKE - - - - - - R. VII. 78

4. —— *Notice of motion.*] Notice of motion to obtain a stop order was considered necessary. FARMER *v.* FARMER [R. I. *M.* 227

PRACTICE—CHANCERY—CONSENT.

1. —— *Chancery (Ireland) Act*, 1867—*Motion for decree—Time for making.*] It was consented that the plaintiffs might, although the time for answering had not expired, and notwithstanding the 91st G. O. (1867), move for a decree on giving to the defendants two clear days' notice of such motion:—*Held*, that the consent might be made a rule of Court. TOWNSEND *v.* FURNELL - - - - - - R. II. *M.* 4

2. —— *Extension of time to file affidavits.*] A consent to extend the time for filing affidavits can be made a rule of Court. PEYTON *v.* O'BRIEN - - - - - R. I. *M.* 646

PRACTICE—CHANCERY—COSTS.

1. —— *Costs of day—Objection for want of parties.*] Where a case is deficient for want of parties, the defendants are entitled to the costs of the day. HODSON *v.* LYSTER C. I. *M.* 24

2. —— *Demand*—Fieri facias—*Over-marking.*] Before the petitioner sues out a writ of *fi. fa.* for costs taxed in the presence of the respondent, a solicitor, it is not necessary to demand the amount. The writ was, by mistake, marked for £99 10s. 11d., and the respondent paid that sum. The correct sum was £98 10s. 11d. The respondent served notice of a motion to set aside the execution, and then the mistake was discovered by the petitioner's solicitor, who thereupon repaid £1 to the respondent:—*Held* that the petitioner was liable for his solicitor's mistake, but that, under the circumstances, no rule should be made on the motion. KELLY *v.* O'BRIENE - R. II. *M.* 4

PRACTICE—CHANCERY (Before the Judicature Acts)—COSTS—*continued.*

3. —— *Drawing money out of Court lodged under 7 Geo. IV., c. 74 (Prisons Act).*] The Court has power under sec. 32 to give the costs of drawing money out of Court which has been lodged under 7 Geo. IV., c. 74, by the Poor Law Commissioners. KELLY *v.* FRENCH - - R. I. *M.* 442

4. —— *Exceptions for insufficiency.*] Of exceptions for insufficiency some were allowed, and the remainder were overruled. It was agreed that the cost of the exceptions should be costs in the cause. But the Court refused to carry out the agreement, and adopted the English practice of giving to each party the costs of those exceptions on which he succeeds. LARKIN *v.* DAVIES - - - - - R. II. *M.* 316

5. —— *Minor—Partition—Discharge of receiver.*] Lands were partitioned in moieties between minors and C., who applied for the discharge from his moiety of the receiver:—*Held*, that the costs of the application should be borne in equal shares by the minor and by the applicant. *Re* SIMPSONS [C. II. *M.* 225

6. —— *Motion to bring ejectment—Receiver.*] The Court never gives the costs of a motion by a landlord for leave to bring an ejectment where a receiver has been appointed over the tenant's interest. DICKSON *v.* SMITH. R. III. *M.* 4

—— Trustee—Account - - - - - - II. *M.* 4

See TRUSTEE—COSTS. 2.

PRACTICE—CHANCERY—DECREE.

1. —— *Order and decree* pro confesso—*Reservation to dispute the amount due.*] In a decree, *pro confesso*, in a suit for a receiver on foot of mortgage, liberty to apply for an account of the sum due on the foot of the mortgage was reserved to the defendants. SCOTTISH AMICABLE LIFE ASSURANCE CO. *v.* STUDDERT - - - - - - R. III. *M.* 280

2. —— *Service of motion for—Parliamentary appearance.*] Notice of motion for a decree must be served on the defendant even in a cause in which he has not appeared, but a Parliamentary appearance has been entered for him. CHAMBRE *v.* COTTINGHAM - - - - - - R. III. *M.* 238

PRACTICE—CHANCERY—DEMURRER.

—— *Amended bill—Demurrer after pleading to original bill.*] A party to a suit is not precluded from demurring to an amended bill by having answered the original bill. JOHNSON *v.* HODGENS - - - - - - Ch. A. VII. 145

PRACTICE — CHANCERY — DISCOVERY — DOCUMENTS.

1. —— *By plaintiff before answer filed.*] A defendant before filing an answer to the interrogatories, moved for the production and inspection of a deed, which was not a title deed common to both parties, and which was stated in the bill at such a length as enabled him to rely upon it as a release:—*Held*, that the motion should be refused, since the Court was not satisfied that the deed was necessary to enable the defendant to put in a full and sufficient answer. PHILIPS *v.* PENNEFATHER - - - - - V. C. II. *M.* 667

2. —— *Chancery Act*, 1867, *sec.* 71—*Affidavit—Production of documents.*] An affidavit is not necessary in support of a motion under the Ch. (Ir.) Act, 1867, sec. 71; the defendant in his affidavit may describe the documents (if numerous) generally, or by classes. LITTLE *v.* M'CORMICK [R. III *M.* 312

3. —— *Communications before dispute—Privilege—Solicitor and client—Co-defendants.*] A. filed a bill to obtain a declaration that the defendants, B., a solicitor, together with C., D., and E., were jointly and severally liable to pay a sum of money which A. had advanced through the means of B., on a mortgage to C. The bill charged a breach of trust by D. and E. (the trustees of C.'s marriage settlement), as the result of which the security proved insufficient, and imputed fraud to all the defendants. B. had acted in relation to the

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PRACTICE—CHANCERY (Before the Judicature Acts)—DISCOVERY—DOCUMENTS—*continued.*

transaction as solicitor for A., D., and E. Upon motion by A. that D. and E. should produce all letters and copies of letters which had passed between them and B.:—*Held*, that all letters and copies of letters written in reference to the subject of the suit, and before the dispute arose which superinduced the litigation, should be produced, save such as should be shown, upon affidavit, to contain legal advice and opinions merely. SANKEY *v.* ALEXANDER - - **V. C. VIII. 157**

4. —— *Summons—Jurisdiction of Chief Clerk.*] When a plaintiff desires to proceed under the Ch. (Ir.) Act, 1867, to obtain an order directing the defendant to produce documents, the Chief Clerk has not jurisdiction to issue a summons requiring the defendant to make a preliminary affidavit stating the documents in his possession. Such an order must be obtained by a motion to the Court. WEST *v.* ENNISKILLEN, BUNDORAN AND SLIGO RAILWAY COMPANY - - **C. III. *M.* 4**

PRACTICE—CHANCERY—DISCOVERY—INTERROGATORIES.

1. —— *Enlargement of time.*] Plaintiff's solicitor being engaged in preparing a will for the plaintiff, who was very ill, forgot to serve the interrogatories within the time limited. The V. C. enlarged the time. WOODHOUSE *v.* JOYCE **[V. C. III. *M.* 99**

2. —— *Laches.*] A motion for extension of time to file interrogatories should be on notice, and an order obtained *ex parte* is irregular; but this can be waived by the defendant's laches. CASHILL *v.* NIXON - - - **V. C. IV. *M.* 180**

3. —— *Petition—15th sec. of Ch. Act*, 1850.] An application to annex interrogatories to a petition under the 15th sec. of the Court of Chancery (Ireland) Regulation Act, 1850, was refused, as such should be made to the Master to whom the order of reference was made. HEWAT *v.* ARMITAGE - **C. I. *M.* 246**

4. —— *Service.*] The service of interrogatories on the defendant need not be personal. DERHAM *v.* KIERNAN **[V. C. III. *M.* 676**

5. —— *Time to file—Voluntary answer.*] On the 10th of March, a joint voluntary answer was filed. On the 9th of March there had been lodged in the notice office notice of a motion for leave to file interrogatories. The defendant's solicitor denied that he had received it at the time of filing the answer:—*Held*, that leave to file the interrogatories should be given, without requiring the plaintiff to pay the costs of the answer, and although the time for filing them had expired. FELTON *v.* BRYAN - - - - **R. II. *M.* 195**

PRACTICE—CHANCERY—DISMISSAL OF BILL.

1. —— *Against the defendant with costs.*] When a plaintiff moves to dismiss the bill with costs against one defendant, without prejudice to the question by whom they shall be paid at the hearing, defendant's costs must in the first instance be paid by the plaintiff; but that will not prejudice at the hearing the question as to the party who shall ultimately pay them. When the plaintiff requires such an order he must obtain it by motion to the Court, not by entering a side-bar order. NOLAN *v.* EYRE - - - - - **R. III. *M.* 99**

2. —— *Motion to dismiss for want of prosecution—Computation of time—136th & 256th G. O.*] The four weeks mentioned in the 136th G. O., 1867, do not run in the vacation. LITTLE *v.* M'CORMICK - - - - - **R. II. *M.* 621**

3. —— *Time for moving to dismiss bill for want of prosecution—Time of vacation.*] A bill was served on one defendant on the 27th of August, and on the other on the 8th of September; appearances were entered upon the 7th and 14th of September respectively. On the 4th of November the defendants filed a voluntary answer. No further step was taken by the plaintiff, and on the 26th of January the defendant moved to dismiss for want of prosecution:—*Held*, that the case was under the 139th G. O., and that the times of vacation were to be excluded from the G. O., and therefore the motion was premature. WALSH *v.* GRIER - - - - **R. IV. *M.* 363**

PRACTICE—CHANCERY (Before the Judicature Acts)—DISMISSAL OF BILL—*continued.*

4. —— *Time for moving to dismiss bill for want of prosecution—136th G. O. 1867—Compromise pending—Vacation—Computation of time.*] On May 12th, 1874, a consent to submit a cause to arbitration was made a rule of Court, but no steps were taken by the plaintiff within the period limited in the consent for entering on the arbitration, and making the award. At the time the consent was entered into the plaintiff had about a week remaining before any steps could be taken to dismiss the bill for want of prosecution. About two days before the Court rose for the long vacation the defendant served a rule to proceed compromise off, and on the first day after the long vacation moved, under 136th G. O., 1867, to dismiss the bill for want of prosecution:—*Held*, that the motion was premature, and should be refused. MOORE *v.* WARING - - - **V. C. IX. 5**

PRACTICE—CHANCERY—EVIDENCE.

1. —— *Affidavits.*] Affidavits in answer to replying affidavits of the petitioner were allowed, after the cause was set down for hearing, at the respondent's peril, they to pay the costs of such portions as were properly evidence in support of the answer and not a reply to other matter. PEYTON *v.* M'MORROW - - - - - - **C. I. *M.* 777**

2. —— *Affidavits in administration summons.*] Notice of affidavits in support of administration summons must be served on the defendants. DYER *v.* DYER **V. C. I. *M.* 703**

3. —— *Commission to cross-examine witness abroad—Terms of order.*] A commission to cross-examine a witness abroad was granted, the order not to be acted upon unless, when the trial came on, the witness' health made it impossible for him to come to Ireland. GETTY *v.* ELLIOTT **[V. C. I. *M.* 688**

4. —— *Examination of witness before examiner.*] The Court will not order the Examiner to attend a witness for examination elsewhere than in his own office, unless on a medical certificate stating that the illness of the witness is not infectious, and that his residence is a suitable place for the Examiner and the professional men to go to. BROOKES *v.* LALOR **[R. IV. *M.* 779**

5. —— *Letter—Petition.*] A letter not put in issue by a petition, but referred to in an affidavit in reply, is admissible in evidence. BUTLER *v.* MILLER - **R. I. *M.* 260**

6. —— *Motion for liberty to use affidavits filed without interrogatories.*] A motion was made for liberty to use at the hearing affidavits filed without interrogatories, which was necessary as the time for closing evidence had passed. The Court held that the application was in reality one for enlarging the time for closing evidence under the 150th section of the Chancery (Ireland) Act, 1867, which should not be granted without special grounds, and the motion should be refused. HASTINGS *v.* DWYER - - **R. IV. *M.* 436**

7. —— *Motion for decree—Cross-examination of witnesses—Ch. Act*, 1867.] On an application by the plaintiff, in a suit to be heard on motion for a decree, that the cross-examination of witnesses who had been examined *ex parte* before the Examiner of the Court, or had made affidavits in the cause, might be taken before the Examiner:—*Held*, that such cross-examination should take place in open Court, and not before the Examiner. BRESLIN *v.* HODGENS. **[V. C. VIII. 110**

8. —— *Motion for evidence in chief to be taken* vivâ voce.] There need not be an affidavit to ground an application that the evidence in chief shall be taken *vivâ voce* at the hearing. The circumstance that answers to interrogatories have been filed, does not constitute an answer to such an application when made by the plaintiff. EIFFE *v.* HILLIARD **V. C. II. *M.* 210**

9. —— *Motion under 162nd General Order*, 1867.] A motion under the 162nd G. O. (1867), should be upon notice. MOTLE *v.* BONWELL - - - - **V. C. II. *M.* 621**

10. —— *Motion for decree—Admission of defendant's answer as evidence—Notice of using as evidence, not given.*]

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PRACTICE—CHANCERY (Before the Judicature Acts)—EVIDENCE—*continued.*

When on motion for a decree, the defendant had omitted to serve notice of his intention to use his answer as evidence, but the plaintiff had included the answer in the list of documents at the foot of his notice of motion for a decree, and had referred in his answering affidavits to all the allegations contained in the answer:—*Held*, that the answer was admissible in evidence. NOLAN v. NOLAN - - **R. VIII. 104**

11. —— *Objections—Entering proofs.*] The rule of evidence must be accurately observed in framing affidavits. Objections to any part of an affidavit must be made when it is offered in evidence. Counsel, when stating the case, may state whatever he considers that he can make evidence, and objections to its admissibility must be made when the proofs are called. PRITCHETT *v.* MAGUINESS - - **V. C. II.** *M.* **195**

12. ——*Permission to use affidavits made in another cause between same parties.*] Leave given to use, on a motion for a decree in this cause, affidavits made in another recent cause between the same parties. MELDON *v.* GRIERSON **[V. C. II.** *M.* **352**

13. —— *Reading answer as affidavit on motion for a decree —93rd G. O.*, 1867.] To enable the defendant to read his answer as an affidavit on the hearing of a motion for a decree, the notice required by 93rd G. O., 1867, must be given. TODD v. GAMBLE - - - - - **V. C. IV.** *M.* **105**

14. —— *Witness out of the jurisdiction—Cross-examination —Special examiner—Chancery Regulation Act*, 1867, *s.* 96.] Where a party to a suit examines a witness *ex parte*, before the examiner of the Court, and the opposite party serves notice of his intention to cross-examine such witness at the hearing, the party on whose behalf the direct evidence is given must, in order to be enabled to use it, submit the witness for cross-examination. The witness is to be considered as under the dominion of the party on whose behalf he gives evidence. The Court will not appoint a special examiner for the purpose of taking the cross-examination, under the Chancery Regulation Act, 1867, s. 96, except under very special circumstances; and if the witness has left the jurisdiction, it must be shown, to the full satisfaction of the Court, that it is out of the power of the party applying for such appointment to produce the witness at the hearing of the suit. SANKEY *v.* ALEXANDER **[V. C. VIII. 159**

PRACTICE—CHANCERY—GUARDIAN AD LITEM

1. —— *Appointment—Practice.*] The appointment of a guardian to a minor, being an act of a judicial nature, must be made by the Court itself. *Re* BUTLER - - **C. II.** *M.* **4**

2. —— *Appointment—Practice.*] When an infant defendant is a ward of Court, it is not sufficient that the Lord Chancellor, on petition in the minor matter, appoints a guardian *ad litem* to defend the infant's rights. An order appointing one must also be obtained from the Court to which the suit is attached. SMITH *v.* SMITH - - - - **V. C. III.** *M.* **5**

3. —— *Cause petition—Jurisdiction of Master.*] In a suit commenced by cause petition before 1st of November, 1867, the Master had jurisdiction to appoint a guardian *ad litem* for minor respondents under the 175th section of the Chancery (Ireland) Act, 1867. PERCY *v.* PERCY - **R. I.** *M.* **701**

4. —— *Minor not served with copy bill—Appearance for minor—32 G. O.*, 1867.] An application had been made before the Vice-Chancellor's chief clerk, by summons under the 32nd G. O., 1867, to assign a guardian *ad litem* to a minor defendant, which the chief clerk refused to do, on the ground that it did not appear that the minor had been actually served with a copy of the bill, although an appearance had been entered for him by the solicitor for the defendants. On an application on behalf of the minor before the Vice-Chancellor in Chamber:——*Held*, that a guardian *ad litem* might be appointed, although the minor had not been served, the application being made on behalf of the minor defendant himself. LLOYD *v.* ROSSMORE **[V. C. IX. 191**

PRACTICE—CHANCERY (Before the Judicature Acts)—GUARDIAN AD LITEM—*continued.*

5. —— *Naming — Chambers.*] A guardian *ad litem* for minors would not, even before the regulations as to Chamber business, be named in Court. WEBB *v.* FITZPATRICK **[V. C. II.** *M.* **105**

6.——*Person of unsound mind, but not so found—Evidence of unsoundness—Sufficiency of affidavits.*] On an application by a plaintiff, that a guardian *ad litem* be appointed for one of the defendants in the suit, who was alleged to be of unsound mind, although not so found by commission:—*Held*, that a statement in the affidavit of the plaintiff repeating an allegation in the answer of the other defendants, that the defendant was "imbecile," was insufficient evidence that the defendant was of unsound mind. WATSON *v.* KNILANS - - - - - - **R. VIII. 157**

7. —— *Person of unsound mind not so found by inquisition —Jurisdiction.*] The usual administration decree was made against an executrix, and she was directed to lodge the usual accounts, which she accordingly lodged and verified. The executrix became a lunatic, but was not so found by the inquisition. On a motion for an order to appoint as a guardian *ad litem* a person who had been already appointed a guardian *ad litem* for the lunatic in two other suits:—*Held*, that under its general jurisdiction the Court had power to make the order. Where the proceedings have been sent into Chambers, such applications should be made, on summons, at Chambers. WOLFE *v.* WOLFE. **[V. C. IX. 98**

—— Payment out of Court—Minor.

See TRUSTEE—TRUSTEE RELIEF ACT. 8, 9.

PRACTICE—CHANCERY—HEARING.

1.——*Copies of documents for the use of the Court.*] Before the hearing of each case, a complete set of printed copies of all the printed documents which are to be used at the hearing, should be lodged for the use of the Court. BUCHANAN *v.* CUMING - - - - - - **V. C. II.** *M.* **281**

2. —— *Omission to enter proofs at the hearing.*] The Court will not allow documents to be entered as evidence after the decree is made up. MURPHY *v.* SMYTH - **R. IV.** *M.* **508**

PRACTICE—CHANCERY—INJUNCTION.

1. —— *Administrator—Injunction to restrain transfer of shares.*] The Court granted an injunction to restrain the transfer of shares by an administrator who had delayed paying the next-of-kin for three years, and against whom it was charged that he had sold his house and was about to leave Ireland—the order was absolute in the first instance, to be served personally within two days. FITZGERALD *v.* LONERGAN - - - - - - **V. C. I.** *M.* **701**

2. —— *Administration summons—Restraining action at law —Irish Chancery Act*, 1867, *ss.* 145, 149.] When an order has been obtained on an administration summons in Chamber, under the 145th section of the Irish Chancery Act, 1867, an injunction to stay proceedings at law can be applied for at any time, either by motion to the Court or by summons, where judgment is on the eve of being marked and danger is apprehended. *Re* NOLAN - - **V. C. IX. 6**

3. —— *Court of Equity staying action at law*] A Court of Equity will not grant an injunction restraining the prosecution of an action at law where the grounds upon which the injunction is sought for would, if in accordance with the statement of them made to the Court of Equity, afford an applicant a good defence to the action at law. ANDERSON *v.* LAMB - - - - - **Ch. A. VII. 146**

4. —— *Injunction bill filed in manuscript—Printed copy not lodged within time limited.*] An injunction bill was filed in manuscript, and through pressure of business the plaintiff's solicitor did not file the printed bill within the 14 days re-

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PRACTICE—CHANCERY (Before the Judicature Acts)—INJUNCTION—*continued.*

quired by the 58th sec. of the Chancery (Ireland) Act, 1867. The Court restored the bill to the file, but refused to give the defendants their costs. ROBB *v.* CONNOR [B. IV. *M.* 551

5.——*Mandatory—Interlocutory motion.*] The plaintiff on the 10th August, 1872, entered into certain articles of agreement with the defendants whereby the defendants agreed to lend to plaintiff a sum of £22,000, on the security of a mortgage of his estates therein named. Subsequently, said defendants receded from said agreement, and plaintiff on the same securities concluded for a loan of £26,000 with the S. Insurance Company. Defendants, for the purpose of enforcing the payments of the costs of said abortive loan, caused a memorial of the said agreement of the 10th August, 1872, to be registered in the Registration of Deeds Office. This memorial operated as a blot on the title of the plaintiff, who now sought on an interlocutory motion for an injunction commanding defendants to withdraw said agreement of 10th August, 1872, from the records, which the Court refused to grant. HARTOPP *v.* N. BRITISH & MERCANTILE INSURANCE COMPANY - - - - - V. C. VII. 147

6.——*Misrepresentation—Deposit receipts to married woman—Action.*] Although a stake-holder, who has entered into a new contract binding at law with one of the rival claimants of the same demand, cannot maintain an interpleader suit; yet if such contract was obtained by misrepresentation the Court will grant an injunction to restrain actions at law commenced against him by both claimants. Money was lodged in a bank on deposit receipts in the names of E., the wife of F. (who at the time of the lodgment represented herself to be a widow) and M., E., and M. went to the bank and exchanged such receipts for a new one in the name of M. alone, E. still representing herself as a widow. The money originally lodged was admitted by E. and M. to be money of W. F. apprised the bank that E. was his wife after the deposit receipt had been given to M., and brought an action against the bank for the money which was originally lodged by E. M. also brought an action against the bank on his deposit receipts:—*Held*, that as the deposit receipt to M. had been obtained by a misrepresentation, the bank was entitled to an injunction to stay the actions. COSTELLO *v.* MARTIN - - - - R. I. *M.* 82

7.——*Staying proceedings against assignees in bankruptcy—Subject matter of suit within jurisdiction of Court of Bankruptcy—That Court declining to adjudicate pending Chancery proceedings—Suit to compel trustees to carry out trusts in relation to bankrupt's property—Discretion of Court—Jurisdiction*—20 & 21 *Vic.*, *c.* 60—35 & 36 *Vic.*, *c.* 58.] The defendants mortgaged to the plaintiffs certain linens, which the mortgagors had placed in the possession of B. for the purpose of being bleached, by the same deed covenanting with the plaintiffs that they would hold the linens on their behalf and keep an account thereof. In December, 1875, the defendants presented a petition for arrangement, and subsequently an injunction was granted restraining B. from delivering up possession of the goods to the bank. Subsequently the plaintiffs filed a bill in the Rolls Court, while the goods remained in the possession of B., alleging that such possession was held by them as agents and trustees for the plaintiffs, and praying an injunction to restrain them from parting with the goods. The petition of the defendants for arrangement was afterwards dismissed, and they were adjudicated bankrupts on a creditor's petition, founded on the act of bankruptcy committed by reason of the proceedings in the arrangement matter. Two days afterwards the messenger of the Court of Bankruptcy obtained possession from B. of the goods. The plaintiffs then amended their bill by adding the assignees in bankruptcy as parties defendants, and praying for an injunction against them also; and when the motion for the injunction came on for hearing, it was directed to stand till the hearing, the assignees stating that it was not their intention to proceed to sell the goods. Without any previous motion to stay the suit in the Rolls Court the assignees shortly afterwards filed their answer, impeaching the plaintiffs' security, claiming the goods under the order and disposition clause of the B. and I. Act, 1857, and submitting that the whole motion was within the jurisdiction of the Court of Bankruptcy. Subsequently the assignees applied to the Court of Bankruptcy for an order that the right of all parties claiming any lien on the goods should be determined by that Court, which motion was refused, as against the plaintiffs, on the ground of proceedings pending in the Rolls Court. The cause then coming on for hearing was met on its merits, but it was found that another amendment by the plaintiffs was necessary, which was afterwards made. On the assignees moving that all further proceedings should be stayed:—*Held*, that the motion should be refused. *Ellis v. Sibler* (L. R. 8. Ch. 83) applied. MERCHANT BANKING CO. *v.* SPOTTEN R. XI. 149

PRACTICE—CHANCERY (Before the Judicature Acts)—INJUNCTION—*continued.*

8.——*Staying actions at law—Costs.*] To an action founded on the promissory note of the plaintiff (the defendant at law), and on an agreement in the nature of accord and satisfaction, defences founded on the agreement were filed. Replications: Fraud, intoxication, that the agreement was not valid. The plaintiff filed this bill for an injunction, admitting that he must be defeated on the third replication if the action were tried, but submitting that the agreement was a perfect equitable answer to the claim of the plaintiff in the action, and praying that the agreement might be declared valid:—*Held*, *that*, since, under the circumstances, the case at law might ultimately become in the nature of an issue to ascertain facts which would enable the Court to decide whether it should interfere, the injunction should not be granted, nor could the Court prevent the trial of the issues raised by the two first replications; but that the plaintiff in the action must undertake to abide such order as this Court should make as to the costs thereof, if of opinion that the plaintiff was entitled to equitable relief on the agreement. Execution not to be issued at law without leave of this Court. MAYNE *v.* MAYNE V. C. II. *M.* 76

9.——*Staying proceedings—Concurrent administration—Actions in English and Irish Courts.*] In respect of the Irish assets of a deceased debtor an administration action was brought in England by English creditors. As other actions were threatened in Ireland an administration action was commenced in Ireland merely for the purpose of obtaining injunctions to restrain them. The Court in Ireland restrained the proceedings in the administration action there, but thought that the plaintiff in the Irish action was not in any default in not proceeding with the action there. BROWNE *v.* ROBERTS [V. C. IV. *M.* 702

——Action of policy of insurance
See INSURANCE. 8-10.

——Ancient Light - - - - - II. *M.* 136
See LIGHT. 1.

——Winding up of company - - - II. *M.* 32
See COMPANY. 5.

PRACTICE — CHANCERY—JURISDICTION—*Small suits in superior Courts.*] The Lord Chancellor commented on the want of jurisdiction in the County Courts to entertain small equity suits. SAVAGE *v.* M'ELLIGOTT C. XI. *M.* 270

PRACTICE — CHANCERY — MINOR — *Accounts.*] In minor matters the Court will refer it to the Chief Clerk to take accounts, that being a Ministerial Act. *Re* BUTLER [C. II. *M.* 4

PRACTICE—CHANCERY—NEW TRIAL—*Contents of notice of motion.*] It is necessary to specify in a notice of motion for a new trial the grounds on which it is sought to disturb the verdict. MILLER *v.* HARRISON - V. C. V. 3

PRACTICE—CHANCERY—NOTICE OF MOTION.

1.——*Indorsement on notice of motion for a decree.*] On a case coming on on a motion for a decree, it was struck out because 97 G. O., 1867, as to indorsement of the memorandum on the notice of motion, was not complied with. BROWN *v.* HILL - - - - - R. IV. *M.* 105

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PRACTICE—CHANCERY (Before the Judicature Acts)—NOTICE OF MOTION—*continued.*

2. —— *Leave to serve—Time expired.*] The Court will not give leave to serve notices of motion after the last day for serving them except in cases of urgency, and where the delay is accounted for. ANON. - - - **R. IV. *M.* 105**

3. —— *Notice served out of Court.*] A notice of motion served out of Court must mention that the motion would be made "at the sitting of the Court"; "or the first opportunity afterwards" should be omitted. BOURKE *v.* FETHERSTON - - - - - - - **R. I. *M.* 279**

PRACTICE—CHANCERY—ORDER.

1. —— *Motion to vary—Order more than a year old—Notice.*] The Court will, under no circumstances, vary an order more than a year old, without notice of motion, but will, in a proper case, make a substantive order adopting the variation. *Re* DUCKET'S TRUSTS - **R. IV. *M.* 335**

2. —— Pro confesso—*Service of interrogatories.*] To entitle a plaintiff to an order, *pro confesso*, interrogatories must be filed and served within the time prescribed by the 42nd General Order of 1867. DOHERTY *v.* MONK **R. IV. *M.* 582**

3. —— *Setting down cause on order to take bill* pro confesso *—Costs.*] It is irregular to proceed by motion for a decree after an order to take the bill *pro confesso* has been made, but the defendant cannot be given the costs of the day. CASEY *v.* KENNEDY - - - - **V. C. IV. *M.* 472**

4. —— *Vacating—Registration.*] An order on a contributory in winding-up proceedings to pay calls to the official liquidator was made in the Court of Chancery in England and registered in the Court of Chancery in Ireland. Payment of the calls having been made, the Court directed the registration of the order made in England to be vacated. *Re* ALEXANDRA PARK COMPANY - - - - - - **R. V. 119**

PRACTICE—CHANCERY—PARTIES.

1. —— *Administration suit—Legacies to charities—Attorney General.*] In an administration suit it is not necessary that the Attorney-General should be a party in the first instance by reason of a legacy being bequeathed by the testator to a charity. MAGILL *v.* MURPHY - - - - **R. IV. *M.* 472**

2. —— *Death of respondent—Proceeding without personal representative.*] A respondent in a suit died, and his mother—a party to the suit—would have succeeded to his interest had he died intestate:—*Held*, that the suit could proceed without a personal representative. PEACOCK *v.* COCKEN **[R. I. *M.* 646**

3. —— *Executors not suing—Power of creditor or legatee to sue—Pleading assent of executor.*] To entitle a creditor or a legatee of a testator to sue (without pleading and proving the assent of the executor) for the recovery of assets, there must be a collusion by or insolvency of the personal representatives; or a refusal by them to sue; or special circumstances. This last exception seems to comprehend those cases in which, from the nature of the assets, or from the position of the personal representatives, it would be impossible, or, at least, seriously inconvenient, for them to take proceedings. EIFFE *v.* HILLIARD **[V. C. II. *M.* 685**

4. —— *Judgment creditor—Extension of receiver.*] A judgment creditor, who has obtained a receiver, is not a necessary party to a suit to extend the receiver, but not praying a sale. NORTH BRITISH AND MERCANTILE INSURANCE CO. *v.* BOURKE **[R. II. *M.* 384**

——Petition for appointment of trustee of separation deed **[IV. *M.* 508**

See TRUSTEE—APPOINTMENT. 10.

PRACTICE—CHANCERY—PAUPER.

1. —— *Liberty to sue* in formâ pauperis—*Notice.*] Notice must be given for leave to continue proceedings *in formâ pauperis*. TOBIN *v.* REDDIN - - - **R. I. *M.* 63**

PRACTICE—CHANCERY (Before the Judicature Acts)—PAUPER—*continued.*

2. —— *Motion for liberty to defend* in formâ pauperis—*Counsel's certificate.*] Under the 8th G. O. of March, 1843, a defendant may, without counsel's certificate that he has a good ground of defence, obtain liberty to defend *in formâ pauperis*. BIRD *v.* BIRD - - - **R. III. *M.* 40**

PRACTICE—CHANCERY—PAYMENT OUT OF COURT.

1. —— Femme covert—*Protection of property acquired subsequent to desertion—Notice to husband.*] On a petition by a married woman who had been deserted by her husband, to draw out of Court money to which she became entitled:—*Held*, that notice of the petition should be given to the husband, notwithstanding that a protection order, under 28 Vic., c. 43, had been obtained. *Re* DUNDAS'S TRUSTS - **R. VIII. 117**

2. —— *Money lodged by company—One petition for separate sums.*] A petition was presented by a railway company stating amongst other matters that arbitrators had settled the compensation for the lands taken, and agreements had been entered into, and that the purchase money had been paid, and prayed for an order that the Accountant-General should draw in favour of the petitioner for the sums deposited. The Master of the Rolls made the order. *Ex parte* MOORE **[R. IV. *M.* 472**

3. —— *Suppression of facts—Bankruptcy and infancy of petitioners—Suspension of solicitor.*] Money awarded to two persons, as compensation for property taken from them by a railway company, had been lodged to their credit in Court. Subsequently, one of those persons was adjudicated bankrupt. An order was obtained from this Court, directing the payment out of Court of the sum lodged by the railway company, but in the petition on which the order was pronounced the fact of the bankruptcy of one of the petitioners was suppressed, as also the fact that the other petitioner was a minor. On motion, by the assignees in bankruptcy, to rescind the order for payment out of Court:—*Held*, that the order should be rescinded, and the money paid over to the assignees in bankruptcy; and that the solicitor who obtained the order, and was guilty of the suppression of facts, should be suspended from practising in the Court. *Ex parte* KNOTT; *Re* DUBLIN AND DROGHEDA RAILWAY CO. **[R. VIII. 81**

4. —— *Tenant in tail—Disentailing deed not required.*] A railway company lodged in Court the transfer money of entailed lands. It was invested in stock on petition by the tenant in tail:—*Held*, that the stock might be transferred to him without his executing a disentailing deed. *Re* GREAT S. AND W. RAILWAY CO., *ex parte* MAUNSELL - **R. II. *M.* 22**

—— Affidavit - - - - - - **I. *M.* 260**

See PRACTICE—CHANCERY—AFFIDAVIT. 8.

—— Money lodged under Trustee Relief Act.

See TRUSTEE—TRUSTEE RELIEF ACT. 1, 3, 7, 8.

PRACTICE—CHANCERY—PENDING LITIGATION.

1. —— *Chancery Regulation (Ireland) Act*, 1850, *sec.* 15—*Jurisdiction—Reference to Master.*] When a cause petition was filed on the 30th of October, 1867, the Court held that it could not to be referred to the Master of the Court under the 15th section of the Court of Chancery (Ireland) Regulation Act, since the passing of the Chancery (Ireland) Act, 1867. PERRY *v.* PERRY - - - - - - **V. C. I. *M.* 631**

2. —— *Chancery Act, ss.* 39, 175.] A motion, in a suit attached to the Court of the Master of the Rolls, was made to the Lord Chancellor, that all further proceedings should be taken under the new practice. The motion was refused, with liberty to apply to the Master of the Rolls for his opinion. The Master of the Rolls gave a strong certificate of the propriety of the course proposed, and then the Lord Chancellor made the order. MAGUIRE *v.* GRATTAN - **C. II. *M.* 210, 667**

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PRACTICE—CHANCERY (Before the Judicature Acts)—PENDING LITIGATION— *continued.*

3. —— *Petition of revivor and supplement.*] A petition under the 15th section of the Ch. Reg. (Ir.) Act, 1850, was filed before the Ch. (Ir.) Act, 1867, came into operation. A petition of revivor and supplement was filed on the 11th January, 1868: —*Held*, that it was a proceeding in the original suit, and that the cause might be set down under the 15th section. The cause was set down, and an order of reference was made. TIGHE *v.* BYRON - - - - - - - - C. II. *M.* 58

PRACTICE—CHANCERY—PETITION.

1. —— *Amendment—Railways Act.*] When a petition under the Railways Act has to be amended by adding a new title, it can be done by a short supplemental affidavit referring to the verifying affidavit. *Ex parte* FOYNES AND LIMERICK RAILWAY CO. - - - - - - - R. I. *M.* 25

2. —— *Dignity of Court—Value of subject matter of suit.*] In a suit to enforce payment of a sum less than £20, when there was no other way of proceeding except by cause petition, and as there was no General Order in Ireland regulating the amount which is beneath the dignity of the Court, the decree was made. M'DONNELL *v.* O'SULLIVAN - - - C. I. *M.* 260

3. —— *Verification.*] A petition for the appointment of new trustees was verified by a solicitor, as the parties lived in England:—*Held*, that the application could not be granted without the written consent of the parties to the order. *Re* TRENCH'S TRUSTS - - - V. C. I. *M.* 688

—— Affidavit verifying - - - I. *M.* 246

See PRACTICE—CHANCERY—AFFIDAVIT. 10.

PRACTICE—CHANCERY—PLEADING.

1. —— *Husband and wife—Separate answers of.*] Where, in a suit in which husband and wife were defendants, the wife had obtained, as of course, an order to answer separately, the Court, upon a motion on notice by the husband, ordered that he be allowed to answer separately. ARMSTRONG *v.* JEFFARES [V. C. IX. 119

2. —— *Purchase for value without notice.*] A defence of a purchase for value, without notice, cannot be set up at the hearing of a cause petition, without having been pleaded by affidavit. STRATTON *v.* MURPHY - R. I. *M.* 578

3. —— *Traversing note—Replication.*] Interrogatories were served without the indorsement required by the 44th Order, and were re-served with the proper indorsement, but not until more than eight days from appearance. The defendant filed a traversing note and replication. The Court set aside the traversing note, not the replication. BOYLAN *v.* CROOKE [V. C. IV. *M.* 472

4. —— *Time for filing—Extension of time to answer—Verification.*] An extension of time to answer authorises the defendant to answer and plead, or answer and demur, but not to demur simply. Where an order extending the time was not made up, through the fault of an officer of the Court—if that were the only objection, a plea which had been taken off the file as being late ought to be reinstated; but when a plea is not verified by suing out a *dedimus*, it is improperly verified, and should not be reinstated. BINKS *v.* WHARTON [V. C. IV. *M.* 179

PRACTICE—CHANCERY—RECEIVER.

1. —— *Appointment of—Measuring security.*] This Court will not, even upon consent, name the person who is to act as receiver, or measure the amount of his security. Those duties belong to the Receiver-Master. HEARD *v.* BARRY [V. C. II. *M.* 335

2. —— *Annuity charged on lands—Concurrent jurisdiction.*] In a suit for the appointment of a receiver over lands, and for the payment of arrears of an annuity:—*Held*, that the Courts of Equity have concurrent jurisdiction with the Courts of Law in annuity cases. BEAMISH *v.* AUSTEN [V. C. IX. 97

3. —— *Extension—Prior creditor—Right to rents received before extension.*] The principle of *Abbott* v. *Stratton* (9 Ir. Eq. R. 233), that rents received by a receiver before his extension by a prior creditor belong to that creditor for whose benefit the receiver was appointed, was acted upon in a contest between claimants in different causes. AGRA BANK *v.* BARRY - - - - - R. III. *M.* 528

PRACTICE—CHANCERY (Before the Judicature Acts)—RECEIVER— *continued.*

4. —— *Extension of.*] The Court refused to direct a receiver, appointed over lands, to pay to the applicants interest due to them under a deed which was prior to that under which he was appointed, or to discharge him in order that the applicants might appoint one under the power contained in their deed. SANDERS *v.* LISLE V. C. IV. *M.* 87

5. —— *Motion for appointment of—Delay—Eve of Long Vacation.*] The plaintiff in a bill for foreclosure, filed May 19th, 1874, moved on July 9th, 1874, to have a receiver appointed, alleging that the premises in question were falling into disrepair, and that the occupying tenants were committing dilapidations:—*Held*, that the motion having been delayed until the eve of the Long Vacation, a receiver should not be appointed. KEARNEY *v.* O'FLAHERTY [V. C. VIII. 157

6. —— *Pending appeal to the House of Lords.*] Pending an appeal to the House of Lords a receiver will not be granted unless there is danger to the property, when there has been long enjoyment by the defendants. COMMISSIONERS OF CARRICKFERGUS *v.* LOCKHART - R. III. *M.* 388

7. —— *Pending litigation in the Probate Court—Jurisdiction.*] The 76th section of the Probate Act (20 & 21 Vic., c. 79) did not interfere with the jurisdiction of the Court in the appointment of a receiver pending litigation in the Probate Court. DILLEEN *v.* FAHY - - - - - R. VII. 144

8. —— *Representatives—Passing accounts—Practice equity.*] When an order is sought against a receiver's representatives, the usual course is to apply for leave to put the receiver's recognisance in suit, and then the receiver's representatives apply for leave to bring in and pass the receivership accounts; but on the consent of the solicitor for the receiver's personal representative, a motion on behalf of an incumbrancer, who had obtained the receiver, that they might bring in the accounts, was granted. GUINNESS *v.* HELSHAM V. C. IV. *M.* 105

9. —— *Vacating recognisance—Notice of motion.*] When application is made to vacate a receiver's recognisance dated over ten years, notice of motion should be given. GROGAN *v.* PIERCE - - - - - - - R. I. *M.* 5

10. —— *Vacating recognisances.*] An application was made on behalf of a receiver that his recognisances should be vacated and that he might be discharged. Side bar orders had been obtained discharging him as receiver over the lands (which had been sold), and a ruling of the Receiver Master was produced directing the accounts to pass, and as it was a final account directing him to retain the balance in his hands "till further order." The Court granted the application on hearing from the Receiver Master that "further order" meant an order of the Master of the Rolls. *Re* M'CULLOCH; M'CULLOCH *v.* LEGG - - - R. I. *M.* 279

—— Insolvent Railway Company—Remuneration of Directors [III. *M.* 588

See RAILWAY—RECEIVER. 1.

—— Judgment mortgage with stay on execution [IV. *M.* 161

See MORTGAGE—JUDGMENT MORTGAGE. 12.

—— Suit for extension of - - - II. *M.* 384

See PRACTICE—CHANCERY—PARTIES. 4.

PRACTICE—CHANCERY—REVIVOR AND SUPPLEMENT.

1. —— *Assignment—Chancery (Ireland) Act, 1867, sec. 157—Transmission of plaintiff's interest—Supplemental order.*] After the issue of a summons to proceed under the decree in a suit for an account of what was due on a mortgage, but before any steps under the summons had been taken, the plaintiffs

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PRACTICE—CHANCERY (Before the Judicature Acts)—REVIVOR AND SUPPLEMENT—*continued.*

assigned away all their interest. The Court made an order under the Ch. (Ir.) Act, 1867, s. 157, declaring the assignee entitled to the benefit of the decree. NORTH BRITISH INSURANCE CO. *v.* BURKE - - - - - **R. II. *M.* 667**

2. —— *Court of Chancery (Ireland) Act, 1867, ss. 34, 35—Master's certificate—Service out of the jurisdiction.*] A cause petition, to administer the real and personal estate of H., abated by the death of some parties, and became defective because the petitioner sold his interest. He resided in London. The Master certified under the Ch. (Ir.) Act, 1867, ss. 34 & 35:—*Held*, that the certificate might be served on the petitioner in London, the Court not expressing any opinion whether such service would be valid. OSBORNE *v.* OSBORNE **R. II. *M.* 58**

3. —— *Death of party.*] One of the respondents died after the petition was presented, and it was not revived by suggestion or petition of revivor and supplement:—*Held*, that it should have been revived. SKELTON *v.* FLANAGAN **[R. I. *M.* 533**

4. —— *Notice of motion.*] Notice of motion must be given for leave to file a petition when it contains supplemental matter. LYLE *v.* SANTA CROW - - - - **R. I. *M.* 44**

5. —— *Abated suit—Amendment.*] In a suit which became abated by the death of the sole petitioner W., a motion was served that the administrator of W. should be allowed to revive and that the cause petition should be amended by adding parties; after the service of this notice an application was made *ex parte* for leave to file a petition of revivor, on which the usual order was made. On the motion being moved, no rule was made on it. WEBB *v.* HEWATT - - **R. I. *M.* 660**

PRACTICE—CHANCERY—SALE BY COURT—*Administration suit—Consent of all the next-of-kin—Sale prior to decree.*] The Court will not under the 19 & 20 Vic., c. 77, s. 6, direct a sale previous to a decree in an administration suit where only some of the next-of-kin have been ascertained, even when all the parties consent. DAWSON *v.* FOX **[R. V. 156**

PRACTICE—CHANCERY—SECURITY FOR COSTS

1. —— *Amount.*] £75 is the sum which the Court thinks sufficient as security for costs. ST. LEGER *v.* O'BRIEN **[V. C. II. *M.* 59**

2. —— *Next friend—Married woman—Evidence of solvency—Form of affidavits.*] Where the next friend of a married woman plaintiff is required by the defendant to give security for costs, on the ground that such next friend is not in solvent circumstances, the Court, unless clearly satisfied upon the evidence that the next friend is possessed of means to pay the costs, over and above all his existing liabilities, will order security for costs to be given, or that a different and sufficient next friend be appointed. SAVAGE *v.* JAMES **[Ch. A. VIII. 190**

3. —— *Order for security for costs not complied with—Dismissal for want of prosecution.*] When an order for security for costs has not been complied with, the order on a motion to dismiss the bill for want of prosecution is that the plaintiff shall give security within a fortnight, or that in default the bill be dismissed. NASH *v.* NASH - - **R. IV. *M.* 400**

4. —— *Plaintiff on a visit to Ireland.*] A plaintiff who was on a visit to Ireland, and who resided with his family in America, was ordered to find security for costs. M'CORMICK *v.* BLACK - - - - - - **R. IV. *M.* 335**

PRACTICE—CHANCERY—SEQUESTRATION.

1. —— *Attachment—Service of decree—Costs—Time of payment.*] When the party against whom a sequestration is sought is out of the jurisdiction, so that it would be useless to issue an attachment, the sequestration may be granted even though no attachment to ground it has issued. But the sequestration, being a process of contempt, cannot issue

PRACTICE—CHANCERY (Before the Judicature Acts)—SEQUESTRATION—*continued.*

until there has been service, personal or substituted, of the decree, or of some order under it, on the party against whom the sequestration is sought. HINDS *v.* CLARKE **[V. C. II. *M.* 41**

2. —— *Priority of.*] A Bishop's sequestration against a living takes priority over the anterior mortgage of the glebe rents and tithe rent-charge. CRAMPTON *v.* MARSHALL **[R. II. *M.* 225**

PRACTICE—CHANCERY—SERVICE.

1. —— *Administration summons—Service out of the jurisdiction.*] An order was made to serve with an administration summons a defendant residing in England. NEWLAND *v.* ARTHUR - - - - - - **R. II. *M.* 316**

2. —— *Notice of appeal.*] On the 18th of April was served notice of a motion by way of appeal from a Master's order, which had not been signed and lodged in the Registrar's office on the 20th February. The Chancellor and the Master of the Rolls rose for vacation on the 22nd of February:—*Held*, that the notice was served in time. SHORTALL *v.* WEDLOCK **[R. II. *M.* 225**

3. —— *Substitution—Notice of petition.*] Leave to substitute service of notice of a petition upon the wife of the respondent, who had been in South America for some time, was refused. O'SHAUGHNESSY *v.* LYNCH **R. I. *M.* 404**

4. —— *Parties—Striking out.*] A case was struck out at the hearing when it appeared that three of the respondents had not been served. LESLIE *v.* HOGAN **V. C. I. *M.* 777**

5. —— *Substitution of petition.*] The Court allowed service to be substituted upon the agent of a lady who resided abroad; the agent, though receiving the rents of property in Ireland, did not reside in Ireland. FRENCH *v.* DE HAESSELER **[R. I. *M.* 386**

6. —— *Re-service of copy of bill served more than a year.*] No order of the Court is necessary to enable a plaintiff to re-serve the copy of a bill served on the defendant more than a year. CONLY *v.* GREEN - - - - - **R. IV. *M.* 46**

7. —— *Out of the jurisdiction—Traversing note.*] The Court has power to order the service of a traversing note out of the jurisdiction. FRIZELLE *v.* COTTON - **R. IV. *M.* 105**

8. —— *Out of the jurisdiction—Bill of complaint—2 & 3 Wm. IV., c. 33—4 & 5 Wm. IV., c. 82.*] The Court has power, under 2 & 3 Wm. IV., c. 33, and 4 & 5 Wm. IV., c. 82, to order service of process out of the jurisdiction in suits for the administration of assets which consist partly of land and stock. The practice in Ireland under *Freeman v. Freeman* (4 Ir. Ch. R. 39) changed in accordance with more recent English decisions. FINLAY *v.* BARTON - **R. I. *M.* 44**

9. —— *Service on peer of bill and letter missive—Indorsement on bill—Vacating appearance—Notice of motion.*] The 6th G. O., 1867, is not mandatory, and the indorsement on the copy of a bill served on a peer should be made to suit such a case. The order for substituting service directed that the defendant, a peer, should have a time therein specified for entering an appearance. The letter missive and the copy of the bill served on him mentioned a different time, namely, eight days:—*Held*, that this objection was fatal, and that therefore an order, allowing the plaintiff to enter an appearance for the defendant, should be set aside. EYRE *v.* KINGSTON **[V. C. II. *M.* 119**

10. —— *Substitution of notice of motion for a decree.*] The Court will substitute service of a notice of motion for a decree. O'DONNELL *v.* KEARNEY - - - **C. III. *M.* 424**

11. —— *Substitution of—Notice of filing replication—Publication in "Dublin Gazette" and newspapers.*] The defendant having been absent from Ireland for the last two years, was believed to be resident in America. His residence could not be ascertained:—*Held*, that the service of the notice of filing the replication might be substituted by publishing it in the *Dublin Gazette*, and in two other Dublin newspapers. PRITCHETT *v.* JORDAN - - **V. C. III. *M.* 155**

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PRACTICE—CHANCERY (Before the Judicature Acts)—SUBPŒNA.

1.——*Attachment—Contempt.*] An order for attachment was made by the Master in default of a respondent attending to be examined. On appeal the order was rescinded on the ground that the Master had no jurisdiction to order a party who had not filed a discharge to be examined, and that the subpœna did not comply with 30th G. O., 1843, and that the attachment could not issue against a party, who had not been, or adjudged to have been, in contempt. KANE *v.* KANE. [R. I. *M.* 794

2.——*Witness resident out of the jurisdiction.*] The Courts of Equity have jurisdiction to issue a subpœna for witnesses out of the jurisdiction, but it must be shown that the witnesses can give material evidence, and that their attendance is reasonably and necessarily required. UNDERWOOD *v.* DARRACOTT. - - - - - R. VIII. *M.* 64

PRACTICE—CHANCERY—TIME.

1.——*Extension of time for filing answer.*] A defendant allowed the time for filing a voluntary answer to expire, and did not sufficiently account for the delay. The bill was served on the 29th November, 1857; appearance was entered on the 10th Dec., notice of motion for a decree was served on the 31st Jan., 1868, notice of motion for liberty to file the answer was served on 10th Feb.:—*Held*, that liberty to file the answer should not be given, but that the defendant might file an affidavit in answer to the motion for a decree, although the time limited by the 93rd G. O., 1867, had expired. BUCHANAN *v.* CUMING - V. C. II. *M.* 58

2.——*Extension of time for filing affidavits.*] Affidavits in a cause in which issue had been joined, were filed on the 22nd of December, the time for closing evidence having expired on the 17th of December. The non-filing was caused by a mistake of the clerk, who believed that the time for closing evidence was, not eight weeks, but two months:—*Held*, that leave to use them should be granted. CONNOLLY *v.* SMITH [R. III. *M.* 174

3.——*Vacation—Computation of time—Motion to dismiss for want of prosecution.*] In computing the time for dismissing a bill under the 130th General Order, vacation is to be excluded. Vacation is the time when the Court does not sit. MURPHY *v.* SHORTAL - - - - V. C. IV. *M.* 737

4.——*Vacation—139th G. O.*, 1867.] The times of vacation are not to be reckoned in computing the three months mentioned in the 139th G. O., 1867. M'KEOGH *v.* M'KEOGH [V. C. III. *M.* 676

PRACTICE—CHANCERY—TRANSFER AND CONSOLIDATION.

1.——*Transfer of cause from Master of the Rolls to Vice-Chancellor.*] Where a cause, originally attached to the Rolls Court, has been transferred to that of the Vice-Chancellor, there must be produced, in every proceeding up to the hearing, a certificate from the Clerk of the Records and Writs showing that the cause is in fact attached to this Court. DUNNE *v.* LAWDER - - - - - V. C. II. *M.* 6

2.——*Transfer of suit from Vice-Chancellor to Master of the Rolls.*] Suit to administer B.'s real and personal estate. It was attached to the Vice-Chancellor's Court. Before the bill was filed, an administration summons in reference to B.'s personalty has been granted in the Rolls, and an order made upon it by the Master of the Rolls. On the defendant's motion:—*Held*, that the suit should be transferred from the V.C. to the Rolls. PATTEN *v.* ALCORN - C. II. *M.* 40

PRACTICE—CHANCERY—Carrying on trade for the benefit of infants - - - III. *M.* 482
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——Changing investment of Trust Property—Funds in Court [I. *M.* 5
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PRACTICE—CHANCERY (Before the Judicature Acts)—*continued.*

——Fee to Counsel—Minutes of decree on further consideration [VI. 158
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——Letting - - - - - - II. *M.* 281
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——Motion to confirm appointment of new trustee [II. *M.* 316
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——Petition for payment out of money—Minor—Guardian *ad litem* - - - - - I. *M.* 459
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——Postponement of Case—Convenience of Counsel [III. *M.* 99
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——Settled Estates Act—Advertisement - I. *M.* 386
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PRACTICE—CIVIL BILL APPEAL - - Col.

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PRACTICE—CIVIL BILL APPEAL—ADJOURNMENT—*Of case—Hearing.*] An adjournment of an appeal on the ground of the absence of a material witness of the appellant through illness was granted at the peril of the applicant, all the questions to remain open and reserved at the next Assizes. When the case came on at the next Assizes:—*Held*, that there was no jurisdiction to hear it. (By Keogh, J.) HUGHES *v.* O'DONNELL [Cir. Cas. VIII. *M.* 137, 449

PRACTICE—CIVIL BILL APPEAL—AFFIDAVIT—*To ground appeal.*] The affidavit to ground an appeal from the Chairman's decision should be made by the attorney who was actually present at the hearing. (By O'Hagan, J.) CONNOR *v.* PALMER Cir. Cas. II. *M.* 198

PRACTICE—CIVIL BILL APPEAL—COSTS.

1.——*Lodged by appellant in lieu of recognisance—Application for costs lodged where decree was reversed.*] Appellant from a Chairman's decree lodged treble costs under 14 & 15 Vic., c. 57, secs. 127 & 130, to enable him to appeal. The decree having being reversed, the appellant applied that the sum lodged for costs should be returned by the Clerk of the Peace:—*Held*, that a party who being defeated at the Quarter Sessions lodges ordinary costs to enable him to appeal, cannot, though successful in the appeal, recover them; but that when treble costs are lodged, one third of the sum lodged should be paid to the respondent, and the remainder returned to the appellants. (By Monahan, C.J.) GREAT SOUTHERN AND WESTERN RAILWAY COMPANY *v.* FLYNN [Cir. Cas. II. *M.* 151

2.——*Lodged by appellant.*] The costs which are lodged by the appellant with the Clerk of the Peace are not recoverable by him if he be successful. (By O'Hagan, J.) SULLIVAN *v.* FLYNN - - - - - Cir. Cas. II. *M.* 198

3.——*Of appeal and of action in County Court—Discretion of Judge—County Courts Act*, 1877.] When the plaintiff, in a civil bill action, recovered a small portion of a liquidated

PRACTICE—CIVIL BILL APPEAL—COSTS—*continued.*

demand, sued for by him in the County Court, and, subsequently, on appeal by him, recovered a substantial part of his demand; and it appeared on the hearing of the appeal that the plaintiff's failure to recover a substantial sum in the County Court was due to his bad system of book-keeping, and want of preparation in his proofs; the plaintiff, although successful on the appeal, was ordered to pay his own and the defendant's costs in the County Court and on the appeal. (By Palles, C.B.) TWOMEY *v.* MURPHY - - Cir. Cas. XII. 48

PRACTICE—CIVIL BILL APPEAL—EVIDENCE.

1. —— *Counter-claim set up on appeal not relied on below—County Court Rules*, 1877, *O. IV., r.* 26.] Where a defendant upon appeal attempted to set up a counter-claim not relied on in the Court below:—*Held*, that the counter-claim was admissible. (By Fitzgerald, J.) GOOD *v.* JAGOE [Cir. Cas. XV. 50

2. —— *Equity suit—Fuller evidence—Judge's notes—Form of order.*] The Court has power to order the plaintiff and defendant to file affidavits in support of their claims, where the Judge's notes are insufficient. (By Chatterton, V.C.) O'GRADY *v.* BARLEE - - - - Vac. J. XXII. *M.* 32

3. —— *On appeal—Equity suit—County Court Rules*, 1877, *r.* 138.] The Lord Chancellor or other Judge hearing an appeal under the provisions of sec. 43 of the County Officers and Courts (Ireland) Act, 1877, has jurisdiction by order XVII., r. 138, of the County Court Rules, 1877, to order witnesses examined in the Court below to be examined before himself. (By Chatterton, V.C.) M'FARLANE *v.* DUNNE [Cy. Ct. A. XXIV. 17

4. —— *Production of Chairman's order on hearing.*] On the hearing of an appeal the decree or dismiss signed by the Chairman should be produced. The entry in the Clerk of the Peace's books, signed by the Chairman and countersigned by the Clerk of the Peace, is not enough. (By Fitzgerald, B.) MATCHETT *v.* MORTON [Cir. Cas. XIII. 128

PRACTICE—CIVIL BILL APPEAL—JURISDICTION.

1. —— *Appeal from adjournment of case for production of witness.*] Where a County Court Judge adjourned a case for the production of a witness whom he considered necessary, and an appeal against the order was taken:—*Held*, that the Judge of Assize had jurisdiction and was bound to hear and determine the case if the parties were then ready, irrespective of whether the exercise of discretion of the County Court Judge in adjourning the case was reasonable or not. (By Johnson, J.) KENNY *v.* RORKE [Cir. Cas. XXVI. *M.* 697

2. —— *Case referred by County Court Judge to Registrar—Question of account—No objection to finding—Decree granted.*] C. brought an action to recover the sum of £20 for wages before the Recorder of Belfast, and when case came on for hearing the Recorder referred the case, being a question of account, to his registrar, who found that there was a sum of £14 4s. 1d. due. The Recorder granted a decree for this amount, no objection being taken thereto, and the defendant served notice of appeal:—*Held*, that there was no appeal. (By Madden, J.) CHARLES *v.* CAWLEY [Cir. Cas. XXVII. 78

3. —— *Case referred by County Court Judge to Registrar—Question of account—No objection to finding—Appeal heard.*] Where no objection was raised to the finding of the County Court Judge's Registrar on a case referred to him by the Judge, the Judge of Assize heard an appeal by the defendant from the County Court Judge's decree. *Charles* v. *Cawley* (XXVII. 78), not followed. (By Harrison, J.) BRODER *v.* BRODER - - - Cir. Cas. XXVII. 115

4. —— *Decree—Not signed by County Court Judge*—45 & 46 *Vic., c.* 29, *s.* 4.] The Judge of Assize has jurisdiction to hear a civil bill appeal, before the decree or dismiss has been signed by the County Court Judge. (By Palles, C.B.) PENNEFATHER *v.* TOBIN - Cir. Cas. XVIII. 54

PRACTICE—CIVIL BILL APPEAL—JURISDICTION—*continued.*

5. —— *Interpleader—Appeal*—14 & 15 *Vic., c.* 57, *s.* 150—40 & 41 *Vic., c.* 56, *s.* 55.] No appeal lies from the decision of the County Court Judge upon an interpleader process under the County Courts Act, 1877, s. 55. (By Sherlock, Serjeant, Judge of Assize.) LACY *v.* DWYER - Cir. Cas. XV. 58

6. —— *Remitted action—Consent—Appeal.*] An appeal lies to the Judge of Assize from a decree of the County Court Judge in an action remitted by consent. (By Keogh, J.) RODGERS *v.* LARMOUR - - Cir. Cas. VIII. *M.* 220

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PRACTICE—CIVIL BILL APPEAL—LODGMENT.

1. —— *Amount of decree and costs with sheriff—Notice of appeal—Affidavit of just grounds for appealing.*] The appellant being unable to attend at Quarter Sessions, his attorney applied for a postponement, which was refused; and the attorney's appearance was, at his request, struck out, and a decree with costs made against the appellant, who, in order to enable him to appeal, lodged the amount with the sheriff of the Queen's County, where he had a farm, with whom the decree, though pronounced by the Chairman of Kildare, in which county the appellant resided, had been lodged for execution. The appellant, not his attorney, made the necessary affidavit of just grounds for the appeal, and the notice of the appeal stated that the appellant had lodged "the amount of the decree," but did not mention the costs:—*Held*, that the deposit was well made with the sheriff of the Queen's County; that the appellant could not be deemed to have appeared below by attorney, since the attorney's appearance was struck out; and that the affidavit was therefore properly made by the appellant; and that the expression "amount of the decree" in the notice was equivalent to "the amount of the decree with costs." (By Whiteside, C.J.) PAGE *v.* FITZGERALD [Cir. Cas. II. *M.* 151

2. —— *Amount of recognisance—Deficiency in amount—Objection not raised on appeal—Action against surety—Estoppel.*] A civil bill decree having been granted for £20 debt and £1 3s. costs, the defendant appealed, entering into a recognisance which, by an error committed by the Deputy-Clerk of the Peace, to which the plaintiff was not party or privy, was conditioned for payment of £40 6s., instead of £42 6s. It not having been objected to the hearing of the appeal that the recognisance was not in double the amount decreed, and the decree having been affirmed, the plaintiff brought an action in the County Court, on foot of the recognisance, to recover the amount due against one of the sureties:—*Held*, that it was not open to the surety to object in the action against him (though the variance might have been held to vitiate the civil bill appeal) that the recognisance was void. *Caldwell* v. *Gibbs* (2 Cr. and D. C. C. 183), questioned. ENGLISH *v.* DWYER [Q. B. D. XVII. 33

3. —— *Costs and witnesses' expenses—Objection.*] The fact that the witnesses' expenses, as well as the costs, are not lodged in Court pending an appeal is a good objection to the hearing of it. (By Fitzgerald, J.) GREAT SOUTHERN AND WESTERN RAILWAY CO. *v.* DALY Cir. Cas. I. *M.* 104

PRACTICE—CIVIL BILL APPEAL—NOTICE OF APPEAL.

1. —— *Discretion of Judge of Assize—Rules, June*, 1891.—*Notice of appeal—O. LIX., r.* 1 (*a*) (*b*)—*O. LXIV., r.* 10.] A notice of appeal served on the seventh day from the decree on a civil bill is not served within six clear days, as required by O. LIX., r. 1 (a). (By Holmes, J.) MATHEWS *v.* SMALLMAN [Cir. Cas. XXVI. 79

2. —— *Equity civil bill—Service of notice of appeal—Mistake*—52 & 53 *Vic., c.* 48, *s.* 3—*Rules, June*, 1891, *O. LIX., r.* 1—*County Court Appeal Rules*, 1889, *O. V.*] Where an

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PRACTICE—CIVIL BILL APPEAL—NOTICE OF APPEAL—*continued.*

appeal was taken from an order of the County Court in an Equity case, notice of appeal was served by mistake on a wrong solicitor, but afterwards was served on the solicitor for the opposite party three days late, the appeal was heard. (By Murphy, J.) FARRELL *v.* TIMULTY [Cir. Cas. XXVI. *M.* 698

3. —— *Service—Posting—County Court Rules*, 1877, *rr.* 218, 234.] The service of notices of appeal from the County Court Judge to the Judge of Assize, prescribed by sec. 5 of the County Court Amendment Act, 1882, is good if made by registered letter addressed to the respondent's solicitor. *Weir* v. *Feely*, (XIX. 61), not followed. (By Murphy, J.) FERGUSON *v.* M'GOWAN - - - Cir. Cas. XXIV. 48

4. —— *Service by post—Rules, Nos.* 218 *and* 234 *of County Court Rules*, 1877.] The service of notices of appeal from the County Court Judge to the Judge of Assize is prescribed by the 5th sec. to the County Court Amendment (Ireland) Act, 1882, and service of such a notice through the post-office, though in fact, it reach the hands of the respondent or his solicitor, is bad. Rules 218 and 234 of County Court (Ireland) Rules, 1877, do not apply to notices of appeal. (By Harrison, J.) WEIR *v.* FEELY - - - - Cir. Cas. XIX. 61

5. —— *Service—Registered letter*—45 & 46 *Vic., c.* 29, *s.* 5.] Service of notice of appeal from a County Court decree, served by registered letter on the respondent's solicitor, if it reaches the solicitor within the time prescribed by 45 & 46 Vic., c. 29, s. 5, is to be deemed good service. (By Fitzgibbon, L.J.) ROYCE *v.* DANAGHER - - Cir. Cas. XXVI. 94

6. —— *Time expiring on Sunday—County Court Amendment (Ir.) Act*, 1882.] When the time for appealing from a decree in the County Court expires on Sunday, a notice of appeal served on the following Monday is late. (By Johnson, J.) HUGHES *v.* MURRAY - - Cir. Cas. XXVII. 115

PRACTICE—CIVIL BILL APPEAL—PARTIES.

1. —— *Appeal by person not a party—Ejectment.*] The Court heard an appeal which was taken from a decree in ejectment, by a man who was not named as defendant or served with the civil bill. (By Fitzgibbon, L.J.) HEGARTY *v.* KINGSTON - - Cir. Cas. XXVI. 95 note

2. —— *Appeal by person not a party—Ejectment for non-payment of rent.*] The Court refused to entertain an appeal from a decree in an action of ejectment for non-payment of rent brought by a man who was not a defendant, or served with the civil bill, and who did not appear in the Court below. (By Holmes, J.) NELIGAN *v.* BRENNAN Cir. Cas. XXVI. 95

3. —— *Death of respondent after notice of appeal served.*] Where the respondent in a civil bill appeal had died after the notice of appeal was served:—*Held*, that there was no jurisdiction to hear it till administration had been taken out and a personal representative raised. (By Fitzgerald, B.) QUIGLEY *v.* BURMEISTER - - - - N. P. XII. *M.* 243

4. —— *Death of sole defendant pending hearing of appeal—Abatement—Right of plaintiff to renew against executor of sole defendant*—14 & 15 *Vic., c.* 57, *ss.* 136, 142—45 & 46 *Vic., c.* 29, *ss.* 4, 6, 9.] Where a civil bill decree having been granted against a sole defendant, an appeal was taken, pending the hearing whereof the defendant died:—*Held*, that the appeal against the decree abated, that the decree remained in force, and that the plaintiff was entitled to renew the decree against the defendant's executor. (By Andrews, J.) M'KEOWN *v.* HENRY (EXECUTOR OF CARLISLE) - Cir. Cas. XXIV. 103

5. —— *Plaintiff and appellant not appearing in County Court—Dismiss.*] Where the plaintiff does not appear in the County Court, the Judge of Assize will not hear an appeal by him from the dismiss. In such a case, the plaintiff should issue a new civil bill. (By Madden, J.) MURPHY *v.* WALSH [Cir. Cas. XXVII. 124

PRACTICE—CIVIL BILL APPEAL—RECOGNISANCE—*Bond.*] A defendant to a process did not appear in the Civil Bill Court, and a decree was made against him. He entered into a recognisance in the form provided by sec. 127 of the Civil Bill Act, and it was objected that he should have done so under sec. 128. The Judge of Assize reversed the decree. (By O'Hagan, J.) HARTY *v.* COMISKEY Cir. Cas. I. *M.* 535

PRACTICE—CIVIL BILL APPEAL—TESTAMENTARY SUIT—*Case stated—Time within which it may be brought—Incorporation in case stated of shorthand writer's report—Power of County Court Judge in remitted cases to go into questions not raised in the pleadings—Jurisdiction as to costs in a testamentary suit.*] An appeal from the decision of a Chairman will be in time if the case stated is lodged within ten days after signature by him. The Probate and Matrimonial Division will not inquire into the jurisdiction of the Chairman to sign the case, but will assume that everything prior to such signature has been regularly done. A case was heard and disposed of by the Chairman on the 9th of April, but the "case stated" was not signed till the 1st of November, and was lodged in the Principal Registry within ten days from the latter date:—*Held*, that the appeal was brought in due time. A "case stated" by a Chairman by way of appeal, after giving the evidence as copied from his notes, appended a copy of a newspaper report of the case, which was referred to in these words:—"I have been furnished with a certified report of the evidence, as taken by a shorthand writer, which I have read and believe to be substantially correct":—*Held*, that the report not being incorporated in the "case," and being merely stated by the Judge to be substantially correct, should be rejected. *Semble*, in a remitted case the Chairman may hear evidence upon questions not raised by the pleadings, if in his discretion he thinks justice so requires—*e.g.*, where the pleas deny execution and capacity, the Judge may hear evidence of undue influence, if he deems it a fit case to do so. *Quære*, whether a Chairman has jurisdiction to deal with the costs of a testamentary suit? M'CONVILLE *v.* M'CREESH; M'CREESH *v.* M'CONVILLE - - - - P. XIII. 35

PRACTICE—CIVIL BILL APPEAL.

——Equity—Introduction of new matter on hearing. [XXII. 41

See PRACTICE—CIVIL BILL COURT—COSTS. 5.

—— Equity Civil Bill—Judge at *Nisi Prius* - XXIV. 56

See PRACTICE—CIVIL BILL COURT—COSTS. 7.

—— Interpleader issue directed by High Court. XXIV. 33

See PRACTICE—APPEAL. 3.

—— Objections not specified in notice of appeal XXII. 82

See PRACTICE—CIVIL BILL COURT—ADMINISTRATION. 1.

PRACTICE—CIVIL BILL COURT.

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PRACTICE—CIVIL BILL COURT—ADJOURNMENT.

1.——*Appeal from.*] An order of adjournment made by the County Court Judge may not be appealed from when it appears that the order was obtained on the application of the appellant. The order should state on whose application the adjournment was granted. (By Gibson, J.) O'LEARY *v.* CLERKE - - - - **Cir. Cas. XXVII. 123**

2.——*Appeal from—Reasonableness of order—Costs.*] Where an adjournment by a County Court Judge is reasonable, the Judge of Assize will not hear the case on appeal; where it is unreasonable the Judge of Assize will hear the whole case. *Kenny* v. *Rorke* (XXVI. M. 697), not followed. (By Harrison, J.) LAYNG *v.* EVANS **[Cir. Cas. XXVII. 115**

3.——*Costs.*] The costs of the adjournment were ordered to be paid by the party applying for it. BUCKLEY *v.* KELLY **[Q. S. X. *M.* 424**

4.——*Reference to arbitration without adjourning case pending result—Jurisdiction to hear case at subsequent Sessions.*] A process having been heard at one Quarter Sessions sittings, and referred to arbitration, the reference to arbitration was removed from the books at following Sessions; and at another succeeding Sessions the Court, having heard the original process as an adjourned case, and pronounced a decree for the plaintiff:—*Held*, that, no note of adjournment of the case having been entered at the first Sessions, the Court had no jurisdiction to hear it as an adjourned case at any subsequent Sessions, and therefore the decree should be reversed. (By Harrison, J.) BOYD *v.* BOYD **Cir. Cas. XVIII. 31**

PRACTICE—CIVIL BILL COURT—ADMINISTRATION.

1.——*Action—By mortgagee of next of kin—Appeal—Objections not specified in notice—County Officers and Courts Act*, 1877, s. 33.] A mortgagee of the share of a next-of-kin may maintain a suit in the County Courts for the administration of the personal estate of the deceased intestate. On the hearing of a County Court appeal objections to the order of the the County Court Judge not mentioned in the notice of appeal cannot be relied on. (By Chatterton, V.C.) SWEENY *v.* GALLAGHER - - - **Cy. Ct. A. XXII. 82**

2.——*Equity civil bill—Limited grant covering assets under £500—General assets exceeding £500—Jurisdiction.*] Where a limited grant of administration has been obtained of the goods of a deceased, whose general assets exceed £500, the Court will not entertain a process for administration, even although the assets covered by this only grant obtained are under £500 in value. HARRIS *v.* M'CAUSLAND - **Q. S. XII. 160**

3.——*Equity civil bill—Valuation—Onus of proof—Next of kin.*] In a suit for administration of the estate of an intestate, brought by one of the next of kin against the administratrix, in the County Court, the onus of proving the valuation of lands forming part of the assets does not lie on the plaintiff in order to satisfy the Judge that he has jurisdiction to make the usual decree. PLANT *v.* PLANT - **Q. S. XII. 160**

4.——*Equity civil bill—Suit by creditor whose debt is for funeral expenses.*] The Court will not entertain a process for administration of assets at the instance of a creditor whose sole debt is for funeral expenses. HUGHES *v.* M'MAHON **[Q. S. XII. 160**

5.——*Lodgment of costs of a dismiss—Amount—Witnesses' expenses—O. XIV. r.* 82.] Where, in an administration suit by equity civil bill, the plaintiff is directed, under O. XIV. r. 82, to lodge the costs of a dismiss with the Clerk of the Peace, the amount to be lodged will be calculated according to the higher scale of fees, notwithstanding that it appears by the probate that the assets have been sworn under a sum to which the lower scale is applicable. A sum to meet witnesses' expenses will, also, be directed to be lodged. NYHANE *v.* O'SULLIVAN - - - - **Q. S. XII. 110**

——When can suit be instituted? - - **XVI. *M.* 97**

See PRACTICE—CIVIL BILL COURT—JURISDICTION. 2.

PRACTICE—CIVIL BILL COURT—AMENDMENT.

1.——*Civil bill.*] A process for contribution to rent under a lease of 1807, and for money had and received, was amended by the Court by substituting a lease of 1858 to meet the justice of the case. (By O'Brien, J.) MOLONY *v.* DOBE **[Cir. Cas. I. *M.* 104**

2.——*Civil bill—Action for money paid—Implied request—Use and occupation—County Courts Act*, 1877—*O. XIV.*, *r.* 84—27 & 28 *Vic.*, *c.* 99, *sec.* 48.] Where in an action for money paid, the plaintiff fails to prove an express or implied request from the defendant to him, but proves facts which would enable him to recover the money sued for in an action for use and occupation, the Court will not amend by substituting or adding a count for use and occupation. DONOVAN *v.* DONOVAN **[Q. S. XII. 109**

3.——*Civil bill—Irregular.*] The copy of a civil bill, entitled "County of Antrim, Division of Downpatrick," required the defendant to appear at Belfast:—*Held*, that the irregularity could not be amended. M'ERLANE *v.* GRUBB **[Q. S. II. *M.* 604**

4.——*Civil bill—Husband and wife—Authority to sue—*27 & 28 *Vic.*, *c.* 99, *sec.* 48—*O. XIV.*, *r.* 8.] When an action is brought in the name of husband and wife for the balance of the amount of a promissory note passed to the wife after her marriage, the husband at the time of the passing of the note and bringing the action being out of the country, and not having been heard of for thirteen years previously, the Court will not presume an authority from the husband to the wife to sue, nor will the Court, from the husband's long absence presume him to be dead, and amend by striking out his name and giving a decree in the wife's name. ASHE *v.* HALLISY **[Q. S. XII. 109**

5.——*Civil bill—Inserting tenant as holding under a lease.*] A process of ejectment was amended by the Judge of Assize by describing the tenant as holding under a lease (which was not successfully proved in Court) instead of being a tenant from year to year, the plaintiff to pay all costs. (By Keogh, J.) SHEEHAN *v.* M'DONALD - **Cir. Cas. I. *M.* 524**

6.——*Civil bill—Plaintiff suing in representative capacity.*] Where a plaintiff sues in a representative capacity instead of personally, the County Court Judge has jurisdiction to, and should, amend the civil bill. (By Johnson, J.) BERMINGHAM *v.* COLLERAN - - - **Cir. Cas. XXVI. *M.* 698**

7.——*Decree or dismiss—Writ of prohibition*—14 & 15 *Vic.*, *c.* 57, *s.* 106.] A County Court Judge has no jurisdiction to alter or amend his decree, or dismiss (from which an appeal lies) after the termination of the sessions at which it was pronounced, and after it had been signed by the Judge and Clerk of the Peace and issued to the party entitled thereto. SMITH *v.* GAMBLE - - - - - **E. D. XV. 97**

8.——*Civil bill—Parties—Name—Service—Costs—*27 & 28 *Vic.*, *c.* 99, *s.* 48.] Where a civil bill was brought against Thomas C. in a case where John C. should have been the defendant, and was served by delivery to John, at the house of Thomas, the Court refused to amend the process by substituting "John" for "Thomas." (By Gibson, J.) JACOB *v.* CONDON - - - **Cy. Ct. A. XXVII. 18**

——Jurisdiction - - - - **III. *M.* 796**

See PRACTICE—CIVIL BILL COURT—JURISDICTION. 13.

PRACTICE—CIVIL BILL COURT—CIVIL BILL.

1.——*Recovery of land—Statement of tenure*—14 & 15 *Vic.*, *c.* 57, *s.* 83—37 & 38 *Vic.*, *c.* 66, *s.* 1—40 & 41 *Vic.*, *c.* 56, *s.* 53.] A plaintiff seeking to recover possession of an interest in lands as against defendants, both claiming under a common title, and which interest is still subsisting, and within the limits as to "tenure" mentioned in the 79th section of 14 & 15 Vic., c. 57, and as to "rent," of 40 & 41 Vic., c. 56, and as to "value" of the 1st section of 37 & 38 Vic., c. 66, may elect to bring his process either in Form 4 or Form 5 attached to the County Court Rules of 1877. A process which in such a case does not state the tenure (as provided by sec-

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PRACTICE—CIVIL BILL COURT—CIVIL BILL—*con.*

tion 83 of 14 & 15 Vic., c. 57) is not defective. *Shillady* v. *Hilles* (XIV., 106), not followed. (By Palles, C.B.) M'QUADE v. M'QUADE - - - - - **Cir. Cas. XV. 49**

2. —— *Signature.*] A civil bill can be validly filled in by a clerk in the presence of a solicitor. COUGHLAN *v.* O'DWYER **[Q. S. XXVII. *M.* 224**

PRACTICE—CIVIL BILL COURT—COSTS.

1. —— *Cases within Petty Sessions jurisdiction.*] Costs and expenses will not be given in cases where the parties could have had recourse to the Petty Sessions Court. ANON. **[Q. S. XI. *M.* 540; Q. S. XII. *M.* 23**

2. —— *Cases within Petty Sessions jurisdiction—County Courts Act*, 1877, *s.* 56—*Contract entered into before Act came into operation.*] Costs were refused where cases were within the Petty Sessions jurisdiction, and the contracts had been entered into before the County Courts Act. ANON. **[Q. S. XII. *M.* 186**

3. —— *Discontinuance of action in Superior Courts—Non-payment of costs—Civil bill process for same cause—Staying proceedings.*] Where an action was brought in the Superior Courts, and afterwards discontinued by the service of a notice under Order XXII., but the costs were never paid, and a civil bill process was subsequently brought for the same cause of action, the County Court Judge dismissed the process on that ground, and the Judge of Assize on appeal refused to hear the case unless the costs were paid. (By May, C.J.) WALSH *v.* FITZGERALD - - **Cir. Cas. XVIII. 54**

4. —— *Dismiss—Process for execution against the person.*] A process for execution against the person cannot be brought under sec. 116 of the 28 & 29 Vic., c. 99, in respect of the costs of a dismiss. (By Fitzgerald, J.) MORONEY *v.* SULLIVAN - - - - - - **Cir. Cas. I. *M.* 460**

5. —— *Equity civil bill—Mortgage—Sale by puisne mortgagee—Proceeds insufficient to pay off prior mortgagee—Affidavit introducing new matter.*] A puisne incumbrancer obtaining an order for the sale of the mortgaged premises from a County Court Judge was declared entitled to the costs of sale including abstract of title, rental, and postings, and all other costs properly and necessarily incurred, notwithstanding that the sum realised by the sale was insufficient to pay off the debt due to the prior incumbrancer, and that the latter had, on the motion to confirm the sale, offered a larger sum than that bid by the purchaser. Order confirmed on appeal. *Semble*, that the party appealing might read an affidavit opening new matter, if the circumstances were exceptional. (By Chatterton, V.C.) WILLS *v.* CLIFFORD **[Cy. Ct. A. XXII. 41**

6. —— *Fee for instructions to plaintiff's solicitor prior to entry of civil bill.*] Where the amount sued for by an ordinary civil bill is tendered before the entering of the civil bill, the plaintiff's solicitor is entitled to payment of the prescribed fee for instructions. BELL *v.* M'NALLY **[Q. S. XVI. 14**

7. —— *Measurement of, by County Court—Appeal to Judge sitting in* Nisi Prius—52 & 53 *Vic.*, *c.* 48, *ss.* 3, 11.] When a County Court Judge declares a party to an equity suit entitled to his costs of suit, he has no jurisdiction to measure a sum for such costs, in the absence of any application by the solicitor of one of the parties that a percentage or commission should be allowed to him in lieu of such costs, the costs must be taxed by the proper officer in the ordinary way. A judge sitting at *Nisi Prius* has jurisdiction to hear an equity civil bill appeal under sections 3 and 11 of the County Courts Appeal Act, 1889 (52 & 53 Vic., c. 48); but, *quære*, if such appeal should not be brought before a Judge of the Chancery Division? (By Andrews, J.) HAIG *v.* COOKE **[Cy. Ct. A. XXIV. 56**

8. —— *Remitted action*—19 & 20 *Vic.*, *c.* 102, *s.* 97—33 & 34 *Vic.*, *c.* 109, *s.* 55—40 & 41 *Vic.*, *c.* 56, *s.* 60.] An action of contract for £48 15s. 8d. was remitted for trial to the Recorder's Court of Belfast, and it was ordered that the costs of the motion to remit on both sides should be costs in the cause. The plaintiff recovered £1 17s. 0d.:—*Held*, that under 19 & 20 Vic., c. 102, the plaintiff having recovered less than £20 was not entitled to the costs of the motion to remit. HILL *v.* M'KINSTRY - **Q. S. XXII. 75**

PRACTICE—CIVIL BILL COURT—COSTS—*continued.*

9. —— *Remitted action of contract—Less than £20 recovered—14 & 15 Vic., c. 57—33 & 34 Vic., c. 109, s. 6—40 & 41 Vic., c. 56, s. 51.*] In an action of contract, remitted for trial to the County Court, the Judge has power either to give or withhold costs, notwithstanding that less than £20 is recovered under the decree. SHERRY *v.* MULLIGAN **Q. S. XIX. 27**

10. —— *Sale in Court—Solicitors' Remuneration Act*, 1881, *s.* 2—*G. O. April 16th*, 1884—*Discretion of Judge—G. O.*, 1877 10.] The General Order of April 16th, 1884, made in pursuance of the Solicitors' Remuneration Act, 1881, is applicable to proceedings in the Civil Bill Court. The method of the taxation of costs on a sale of lands in the County Court defined. KENNEDY *v.* BEAUMONT - **Q. S. XXIV. 95**

11. —— *Solicitor—Amount sued for greater than sum recovered.*] A plaintiff sued for £50, and obtained a decree for £15, which was increased to £35:—*Held*, that his solicitor was entitled to fees on the original sum sued for, and not on the sum recovered. (By Palles, C.B.) SIMPSON *v.* WILSON **[Cir. Cas. XVII. *M.* 546**

12. —— *Tender.*] When there was a tender made of the amount of the debt, £2 5s. 9d., it was held that the defendant should also pay 2s. 6d., the costs of the plaintiff's solicitor up to the tender. NEWRY STEAM AERATED WATER CO. *v.* —— **[Q. S. IX. *M.* 194**

13. —— *Testamentary suits—Jurisdiction*—40 & 41 *Vic.*, *c.* 56, *s.* 46—14 & 15 *Vic.*, *c.* 57, *s.* 111.] The jurisdiction given to the County Courts in testamentary cases under 40 & 41 Vic., c. 56, s. 46, is as complete as that of the Probate Division itself, and includes the power to deal with the costs. 14 & 15 Vic., c. 57, s. 111, does not apply to probate cases. *Flynn* v. *Flynn* (9 Ir. Jur. N. S. 381) and *M'Conville* v. *M'Creesh* (XII. 76) considered. BELL *v.* HUGHES - - **Q. S. XIV. 77**

—— Adjournment - - - - **X. *M.* 424**

See PRACTICE—CIVIL BILL COURT—ADJOURNMENT. 3.

—— Ejectment for non-payment of rent—Holding neither agricultural nor pastoral - - - **XXVII. 109**

See LAND LAW (IRELAND) ACT, 1887. 52.

PRACTICE—CIVIL BILL COURT—COUNTER-CLAIM—*Rules of* 1877, *No.* 26.] A shipowner having issued a civil bill process to recover freight for the carriage of goods, the defendant served a notice within Rule 26, setting up a counter-claim for damages for injury to the goods, and for money wrongfully extorted for demurrage:—*Held* (reversing the decision of the County Court Judge), that the counter-claim should be allowed, being connected with the subject-matter of the action. (By Johnson, J.) POWER *v.* MOONEY **[Cir. Cas. XX. 40**

PRACTICE—CIVIL BILL COURT—DECREE.

1. —— *Execution of, pending appeal—Reversal on appeal—Liability of person executing.*] Where a party regularly and without fraud obtains a decree in the County Court, and under it seizes and sells the goods of his opponent while the decree is in force, and the latter, without entering into a recognisance or lodging money, appeals to the Judge of Assize, who grants a reversal of the decree, without making any mention of the execution already had, no action lies against the party executing the decree as a trespasser. *Semble*, in such a case the proper remedy is to obtain a direction for restitution, to be inserted in the Appellate reversal, or to bring a cross-action on the case (By Gibson, J.) BROSNAN *v.* SHEEHAN **[Cir. Cas. XXVII. 96**

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PRACTICE—CIVIL BILL COURT—DECREE—*continued.*

2. —— *For a part—Costs—Title of causes—Amendment—County Court Rules*, 1877, *O. IV., rr.* 30, 34.] Where a civil bill ejectment on the title is brought against two defendants, each being in possession of a portion of the premises sought to be recovered, and the ejectment is defended by both, neither confining his defence to the portion in his possession, and a decree is obtained against one defendant only for his portion, the decree will be confined to that portion, but the other defendant will not be entitled to a dismiss for his portion, or to his costs, inasmuch as he has not confined his defence under the provisions of O. IV., r. 30, but his name will be struck out as a defendant. (By May, C.J.) LYONS *v.* LYONS - **Cir. Cas. XII. 159**

—— Renewal of.

See Cases under PRACTICE—CIVIL BILL COURT—RENEWAL OF DECREE.

PRACTICE—CIVIL BILL COURT—EVIDENCE.

1. —— Comments on the suppression of evidence by a solicitor. JENNINGS *v.* MURPHY - **Q. S. XXVII.** *M.* **22**

2. —— *Documents insufficiently stamped—Adjournment—Consent—Dismiss—County Court Act*, 1887, *O. XIV., r.* 84.] Where upon the hearing of a civil bill, the plaintiff is unable to give a document in evidence in consequence of its being insufficiently stamped, the Judge will not adjourn the hearing to the next Sessions on the terms of the plaintiff paying the costs of the adjournment, unless the defendant consents. Where, in a civil bill action, the plaintiff tenders in evidence a document insufficiently stamped, which it was the duty of the defendant to have stamped originally, the Judge will not direct the defendant to lodge in Court sufficient to make up the deficiency and proceed with the hearing, but will, if the defendant does not consent to an adjournment, dismiss the case unless the plaintiff lodge the deficiency of stamp duty and the penalty in Court. HUNTER *v.* MACCABE - **Q. S. XII. 106**

PRACTICE—CIVIL BILL COURT—EXECUTION—*Stay of civil bill ejectment for non-payment of rent—Discretion of County Court Judge—Land Law (Ireland) Act*, 1881—*County Courts Rules*, 1887, *O. XV., r.* 96.] The County Court Judge has no jurisdiction, under O. XV., r. 96 (1877), to grant a stay of execution on an ejectment decree for non-payment of rent, where the defendant has acquired a statutory term in his holding under the Land Law Act, 1881. (By Harrison, J.) LANESBOROUGH *v.* M'CLEAN - **Cir. Cas. XVII. 75**

—— Stay of - - - - - - - - - **XXII. 70**

See LAND LAW (IRELAND) Act, 1887. 47.

PRACTICE—CIVIL BILL COURT—FRAUD—*Omission of averment of fraud in civil bill.*] An action against a Poor Law Guardian by a medical officer for his fee in attending a person who was not an object of charity within the Poor Law Acts, and who had been given a red ticket by the defendant, was dismissed without prejudice, the civil bill not charging fraud. (By Fitzgerald, J.) CRUMLEY *v.* WOODS **Cir. Cas. X.** *M.* **447**

PRACTICE—CIVIL BILL COURT—GUARDIAN AD LITEM—*Power of County Court Judge to appoint*—40 & 41 *Vic., c.* 56, *s.* 34—*County Court (Ir.) Orders*, 1890, *O. XXXVI., r.* 22.] Where one of the parties to an administration suit in the County Court becomes lunatic during the progress of the suit, the County Court Judge has no jurisdiction to appoint a guardian *ad litem*. PATTERSON *v.* PATTERSON **[Q. S. XXVI.** *M.* **625**

—— Jurisdiction to appoint - - **XXVII.** *M.* **124**

See PRACTICE—CIVIL BILL COURT—JURISDICTION. 10.

PRACTICE—CIVIL BILL COURT—INJUNCTION—*Jurisdiction.*] Sec. 33 (l.) of the 40 & 41 Vic., c. 56, enables a County Court Judge to grant an injunction only as ancillary relief in some pending suit, and does not authorize him to hear a suit brought merely to obtain an injunction. BOYLE *v.* MASTERSON - - - - - - - **C. A. XXIV 69**

PRACTICE — CIVIL BILL COURT — INTERPLEADER—*Court for Division of a County*—14 & 15 *Vic., c.* 57, *s.* 150.] The holding of Courts of Quarter Sessions in different towns for a Civil Bill Division of a county is to be regarded as one sitting, and, therefore, it is sufficient, in an interpleader civil bill, if the plaintiff makes the process returnable at any town of the division for the Sessions next after the seizure. (By Andrews, J.) LEGGE *v.* NEILL **[Cir. Cas. XXIII. 20**

—— Remitted - - - - - - - - **XXVI.** *M.* **379**

See PRACTICE—CIVIL BILL COURT—JURISDICTION. 11.

PRACTICE—CIVIL BILL COURT—JURISDICTION.

1. —— *Action on bond—Road contract—Grand Jury Act, s.* 168.] Where, under a bond by a road contractor and his sureties, separate civil bills are brought against the sureties, under which more than £100 in all might be levied, the Chairman has no jurisdiction under the Grand Jury Act, 5 & 7 Wm. IV., c. 116, s. 168. ATTORNEY-GENERAL *v.* WHELAN **[Q. S. XI. 21**

2. —— *Administration suit—Institution of, within year from death of intestate—County Courts Act*, 1877, *s.* 41.] A suit for administration can be instituted within a year from the death of the intestate. (By Flanagan, J.) MURDOCK *v.* MURDOCK **[Cy. Ct. A. XVI.** *M.* **97**

3. —— *Annuity charged upon real estate*—14 & 15 *Vic., c.* 57.] Section 55 of the Civil Bill Act (14 & 15 Vic., c. 57) does not apply to a rent-charge or annuity charged upon real estate or chattels real, otherwise than by will. (By Fitzgerald, J.) KING *v.* GRAY - - - - **Cir. Cas. X. 163**

4. —— *Carriers—Place of contract.*] The Chairman of Quarter Sessions refused to hear a case for the recovery of damages for the non-delivery of sheep, which were booked at Chester for conveyance to another station in England, on the ground that the contract was completed in England. M'ANELLY *v.* LONDON & NORTH WESTERN RAILWAY CO. **[Q. S. IX.** *M.* **195**

5. —— *Case referred by County Court Judge to Registrar—Question of account—Objection to finding—County Court Judge bound to hear all objections.*] Where objection is raised by any of the parties to the finding of the County Court Judge's Registrar on a case referred to him by the County Court Judge, the County Court Judge is bound to try the case himself. (By Palles, C.B.) ADAMSON *v.* CONNAUGHTON **[Cir. Cas. XXVII. 114**

6. —— *Civil bill for* £50—14 & 15 *Vic., c.* 57, *s.* 36—40 & 41 *Vic., c.* 56, *s.* 50.] Although sec. 36 of the Civil Bill Courts (Ir.) Act, 1851 (14 & 15 Vic., c. 57), is not mentioned in sec. 50 of the County Officers and Courts (Ir.) Act, 1877 (40 & 41 Vic., c. 56), the County Court has jurisdiction to hear a civil bill for £50, being a portion of a larger sum due to the plaintiff, the excess being abandoned. COUGHAN *v.* MADDEN - - - - **Q. S. XII. 40**

7. —— *Costs of action in High Court.*] The Lord Chancellor commented on the cost, in the High Court, of action dealing with a few acres of land, which showed the necessity of vesting an equitable jurisdiction in the Chairman of Quarter Sessions. WILLIAMSON *v.* BEAMISH - **C. X.** *M.* **47**

8. —— *Equity civil bill—Excess over limit of jurisdiction—County Officers and Courts Act*, 1877, *s.* 37.] Although an Equity civil bill alleges on its face that the subject-matter of the suit is within the jurisdiction of the County Court in point of value, the Court ought to strike out the suit, and not to order it to be transferred to the Lord Chancellor, under sec. 37 of the County Officers and Courts Acts, 1877, if of opinion that such allegation is made with a knowledge that it is false, merely for the purpose of instituting the suit in the County Court. The onus, however, of proving that the plaintiff had this knowledge lies on the defendant seeking to have the suit struck out, and the mere fact that the certificate of valuation shows that the subject-matter of the suit is outside the limit of jurisdiction is not, *per se*, sufficient.

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PRACTICE—CIVIL BILL COURT—JURISDICTION— *continued.*

in the absence of any evidence that the plaintiff was aware of that fact before the civil bill was issued. (By Monroe, J.) MORRIS *v.* FLYNN - - - **Cy. Ct. A. XXV. 34**

9. —— *Ejectment on the title—Valuation under* £20.] The Civil Bill Court has an original jurisdiction to try actions of ejectment on the title, where the valuation does not exceed £20. (By Armstrong, Serjeant, Judge of Assize.) M'KEEVER *v.* M'KEEVER - - - **Cir. Cas. X. *M.* 469**

10. —— *Guardian.*] The County Court has not got jurisdiction to appoint a guardian for the protection of a minor's property, unless the petition sets out the whole of the property, and prays to have the minor made a ward of Court; nor will the County Court appoint a guardian *ad litem* where there is no suit pending before it. *Re* DRENNAN **[Q. S. XXVII. *M.* 124**

11. —— *Interpleader action irregularly remitted.*] A County Court Judge is not bound to try an interpleader action unless it be regularly remitted to him. CORCORAN *v.* NATIONAL BANK - - - - - **Q. S. XXVI. *M.* 379**

12. —— *Money paid—Partnership—Jurisdiction Civil Bill Court.*] In a process for money paid to the defendant's use, the Chairman's jurisdiction was objected to, on the ground of its being a partnership account:—*Held*, that the decree should be made, as the money had been actually paid to the defendant's use. HEADLY *v.* LUBY **Q. S. II. *M.* 302**

13. —— *Obstruction of light and watercourse and injury to house.*] In the Civil Bill Court a process was brought for obstructing window lights and watercourses and seriously injuring the foundation of the plaintiff's house. At the hearing, the assistant barrister amended the process by striking out a portion of the complaint as not being within his jurisdiction, heard the case on the amended process, and gave a decree for £20. On appeal:—*Held*, that the assistant barrister had not jurisdiction in respect of any part of the complaint, and that he ought not to have amended the process so as to bring the case within his jurisdiction. (By Keogh, J.) SPOTTEN *v.* LORD LEITRIM - **Cir. Cas. III. *M.* 796**

14. —— *Question of title—Right of way—Separate valuation of part of lands affected—37 & 38 Vic., c. 66, s. 1.*] In an action of trespass in the Civil Bill Court, the defendants relied on a justification of the acts complained of, as having been done in exercise of a right of way. The valuation of the demesne through which the alleged right of way lay much exceeded £30, but the plaintiff produced a separate valuation of the part of the demesne over which the right was claimed, which was under that sum:—*Held*, that it was insufficient to give jurisdiction, as the right claimed affected the whole demesne. (By Lawson, J.) DE LA POER *v.* BOLAND **[Cir. Cas. XIX. 39**

15. —— *Recognisance—Sureties—Death of appellant.*] The County Court has jurisdiction to hear and decide process issued on foot of recognisance entered into by sureties in relation to prosecution of appeal from a civil bill decree, even though the amount be not in double the debt and costs primarily recovered; but no such process lies in a case where the principal who appealed died before time for hearing of appeal arrived. MEHARG *v.* CAMPBELL **[Q. S. XXVII. 13**

16. —— *Remitted case—Limit of jurisdiction.*] The Chairman's jurisdiction, in an action of tort remitted to the Civil Bill Court, under C. L. P. A. Act, 1870, is limited to £40 An appeal lies to the Judge of Assize from the Chairman's decree in a case remitted to him under the C. L. P. A. Act, 1870. DOYLE *v.* HANKS - - **Cir. C. R. VI. 85**

17. —— *Right of way—Valuation.*] A. and B. held, as yearly tenants, adjoining holdings, under the same landlord. A. claimed a right of way over B.'s holding, having enjoyed it for more than twenty years:—*Held*, that A.'s right of way existed either as a way of necessity, or as a way reserved by the landlord over the servient tenement at the time of the creation of the tenancies, and that the Civil Bill Court had jurisdiction under the 37 & 38 Vic., c. 66, to determine the question of title, the valuation of the servient tenement being under £20. (By Palles, C.B.) CONLAN *v.* GAVIN **[Cir. Cas. IX. 198**

18. —— *Small suits in the Superior Court.*] The Lord Chancellor commented on the want of jurisdiction in the Civil Bill Court to sell an estate to pay a legacy of £40. DONOHOE *v.* DONOHOE - - - - - - **C. X. *M.* 386**

19. —— *Trespass*—Quare clausum fregit.] A. held certain houses under a lease, which expired in 1867. B. occupied one of these houses, but had paid no rent to A. from 1837 up to 1875. C. bought the reversionary interest of the lessor in 1864. A., upon the expiration of his lease, continued on as yearly tenant to C. B. continued in occupation also, and refused to pay any rent, or to acknowledge title in either C. or A. Possession was demanded by A., and also by C., but was refused. A. and C., jointly, brought a civil bill in trespass, *quare clausum fregit*, against B.:—*Held*, that the Civil Bill Court had jurisdiction, under the 32 & 33 Vic., c. 66. (By Fitzgerald, J.) WAITMAN *v.* FARRELL **Cir. Cas. IX. 198**

—— Decree for possession of part of lands in ejectment **[X. 158**

See EXECUTOR—POWERS. 2.

—— Ejectment for Breach of Condition.

See LANDLORD AND TENANT—EJECTMENT—BREACH OF CONDITION. 1, 2.

—— Right of Way—Servient tenement valued under £20

See WAY. 5, 11.

—— Title—Valuation of the holding - - - **IX. 73**

See REMITTING ACTION TO CIVIL BILL COURT. 108.

—— Title—Re-sale—Conditions of Sale - **I. *M.* 476**

See VENDOR AND PURCHASER. 2.

PRACTICE—CIVIL BILL COURT—PARTICULARS—*Goods sold and delivered—Rules, 1877, Nos. 22, 24—Reasonable period for furnishing particulars of demand.*] Plaintiff furnished defendant with particulars of his demand (for goods sold and delivered) two years before the service of his process, and defendant did not dispute them:—*Held*, that they were not furnished "within a reasonable period before the service of the process" under rule 22. (By Palles, C.B.) SMITHWICK *v.* CANAVAN **Cir. Cas. XVIII. 55**

PRACTICE—CIVIL BILL COURT—PARTIES—*Boundaries—Dispute between tenants—Different landlords.*] Where there is a dispute between tenants of different landlords regarding boundaries, notice must be served on the landlords. GILMAN *v.* COLLINS - **Q. S. XXVI. *M.* 625**

PRACTICE—CIVIL BILL COURT—REMITTED ACTION.

1. —— *Costs—Less than* £20 *recovered—C. L. P. Act*, 1856, *s. 97—County Court Rules*, 1890, *O. XXIV., rr.* 2, 3.] Where in an action on a contract, remitted to the County Court, the plaintiff recovers less than £20, he is deprived of costs incurred in the Superior Court by the Common Law Procedure Act, 1856, s. 97; and the costs in the County Court follow the decree (14 & 15 Vic., c. 57, s. 111). The C. L. P. Act, 1856, s. 97, confers no discretion upon the County Court Judge in reference to costs. CREMMINS *v.* BARRY AND CLANCHY **[Q. S. XXVII. 40**

2. —— "*Next Court.*"] Where an action was remitted by the Queen's Bench Division for trial at "the next Recorder's Court," which was held the day after the making of the

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PRACTICE—CIVIL BILL COURT—REMITTED ACTION—*continued.*

remitting order, the order remitting must be amended in order to enable the Recorder to hear the case at any subsequent Court. M'MULLIN *v.* CLARKE - **Q. S. XXV. 48**

3. —— *Plaintiff resident out of the jurisdiction—Lodgment of costs of dismiss—County Court Rules* 72.] A plaintiff in a remitted action, who is resident out of the jurisdiction, must lodge the costs of a dismiss with the Clerk of the Peace. CLUCAS *v.* RICE - - - **Q. S. XII. *M.* 298**

——Costs.

See PRACTICE—CIVIL BILL COURT—COSTS. 8, 9.

PRACTICE—CIVIL BILL COURT—RENEWAL OF DECREE.

1. —— *Against executor* de son tort *of defendant*—14 & 15 *Vic., c.* 57, *s.* 142.] A renewal can be obtained, under sec. 142 of the Civil Bill Act of 1851, against an executor *de son tort* of a decree obtained against the person of whom he is executor *de son tort*. (By O'Brien, J.) HUGHES *v.* DILLON **[Cir. Cas. XIX. 50**

2. —— *Appeal pending.*] Where the plaintiff and respondent died after service of the notice of appeal from a decree of the County Court Judge, on the appeal coming on for hearing before the Judge of Assize the following order was made: "That this case be adjourned to the Assizes next after said decree shall have been renewed in the name of the administratrix of the deceased (if such renewal can be made)." The County Court Judge held he had no jurisdiction to renew, the appeal being pending. SOMERS *v.* DUGGAN **[Q. S. XXVI. *M.* 660**

3. —— *Defendant ceasing to reside within the jurisdiction.*] Where, after a decree had been granted in the County Court of one district, the defendant went to reside in another county out of the jurisdiction of the Court:—*Held*, that the plaintiff was entitled to bring a civil bill decree in the latter county to recover the amount of the decree. (By Dowse, B.) M'ELROY *v.* M'GARRITY - **Cir. Cas. XIX. 38**

4. —— *Defendant leaving the jurisdiction—Signature of County Court Judge—Proof of civil bill.*] Where a defendant, against whom a civil bill decree has been obtained, changes his residence into the jurisdiction of another County Court, a fresh civil bill must be issued, there being no jurisdiction to renew in another county. A decree is not admissible in evidence without proof of the signature of the Judge signing it. (By Andrews, J.) WOODS *v.* MALONEY **[Cir. Cas. XX. 15**

5. —— *Hearing adjourned—Lapse of more than six years*—14 & 15 *Vic., c.* 57, *ss.* 139, 142, 144.] Where an application to renew a County Court decree was served for a Sessions just within six years from the date of the original decree, and was adjourned to the following Sessions, it was held that the decree could then be renewed as from the date of the Sessions for which the notice of renewal was served. (By Fitzgibbon, L.J.) MYHANE *v.* HURLEY - **Cir. Cas. XXVI. 60**

6. —— *Instalment order—Debtors' Act*, 1872—14 & 15 *Vic., c.* 57, *ss.* 139, 144.] A committal order under the Debtors Act, 1872, can be granted on foot of a civil bill decree which is more than one year old, and has not been renewed, where an instalment order has been obtained within the year, and proof is given of the defendant's ability to pay, and his refusal to do so. In such a case it is not necessary to renew the original decree. GREENFIELD *v.* STINTON **Rec. C. XXIV. 23**

7. ——14 & 15 *Vic., c.* 57, *s.* 144—*When statute begins to run.*] Where it was sought to renew a civil bill decree more than six years after the making of same by the County Court Judge, but within six years after its affirmance by the Judge of Assize on appeal:—*Held*, that the decree meant the last order of the Court, and that the statute 14 & 15 Vic., c. 57, s. 144, ran from the date of the affirmance. (By Holmes, J.) M'GILLIGAN *v.* M'GILLIGAN - **Cir. Cas. XXV. 60**

PRACTICE—CIVIL BILL COURT—RESIDENCE.

1. —— *Jurisdiction—Employers' Liability Act*, 1880—*Civil Bill Act, ss.* 65, 69.] A contractor for the execution of certain buildings, occupying a shed or office in a yard, at the rear thereof for his own convenience in carrying out the contract, has not a residence there within the meaning of the Civil Bill Act. (By Palles, C.B.) BYRNE *v.* HILL **[Cir. Cas. XXVI. 132**

2. —— *One of joint defendants residing out of civil bill division—Option of plaintiff to bring civil bill against all in which division he pleases.*] Where one of the several defendants resided out of the civil bill division of the county in which the others resided, it was held that, under sec. 59 of the Civil Bill Act, the plantiff had the option of proceeding against them all in a division in which any of them resided. KANE *v.* BARRY - - - **Q. S. X. 9**

PRACTICE—CIVIL BILL COURT—SERVICE OF CIVIL BILL.

1. ——*Action brought in Civil Bill Court.*] An action or suit is not brought in a Civil Bill Court until the process was served by the person directed by the County Courts (Ireland) Act, 1851, sec. 15. HARNAN *v.* HARNAN **Q. S. XI. *M.* 549**

2. —— *Ejectment process—Time, computation of—Sundays.*] Sundays are to be included in computing the fifteen clear days for service of an ejectment process for over-holding. BEAMISH *v.* DONOVAN - - - - **Q. S. XV. *M.* 311**

3. —— *Ejectment — Posting — Nearest market town—Rules 10th Sept.*, 1881.] The market town nearest to the defendant's residence, referred to in the County Court Rules of Sept. 10th, 1881, need not be in the county where the defendant resides. (By Andrews, J.) DE LA POER *v.* WALSH **[Cir. Cas. XXI. 19**

4. —— *Ejectment on the title*—14 & 15 *Vic., c.* 57, *ss.* 79, 81—37 & 38 *Vic., c.* 66, *s.* 1—40 & 41 *Vic., c.* 56, *ss.* 53, 54—*The County Courts (Ir.) Orders*, 1890, *O. I., r.* 8.] In an ejectment on the title brought by civil bill under 37 & 38 Vic., c. 66, s. 1, as extended by 40 & 41 Vic., c. 56, s. 53, it is necessary to serve with the ejectment process only the person or persons in possession or apparent possession of the lands sought to be recovered. PARKER *v.* M'BRIDE **[Q. S. XXVII. 102**

5. —— *Equity Rules*, 1877, *Nos.* 37, 228.] Under Rule 37 of the County Court Rules of 1877, which prescribes that the civil bill in equity suits must be served "one calendar month at least before the return day," a civil bill served on the 2nd of January when the return day is the 2nd of February is late. PROVINCIAL BANK *v.* TOBIN - **Q. S. XX. 18**

6. —— *Lunatic in lunatic asylum.*] Service of a civil bill on a defendant who is living in a lunatic asylum, by leaving it with the governor, is not service on the defendant at his place of residence within the meaning of the Civil Bill Act. (By O'Hagan, J.) SWEENY *v.* SHEA **Cir. Cas. II. *M.* 574**

7. —— *Office of railway company*—14 & 15 *Vic., c.* 57, *s.* 65.] Where through tickets can be procured at the terminus of Railway Company A. to stations on line of Railway Company B. that terminus of Railway Company A. is an office of Railway Company B., within the meaning of the Civil Bill Consolidation Act, 1851, s. 65; and service on the station-master there of a civil bill process is sufficient service on Railway Company B. (By Keogh, J.) DUBLIN AND DROGHEDA RAILWAY CO. *v.* O'HANLON - - - **Cir. Cas. VI. 87**

8. —— *Original instead of copy.*] Where the process server, in serving an ejectment for overholding, serves the defendant with the original, and keeps the copy, there is no service. HAYES *v.* COONEY - - - - **Q. S. XII. 109**

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PRACTICE—CIVIL BILL COURT—SIGNATURE OF CIVIL BILL.

1. —— An objection, raised on appeal, that the copy of the ordinary civil bill process, served on the defendant, bore no signature whatever, was overruled. (By Johnson, J.) WILSON *v.* KENNY - - - **Cir. Cas. XXVI. 75 note**

2. —— *Plaintiff or solicitor on his behalf—Civil bill printed and solicitor's name printed at same time*—14 & 15 *Vic., c.* 57, *s.* 60.] Where an ordinary civil bill, and the copies thereof, have been printed, and the name of the plaintiff's solicitor has been printed therein at the same time as the rest of the form, such signature is a sufficient compliance with the requirements of 14 & 15 Vic., c. 57, s. 60, when it has been adopted by the solicitor, by the service of the process. (By Johnson, J.) GRANARD *v.* KEOUGH - - **Q. S. XXVI. 14**
GRANARD *v.* DUNLEAVY - - **Cir. Cas. XXVI. 75**

—— Ejectment—Amendment - - - **XV.** *M.* **118**

See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 5.

—— Filled up by clerk in solicitor's presence **[XXVII.** *M.* **224**

See PRACTICE—CIVIL BILL COURT—CIVIL BILL. 2.

PRACTICE—CIVIL BILL COURT—SOLICITOR.

1. —— *Acting as* quasi *advocate—Right of audience.*] A solicitor has no right to act as a *quasi* advocate, with another solicitor, in the conduct of a case in the Civil Bill Court, on behalf of one plaintiff or defendant. LUTTON *v.* ULSTER RAILWAY Co. - - **Q. S. IX.** *M.* **322; IX. 171**

2. —— *Another appearing for the solicitor on the record.*] The Chairman gave leave to another solicitor to appear for the solicitor on the record, who was absent. HOBAN *v.* FOLEY, **Q. S. XI.** *M.* **540**; PIGGOTT *v.* —— **[Q. S. XI.** *M.* **562**

3. —— *Exclusive audience of counsel—Instructed by a solicitor—County Court Rules*, 1877, *s.* 68.] The rule that when counsel is retained he is entitled to exclusive audience is not altered by the operation of the 68th section of the County Officers and Courts (Ireland) Act, 1877. COLLINS *v.* CORK AND MACROOM RAILWAY CO. - **Q. S. XII. 86**

4. —— *Land Sessions—More than one for same party—Solicitor from other neighbourhood.*] A solicitor from another neighbourhood, who was not the solicitor on the record, was refused audience at Land Sessions. MACAULEY *v.* IRWIN **[L. S. XI.** *M.* **345**

5. —— *More than one for one party.*] Only one solicitor was allowed to appear for a party. KILROY *v.* BYRNE **[Q. S. XII.** *M.* **243**

6. —— *Non-appearance of solicitor on record—Unavoidable absence—Substitution of solicitor—County Courts Act*, 1877, *s.* 68—*O. XIV., r.* 81—*Plaintiff in person.*] Where a civil bill had been entered for a plaintiff by his solicitor, who did not appear at the hearing, and it was not shown that he was sick or unavoidably absent, an application to allow the name of another solicitor to be substituted for that of the solicitor on record, or that the name of the solicitor on record should be struck out and the plaintiff be at liberty to appear in person, was refused, and the case dismissed for want of appearance. HOME *v.* CROWLEY **Q. S. XII. 40**

7. —— *On the record.*] The solicitor on the record for a party is the solicitor whose name appears in the Clerk of the Peace's book; and the solicitor on the record has no power to retain another solicitor to appear with or for him. ANON. **Q. S. XI.** *M.* **501**; ANON. **L. S. XI.** *M.* **528**

8. —— *One only allowed for a party.*] There can be only one solicitor on the record for each of the parties to a civil bill, and it is illegal for the solicitor on the record to retain another solicitor to act with him as an advocate in the conduct of the case. (By Morris, J.) M'KITTRICK *v.* ROBINSON **[Cir. Cas. IX. 140**

PRACTICE—CIVIL BILL COURT—SOLICITOR—con.

9. —— *Substitution of solicitor—Unavoidable absence—County Courts Act*, 1877, *s.* 68—*County Court Rules*, 1877, *O. XIV., r.* 81.] Where the solicitor on record in a civil bill is absent on professional business on the day of hearing, such absence is sufficient ground for substituting the name of another solicitor. LANE *v.* HORGAN - - **[Q. S. XII. 48**

10. —— *Three solicitors appearing for same party.*] The Court allowed three solicitors to appear for the same party. MUNN *v.* MUNN - - - **Q. S. IX.** *M.* **517**

11. —— *Two solicitors appearing for same party.*] The Court allowed two solicitors to appear for the same party, but it has the power to prevent it, which it will do if the privilege is abused. ANON. - **Q. S. IX.** *M.* **508**

12. —— *Unavoidable absence of solicitor on record—Change of solicitor.*] Another solicitor was allowed to appear in the unavoidable absence of the solicitor on record. ANON. **[Q. S. XII.** *M.* **24**

13. —— *Unqualified agent—Client filling process and attaching solicitor's name—Costs.*] No costs were given for drawing and signing a civil bill process, or for instructions for hearing and preparing proofs, where the process had been filled up and signed in the solicitor's name by his client. ANON. - - - - **Q. S. XII.** *M.* **340**

—— More than one for same party - **X.** *M.* **256**

See TOWN COMMISSIONERS. 10.

PRACTICE—CIVIL BILL COURT—VALUATION.

1. —— *Certificate of—Duty of Clerk of Union to give—Power to charge fee for.*] Sec. 32 of 40 & 41 Vic., c. 56, which makes a certified copy of valuation of lands under the hand of the Clerk of the Union evidence, does not impose upon him the duty of giving it without a fee. GALLAGHER *v.* M'MENAMIN - - - **C. P. D. XV.** *M.* **324**

2. —— *Parol evidence instead of certificate*—40 & 41 *Vic., c.* 56, *s.* 31.] Parol evidence of annual value was held admissible without the Clerk of the Union's certificate, although there was a valuation which included the premises in question with four other cottages amounting to £6 10s., there being no separate valuation of the cottage in question. KIRBY *v.* KELLY **[Q. S. XXVI.** *M.* **321**

See PRACTICE—CIVIL BILL COURT—JURISDICTION. 8, 9, 14, 17.

—— Administration suit - - - **XII. 160**

See PRACTICE—CIVIL BILL COURT—ADMINISTRATION. 3.

—— Proof—Ejectment on the title - - **XIV. 121**

See EJECTMENT ON THE TITLE. 8.

PRACTICE—CIVIL BILL COURT—VIEW JURY— *Costs incidental to*—34 & 35 *Vic., c.* 65, *s.* 38.] These costs incidental to a view jury, except the fees of 3s. 6d. as fixed by the Civil Bill Act, are not taxable as against a defendant. GREGG *v.* JOHNSTON - - **Rec. C. XXV. 20**

PRACTICE—CIVIL BILL COURT.

—— Commencement of action - - - **XX. 82**

See LIMITATIONS, STATUTE OF. 8.

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PRACTICE—COMMON LAW—AFFIDAVIT.

1. —— *Absence of solicitor's name—Irregular.*] A copy of an affidavit which does not contain the name of the solicitor who filed it is irregular. CALLAN *v.* MARUM - **Q. B. V. 80**

2. —— *Filing.*] An affidavit not filed at the time of the service of a notice of motion cannot be used at the hearing. BENJAMIN *v.* SAULEZ - - - - - **C. P. VI. 57**

3. —— *Lost in office—Judgment by default.*] The Court would not permit judgment to be marked by default, when the affidavit upon which it was sought to mark such judgment was not to be found on the indexes or files of the Court. O'ROURKE *v.* MACLEAN - - - - - **Q. B. IV.** *M.* **335**

4. —— *Omission of jurat from copy affidavit served.*] The Court discharged with costs a notice of motion where the jurat was omitted from the copy affidavit served. THORPE *v.* TUCKWELL - - - - - - **E. VII.** *M.* **459**

5. —— *Preliminary objection to motion—Copy affidavit not served.*] A party moving a motion upon an affidavit of which he had not served a copy on the other side, was ordered to pay £3 3*s.* and the costs of the motion, which was adjourned. SMITH *v.* MADDEN - - - **C. P. VII.** *M.* **287**

PRACTICE—COMMON LAW—AMENDMENT.

1. —— *Affidavit — Municipal election petition — Amendment of answering affidavit.*] An answering statement to a municipal election petition under 34 & 35 Vic., c. 109, having been filed by the ex-Mayor, not being a respondent named in the petition, the Court permitted the answer to be amended by framing it as an answer by the Town Clerk. GRIBBIN *v.* KIRKER **[C. P. VII. 10**

2. —— *Defence—Statute of Limitations.*] A motion for leave to amend a defence to an action for breach of promise of marriage by adding a plea of the Statute of Limitations, was refused. CANNON *v.* PHILLIPS - - **E. VII.** *M.* **355**

3. —— *Defence—Technical error.*] A motion for leave to amend a technical error in a defence was granted, although opposed by plaintiff, who intended to move to set it aside. *Quære*, should not the costs be given against the plaintiff? DALY *v.* HEALY - - - - - **C. P. VII.** *M.* **287**

4. —— *Defence.*] A motion for leave to amend a defence by substituting a plea of payment into Court for the traverses pleaded, was granted, the defendant to pay the costs occasioned thereby. BARRY *v.* FITZGERALD - - **E. VII.** *M.* **390**

5. —— *Defence—Libel—Justification in addition to pleas filed of no libel, and traverses of publication and sense imputed.*] A defendant in an action of libel, in which a criminal offence was imputed to the plaintiff, having pleaded no libel, traverses of the publication and the defamatory sense imputed, and another plea to which a demurrer was allowed, moved for leave to file, in addition, a defence of justification, on the eve of the Assizes to which, on his own application, the venue had been changed, and when the plaintiff might, in the result, be thrown out of a trial:—*Held*, that the motion should be refused. *Hogan* v. *Sutton* (II. M. 24), distinguished. CLEARY *v.* LENIHAN - - - - - **Q. B. VIII. 160**

6. —— *Indorsement of service on writ.*] The Court will not amend the indorsement of service on a writ so as to make the name correspond with the name of the defendant. KNARESBOROUGH *v.* EDMUNDSON - - - **C. C. I.** *M.* **298**

7. —— *Judgment.*] A motion that the judgment be amended by substituting Nelson-street for Talbot-street as the residence of the defendant was granted, the plaintiff to pay the costs. MAHONY *v.* O'NEILL - - - **E. VII.** *M.* **420**

8. —— *Order.*] The Court amended a conditional order by inserting the day on which it was to be made absolute. SULLIVAN *v.* HAMILTON - - - **C. C. VII.** *M.* **440**

9. —— *Pleadings at trial—Refusal of Judge at trial to allow amendment—Power of Court to review his ruling.*] The Court in Banc has jurisdiction to review the act of the Judge at the trial, whether in refusing or granting an amendment of the pleadings, as a part of its jurisdiction to review his general conduct in trying the case. It is not open to the Court in Banc to review a refusal by the Judge, at the trial of the case, to allow an amendment of the pleadings, unless the conditional order has been obtained on the ground, or as one of the grounds of the order, that the amendment ought to have been allowed. GALLAGHER *v.* GILLESPIE - - - - **E. IX. 93**

10. —— *Record and* postea.] When the record and *postea* were made up upon the original plaint, which had been altered at the hearing, the Court directed them to be amended in accordance with the order made at the trial. ELDER *v.* M'CREIGHT - - - - - **C. P. VII.** *M.* **569**

11. —— *Summons and plaint.*] A motion for leave to amend a writ of summons and plaint by altering and increasing the plaintiff's demand, and changing the venue, was granted. Form of order therein. GRACE *v.* STEWART **[Q. B. VII.** *M.* **479**

12. —— *Summons and plaint—Residence of Defendants.*] Leave was given to amend a summons and plaint by describing two of the defendants as resident in different places than set out in the writ. BELL *v.* FRENCH - **C. P. VII.** *M.* **526**

13. —— *Summons and plaint.*] A motion for leave to amend a summons and plaint, and that service of it on the Sub-Sheriff be deemed good service on the defendant, a High Sheriff, was granted. RICE *v.* BOND **C. C. VII.** *M.* **370**

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PRACTICE—COMMON LAW (Before the Judicature Acts)—AMENDMENT—*continued.*

14. —— *Summons and plaint.*] Leave was given to amend the summons and plaint by inserting the names of the several persons composing the defendant company in the place of it. ROCHE *v.* CLYDE SHIPPING CO. [C. P. VII. *M.* 448

15. —— *Summons and plaint.*] A motion for leave to amend a summons and plaint on the file by adding the next friend of a minor plaintiff, was granted, the plaintiff paying the costs occasioned by it, and of the motion. WALLACE *v.* BRADY - - - - - C. C. VII. *M.* 378

16. —— *Summons and plaint—Residence of Plaintiff—Misdescription.*] Upon an application to set aside a summons and plaint on the ground of misdescription of the plaintiff's address, the Court ordered it to be amended, the defendant's time for applying for liberty to appear and defend to run from the date of the amendment. SILK *v.* ARMSTRONG Q. B. I. *M.* 660

17. —— *Summons and plaint.*] A motion to strike out the names of all the plaintiffs but one was granted on the terms of the plaintiff paying the costs consequent upon such amendment. TAYLOR *v.* LEONARD - - C. C. VII. *M.* 379

18. —— *Summons and plaint.*] Lease was granted as of course to substitute the name John E. Walsh for John C. Walsh, in the writ of summons and plaint, the order to be served forthwith, and to be without prejudice to the service already had. M'KENZIE *v.* WALSH - Q. B. VII. *M.* 373
JAMES *v.* WALSH - - - - C. P. VII. *M.* 500

19. —— *Summons and plaint.*] Leave was given to amend the summons and plaint by adding as co-plaintiff certain mortgagees, without prejudice to the notice of trial served. PERRY *v.* MOORE - - C. P. VII. *M.* 469

20. —— *Summons and plaint.*] A motion to amend a summons and plaint by stating that the cheque therein mentioned was drawn in a foreign country was moved; the notice of it did not state that it would be grounded upon an affidavit. The motion was refused. ROSTAN *v.* KING-HARMAN [E. VII. *M.* 219

21. —— *Summons and plaint.*] The name of the defendant served was indorsed on the summons and plaint as James instead of John; the Court allowed it to be amended. M'CULLAGH *v.* BOLTON - - - C. C. VII. *M.* 419

22. —— *Summons and plaint.*] After the defence had been filed the plaintiff moved for leave to amend summons and plaint in accordance with it; leave was granted, the plaintiff to pay the costs of the original defence. M'CORMICK *v.* BARRETT - - - - Q. B. VII. *M.* 328

23. —— *Summons and plaint.*] Leave was given to amend the summons and plaint by inserting "Midland Great Western Railway of Ireland Company," instead of "Railway Company of Ireland." SMYTH *v.* MIDLAND GREAT WESTERN RAILWAY COMPANY - Q. B. VII. *M.* 519

24. —— *Summons and plaint.*] The Court gave leave to amend the writ of summons and plaint in order to have the real issues raised. DONEGAL *v.* VERNER [Q. B. VII. *M.* 489

25. —— *Summons and plaint.*] A motion to amend the summons and plaint by altering the addresses of two of the defendants was granted, the order to be served by registered letter, and the plaintiff to pay his own costs. BELL *v.* HARMAN - - - - - C. P. VII. *M.* 373

26. —— *Summons and plaint.*] The plaintiff asked by notice, for a consent to amend the plaint by adding counts. No answer was given. On motion in the terms of the notice:—*Held*, that the amendment should be permitted, but that it was not necessary for the defendant to comply with the notice. HARRIS *v.* IVERS - E. II. *M.* 354

27. —— *Summons and plaint—Remitting—Civil Bill Court.*] The Court granted leave to the plaintiff to amend the summons and plaint which had been wrongly filled up, and remitted the action to the Civil Bill Court. BURY *v.* SHEEHAN [C. P. X. *M.* 47

PRACTICE—COMMON LAW (Before the Judicature Acts)—APPEAL.

1. —— *Delay—Jurisdiction.*] Where a defendant having given notice of appeal from an order of the Court, allowing cause shown against entering a verdict upon a point reserved at the trial, and having entered into security for costs, delays stating and furnishing his case upon appeal, the Court may order the case to be furnished within a prescribed period. *Semble*, the Court has no jurisdiction on the default of the appellant in not furnishing his case, to order execution to issue. KENNA *v.* CONNOR - - - - - C. P. V. 137

2. —— *Expediting appeal to the House of Lords.*] The Court made an order that the plaintiff in an action of ejectment who had succeeded in the Exchequer Chamber, should be at liberty to issue execution, unless the appeal to the House of Lords by the defendants was lodged within a fortnight. LECKY *v.* WATSON - - - - - - E. XI. *M.* 377

3. —— *Motion to compel appellant to proceed with appeal.*] A motion to compel an appellant to proceed with his appeal to the Exchequer Chamber, he having given an undertaking to do so on a former occasion, was granted. HOEY *v.* LEWIS [C. P. VII. *M.* 246

4. —— *Motion to extend time for appealing.*] A motion to extend the time for appealing, which had expired 19 days before, was refused. M'CREESH *v.* M'GEOUGH [E. VII. *M.* 368

5. —— *To the House of Lords—Notice of appeal—Enlarging time for service—C. L. P. A. Act*, 1856, *s.* 43.] The plaintiff's attorney, not having been aware till January, 1877, that it was necessary under the C. L. P. A. Act, 1856, sec. 43, to give notice to the opposite party or his attorney, and to the Master of the Court, within four days after a decision, pronounced in May, 1876, affirming an order for a new trial, of the plaintiff's intention to appeal to the House of Lords:—*Held*, by the majority of the Court (Fitzgerald, J., *dissentiente*, and O'Brien, J., *hesitante*) that the time for serving notice of appeal should be enlarged, and that such notice should be allowed to be served *nunc pro tunc*, no change having taken place in the position of the respondent since the decision complained of had been pronounced. BRISTOW *v.* CORMICAN E. XI. 56; E. C. XI. 54
LIDDY *v.* KENNEDY - - - E. C. XI. 54 note

PRACTICE—COMMON LAW—APPEARANCE— *Motion that defendant's attorney carry out his undertaking to appear.*] A motion that the defendant's attorney carry out his undertaking to appear, was granted, the plaintiff to mark judgment if he did not appear within twelve days. SALA *v.* RYND [E. VII. *M.* 390

PRACTICE—COMMON LAW—ATTACHMENT.

1. —— *Arrest under Judge's fiat—Discharge after final judgment.*] A defendant arrested under a writ of *capias*, issued on a Judge's fiat, pursuant to 3 & 4 Vic., c. 105, s. 2, will be discharged from custody once final judgment in the action has been entered against him by the plaintiff. DOYLE *v.* SINNOTT [C. P. VI. 70

2. —— *Refusal to sign consent.*] A conditional order for attachment was made of a party to a consent, by which proceedings were terminated, on the ground of his refusing to execute the formal document of consent. BOLAND *v.* WHITE [C. C. VII. *M.* 366

3. —— *Witness.*] A conditional order was made against a man for non-attendance at a trial in Dublin. He received 30 shillings, *viaticum*, but refused to go unless some provision was made, during his absence, for his children, whose guardian he was, under the Court of Chancery. This conditional order was made absolute. HEMPTON *v.* HUMPHREYS - E. I. *M.* 247

—— Solicitor - - - - - II. *M.* 635
See SOLICITOR—PRIVILEGE.

PRACTICE—COMMON LAW—BAIL IN ERROR— *Motion with reference to bail in error.*] Bail for the prosecution of an appeal was ordered to be for £1,100, £800 to be secured by recognisance, and the balance to be lodged in Court. LECKY *v.* WALTON - - - C. C. VII. *M.* 440

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PRACTICE—COMMON LAW (Before the Judicature Acts)—BILL OF EXCEPTIONS—The Court refused to extend the time for handing in a bill of exceptions when no steps had been taken in that direction for twelve days after the trial. Leave to move for a new trial was given. KING *v.* POE - - - - - - - - - C. C. I. *M.* 192

PRACTICE—COMMON LAW—CERTIORARI.

1. —— *Removing a decree into the Superior Courts.*] A motion to remove a decree into the Superior Courts was granted with costs on the affidavit of the plaintiff that the defendant had no visible means to satisfy it, although he was in possession of a farm of land. COLLINS *v.* WOODS [C. C. VII. *M.* 430 and 439

2. —— *Removing a decree into the Superior Courts.*] A motion to remove decrees into the Superior Courts was granted as of course. PINKERTON *v.* SMITH - C. C. VII. *M.* 389
MUNSTER BANK *v.* CLARKE - - C. P. VII. *M.* 429
WALKER *v.* MAGEE - - - C. P. VII. *M.* 459
SCOTT *v.* M'GOVERN - - - Q. B. VII. *M.* 480
BOND *v.* GILLMAN - - - Q. B. VII. *M.* 489

3. —— *Removing a decree into the Superior Courts—Remitted action—Costs.*] A motion for a writ of *certiorari* to remove a civil bill decree, under 27 & 28 Vic., c. 49, in order to make the judgment available against the defendant's chattels real, was granted, but without costs, as it appeared that the action, having been remitted under 33 & 34 Vic., c. 109, sec. 5, the plaintiff had not opposed the motion to remit on affidavit disclosing that the defendant's property was not seizable under a civil bill decree. HALL *v.* MARTIN - C. C. IX. 231

PRACTICE—COMMON LAW—CHARGING ORDER.

1. —— *"Estate or interest" of a Plaintiff in money paid into Court by a Defendant—C. L. P. Act*, 1853, *ss.* 75, 135.] Where money, which has been lodged in Court by a defendant, upon a plea of payment into Court, is standing in the Bank of Ireland in the name of the Master of any Superior Court of Common Law, the defendant has an "estate or interest" therein against which a charging order may be obtained within the 135th sec. of the Common Law Procedure Act, 1853. (Fitzgerald, B., *diss.*) ADAMS *v.* GILLEN - E. IX. 53

2. —— 16 & 17 *Vic.*, *c.* 113, *s.* 132—*Executor.*] Sec. 132 of the Common Law Procedure Act, 1853 (16 & 17 Vic., c. 113), does not apply when the defendant is an executor or administrator and judgment *de bonis testatoris* has been recovered against him. HEWAT *v.* DAVENPORT - E. VI. 170

PRACTICE—COMMON LAW—CONSENT.

1. —— *Making a consent two years old a rule of Court.*] The officers refused to receive a consent two years old without an order; the Court granted a motion to make it a rule of Court as of course. ANON. - - E. VII. *M.* 430

2. —— *Motion to compel the carrying out of the terms of a consent.*] The Court granted a motion to compel the defendant to carry out the terms of a consent.
SHEPPARD *v.* TREVAN - - C. P. VII. *M.* 489
BESTALL *v.* JAMES - - - Q. B. VII. *M.* 489

3. —— *Varying consent order*—Habeas corpus—*Lapse of time specified in order—Change of venue.*]. An order of the Court made upon consent will not be varied, unless in case of fraud or of very special and extraordinary circumstances. *Quære*, when the sittings after a particular term specified in an order, for the trial of an issue directed by the Court, upon an application for a writ of *habeas corpus*, have gone by, without such trial having been had, whether it is necessary to move for a new order directing an issue to be tried, or to vary the former order by appointing another period for the trial? *Re* BYRNES, MINORS - - - - Q. B. VII. 197

PRACTICE—COMMON LAW—CONSOLIDATION OF ACTIONS.

1. —— Two actions between the same parties and arising from the same transactions were consolidated. DOYLE *v.* BAILEY - - - - - E. VII. *M.* 246
M'CHAINE *v.* FRASER - - C. P. VII. *M.* 569

PRACTICE—COMMON LAW (Before the Judicature Acts)—CONSOLIDATION OF ACTIONS—*continued.*

2. —— *Penalties—Same parties—Mistake in order of Court as made out—Costs.*] On a motion the Court ordered that six actions for penalties should be consolidated, and that in one of the writs of summons and plaint the other five causes of action should be inserted. By the instrumentality of one of the counsel for the plaintiff, the order was drawn up enabling "the proceedings to be amended *as may be advised, and* by including, etc." The plaintiff inserted then in each count additional words:—*Held*, that they should be struck out, the plaintiff to pay the costs. BRAMBLE *v.* KNOX [C. P. III. *M.* 726

PRACTICE—COMMON LAW—COSTS.

1. —— *Actions of contract—Payment into Court on count in contract—Joinder of counts in contract and tort—Common Law Procedure Act*, 1853, *s.* 243.] The summons and plaint contained a count in trespass for mesne rates, and a count for use and occupation. The defendant on the latter count lodged £30 in Court, which the plaintiff did not accept. At the trial there was a verdict for the plaintiff for £3 2s. 6d. on the count in trespass, and a verdict for the defendant on the count in contract:—*Held*, that the £30 lodged in Court was not "recovered" by the plaintiff in the action, and that it should not be added to the £3 2s. 6d., so as to entitle him under the 243rd section of the C. L. P. Act, 1853, to full costs. LEONARD *v.* BROWNRIGG - - - Q. B. VI. 7

2. —— *Actions of contract—Payment into Court—Common Law Procedure Act*, 1853, *s.* 243.] The defendant lodged in Court £64 8s. 9½d., in full satisfaction of plaintiff's claim on two counts in contract. The plaintiff drew out and accepted same in full satisfaction of those causes of action, and no issue went to the jury respecting same. On another count in contract, for not using premises in a tenant-like manner, and on a count in tort for waste, the jury awarded the plaintiff £2 damages in the gross:—*Held*, that a portion of the £2 was to be treated as recovered on each of the two counts; that the money lodged in Court was to be added to that unascertained portion of the £2, which was applicable to the count in the contract on which it was assessed; and that the plaintiff had recovered, in an action of contract, a sum sufficient to entitle him to full costs, within the Common Law Procedure Act, 1853, *s.* 243. *Arkins* v. *Armstrong* (III. M. 465.) *Walsh* v. *Walsh* (17 Ir. C. L. 195), discussed. PALMER *v.* GARRETT [C. P. V. 165

3. —— *Cause of action disconnected with contract—Half-costs.*] When a cause of action has its origin in a contract, which has been violated, no matter what the pleading may be, it is not one disconnected with contract with sec. 243 of the Common Law Procedure Act. O'SULLIVAN *v.* DUBLIN AND WICKLOW RAILWAY CO. - - C. P. I. *M.* 675

4. —— *Counts in contract and tort—Money paid into Court on one count, and money recovered by verdict upon another.*] A summons and plaint contained counts in contract and also in tort. On one of the counts in contract the defendant paid £12 into Court, and on another the jury found a verdict for £8:—*Held*, that, though both parties resided within one and the same jurisdiction, the plaintiff was entitled to full costs. ARKINS *v.* ARMSTRONG E. III. *M.* 465

5. —— *Debt paid after commencement of action without costs.*] After service of the summons and plaint, the defendant offered a cheque for the debt; but, representing that he was insolvent, refused to pay the costs. The plaintiff, alleging that the representation as to insolvency was false, moved for the costs:—*Held*, that the Court could not, in such a motion, decide upon allegations of this kind. GARRATT *v.* QUIN - - - - E. II. *M.* 244

6. —— *Defendant's costs after payment of money into Court—Practice—Common Law.*] The defendant was declared entitled to his costs incurred after the payment of money into Court when the plaintiff has been slow in accepting it, which necessitated the defendant's serving notice to change the venue. QUIN *v.* GRAY - - - E. I. *M.* 280

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PRACTICE—COMMON LAW (Before the Judicature Acts)—COSTS - *continued.*

7.——*Defendant's costs—Necessarily incurred by a Defendant after lodging money in Court which is accepted in satisfaction of the plaintiff's claim.*] The defendant in an action lodged money in Court in satisfaction of the plaintiff's demand, and on the same day on which he served notice of the lodgment of the money, he served notice of motion to change the venue. The plaintiff took out the money on account, and subsequently elected to take the money so lodged in satisfaction of his claim:—*Held*, that the plaintiff must pay to the defendant his costs, necessarily and properly incurred subsequent to the lodgment of the money, including the costs of the motion to change the venue. LINDSAY *v.* CROTTY [C. P. I. *M.* 280

8.——*Detinue—Nature of action—Money paid into Court—C. L. P. Act*, 1853, *s.* 243.] The defendant lodged in Court a sum exceeding £20 on foot of counts in contract, including a count for debt on a covenant in a deed of mortgage, and the plaintiff proceeded to trial on issues as to the sufficiency of the lodgment. The jury found in favour of the defendant, that the money lodged was sufficient. Upon a count in detinue, in respect of the same deed, the jury found for the plaintiff with one farthing damages:—*Held*, that the plaintiff was entitled to only half costs. *Palmer* v. *Garrett* (V. 165), discussed. BYRNE *v.* M'EVOY - - - C. P. VI. 22

9.——*Former trial—New trial.*] The practice of the Court is to grant a new trial, reserving the question of the costs of the former trial till the end of the case. HANNAWAY *v.* DUBLIN TRAMWAYS CO. - - C. P. X. *M.* 59

10.——*Judgment by default for untaxed costs—Practice.*] When, in an action upon an untaxed bill of costs, judgment by default is marked, the Master, without a jury, ascertains the amount on the testimony of an independent professional man, or by referring the matter to the taxing officer. SHORTAL *v.* FARRELL - - - Q. B. III. *M.* 694

11.——*Motion to renew order for taxation—Notice.*] A motion to renew an order for taxation of costs must be on notice. DILLON *v.* REILLY - - C. C. V. 43

12.——*Motion to compel the payment of costs by a third party.*] In an action of ejectment to which an assignee, without the landlord's leave, was named defendant together with the lessee, judgment was given for the plaintiff. An application by him for an order that the assignee should pay the costs of the action was refused. EVANS *v.* MONAHER [E. VII. *M.* 273

13.——*Motion to have costs referred for taxation.*] An action had been settled by payment out of Court, and a motion to have the costs referred to the Master for taxation was granted as of course. Settlements of actions must not prejudice the solicitor's lien for costs. RYAN *v.* TIERNEY [E. VII. *M.* 273

14.——*Motion to refer to taxation.*] In an action upon a bill of costs the Court referred the costs to taxation, and directed that within one week after certificate obtained the defendant should plead as he might be advised. NOLAN *v.* BRENNAN - - - - - - - - Q. B. I. *M.* 25

15.——*Motion to add costs to judgment marked—Notice.*] A motion that the costs may be added to the judgment marked in default of appearance must be on notice. THORPE *v.* MARTYN - - - - - - C. C. VII. *M.* 148

16.——*Parliamentary costs—Special procedure.*] The filing of a writ of summons, and the certificate of a sum of money found by a Parliamentary Committee to be due to the plaintiff, and an affidavit of demand, is not the proper course to adopt to recover it. THE ULSTER RAILWAY CO. *v.* THE NEWRY AND ARMAGH RAILWAY CO. - - E. I. *M.* 26

17.——*Replications—Failure to prove special replication.*] When there are two replications filed to a plea, one of which merely takes issue on the truth of the defence, and the issue on the other is decided adversely to the plaintiff, the costs of the replications and motion for leave to reply will not be allowed to the plaintiff, though successful in the action. GUINEA *v.* ALLEN - - - C. P. I. *M.* 6

PRACTICE—COMMON LAW (Before the Judicature Acts)—COSTS—*continued.*

18.——*Same civil bill jurisdiction—Half costs.*] A contract was made in Fermanagh. The breach of non-delivery occurred in Donegal. In an action for damages, it being admitted that both parties resided within one and the same jurisdiction, the jury assessed the damages at £10:—*Held*, that the plaintiffs were entitled to half costs. CROWDER *v.* IRISH NORTH WESTERN RAILWAY CO. - E. III. *M.* 465

19.——*Taxation—Arbitration.*] In an action the matters in dispute were referred to arbitration under a consent which specifically dealt with the question of costs in each event. The parties lived within the same civil bill jurisdiction. The arbitrators awarded £15 to the plaintiff:—*Held*, on an application to direct the Taxing Master, who had given the plaintiff all his costs, that he (Taxing Master) had acted properly as the parties had contracted themselves out of sec. 97 of the Common Law Procedure Act, 1856. LANG *v.* EAKIN. [Q. B. I. *M.* 631

20.——*Taxation between solicitor and client as against a client after taxation between party and party as against the opposite party.*] Costs had been taxed between party and party under consent by a third party submitting to a verdict, and the plaintiff's solicitor got leave to have his costs as against his own client taxed between solicitor and client. MAGUIRE *v.* O'CONNOR - - - - C. P. I. *M.* 702

21.——*Verdict entered for Defendant on point reserved for him.*] When, on a point reserved for defendant, the verdict is entered for him on the entire record, the costs are given as costs in the cause. HODGSON *v.* LYNCH. [C. P. V. 105

22.——*Withdrawing plea to action and paying money into Court—Costs incurred by Defendant after payment into Court and before notice of trial withdrawn.*] In an action, after notice of trial was served, the defendant applied for leave to withdraw his plea and pay money into Court, and an order to that effect was made on the terms of his paying the costs if the plaintiff did not accept the sum so paid in, and the order to be without prejudice to the plaintiff's notice of trial. The day after the money was paid in the plaintiff took it out, but did not give notice to the defendant of his having done so, or withdraw notice of trial for three days, and the case appeared still on the list of jury cases. The defendant now applied that he should be allowed his costs incurred between the day the money was paid in and before notice of trial was withdrawn. The Court ordered that such costs necessarily and properly incurred up to the withdrawal of notice of trial should be taxed and set off against the plaintiff's costs in the action, and the plaintiff should pay the defendant's costs of the motion. BROWN *v.* JULIAN C. P. I. *M.* 156

——Money lodged as security for costs accepted in full discharge - - - - - VII. *M.* 470

See SOLICITOR—BILL OF COSTS. 27.

——Substitution of service.

See SOLICITOR—BILL OF COSTS. 10, 11.

PRACTICE—COMMON LAW—DEMURRER.

1.——*Motion to reverse order setting aside demurrer—Time for filing demurrer.*] The Court refused to reverse an order setting aside a demurrer to the replication, which had been filed upon the settlement of issues. M'CABE *v.* NORFOLK FARMERS' CATTLE INSURANCE CO. C. P. VII. *M.* 568

2.——*Motion to lodge the demurrer books after the time had expired—50th G. O.*, 1854.] In an action in which there was a substantial question of fact to be tried, the defendant got liberty to plead and demur, but the order did not direct that the demurrer should be argued first. The defendant's solicitor did not lodge the demurrer books within the six days limited

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PRACTICE—COMMON LAW (Before the Judicature Acts)—DEMURRER—*continued.*

by 50th G. O., 1854, because the form of the order led him to suppose that the issues in fact would be tried first. On a motion that the demurrer might be reinstated and the demurrer books lodged notwithstanding the lapse of the six days, or that the defendant might be at liberty to refile the demurrer:—*Held*, that the motion to lodge the demurrer books must fail, but that the defendant, on paying all the plaintiff's costs, might refile the demurrer. GREGORY *v.* LEVINS [Q. B. II. *M.* 23

3. —— *Omission of words in copy plaint served.*] When the words, the omission of which from the copy served is the subject of the demurrer, are not omitted from the original plaint filed, the practice is that the party is entitled to demur to the copy served, but when the demurrer comes on the Court refers to the record, and is bound to decide according to the right and overrule the demurrer, but the defendant gets the costs. LAWLESS *v.* BRYCE - C. P. V. 5

PRACTICE—COMMON LAW—DISCOVERY OF DOCUMENTS.

1. —— *Privilege.*] When there was in issue in 1868 the same question as had been brought to the House of Lords in 1787, and the then solicitor for the plaintiffs drew up a report of the proceedings for the present plaintiffs, and furnished them with a book of costs:—*Held*, that the report was privileged, but that the accounts should be disclosed. IRISH SOCIETY *v.* CROMMELIN - - - - C. P. II. *M.* 265

2. —— *Inspection.*] Cross motions for discovery and inspection of letters, &c., were granted. Form of order in such case. SHEEHY *v.* EVANS - C. P. VII. *M.* 302

3. —— *Inspection—Interrogatories.*] A motion for inspection of documents, names, and addresses of persons to whom a libel was sent was held irregular, and that the proper way of obtaining the information sought was by interrogatories. DOUGHTY *v.* CHAMBERS - - - E. V. 99

PRACTICE—COMMON LAW—DUPLICATE WRIT.

Where the original writ was, through change of the process server, lost, leave was given to issue a duplicate writ. GILLOW *v.* HACKETT - - C. C. VII. *M.* 508

PRACTICE—COMMON LAW—EVIDENCE.

1. —— *Expiration of time for return of commission.*] A motion that the evidence of a witness taken after the return of the commission had expired, and that the commission itself, be received, was refused, with liberty to issue a new commission. DEANE *v.* RAYMOND - E. VII. *M.* 287

2. —— *Motion to examine a witness before the Master of the Court.*] A motion to examine before the Master of the Court a witness who was temporarily in Dublin from America, and who would not return to Dublin again, was granted. DUDMAN *v.* DUBLIN PORT AND DOCKS BOARD [C. C. VII. *M.* 389

3. —— *Motion to examine witness.*] An order was made for the examination of a witness, 90 years of age, whose medical advisers said it would be dangerous for him to travel to Dublin for the trial. SHERIDAN *v.* WOODS [C. P. VII. *M.* 595

4. —— *Motion to renew order for commission.*] The Court granted an order for the renewal of an order for examination by commission, which had not taken place. YOUNG *v.* SCOTT [C. C. VII. *M.* 623

5. —— *Motion to extend time for return of commission.*] A motion to extend the time for the return of a commission was granted, the original time not having expired. SIMPSON *v.* CUMMINGS - - - - E. VII. *M.* 287
GOWAN *v.* WHEELER - - - E. VII. *M.* 368
KNOX *v.* MAYNE - - - E. VII. *M.* 490

6. —— *Motion that officer of Court do attend trial of cause, with award.*] A motion that the officer of the Court should attend the trial at the Assizes, with an original deed of submission, was granted. CALDWELL *v.* WILLS [C. P. VII. *M.* 420

PRACTICE—COMMON LAW (Before the Judicature Acts)—EVIDENCE—*continued.*

7. —— *Varying order for commission.*] A motion to vary an order for a commission to examine witnesses, by extending the return of the said commission, and, in the event of the defendants not naming a person to represent them, that the plaintiff should be at liberty to proceed with the commission, was granted. Form of order in such case given. GILL *v.* MAYNE - - - - - E. VII. *M.* 147

PRACTICE—COMMON LAW—EXECUTION.

1. —— *Motion for leave to issue execution for costs—Collusion.*] The plaintiff's attorney was allowed to issue execution against the defendant for the amount of his costs, on the ground of collusion between the plaintiff and defendant. LONERGAN *v.* LONERGAN - - C. P. VII. *M.* 400

2. —— *Motion to stay execution in an action after compromise.*] A trial had taken place in an action for ejectment, and by a compromise a verdict was taken for portion only of the premises sought to be recovered:—*Held*, on a motion to stay execution to enable the defendant to apply to the Court to set aside the verdict, on the ground that he was only mortgagee, and that he did not give his consent to the compromise, that the motion should be dismissed. (By Fitzgerald, J.) CHANDER *v.* HAYES - - Cir. Cas. I. *M.* 515

PRACTICE—COMMON LAW—GARNISHEE.

1. —— *Accruing debt—Promissory note—C. L. P. A. Act*, 1856, *s.* 63.] A promissory note, while running, and before it becomes payable, is not a debt within the 63rd section of the Common Law Procedure Amendment Act, 1856, that may be attached to answer a judgment debt. PYNE *v.* KINNA [C. P. XI. 18

2. —— *Amount awarded under Landlord and Tenant (Ireland) Act*, 1870—*Respite of decree—Appeal.*] The amount awarded by a decree under the L. and T. Act, 1870, which was respited until the next Sessions for a proposed settlement, is not a debt which the Court can order to be paid over. *Semble*, that an appeal being pending would have the same effect. PROCTOR *v.* CHURCH - - - C. P. VIII. 206

3. —— *Amount of civil bill decree.*] The amount of a civil bill decree, with costs, which the defendant had obtained against the garnishee, was attached. MOFFATT *v.* O'DONNELL [C. P. VII. *M.* 135

4. —— *Annuity under separation deed.*] An annuity payable under a deed of separation, when there is no evidence of any gale being due thereunder, cannot be made the subject of a garnishee order. DRINAN *v.* LEADER - Q. B. I. *M.* 138

5. —— *Attachment of interest of Commutation Fund and arrears of annuity payable to a clergyman under Irish Church Act.*] On motion by a judgment creditor to attach the balance of an annuity payable to the judgment debtor as the incumbent of a parish by the Commissioners of Church Temporalities, and the interest payable to him by the Representative Body of the Church of Ireland on the amount of the commutation by him of said annuity:—*Held*, that the motion should be refused, as the said moneys were not debts owing or accruing to the judgment debtor within the Common Law Procedure Amendment Act, 1856, sec. 63. EAMES *v.* MARTIN [E. VI. 35

6. —— *Averment in affidavit.*] One of the averments in an affidavit to ground a motion to attach money in the hands of a third party should be that such party "is indebted to the defendant" in or in and about the sum of £——. PHELAN *v.* O'NEILL - - - - C. C. VII. *M.* 125

7. —— *Company—Liquidator.*] A garnishee order under the Common Law Procedure Act, 1856, will not be given to attach a dividend in the hands of the official liquidator of a joint stock company which is being wound up in bankruptcy, but will be given against the company. DAWSON *v.* MALLEY [E. I. *M.* 247

8. —— *Debt—Promissory note not due.*] A motion to attach a debt for which a promissory note had passed, but was not

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PRACTICE—COMMON LAW (Before the Judicature Acts)—GARNISHEE—*continued.*

yet due, was granted *ex parte*, the order to be by way of attachment and at the plaintiff's risk. CURTIN *v.* GEANEY [C. P. VII. *M.* 246

9. —— *Debt due, but liable to be affected in certain contingencies.*] As cause against a garnishee order against a corporation they showed that the sum ascertained to be due by them to the defendant was still liable to be affected by further legal proceedings:—*Held*, that the order should not be made absolute. RUSSELL *v.* FERGUSON E. II. *M.* 137

10. —— *Discharge of order—Payment of money before order.*] A conditional order for a garnishee was discharged, when it appeared that the money had been paid over prior to the date of the judgment. DILLANE *v.* O'CONNELL [C. C. VII. *M.* 623

11. —— *Disputed liability.*] On a motion for an order that the garnishee do pay the amount of the judgment debt and costs out of the debt due to him by the defendant, as set out in the order of attachment:—*Held*, the garnishee appearing and disputing his liability, that the plaintiff should proceed against him by writ under 66th sec. of the C. L. P. Act, 1856. EGAN *v.* O'BEIRNE - C. P. VII. *M.* 135

12. —— *Extension of time for showing cause.*] Where, through the illness of the person who effected service, the necessary affidavit was not made, the Court extended the time for showing cause. BEATTIE *v.* LITTLE [C. P. VII. *M.* 489

13. —— *Joint judgment—Husband and wife—Garnishee—C. L. P. Act*, 1856, *s.* 63—*Civil bill decree*—37 & 38 *Vic.*, *s.* 50.] The amount due to a husband and wife on foot of a civil bill decree, obtained by them jointly, may be attached under the C. L. P. Act, 1856, s. 63, to answer a debt due by them to a judgment creditor, on a judgment against them jointly. CRONIN *v.* SCOTT - - - - C. P. X. 100

14. —— *Judgment debt recovered by Plaintiff.*] The defendant had obtained a verdict on *postea* against the plaintiff, and £83 remained due to him in respect of taxed costs; the plaintiff obtained verdict and judgment on *postea* against C., who was indebted to him in £187 in respect thereof. An order was made attaching so much of the sum of £187 as would satisfy the judgment for £83. GABRIEL *v.* WEEKES [C. C. VII. *M.* 440

15. —— *Judgment entered for amount of verdict—Costs untaxed.*] A judgment entered for the amount of a verdict cannot be attached if the costs in the cause have not been taxed and added to the roll. JOHNSTON *v.* GRAVES - E. VIII. 76

16. —— *Making conditional order absolute—Terms.*] A conditional order for a garnishee (where neither the defendant nor the garnishee appeared) was made absolute, the sum due to the plaintiff to be paid by monthly instalments. THOMPSON *v.* FRITH - - - - - C. C. VII. *M.* 161

17. —— *Money for sale of farm—Sale not stated to be completed.*] A motion was made for a garnishee order to attach money which was said to be in the hands of the purchaser of a farm of the defendants. The affidavit to ground it did not state that the purchase had been completed, or that the purchaser was in possession of the farm; it was held not sufficient. M'CLURE *v.* HENRY - - C. C. VII. *M.* 147

18. —— *Money in the hands of an auctioneer.*] The Court made a garnishee order attaching money of the defendants in the hands of an auctioneer. SANDS *v.* ENRIGHT [C. P. VII. *M.* 595

19. —— *Money in hands of sub-sheriff.*] Money, balance of proceeds of sale of defendant's farm at the suit of another creditor, was ordered to be garnisheed, as it could not be seized under writ of *fi. fa.* CRAWFORD *v.* DONALD [C. C. VII. *M.* 419 & 441

20. —— *Money lodged in Common Pleas—Motion to draw out by judgment creditor in Queen's Bench—Jurisdiction.*] A Judge of the Queen's Bench, sitting in the Consolidated Chamber, has power to grant a garnishee order in respect of money lodged in the Common Pleas, the notice of motion and affidavit being entitled in the Common Pleas; but where the money was lodged in these causes in the Common Pleas, the motion was directed to be moved before that Court. CURTIN *v.* FITZGERALD - - C. C. VIII. *M.* 545

21. —— *Money lodged in Court under garnishee order—Motion by judgment creditor to draw it out—Jurisdiction of courts.*] Money was lodged in the Court of Common Pleas pursuant to a garnishee order; subsequent orders were obtained by other creditors to attach the money, and the amount of their claims had been paid thereout. A judgment creditor at the Queen's Bench moved before a Judge of the Queen's Bench in the Consolidated Chamber to draw out the money in satisfaction of his debt:—*Held*, that there was jurisdiction to grant the order, but the affidavit and notice of motion should be in the same Court in which the money was lodged. CURTIN *v.* FITZGERALD - - - C. C. VIII. *M.* 472

22. —— *Non-compliance with terms of order—New order.*] Where it appeared that the terms of a garnishee order had not been complied with, before a new order could be obtained it was necessary to move to have the first order discharged. GORDON *v.* TEMPLE - - - Q. B. VII. *M.* 190

23. —— *Promissory note—Staying action.*] A motion to make absolute a conditional order to the garnishee requiring him to show cause why he should not pay the amount of a promissory note, due to the defendant, which had been indorsed to a third party, was granted, without prejudice to the respective parties applying as they might be advised, and an action by the indorsee against the garnishee to be stayed. LYONS *v.* GEANEY - - C. P. VII. *M.* 342

24. —— *Rent in hands of Collector-General of Constabulary.*] A motion to garnishee rent, payable by the Collector-General of Constabulary to the defendant for a police barrack, was refused. LATCHFORD *v.* BENNER - E. VII. *M.* 543

25. —— *Small debts.*] Several small sums of money owing to the defendant, varying from 18s. upwards, were ordered to be attached. BEATTIE *v.* LITTLE - C. C. VII. *M.* 468

26. —— *Verdict recovered but judgment not entered—Common Law Procedure Act*, 1856, *sec.* 63.] In an action for trespass, the plaintiff recovered a verdict, upon which, however, no judgment had been entered, when a creditor of the plaintiff obtained a conditional order to attach the amount of the verdict:—*Held*, that the sum was not a debt which could be attached, and that the order must be discharged. SHAW *v.* SHAW - - - - - Q. B. II. *M.* 243

PRACTICE—COMMON LAW—INTERPLEADER.

1. —— *Application for costs before expiration of* 14 *days.*] The Court made no rule on an application for costs against the claimants when the 14 days had not expired. SWITZER *v.* LYNE - - - - - C. C. X. *M.* 423

2. —— *Barring claim.*] A sheriff seized goods under a *fi. fa.* Before the sale, C. served a claim for the goods under a deed of assignment, registered under the English Act since the seizure. The Judge in Chamber refused to allow the parties to interplead. The Court asked C., would he take an issue? He refused. The Court decreed that C.'s claim should be barred; the sheriff to abide his own costs, C. to pay costs of all parties. HOBAN *v.* MUNRO (I.) - E. I. *M.* 647

3. —— *Execution creditor declining to try the question—Sheriff's fees.*] The execution creditor refused to try the question of the right to property which had been seized by a sheriff, and to which adverse claims had been set up. The Court ordered the sheriff to be paid the costs properly incurred by him, and the claimants to be paid their costs by the execution creditor. Sheriffs should give the Court information, verified by affidavit, of the amount of expenses incurred by them up to the date of the Court's final order. PLUNKETT *v.* KEARNEY - - - - - - E. X. *M.* 47

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PRACTICE—COMMON LAW (Before the Judicature Acts)—INTERPLEADER—*continued.*

4. —— *Garnishee order—C. L. P. A. Act*, 1856, *s.* 66—9 & 10 *Vic.*, *c.* 64.] A writ issued in pursuance of the 66th section of the C. L. P. A. Act, 1856, calling on a garnishee to show cause why execution should not issue against him, is not within the scope of the Interpleader Act (9 & 10 Vic., c. 64). HAMILTON *v.* BOVAIRD - - - **C. P. X. 167**

5. —— *Motion to discharge order.*] The plaintiff declined to maintain a claim in an interpleader suit or to take the usual issue; the Court barred the claim, directed the sheriff to retire from the possession of the goods, and to hand them over to the claimant. WATERHOUSE *v.* BARRY **[C. P. VII. *M.* 429**

6. —— *Policy of insurance—Assignment—Bankruptcy*—9 & 10 *Vic.*, *c.* 64, *s.* 1—20 & 21 *Vic.*, *c.* 60, *s.* 313.] Where an action was brought against an insurance company by the assignee of a policy of life insurance, deriving under an assignment from F., who had subsequently been adjudicated bankrupt, the Court (although no order for sale of the policy had been made by the Court of Bankruptcy under the reputed ownership clause of the B. & I. Act, 1857) directed an interpleader issue to be tried between the assignee of the policy, as plaintiff, and F. and his assignee in bankruptcy, as defendants, in order to ascertain who was entitled to the amount of the policy. FALLON *v.* BRITANNIA MEDICAL AND GENERAL ASSURANCE CO. - - - - - **Q. B. XI. 73**

7. —— *Real estate.*] An order for an interpleader to decide the right to real estate cannot be granted. GARDINER *v.* HINDS - - - - - **C. C. VIII. *M.* 401**

8. —— *Withdrawal of execution creditor's claim after summoning order—Sheriff's costs.*] After the sheriff had obtained a summoning order with regard to goods seized by him, to which a claim was put forward, the execution creditor served a notice withdrawing his claim:—*Held*, that the sheriff was not entitled to any expenses, and only to a small sum for costs. CAMPBELL *v.* SWEENY **Q. B. VII. *M.* 584**

PRACTICE — COMMON LAW — INTERROGATORIES.

1. —— The fact that the plaintiff was and always had been resident in England, and was of very advanced years, is not "unavoidable circumstances" within the meaning of sec. 57 of the Common Law Procedure Act, 1856, so as to enable the Court to act upon the affidavit of his son, who managed the plaintiff's property, or upon that of his solicitor, on a motion to administer interrogatories. ADAIR *v.* SIMPSON - **C. C. I. *M.* 661**

2. —— *Action against railway company—Negligence—Railway servants—Letters.*] In an action against a railway company for injuries sustained by reason of the defendant's negligence, the Court allowed interrogatories to be administered to the defendant's secretary and general manager, in order to ascertain how, and the circumstances under which, the alleged negligent stoppage of the train by which plaintiff travelled had occurred and was occasioned; the names of the defendant's servants who were on duty at the time and place; the condition of the plaintiff when lifted from the train by such servants; and what reports, letters or writings relating to the matter in dispute the defendants had in their possession or control, and, if lost or destroyed, what were their contents so relating. DAVIES *v.* THE DUBLIN AND DROGHEDA RAILWAY CO. **C. P. VI. 128**

3. —— *Affidavit—Irregularity.*] In an action for assault, arising out of circumstances in connection with the prevention of a public meeting, interrogatories were allowed to be exhibited to the defendants, in order to ascertain whether they had interfered in relation to the prevention of said meeting, or were accessory to said assault. A copy of an affidavit which does not contain the jurat, or the name of the attorney who filed it, is irregular. When, at the time of making an affidavit, the deponent is in the Marshalsea, he may properly be described as resident at the place where he had been living up to the period of his arrest. O'BYRNE *v.* MARQUIS OF HARTINGTON **[C. C. V. 201**

PRACTICE—COMMON LAW (Before the Judicature Acts)—INTERROGATORIES—*continued.*

4. —— *Affidavit.*] A motion for leave to administer interrogatories, though usually grounded on the joint affidavit of the party and his attorney, need not, under certain circumstances, be so grounded. JUDD *v.* M'CARTHY - **C. P. VII. *M.* 191**

5. —— *Answers—Consent for judgment.*] In an action against several defendants for breaking and entering plaintiff's house, carrying away his goods and chattels, converting several articles the property of the plaintiff, and expelling him and his servants from the premises, leave was obtained to administer interrogatories for the purpose of discovering at whose instance the outrage was planned, what circumstances attended it, and what had been done with some of the property so taken. The defendants declined to answer the interrogatories and gave a consent for judgment, relying upon this consent as absolving them from liability to answer:—*Held*, that they were bound to answer, although by doing so they might have themselves exposed to indictment for conspiracy, or might disclose a cause of action against persons not named as defendants. DUNNE *v.* MOONAN. **[Q. B. IV. *M.* 46**

6. —— *Assignee of lease.*] The assignee of a reversion brought an action for rent against the alleged assignees of the lease, who traversed the vesting of the lessee's interest. The plaintiff was allowed to administer this interrogatory:—"Did not you, or either of you, become possessed of the said lease under and by virtue of some, and what, deed or instrument of assignment, and of what date, and of the will of W?" GRATTAN *v.* WALL. - - - **E. II. *M.* 137**

7. —— *Exhibition of and extension of time to plead.*] The Court gave leave to defendant to exhibit interrogatories, and extended the time to plead until two days after the answers to them were received. M'CANN *v.* REEVES **[C. P. VII. *M.* 429**

8. —— *Exhibition of, with summons and plaint.*] An application to exhibit interrogatories with a writ of summons and plaint was granted. WHITNEY *v.* COLLINS, **Q. B. VII. *M.* 314**; LITTLE *v.* MORRISON - **Q. B. VII. *M.* 489**

9. —— *Further.*] A Court has power to order further interrogatories. THOMPSON *v.* WYNNE - **C. C. I. *M.* 689**

10. —— *Leave to exhibit when the majority are improper.*] When the great majority of the interrogatories, which it was proposed to administer to the defendant, the administratrix of her husband, were wholly irrelevant, and some of them were framed for the purpose of pure insult and vexation, the Court refused a motion for leave to administer them. SWANSEY *v.* SOUTHWELL - - - - - **E. III. *M.* 118**

11. —— *Libel—Privileged communication—Prejudice to public service—Objection, how taken—Oral examination of party—Disclosing contents of protected document—C. L. P. A. Act*, 1856, *ss.* 56, 58.] In an action against a justice of the peace for libel, contained in communications addressed by him to the Commissioners having the custody of the Great Seal in Ireland, complaining of the conduct of the plaintiff as a justice of the peace, in consequence of which the plaintiff was superseded in the commission of the peace, interrogatories were administered to the defendant in order to discover whether such communications had been made, and their substance and nature. The defendant, by his answers, objected that the communications were privileged. The documents were still in the custody of the Lords Commissioners. On a motion to direct an oral examination of the defendant under the C. L. P. A. Act, 1856, sec. 58:—*Held*, that as the documents themselves were capable of being produced at the trial, and as the disclosure of their contents beforehand by the defendant might be prejudicial to the public service, the motion should be refused. FITZGIBBON *v.* GREER **[Q. B. IX. 112**

PRACTICE—COMMON LAW—IRREGULARITY— *Trial in Consolidated* Nisi Prius—*Waiver.*] An action of ejectment on the title by a lessor against a lessee for a forfeiture was tried in the Consolidated Nisi Prius Court, no order

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PRACTICE—COMMON LAW (Before the Judicature Acts)—IRREGULARITY—*continued.*

to have it so tried having been obtained. The lessee did not take defence, but one of the defendants named, who had been in possession of the premises, defended, and appeared at the trial, without excepting to the jurisdiction of the Court. On motion by this defendant to set aside the proceedings:—*Held*, that the Consolidated Nisi Prius Court had jurisdiction to try the issue; and that, if an order to have it so tried should have been obtained, the want of it was only an irregularity, which was waived by the defendant appearing at the trial. *Per* Morris, J.:—An ejectment on the title for a forfeiture is an action against an overholding tenant within the terms of 16 & 17 *Vic., c.* 113, s. 237. TALBOT *v.* ODLUM **C. P. V. 107**

PRACTICE—COMMON LAW—JUDGMENT.

1. —— *Appearance of minor by attorney—Vitiating judgment.*] The appearance of an infant defendant by attorney and not by a guardian is an error in fact, and vitiates a judgment which had been recovered. GREENE *v.* LECKEY **E. I. *M.* 661**

2. —— *Conditional order for final judgment.*] A motion for leave to mark final judgment in a case where two solicitors had appeared for the defendant, but no appearance had been entered or defence filed, was granted, the order to be conditional in the first instance. CITY OF DUBLIN STEAM PACKET CO. *v.* D'ARCY - - - - - - **Q. B. VII. *M.* 302**

3. —— *Consent for judgment—Costs of marking it—Neglect to mark it—Refund of costs.*] The plaintiff's attorney took from the defendant a consent for judgment, and charged and received from him a sum for costs, including the costs of judgment, which was not marked. The Court, on motion, ordered him to refund the costs of marking judgment. *Quære*:—Whether an agreement not to mark judgment in consideration of the plaintiff's costs, including the costs of marking it, is an illegal agreement? O'ROURKE *v.* MURRAY **[C. P. V. 98**

4. —— *Entering up judgment before expiration of time.*] Leave was given to enter up a judgment forthwith before the time for doing so had expired, on an allegation that the defendant was disposing of his stock. CURRAN *v.* LENAHAN **[C. C. X. *M.* 296**

5. —— *Entering satisfaction of judgment—Setting off judgment obtained against plaintiff.*] Judgment was marked and a *ca. sa.* executed in respect of a debt; the defendant was arrested, but the order for arrest was set aside, and he obtained damages in an action for false arrest, when it was directed that the amount of the judgment should be deducted from the damages. The Court directed a satisfaction should be entered on the judgment. DONOVAN *v.* DONOVAN **[C. P. VII. *M.* 570**

6. —— *Judgment by default—Action in contract, trover and detinue*—Nolle prosequi.] The Court refused to allow an interlocutory judgment to be entered upon a count in contract, leaving counts in trover and detinue, for which it was proposed to enter a *nolle prosequi*, the proper course being to enter the *nolle prosequi* first, and then mark judgment on the count in contract. LYNCH *v.* LYNCH **[E. IX. 197 note**

7. —— *Judgment by default—Unliquidated demand—Action on guarantee for unascertained amount—C. L. P. Act*, 1853, *s.* 96.] Where, in an action brought against a surety on a guarantee, the amount to which the defendant is liable does not appear on the face of the pleading to be substantially a matter capable of ascertainment by a mere arithmetical computation, the plaintiff is not entitled to mark final judgment by default under the Common Law Procedure Act, 1853, s. 96. THE NITRO-PHOSPHATE, &C., CO. *v.* KEAVENEY **[E. IX. 197**

8. —— *Motion for leave to mark judgment.*] An action had not proceeded further than the service of the summons and plaint nearly two years before, and no defence had been taken. A conditional order for leave to mark judgment was granted, cause to be shown within six days. DOHERTY *v.* GIBSON **[C. C. VII. *M.* 274**

PRACTICE—COMMON LAW (Before the Judicature Acts)—JUDGMENT—*continued.*

9. —— *Leave to enter—Bond and warrant of attorney—Entering judgment ten years after date of it—Special circumstances—94th G. O.*, 1854.] The defendant, more than ten years ago, gave a bond with warrant of attorney, to enter up judgment. The agreement was that judgment might be entered whenever the defendant lost part of his capital in trade. The affidavits in support of a motion for leave to enter up judgment, showed that he had sustained such a loss, and that there was a danger of his becoming bankrupt, or obtaining a protection order, unless an order, absolute in the first instance, was granted:—*Held*, that there were sufficient special circumstances within G. O. 94. GALAVAN *v.* GALAVAN **[C. C. II. *M.* 92**

10. —— *Motion for final judgment after* 12 *months elapsed.*] A conditional order for leave to mark final judgment after the lapse of twelve months, when no defence had been filed, was granted as of course. TARPEY *v.* WHITE **[C. P. VII. *M.* 390**

11. —— *Motion for leave to serve notice on the Defendants to mark judgment on the record.*] A motion on behalf of the plaintiff for leave to serve notice on the defendants to mark judgment on the record within ten days, or that in case they did not, the defendant should be at liberty to do so, was granted. CONWAY *v.* BELFAST AND N. C. RAILWAY CO. **[Q. B. X. *M.* 73**

12. —— *Motion for leave to mark judgment on admission of service.*] A motion *ex parte* for leave to mark judgment upon admission of service, which had been indorsed on the writ by the defendant's attorney, was granted, by a conditional order to be served on the defendant and his attorney. BURKE *v.* SMITH - - - - - - **C. P. VII. *M.* 206**

13. —— *Motion for leave to enter judgment (interlocutory).*] The time for pleading having expired after the defendant's attorney had accepted service of the writ of summons and plaint, and the Court being satisfied that it had reached the defendant, a motion for leave to enter judgment was granted, the order to be conditional and served on the defendant by registered letter, and on his attorney. ANON. **[C. P. VII. *M.* 147**

14. —— *Motion for leave to mark judgment—Insolvency of Plaintiff.*] After the action had commenced the plaintiff became insolvent, and the assignees moved for leave to mark judgment; leave to do so was granted by a conditional order. SERGENT *v.* KILKENNY RAILWAY CO. **[C. P. VII. *M.* 447**

15. —— *Marking judgment for costs.*] The amount claimed in an action having been paid, liberty was given to mark judgment for the costs of it and of the motion. ULSTER BANKING CO. *v.* O'DONNELL **C. P. VII. *M.* 287 and 448.** CAFFREY *v.* FARRELLY - - **C. P. VII. *M.* 459**

16. —— *Setting aside—Want of service on the Defendant.*] A motion to set aside judgment which had been marked, on the ground that the defendant had been absent from the place of service when the alleged service took place which he said was on a fellow clerk, but he admitted that he had received the writ, was refused, it appearing that the process-server had shown him the writ and laid a copy on his desk in his presence. BARNES *v.* RUCKLEY **[C. P. VII. *M.* 230**

17. —— *Setting aside—Unliquidated demand—Interest.*] The Court set aside a final judgment which had been marked for a debt and interest, as judgment could not be marked for interest being an unliquidated demand. MINORS *v.* PURVIS - - - - **C. C. VIII. *M.* 106**

18. —— *Setting aside—Substitution of service on agent—Writ not forwarded to Defendant.*] The Court set aside a judgment which had been marked, the service of the writ having been substituted on the defendant's brother, as his agent, but it appeared that the writ never came to the defendant's hands, and that he did not know of the service. PIM *v.* SHEEHAN **[Q. B. VIII. *M.* 108**

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PRACTICE—COMMON LAW (Before the Judicature Acts)—JUDGMENT—*continued.*

19. —— *Setting aside—Same civil bill jurisdiction.*] A motion was made to set aside a judgment for £17 3s. 2d. including costs, where the parties lived in the same civil bill jurisdiction, and the bill sued on was for £8; the Court ordered the judgment to be amended by striking out the sum for costs, and directing the judgment to stand for £9 13s. COLLINS *v.* DALTON - - - - **E. VII. *M.* 519**

20. —— *Setting aside—Revivor.*] The Court, in the absence of collusion, fraud, or insolvency refused, on the application of the defendant, to set aside a judgment of revivor, obtained in the name of an executor, without his authority by the person beneficially entitled to the assets. BARNES *v.* CROTHERS **[Q. B. V. 93**

21. —— *Setting aside—Order for substitution of service—Motion to set aside order.*] An order for substitution of service was made and the defendant served a notice of motion to set it aside; meanwhile the plaintiff marked judgment. The Court set this judgment aside. GIBLIN *v.* LONDON & NORTH WESTERN RAILWAY CO. - **C. C. IX. 177 note**

22. —— *Setting aside—Regularly marked—Fatality—Affidavit of merits.*] An affidavit by the defendant's attorney stating that he is advised and verily believes that the defendant has a good defence to the action on the merits, is an insufficient affidavit of merits for the purpose of setting aside a regular judgment which the defendant, through a fatality, has suffered to go by default. GRIFFIN *v.* MAYOR AND CORPORATION OF DUBLIN - **C. C. VIII. 123**

23. —— *Setting aside—Nullity of service—Defendant out of jurisdiction.*] When on the service of a writ at the former residence of the defendant the landlady wrote to the plaintiff's solicitor that the defendant did not reside there and was out of the country, and the plaintiff notwithstanding marked judgment, the Court set it aside with costs. COPELAND *v.* HUMPHRY - - - - - **Q. B. I. *M.* 44**

24. —— *Setting aside—Nullity of service—Defendant out of jurisdiction—Affidavit of merits.*] A judgment will be set aside, although there is no affidavit of merits, or denial that the process came to the hands of the defendant, where the service of the summons and plaint is alleged to have been effected on a servant of the defendant under the 32nd section of the Common Law Procedure Act, and the Court is not satisfied that the defendant was within the jurisdiction at the time of the alleged service. TISDALL *v.* HUMPHREY **[C. P. I. *M.* 7**

25. —— *Setting aside—Non-service of writ—Prosecution of process server.*] The defendant in an action, in which judgment had been obtained in default of defence, moved to set it aside on the ground that he had not been served with the writ of summons and plaint, and admitting the debt, offered to bring the money into Court and undertook to prosecute the process server. The motion was ordered to stand till the result of the prosecution of the process server was ascertained, the defendant to pay the debt at once, and bring the costs into Court to abide the final order on the motion. O'FERRALL *v.* BURKE - - - - - - **E. II. *M.* 137**

26. —— *Setting aside—Marked against non-existent company.*] Judgment had been marked against the defendants, although the plaintiff had been cautioned against doing so, on the ground that they were not a company or corporation under Act of Parliament; this judgment was set aside. MUFFANY *v.* COATSBRIDGE OIL WORKS CO. **C. P. VII. *M.* 542**

27. —— *Setting aside—Marked after extension of time to plead.*] The defendant obtained an extension of time to plead, but omitted to serve the order on the plaintiff, who marked judgment. The Court set aside the judgment, the plaintiff to be entitled to the costs of marking it. SIMMONDS *v.* DEMPSEY - - - - - - **C. C. VII. *M.* 367**

28. —— *Setting aside—Marked after extension of time to plead—Vacation.*] A motion to set aside a judgment, which had been marked during the long vacation, before the commencement of which the defendant had obtained a month's extension of time to plead (which would not expire till after the vacation) was granted. MAHON *v.* DOBBS **[C. P. VII. *M.* 162**

29. —— *Setting aside*—Mala fides.] A judgment which was marked and registered *malâ fide*, after tender of the amount claimed and costs, was set aside with costs. MELDON *v.* O'SHAUGHNESSY - - - - **C. P. VII. *M.* 246**

30. —— *Setting aside—Joint stock company—Judgment entered after winding-up order—Costs.*] An action was commenced against a company on the 26th May. A winding-up order was made in Chancery on the 13th June, and judgment was marked on the 30th June. The Court set aside the judgment, but (not being satisfied that notice of the winding-up order had been brought home to the plaintiff) on the terms that the official liquidator should pay the costs of the action and motion. HARTFORD *v.* THE AMICABLE LIFE ASSURANCE COMPANY - - - - - - - **Q. B. V. 59**

31. —— *Setting aside judgment—Execution—Overmarking judgment and execution—2nd G. O.*, 1859.] A plaintiff who under 2nd G. O., 1859, was entitled to half costs only, marked judgment and issued execution for full costs, and arrested the defendant:—*Held*, that the judgment and execution should be set aside, and the defendant discharged. CASEY *v.* PARSONS **[C. C. II. *M.* 370**

32. —— *Setting aside—And execution of writ of* ca. sa.—*Debt proved in bankruptcy—Election.*] A writ was served on the defendant by the plaintiff on February 12th, and on the 15th a trader-debtor summons under sec. 105 of the B. & I. Act, 1857, and on 18th the plaintiff filed a declaration of insolvency, notice of which was given to the plaintiff's attorney. On March 1st the plaintiff filed a petition for adjudication against the defendant, and subsequently a proof of debts on which the defendant was adjudicated a bankrupt. At the meeting for the appointing of a trade assignee the plaintiff and his agent alone proved and voted. The meeting for final examinations adjourned *sine die*. On 6th December, a petition of appeal was presented against the refusal of the Court to pass a final examination, and on the 17th December, a case by way of answer was filed: on the 19th December was marked, and subsequently the defendant was arrested. The Court set aside the judgment and discharged the defendant. GIROND *v.* BURKE - - - - - **E. VIII. *M.* 450**

33. —— *Setting aside regular judgment—Fatality—Affidavit of merits.*] A motion to set aside a regular judgment marked by default (the defendant not having filed a defence in consequence of a mistake or fatality), must be grounded on an affidavit of merits. COEN *v.* GALLAGHER **C. C. VI. 192**

34. —— *Setting aside—Error—Jurisdiction—Wavier of irregularity—Step in the cause—Suggestion of error.*] Notwithstanding the lodgment of a memorandum of error on the record, and entry of suggestion of joinder in error, the Court below has jurisdiction to set aside the verdict and grant a new trial, and to set aside a judgment marked irregularly. The lodgment of a memorandum of error, one of several grounds alleged being the marking of the judgment before the expiration of fourteen days from the verdict, is not such a step in the cause as to amount to a waiver of the irregularity, and cannot be relied on as such, on a motion to set aside the judgment. DROUGHT *v.* DROUGHT - - - - **C. P. XI. 55**

35. —— *Setting aside—Irregularly marked.*] A judgment which had been marked after security for costs was fixed, no notice of the lodging of which had been given to the defendant, was set aside. STROULGER *v.* FLOOD **C. C. VII. *M.* 635**

36. —— *Setting aside—Defendant not served.*] A motion to set aside a judgment, on the ground that one of the defendants had not been served, was refused; the judgment to stand as a security for the plaintiff, with leave to the defendant to plead such pleas as would go to the merits of the action only. STRAHAN *v.* NICHOLLS - **C. C. VII. *M.* 378**

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PRACTICE—COMMON LAW (Before the Judicature Acts)—JUDGMENT—*continued.*

37. —— *Setting aside—Debt paid after action—Jurisdiction to impose terms on Defendant.*] Where judgment has been marked on foot of a debt which has been paid since action brought, but before the judgment was marked, the Court has jurisdiction to impose on the defendant, as a condition precedent to setting aside the judgment, the terms that he shall not bring any action in respect of the marking of said judgment or the execution of the *fi. fa.* issued thereunder, and that he shall pay the costs of the action up to the time of the judgment being marked. *Lorimer v. Lule* (1 Chit. R. 134), followed. GAILEY *v.* CONLAN - - - - **E. IX. 227**

38. —— *Setting aside—Costs of opposition to the motion.*] Where a plaintiff opposed a judgment being set aside which had been marked by default, and the judgment had been marked in consequence of an accidental delay of defendant to file his defence, the plaintiff was refused costs of opposing the motion. LESTER *v.* ROSENGRAVE - - **C. C. VII. 70**

39. —— *Setting aside—Compromise pending.*] The Court will not set aside a judgment which has been marked, on the ground of a compromise pending, when at the time of the marking of it an offer by the defendant to settle had been definitely refused by the plaintiff. RIDDELL *v.* CRAWLEY **[E. I. *M.* 7**

40. —— *Setting aside—Against non-existent company.*] A writ was issued against a company, and service of the summons and plaint was substituted on a person, who admitted himself to be an agent to the so-called company, but after the service of the writ notice was served on the plaintiff that the supposed company was a mere partnership, but judgment was, notwithstanding, marked against the company. The judgment was set aside on the application of the members of the partnership. MUFFENY *v.* COATBRIDGE OIL WORK CO. **[C. P. VII. 203**

41. —— *Setting aside—Affidavit of merits.*] Unless the defendant makes an affidavit of merits the Court will not set aside the judgment, although the plaint never came into his hands, and he knew nothing of the proceedings till after the judgment was marked. (By Fitzgerald, B.) *Held*, on appeal that this order could not be maintained, because the defendant had not been served, directly or indirectly, with the plaint: and that it would be unreasonable to require an affidavit of merits in the case. MARTIN *v.* WILLIAMS **[C. C. II. *M.* 91; Q. B. II. *M.* 242**

42. —— *Setting aside final—Action for work and labour done.*] A final judgment on counts in a writ and summons which were not counts in debt under a contract, but on a *quantum meruit*, was set aside, as the judgment should not under the circumstances be final. REGAN *v.* REGAN **[C. C. IV. *M.* 136**

43. —— *Unliquidated demand—Action for costs—Interlocutory judgment.*] In an action upon the untaxed bill of costs the judgment marked in default of appearance is interlocutory in the first instance. SHORTAL *v.* FARRELL **[Q. B. III. *M.* 694**

PRACTICE—COMMON LAW—JURY.

1. —— *Special—Application for certificate for—Delay.*] An application for a special jury, made at Carlow, in a case heard at Maryborough, was refused, on the ground of delay. (By Whiteside, C.J.) COOTE *v.* CORBETT **[Cir. Cas. VIII. *M.* 449**

2. —— *Under the old system.*] The Court refused to order a jury under the old system when there was no political or religious feeling connected with the case, and when it was not shown that a jury under the old system would secure a fairer trial. BELFAST WATER CO. *v.* GIRDWOOD **[C. C. I. *M.* 661**

3. —— *Under the old system.*] A motion that a jury be struck under the old system was granted, the Sheriff to attend the Master of the Court with the necessary books and documents. BREW *v.* HAREN - - - **C. C. VII. *M.* 343**

PRACTICE—COMMON LAW (Before the Judicature Acts)—MODE OF TRIAL.

1. —— *Municipal election petition—Affidavit.*] The Court has jurisdiction, under 34 & 35 Vic., c. 109, s. 20, to dispense with the *vivâ voce* examination of witnesses upon the hearing of a municipal election petition, and to order the trial to be had before the Court upon affidavits. Where the question involved turns not upon disputed matters of fact, but of law, or where the matters of fact in question can easily be determined upon affidavits—no serious objection appearing to the contrary—the hearing will be ordered to be had before the Court, upon affidavits. GRIFFIN *v.* KIRKER - - **C. P. VII. 15**

2. —— *Trial of action of trespass in Consolidated Nisi Prius Court.*] A motion that an action of trespass should be tried in the Consolidated Nisi Prius Court was refused. ASSOCIATED IRISH MINE CO. *v.* CONNORREE MINING CO. **[C. P. VII. *M.* 206**

PRACTICE—COMMON LAW—MOTION.

1. —— *Moving a motion on circuit—Consent.*] The Judge refused to hear a motion on circuit at Armagh, in an action to be tried at Belfast, where the parties did not consent. (By Morris, C.J.) TAGGART *v.* STEWART **Cir. Cas. X. *M.* 187**

2. —— *Notice of—Irregularity in.*] An impossible day mentioned in a notice of motion is good ground for an objection. TISDAL *v.* HUMPHRIES - - - - **C. C. I. *M.* 64**

PRACTICE—COMMON LAW—NEW TRIAL.

1. —— *Communication with Judge.*] The English practice in motions for new trials, that the motion should stand over until a communication was made to the Judge who tried the case, to ascertain whether he was dissatisfied with the verdict, was adopted. LIVINGSTONE *v.* RODSTONE - **C. P. VII. *M.* 55**

2. —— *Costs of new trial which was granted on the grounds of surprise.*] The Court granted a new trial on the ground that the plaintiff had been surprised, and expressly reserved the question of the costs of the first trial until the second trial should have taken place. On the second trial the plaintiff obtained a verdict. On motion on his behalf for the costs of both trials:—*Held*, that the motion should be granted. GREEN *v.* HANDCOCK - - - - - **C. P. III. *M.* 708**

3. —— *Grounds not included in conditional order—Amendment—Setting aside verdict as unsatisfactory—Contract with betting agent—8 & 9 Vic., c. 109, s. 18.*] Where, on a motion for a new trial, it appears that the real question of fact involved in an action has not been tried, the Court possesses inherent jurisdiction to set aside the verdict as unsatisfactory, although the conditional order has not been taken upon that ground, which may be substituted by amendment. No appeal lies from an order to set aside a verdict as unsatisfactory. *Semble*, that an agent who has been employed to negotiate with a third person an agreement of betting on a horse-race may recover from his principal money paid to the third person on account of a lost bet, although the agreement negotiated were such as, between principals, would be illegal by way of gaming or wagering with 8 & 9 Vic., c. 109, s. 18. NICHOLLS *v.* BUNBURY **[Q. B. X. 56**

4. —— *Misdirection—Evidence.*] The Court refused to order a new trial on the ground of misdirection, when the Judge's direction at the trial was entirely supported by the evidence. MURPHY *v.* M'CORMICK - - - **Q. B. I. *M.* 138**

5. —— *Refusal of Judge to allow amendment.*] At the trial the plaintiff asked leave to amend; the defendant resisted the application because he was not prepared with evidence which the amendment would necessitate. Monahan, C.J., offered to grant the application on the plaintiff paying the costs occasioned by the postponement to procure witnesses. These terms were refused, and the amendment was not made and there was a verdict for the defendant:—*Held*, that the Court would not grant a conditional order for a new trial on the ground that the amendment had not been allowed at the trial. CONOLLY *v.* HAYES - - - - - **C. P. II. *M.* 212**

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PRACTICE—COMMON LAW (Before the Judicature Acts)—NEW TRIAL—*continued.*

6. —— *Restraining proceedings pending appeal—Common Law Procedure Act*, 1856, *ss.* 41, 44.] The Court has no statutable jurisdiction under the Common Law Procedure Act, 1856, to stay a new trial pending an appeal to the Court of Exchequer Chamber, from the order awarding the *venire de novo*. (Whiteside, C.J., *diss.*) But it has an inherent right over its own proceedings, and can regulate them so as to prevent wanton, useless, and unjustifiable litigation, by staying the new trial. Where there appeared to be important issues of fact, which had not been sent to the jury on the first trial, the Court refused to stay the new trial pending the appeal. (Whiteside, C.J., *diss.*) CALLAN *v.* MARUM - - Q. B. V. 90

7. —— *Surprise—Plaintiff not asking to be non-suited.*] In an action for commission, the plaintiff sought to prove the retainer by an alleged agreement, the signature to which was, at the trial, denied by the defendant to be his. This was a surprise on the plaintiff. The jury found for the defendant. The witness to the agreement was then in England, and through illness unable to attend. He made an affidavit to ground a motion for a new trial, stating that the defendant, in his presence, executed the agreement on the day of its date:—*Held*, that a new trial should be granted. GREEN *v.* HANDCOCK [C. P. III. *M.* 425

8. —— *Verdict against weight of evidence.*] A verdict should be set aside on unsatisfactory evidence. (*Diss.*, Whiteside, C.J.) DUTCH *v.* POWER - - - Q. B. I. *M.* 82

—— Evidence of usage of trade - - - I. *M.* 247
See EVIDENCE. 15.

PRACTICE—COMMON LAW—NOTICE OF TRIAL.

1. —— *Liberty to Defendant to proceed*—stet processus—178 *G. O.*] Where the plaintiff in an action served a notice to withdraw the action, which was refused by the defendant, and notice of trial was withdrawn by the plaintiff, and for 18 months no steps were taken, it was held on a motion by the defendant that he had a right to have the question tried. PICKERING *v.* DUNNE - - - - Q. B. I. *M.* 63

2. —— *Service of, when cause not at issue.*] Where a set-off has been pleaded and no replication has been filed, a notice of trial served in a nullity. On motion to set aside a notice of trial, and abstract of issues, served when the cause was not at issue as no replication had been filed to a plea of set-off, the Court refused to allow the notice of trial to stand, and a replication to be filed *nunc pro tunc*. ENNIS *v.* STEWART [C. C. VII. 160

3. —— *Setting aside.*] In an action of ejectment on the title, notice of trial had been served before issue was joined; the trial proceeded on consent, the question now argued being reserved for the full Court: the Court considered the irregularity was waived by the defendant and refused the motion. NICHOLSON *v.* GILLIGAN - - - Q. B. VII. *M.* 218

4. —— *Setting aside.*] Notice of trial was set aside when it appeared that the costs which were ordered to be paid to the defendant of an abortive previous trial had not been paid. GOONAN *v.* HUG - - - Q. B. VII. *M.* 272

5. —— *Setting aside summons to settle issues.*] A summons to settle issues was set aside on the ground that the Court was not satisfied that the service of the issues and notice of trial was not made on the day stated by the plaintiff. BAFTY *v.* DOWLING - - - - Q. B. VII. *M.* 328

6. —— *Setting aside side bar rule.*] The plaintiff had given notice of trial for the Consolidated Sittings, and without withdrawing it, served notice of trial for the *Nisi Prius* after sittings, whereupon the defendant's attorney entered a side bar rule staying proceedings till the costs of the day were paid. The Court refused to set aside this rule. RYAN *v.* LOFTHOUSE - - - C. C. VII. *M.* 636

7. —— *Undertaking to accept service.*] In answer to an application by the plaintiff's solicitor to accept service of a writ of summons and plaint, the defendant's solicitor wrote

PRACTICE—COMMON LAW (Before the Judicature Acts)—NOTICE OF TRIAL—*continued.*

on the 27th October:—"Before I accept service I think it right to say to you that the defendant's residence is in the County of L., and not in the County of S. as in the copy." On the 31st of October an order to amend the writ was obtained and telegraphed to the defendant's solicitor, who wrote on the 2nd November admitting service as of that day. The defendant pleaded on the 16th November, and notice of trial was served on the same day, being one day late for a trial of the ensuing after-sittings. The Court made an order that the notice should be deemed good and sufficient notice of trial for those sittings. BRADY *v.* WHITE [Q. B. V. 198

PRACTICE—COMMON LAW—PARTICULARS.

1. —— *Action by hotel-keeper.*] Particulars were ordered in an action by an hotel-keeper for various goods supplied. NICHOLLS *v.* FARRELL - - C. C. VII. *M.* 608

2. —— *Action by underwriters.*] The Court granted an order for particulars in an action by underwriters against underwriters, when it did not appear that there was any difficulty in supplying them. BLEASE *v.* BEWLEY [C. C. VII. *M.* 653

3. —— *Acts of covin and fraud.*] A motion for particulars of acts of covin and fraud, which the defendant in an action for breach of promise of marriage pleaded were done by the plaintiff to induce her to marry him, was refused. CUSACK *v.* SMITH - - - - - C. P. VII. *M.* 246

4. —— *After plea—Slander.*] Particulars of slander were granted after plea, pleaded by defendant, the plaintiff not appearing to oppose. NOLAN *v.* SHEA Q. B. I. *M.* 404

5. —— *Ejectment for breaches of covenant against sub-letting.*] The Court directed the plaintiff to give particulars specifying the dates of alleged sub-lettings, in an action of ejectment for breach of covenant by sub-letting. DOMVILE *v.* CARR - - - - - - E. VII. *M.* 557

6. —— *Ejectment.*] In an action of ejectment the description in the plaint of the lands was taken from a lease made in 1698. One of the defendants, alleging that she could not make out from the plaint whether the plaintiff claimed any or what part of the lands in her possession, moved that the plaintiff should furnish further particulars. The plaintiff alleged that he could not give any better particulars:—*Held*, that the motion should be refused. KING *v.* ARMSTRONG [C. P. II. *M.* 244

7. —— *Indorsement.*] In an action by the executors of a deceased person against an executor *de son tort*, the summons and plaint contained paragraphs in detinue and trover for certain goods, and no particulars were indorsed. The Court gave leave to indorse them. RYAN *v.* RYAN E. I. *M.* 298

8. —— *Nuisance.*] A motion for particulars of days on which the plaintiff had suffered from the alleged nuisance (pestilential vapours from chemical works) was refused. COLLINS *v.* GOULDING - Q. B. VII. *M.* 230

9. —— *Seed sold.*] A motion for particulars of the kinds of seed sold and the persons injured by the sale of them, was granted in an action for damages for supplying bad seed. BURKE *v.* EDGAR. - - C. C. VII. *M.* 342

10. —— *Set-off—Not part of record—Demurrer.*] The particulars indorsed amounted to a sum less than that claimed by the count pleaded to; on a demurrer to the plea:—*Held*, that for the purpose of arguing the demurrer, the record consisted of the plaint, the plea, and the demurrer thereto; and that the inconsistency, if any, between the plea and the particulars indorsed thereon, should be objected to by motion. SIGSWORTH *v.* FARREL. - - C. P. II. *M.* 168

11. —— *Set-off.*] A motion for particulars of a set-off relied on by the defendant was granted. M'DONNELL *v.* WARD. [Q. B. VII. *M.* 314

12. —— *Slander.*] A motion on notice for particulars of occasions on which the slanderous words were alleged to have

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PRACTICE-COMMON LAW (Before the Judicature Acts)-PARTICULARS-*continued.*

been spoken was granted, it appearing that the preliminary notice requiring particulars had been duly served, and there was no appearance on behalf of the plaintiff. LAWDER *v.* FFRENCH - - - - - **C. P. VII. *M.* 206**

13. —*Slander.*] A motion for particulars of the occasions when the alleged slanderous words were spoken was granted. MOONEY *v.* COLCLOUGH - - - **C. P. VII. *M.* 390**
LAWDER *v.* M'GOVERN - - - **E. VII. *M.* 490**

14. —*Slander.*] Where in an action for slander application was made for particulars as to when the words were spoken, and the plaintiff replied, "as nearly as he could specify them" "about" certain months:—*Held*, on a motion for particulars, that the defendant was entitled to more specific information. BYRNE *v.* DOYLE.
[Q. B. I. *M.* 6

—*Quantum Meruit* - - - - - **I. *M.* 349**
See FRAUDS, STATUTE OF. 3.

—Seduction - - - - - **X. 6**
See SEDUCTION. 4.

PRACTICE—COMMON LAW—PARTIES.

1. —*Adding parties—Amending pleadings.*] In an action of ejectment the Judge in Chamber allowed the pleadings and issues to be amended (without prejudice to the notice of trial served) by the addition of the names of mortgagees as co-plaintiffs:—*Held*, on appeal, that the mortgagees, as having an interest, though puisne to the original plaintiff, were properly added as co-plaintiffs. PERRY *v.* MOORE
[C. P. VII. *M.* 206

2. —*Adding defendants—Plea in abatement.*] In an action for goods sold and delivered the defendant had pleaded and issues had been served by the plaintiff and returned. The defendant now moved to have two others joined as defendants. The Court under the special circumstances gave leave to file a plea in abatement, if the plaintiff refused to add the parties as defendants, but did not consider they had jurisdiction under secs. 84-90 of the Common Law Procedure Act to compel the plaintiff to add defendants. This case not to be cited as an authority that parties might first plead in bar, and then come to the Court for leave to file a plea in abatement. DONEGAN *v.* LYONS - - **C. P. I. *M.* 262**

3. —*Husband and wife co-defendants—Pleading Common Law—Particulars indorsed.*] A summons and plaint, containing ordinary *indebitatus* paragraphs, against a husband and wife, having been demurred to upon the ground, amongst others, that it did not disclose how the husband was liable jointly with his wife, her interest not having been shown, the Court allowed the demurrer. *Semble*, particulars endorsed on a summons and plaint may be regarded on demurrer, but not an account furnished, referred to, and not set out in the particulars. CUMMING *v.* MONTGOMERY - **C. P. VI. 29**

4. —*Motion for leave to take defence.*] The Court refused a motion by parties not served for leave to take defence, where it appeared that the portion for which it was sought to take defence was included in the "instrument sought to be evicted" under sec. 199 of the C. L. P. Act, 1853. MUNSTER BANK *v.* MONSELL - **C. P. VII. *M.* 608**

5. —*Motion for leave to suggest on record names of new trustees.*] A motion for leave to suggest on the record the names of new trustees was granted as of course. JONES *v.* MEREDITH - - - - - **C. C. VII. *M.* 366**
MARK *v.* HEWSON - - - **C. C. VII. *M.* 420**

6. —*Motion for leave to suggest death and to proceed.*] The plaintiff in an action of ejectment was by an award of an arbitrator held to have no title to the relief prayed for; and the defendant subsequently obtained leave to suggest the death of the original defendant, and to proceed. HEGARTY *v.* HEGARTY - - - - **C. P. VII. *M.* 608**

PRACTICE—COMMON LAW (Before the Judicature Acts)-PARTIES-*continued.*

7. —*Motion for leave to defend.*] A motion for leave to defend by a party in possession but not served, was granted. O'FARRELL *v.* LOUGHLEN - - **Q. B. VII. *M.* 302**

8. —*Motion for leave to suggest death of Defendant.*] A motion for leave to enter a suggestion of the death of the defendant was granted. KAVANAGH *v.* BOYLE
[C. C. VII. *M.* 500

9. —*Motion to take writ off file.*] A motion for leave to take a writ off the file when the plaintiff was a minor, and the consent of the next friend had not been obtained, was granted *ex parte*. SIBBALD *v.* INGERS **C. P. VII. *M.* 191**

10. —*Residence—Place of business—Writ.*] The business address of a plaintiff is his proper address on the writ. WRIGHT *v.* BROWN - - - **C. C. I. *M.* 102**

11. —*Satisfaction piece after death of Plaintiff.*] A motion for leave to suggest the death of the plaintiff, and the appointment of his successor, in order to satisfy a judgment, when the plaintiff had died before the satisfaction piece had been signed and entered, was granted. MURRAY *v.* CRAIG
[Q. B. VII. *M.* 177

12. —*Striking out Defendant.*] In an action of contract it appeared that one of the defendants was a minor, and his name was directed to be struck out. GREER *v.* TATTON
[E. VII. *M.* 409

13. —*Striking out the name of one of the Plaintiffs.*] A motion to strike out the name of one of the plaintiffs who had died after interlocutory judgment had been marked, and for liberty to file a suggestion of the death, was granted. BELL *v.* HARMAN - - - - **C. P. VII. *M.* 260**

14. —*Striking out Defendant.*] A motion to strike out a defendant who had died, was granted *ex parte*. ALLIANCE AND CONSUMER'S GAS CO. *v.* MILLER - **C. C. VII. *M.* 378**

—Adding plaintiffs - - - - **VII. 149**
See EJECTMENT ON THE TITLE. 3.

PRACTICE—COMMON LAW—PAYMENT OUT OF COURT.

1. —*Affidavit.*] The Court refused to allow applicants to draw money out of Court without an affidavit, even though the sum was only 10 guineas, and the amount which each was entitled to only 30s. MOSSOP *v.* GLORNEY
[C. C. VII. *M.* 479

2. —*Lodged as security for costs and bail in error.*] A motion by the plaintiff for leave to draw out of Court money lodged as security for costs and as bail in error, was granted. DOUGLAS *v.* BARRETT - - - **Q. B. VII. *M.* 480**

3. —*Money lodged by Defendant with a view to new trial motion, which was granted.*] At the hearing of an action, the plaintiff recovered judgment, and the defendant obtained a respite of execution, with a view to moving for a new trial by lodging a sum of money in Court. A new trial being ordered, the defendant obtained leave to draw the money out. COSGRAVE *v.* TRADE AUXILIARY CO. **C. C. VIII. *M.* 221**

4. —*Motion that money deposited in lieu of bail be paid to plaintiff.*] Money deposited in lieu of bail and for costs, was ordered to be paid to the plaintiff in respect of his claim. THOMPSON *v.* HOLDEN - - - **C. P. VII. *M.* 447**

5. —*Motion to substitute receipt in full for receipt in part.*] The plaintiff had drawn out of Court, in part discharge of his claim, a sum of money lodged by the defendant, and had given a receipt for it. A motion to substitute a receipt in full for this receipt, was granted, the plaintiff to pay all costs incurred by reason of the substitution. ANON.
[E. VII. *M.* 368

6. —*Payment by Master—Power of attorney—Dissolution of partnership.*] Where a defendant, in an action, lodged money in Court, and a power of attorney was forwarded to a firm who acted as shipping agents for the plaintiff, who was a

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PRACTICE—COMMON LAW (Before the Judicature Acts)—PAYMENT OUT OF COURT—*continued.*

mariner, to draw the money out, the partnership was afterwards dissolved, and a member of the late firm came to the office of the Court, accompanied by the attorney for the plaintiff, and drew out the money, giving a receipt, signed in his own name, and his signature was identified by the attorney for the plaintiff, and the money was paid over to him by the Master of the Court. A motion to make the Master pay to the plaintiff the money so paid over, was refused. SIEBOLD *v.* CONOLLY - - - - - - C. P. VII. 198

7. —— *Wife of plaintiff.*] The plaintiff, who was entitled to draw out of Court money lodged as security for costs, was out of the country; the Court directed it to be paid to his wife and agent. O'BRIEN *v.* CASEY - E. VII. *M.* 489

PRACTICE—COMMON LAW—PLEADING.

1. —— *Additional plea after previous trial—Terms—Costs.*] The defendant to an action of trespass pleaded a traverse of the committing of the acts, and pleas of prescription. At the trial the jury were discharged without agreeing to a verdict. The defendant moved for leave to amend the record by adding a traverse to the property by the plaintiff:—*Held*, that he, if he elected to amend, must pay the costs of the former trial. MITCHELL *v.* ROGERS - E. III. *M.* 136

2. —— *Ambiguity—Party-wall.*] The summons and plaint averred that the defendant wrongfully pulled down large portions of a party-wall, which separated the adjoining houses of the plaintiffs and the defendant, and so weakened the party-wall that plaintiffs' house was injured:—*Held*, embarrassing, as it was not shown whether the party-wall was held in common or in equal moities, nor in what right the plaintiffs complained of the injury occasioned by pulling down portions of it. *Per* Monahan, C.J.: It is always more convenient that a plaintiff should select and state his causes of action fully, even though it lead to increasing the number of counts, rather than that a defendant should have to multiply his defences or plead specially to a more limited number of counts. INGRAM *v.* MOONEY - C. P. V. 120

3. —— *Ambiguous count.*] An ambiguous count was ordered to be amended or struck out. BELL *v.* HENDERSON [E. VII. *M.* 287

4. —— *Amendment.*] After defence filed, leave was given to add a count to the plaint, and to increase the sum claimed. CLORAN *v.* COGAN - - - C. P. II. *M.* 212

5. —— *Constabulary—Venue.*] A defence that certain acts were done in pursuance of the powers of the constabulary, and that the action should be tried in the venue where the acts were done, was demurred to:—*Held*, that the demurrer should be allowed, as (1) the venue of the Common Law Procedure Act is transitory, and (2) a search warrant should be given to the constable who made the information under 1 & 2 Wm. IV., c. 55, s. 17. MATTHEW *v.* TUTE [E. C. I. *M.* 646

6. —— *Defence in words of general issue.*] To a plaint that the defendant promised to pay to the plaintiff, etc., the defendant pleaded that he "did not promise as alleged":—*Held*, that the defence should be amended. M'GLOIN *v.* BELL [C. P. I. *M.* 794

7. —— *Defence neither justifying nor denying the acts complained of.*] A motion to set aside a defence which neither justified nor denied the acts complained of, was refused. ATKINSON *v.* MILLS - - - C. C. VII. *M.* 378

8. —— *Defendant "did not promise."*] The summons and plaint averred that the defendant "promised the plaintiffs that he would, during his tenancy, preserve, uphold, and keep in repair the demised premises." Defence, "that the defendant did not promise as alleged":—*Held*, a good defence. LAMB *v.* O'GORMAN - - - Q. B. VI. 28

9. —— *Duplicity.*] In an action for maliciously and without reasonable and probable cause obtaining a judge's special order to hold the plaintiff to bail in action by falsely representing that he was about to leave Ireland, and obtaining a writ of *capias* (under which he was arrested, but discharged by the Court with costs against the defendants) the defendants admitted that they brought the action and procured the order, but denied that they did so maliciously and without reasonable and probable cause, and averred that the said affidavit was not false nor did it contain any false representations as alleged. The Court refused to set aside the plea for duplicity. SEYMOUR *v.* BROOKS - - - - C. P. I. *M.* 192

PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

10. —— *Embarrassing.*] In a summons and plaint for slander of the plaintiff in relation to his business as land agent, cess collector, and otherwise, the Court (*diss.* Fitzgerald, J.) ordered the words "and otherwise" to be struck out as embarrassing. RUTLEDGE *v.* BLAKE - - - Q. B. I. *M.* 349

11. —— *Embarrassing—Duplicity.*] A motion was made to set aside a defence as embarrassing and traversing more than one material fact, and asking double. The second count of the summons and plaint complained that the defendant employed F. to drive a waggon, and that F. drove it negligently and inflicted injuries upon the plaintiff's husband causing his death. To this count the defendant pleaded that he did not do or commit the several acts. The Court was of opinion that this plea might prove embarrassing at the trial, as it might put the plaintiff upon proof that F. was a servant of the defendant, but they allowed the defendant to amend by traversing negligence. SMITH *v.* M'CORMACK - C. P. I. *M.* 209

12. —— *Embarrassing—Uncertainty.*] In an action to recover damages for the non-fulfilment of a contract to sell certain premises the defendant pleaded that he held them under a lease which contained a clause against alienation, of which both parties to the action were aware, and that the plaintiff purchased "subject to the contingency" that the landlord would refuse to consent to the sale; the Court set aside the defence as embarrassing. CRAIG *v.* BEATTIE [Q. B. I. *M.* 209

13. —— *Embarrassing summons and plaint—Uncertainty—Pleading evidence.*] The summons and plaint alleged: 1st, that the defendant, without reasonable cause, and well knowing that plaintiff resided in Ireland and not in England, procured him to be adjudicated a bankrupt in England; that plaintiff appealed, and that thereupon the adjudication was annulled; 2nd, that the defendant, knowing that plaintiff was not within the jurisdiction of the London Bankruptcy Court, without probable cause made divers affidavits, took divers proceedings, and obtained divers orders, and filed a petition in said Court, for the purpose of inducing the Court to believe that plaintiff was within its jurisdiction, and to obtain an adjudication in bankruptcy against him; that he was adjudicated bankrupt, and that the adjudication was afterwards duly annulled. On motion to set aside these counts as embarrassing, the Court ordered same to be amended by expunging the averments of defendant's knowledge of plaintiff's residence, and of his being outside the said jurisdiction, as also that of defendant's purpose to induce a contrary belief, but refused to direct a more specific allegation respecting the orders, etc., in the said Court referred to. O'LOGHLEN *v.* HARRIS - C. P. VI. 28

14. —— *Embarrassing summons and plaint—Setting aside—Writ not filed—C. L. P. Act*, 1853, *ss.* 37, 83.] An application to set aside a summons and plaint before the writ is filed is not premature. A count alleging that the plaintiff was a conacre tenant to the defendant, and that the defendant undertook to protect the plaintiff's crop during the tenancy, yet that the defendant, not regarding his duty in that behalf, broke and entered the plaintiff's land, and destroyed the crop by allowing cattle to trespass on same, contrary to his duty and agreement, will be set aside as embarrassing. BOLGER *v.* WRIGHT [C. P. IX. 180

15. —— *Embarrassing summons and plaint—Goods "supplied."*] A summons and plaint which alleged that the defendant was indebted to the plaintiff for goods "supplied," was held good on demurrer. COLE *v.* JOY - E. X. *M.* 354

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PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING - *continued.*

16. —— *Embarrassing plea—Action against steward of race-course.*] Action against the steward of a racecourse for erroneously pointing out the course to the rider of the plaintiff's horse, causing the horse to be disqualified. Defence: that it was not by the defendant's negligence, but that the plaintiff was otherwise disqualified and disentitled to the stakes. The defence was ordered to be amended. MANSERGH *v.* COPPINGER [Q. B. IV. *M.* 180

17. —— *Embarrassing plea—Action on policy of assurance.*] In 1832, a life policy was effected with the European Life Assurance and Annuity Co., which assigned all its business, &c., to The People's Provident Assurance Society, the name of which was afterwards changed by statute, into the European Assurance Society. In an action on the policy the defendant was described on the plaint as a director of the European Life Assurance and Annuity Co. Service on the defendant was substituted at the London office of the company; but cause was not shown against the order, nor was the plaintiff informed of the misdescription. The defence stated the changes which had been made in the name of the company, and averred that the defendant "was not at the time of the commencement of the action, nor has he since been, nor is he now, a director of the European Life Assurance Company." On motion:—*Held*, that this was an evasive and embarrassing defence, which should be set aside with costs. CODD *v.* SMITH - - Q. B. II. *M.* 211

18. —— *Embarrassing plea—Bill of exchange—Stock broking—Wager*—8 & 9 *Vic., c.* 109.] A defence to an action on a bill of exchange where the defence stated that there was no consideration, inasmuch as the amount sued for was in respect of differences on certain stock exchange transactions, and contained neither expressly nor impliedly an averment that the differences were not paid, was set aside as embarrassing. MURPHY *v.* MARTIN - - - - - E. XI. 47

19. —— *Embarrassing plea—Defence confessing part of cause of action and not bringing in money.*] A motion to set aside a defence as embarrassing as the defence, while purporting to be a confession and avoidance of the action, only confessed and avoided a portion thereof, and neither traversed action on a promissory note, nor confessed, nor avoided the residue:—*Held*, that the motion should be refused. DOUGAN *v.* COWDEN [C. P. IV. *M.* 336

20. —— *Embarrassing plea—Contributory negligence—Ambiguity.*] In an action against the defendant for having, by negligently driving, killed a dog, the property of the plaintiff, the defendant pleaded a defence of contributory negligence, containing an averment that, by his negligence in the control and care of the dog, the plaintiff had directly contributed to the "misfortune" alleged. On a motion that the plea should be set aside as embarrassing:—*Held*, that the term "misfortune" was not ambiguous, and that the plea was not embarrassing. *Weston* v. *Hunt* (VIII. 115) discussed. SMITH *v.* M'AULEY - - - - - - - C. P. IX. 6

21. —— *Embarrassing plea—Confessing part of cause of action without bringing in money.*] A motion was made to set aside a plea, as embarrassing, which confessed part of the cause of action, and did not aver the bringing into Court of the money:—*Held*, that it should be refused. RUTLEDGE *v.* DAVIS [C. P. IV. *M.* 336

22. —— *Embarrassing plea—Confession of part of claim without payment into Court.*] In an action for three half-yearly gales of rent, the defence confessed the cause of action and admitted the plaintiff's claim as to the amount of one gale, but did not bring the money into Court. As to the two other gales, he pleaded an assignment of the premises before any part of the money became due. On a motion to set aside the defence as embarrassing and irregular:—*Held*, that the motion should be refused. TUDOR *v.* FURLONG - Q. B. II. *M.* 299

23. —— *Embarrassing plea—Pleading duty in action of contract.*] A defence to an action of contract averred that it was the duty of the plaintiff to provide certain ships, the non-provision of which caused the damage which was complained of. An application to set aside the defence as embarrassing was refused. MALCOMSON *v.* BIDDER - Q. B. VII. *M.* 313

PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

24. —— *Embarrassing plea—Motion to set aside—Flooding lands.*] A defence to an action for flooding land averred, amongst other things, that the injuries complained of resulted, not from fresh water, but from the sea:—*Held*, that this was unnecessary and therefore should be omitted. BURKE *v.* BURKE - - - - - C. C. VII. *M.* 343

25. —— *Embarrassing plea—Duplicity—Action of covenant—Traverse of making of covenant.*] To an action for breach of covenant to pay a sum of money, it is an embarrassing plea "that the defendant did not make the covenant as alleged." CONNELL *v.* DILLON - - - - - C. C. VIII. 115

26. —— *Embarrassing plea—Setting aside—Rent.*] A defence, where it did not appear how the rent referred to had been paid, or how it was not in arrear, was set aside as embarrassing and frivolous. HAMILTON *v.* DUFFY [Q. B. VII. *M.* 479

27. —— *Embarrassing plea—Railway company—Injury to passengers—Contract and tort.*] Action for negligence by railway carrier:—*Held*, that a statement for a contract to carry safely and securely was something more than a matter of inducement and was embarrassing in a count in tort. SHEPPARD *v.* GREAT S. AND W. RAILWAY CO. - C. C. V. 52

28. —— *Embarrassing plea—Principal and surety—Representations as to course of business—Equitable plea.*] Action against a surety on a bond conditioned to secure the due performance of his duty by a clerk. The defendant pleaded on equitable grounds a defence which might be a defence—that he was induced by false representations to execute the bond; *or* that the representations amounted to a collateral condition, modifying the bond; *or* that the defendant executed it as surety for one in a course of employment which was afterward changed; and the risk increased:—*Held*, that the defence should be set aside as embarrassing. STEWART *v.* ROBINSON - - - - - Q. B. III. *M.* 22

29. —— *Embarrassing plea—Trespass—Conversion.*] Trespass:—plea—that the defendant did not commit all or any of the trespasses alleged. Conversion:—plea—that the defendant did not convert the property of the plaintiff to his own use as alleged:—*Held*, that both pleas should be set aside as embarrassing. STEVENSON *v.* LAWLOR - E. II. *M.* 137

30. —— *Embarrassing—"Black list."*] A count in a summons and plaint for libel averring that judgment had been marked against the plaintiff whereby special damage was obtained, was held to be one for false representation and not embarrassing. A count averring a false publication by printing matter complained of in the Black List (setting out the matter *seriatim*), and special damage was held to be one for false representation and not embarrassing. A count averring that defendant had sent out the Black List containing the matters complained of was held to be embarrassing. JONES *v.* M'GOVERN - - - Q. B. I. *M.* 25

31. —— *Embarrassing summons and plaint—Duplicity—Mixing tort and contract—Two causes of action in one count.*] A count in a summons and plaint averred that the defendant was tenant to the plaintiff on the terms that the defendant should keep the premises in tenantable order and repair and whitewash them once a year, yet the defendant did not keep them in tenantable order and repair or whitewash them once a year, and did allow gates and walls on the premises to be removed:—*Held*, double and embarrassing, as including two distinct causes of action. KIRWAN *v.* LYDON [C. C. X. 65

32. —— *Extension of time for pleading.*] "A week's further time to plead" in an order extending the time for pleading, means a week in addition to whatever part of the regular time for pleading remains unexpired at the date of the order. BRADY *v.* PICKERING - - - C. P. II. *M.* 196

33. —— *False imprisonment and malicious prosecution.*] A very long pleading in an action for false imprisonment and malicious prosecution which stated particularly the circum-

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PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

stances under which the alleged acts took place, was held to be not prolix or embarrassing. CALLAGHAN *v.* O'SULLIVAN [C. P. I. *M.* 713

34. —— *Filing* retraxit *after service of notice of trial.*] A *retraxit* cannot be filed after notice of trial served, nor can it be filed without leave of the Court. BERGIN *v.* WHITE [Q. B. IV. *M.* 509

35. —— *I O U—Parol agreement.*] To a plaint that the defendant was indebted to the plaintiff in a sum, &c., for money payable by the defendant to the plaintiff for money due for an I O U the defendant pleaded on equitable grounds, stating that the money was not to be recoverable for 18 months on the fulfilment of certain conditions by the defendant (which were fulfilled) and that the 18 months had not expired. To this defence the plaintiff demurred. *Held*, that the plea was bad and that the plaint also was bad, but not on a general demurrer, and as the defendant had pleaded over instead of moving to set aside the plaint, the plaintiff was entitled to succeed on the demurrer. HILL *v.* BALFE [E. I. *M.* 156

36. —— *Leave to reply—Notice.*] Where a replication would raise serious questions, leave to reply should be on notice. M'SWEENY *v.* AHERN - - - C. P. I. *M.* 675

37. —— *Liberty to withdraw defences—Delay—Costs.*] On a motion for liberty to withdraw defences, which was not to be moved if a consent to that effect was signed by the plaintiff (which he refused to do), the Court granted the motion, giving the plaintiff her costs. RIORDAN *v.* LEADER [C. C. I. *M.* 119

38. —— *Motion for leave to plead double matter—Assault and imprisonment.*] A motion for leave for the defendant to plead double matter, in an action against a stipendiary magistrate for assault and imprisonment, was granted. REA *v.* ORME - - - - C. C. VII. *M.* 526

39. —— *Motion for leave to reply and new assign.*] A motion for leave to reply and new assign was granted, with liberty to the defendant to plead to such new assignment; the plaintiff to amend the record, and pay the costs of the motion. BREW *v.* HAREN - C. C. VII. *M.* 379

40. —— *Motion for leave to reply.*] The plaintiff applied for leave to reply, but the Court refused it, giving him, however, leave to amend the summons and plaint. M'CABE *v.* NORFOLK FARMERS' LIVE STOCK INSURANCE CO. [C. P. VII. *M.* 542

41. —— *Motion for leave to plead several defences.*] A motion for leave to plead several defences to an action for trespass on the seashore and carrying away seaweed was granted, the defences being traverses of the acts and the plaintiff's property, and pleas of prescriptive right and right by grant. M'DOWELL *v.* COYLE; M'DOWELL *v.* OAKS [C. C. VII. *M.* 342

42. —— *Motion for liberty to plead* puis darrein continuance.] The Court granted a motion for liberty to the defendant to plead, by way of defence, *puis darrein continuance*, a reference by the plaintiff and defendant of the matters in dispute to arbitration, and the fact that an award had been made thereon. MAGEE *v.* M'SLANE - C. C. VII. *M.* 408

43. —— *Motion to plead replications—Notice.*] A motion to plead, several replications must be on notice; and where it is sought to reply new matter, the motion must be grounded on an affidavit. BENJAMIN *v.* SAULEZ - - C. P. VI. 57

44. —— *Motion for leave to withdraw plea.*] A motion for leave to withdraw a plea, traversing the plaintiff's property in a horse, wrongfully converted to the defendant's use, and to lodge a sum of money for the wrongful conversion, was granted. CALLAN *v.* THOMPSON - - - C. P. VII. *M.* 218

PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

45. —— *Motion to settle issues.*] An action was brought for breach of contract in the non-delivery of oysters, and the delivery of inferior ones. A motion to settle issues was resisted, on the ground that, although a set-off had been pleaded, no replication was filed:—*Held*, that a replication should be filed. SOUTH-EAST OYSTER CO. *v.* GIBBONS [E. VII. *M.* 314

46. —— *Motion to compel Defendant to plead and take short notice of trial.*] A motion to compel the defendant to plead and take short notice of trial, was refused when there had been delay in making absolute the conditional order for substitution of service. LANCASHIRE *v.* BEDFORD C. P. VII. *M.* 480

47. —— *Motion to compel Defendants to file defence pursuant to attorney's undertaking.*] A motion to compel the defendants to file a defence, pursuant to the undertaking of their attorney, was granted. STEPHENS *v.* MUSPRATT Q. B. VII. *M.* 568

48. —— *New assignment—Breach of promise of marriage.*] In an action for breach of promise of marriage, the first count of the plaint alleged the promise to marry within a reasonable time, which had elapsed, and the second, on a day certain, which had elapsed. To the second of these counts three defences had been filed—first, a traverse of the agreement; secondly, a recision of the agreement; and, thirdly, a plea of the Statute of Limitations. The plaintiff moved for leave to file a new assignment to the third of the defences, "That the plaintiff sued, not for the cause of action therein admitted, but for and in respect of an agreement between plaintiff and defendant to marry one another upon a day within six years, which had now elapsed; and he sought to traverse and take issue upon that third defence." The motion was granted. CANNON *v.* PHILLIPS - - - C. C. VII. *M.* 176

49. —— *New assignment—Breach of promise of marriage.*] Leave to new assign was granted in an action for damages for breach of promise of marriage, in which correspondence had been produced in Court showing a recision of the promise, upon the terms of the plaintiff stating in writing that the promise had been made since the letters were written. SHEEHY *v.* O'LEARY - - - C. P. VII. *M.* 329

50. —— *New assignment—Replication—Taking issue—Practice.*] Where the plaintiff asked leave to new assign, he was allowed to do so by way of replication and taking issue. TRACY *v.* CRUICE - - - E. I. *M.* 648

51. —— *New assignment—Right to take seaweed.*] After a new trial in an action, which involved the right to take seaweed, had been granted, the plaintiff was given liberty to new assign that the trespasses were committed beyond a certain right of way claimed by the defendant; and subsequently the defendant obtained leave to plead to the new assignment. BREW *v.* HAREN (HARVEY) [E. VII. *M.* 330; C. C. VII. *M.* 342

52. —— *New assignment—Trespass—Justice of the Peace.*] In an action for trespass by K., against T. and M., the summons and plaint stated that the defendants assaulted and beat the plaintiff, and gave her into custody and caused her to be imprisoned. T. pleaded a denial of the acts, and further that the alleged trespass was committed by him as a Justice of the Peace, and took place more than six months before the commencement of the action. M. pleaded a traverse of the acts. The issues were—(1) Had the defendant committed the trespass? (2) Was the trespass by T. in execution of his office as Justice of the Peace? At the trial it appeared that M., the bailiff of T., by his directions went to the plaintiff's house, and there was a struggle in which M. beat her, and she was brought before T., who, as a magistrate, committed her. The Judge told the jury to leave out of consideration everything that happened after the assault by M.; if they believed the assault took place they should find for the plaintiff. Counsel for T. asked the Judge to direct that if the jury found that T. had acted as a magistrate, the plaintiff

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PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

not having new assigned, they should find for T. The jury found for the plaintiff:—*Held*, that a new assignment would have been improper. KEANEY *v.* TOTTENHAM [E. C. I. *M.* 514

53. —— *Order of Master of Chancery in action at law.*] An order of a Master in Chancery made in a matter over which he has jurisdiction is a good defence to an action at law brought in regard to the same matter. ANDERSON *v.* LAMB [Ch. A. VII. 146

54. —— *Pleading several matters.*] A motion for leave to plead several matters in an action of slander was granted CAMERON *v.* M'FARLANE - - C. C. VII. *M.* 468

55. —— *Pleading several defences without leave.*] A plea of payment, and one of set-off to a part of the plaintiff's demand, may be pleaded without leave of the Court. HOARE *v.* STAFFORD - - - - - - C. C. IV. *M.* 390

56. —— *Pleading double matter without leave.*] On a motion to set aside a defence which pleaded double matter without leave, the Court ordered it to be amended, and in default of amendment that the plaintiff should mark judgment. PERRIN *v.* ALLEN. - - - C. C. VII. *M.* 420

57. —— *Replevin—Summons and plaint—Return of goods.*] A writ of replevin will not be set aside because the summons and plaint on which it was founded does not pray a return of the goods. GIBBONS *v.* M'EVILLY - C. P. I. *M.* 227

58. —— *Scienter—Negligence.*] The summons and plaint averred that the defendant was possessed of a vicious horse knowing it to be vicious, and knowing that by reason of its viciousness it could not be ridden along a public highway without great danger; and the defendant negligently, by his servant, rode the said horse, whereby the horse kicked one M. R.:—*Held*, bad for duplicity, as there were therein contained two causes of action, namely—the riding of a vicious horse knowing it to be vicious, and negligence. REDMOND *v.* CLARKE - - - - Q. B. IV. *M.* 475

59. —— *Setting aside defence—Filed in person and without address of defendant.*] A motion to set aside a defence, which was filed by the defendant in person, and did not contain any address in Dublin, was granted. M'NALLY *v.* FENNEL - - - C. P. VII. *M.* 206 and 469

60. —— *Setting aside special defence.*] A special defence, which did not aver that the time for which credit had been given had elapsed, was ordered to be amended. NORTH BRITISH OIL CO. *v.* LEESON - C. C. VII. *M.* 343

61. —— *Setting aside defence.*] A defence, filed by a person who had not been served with the writ, and who had not obtained the leave of the Court to file it, was set aside. KEELY *v.* D'ARCY - - - - - Q. B. VII. *M.* 408

62. —— *Setting aside defence.*] In an action under the Summary Procedure on Bills of Exchange Act, leave to defend was given upon the terms of the defendant bringing money into Court; this he failed to do, though he filed defences:—*Held*, that if the defendant failed to bring the money into Court by a day named, the defence should be set aside, and the plaintiff should be at liberty to mark final judgment COSTELLO *v.* READ - - C. P. VII. *M.* 329

63. —— *Setting aside defences and marking judgment.*] A motion to set aside defences and for liberty to mark judgment was granted when the defence to the first count had not endorsed thereon the particulars of payment required by the statute, and that to the second count amounted to the general issue. BEGGS *v.* ACHESON - - Q. B. VII. *M.* 177

64. —— *Setting aside defence.*] The Court set aside a defence which was filed in the name of Margaret Bradshaw instead of John Bradshaw, and refused to give liberty to amend. O'BRIEN *v.* BRADSHAW - - C. C. VII. *M.* 608

PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

65. —— *Setting aside defence.*] In an action for a nuisance, caused by smoke, vapour, and gas from the defendant's mill, the defendants pleaded that they had for the full period of twenty years exercised the right to carry on their trade on their premises. The Court refused to set aside the defence, but gave leave to reply and demur. SHERLOCK *v.* DOLLARD [Q. B. VI. 68

66. —— *Setting aside defence amounting to the general issue.*] A defence which amounted to the general issue was set aside LYNCH *v.* BRADFORD - - - C. C. VII *M.* 400

67. —— *Setting aside defence—Landlord and tenant.*] The defendant obtained leave to take defence, and filed a defence that he held three acres of the land in the plaint mentioned "as tenant." A motion to set it aside was granted, the defendant being ordered to substitute an averment that he was in possession of the said three acres. TENISON *v.* CANTWELL [C. C. VII. *M.* 367

68. —— *Setting aside demurrer.*] A demurrer which was not set down within the proper time was set aside. SLEVIN *v.* MANDERS - - - - - E. I. *M.* 647

69. —— *Setting aside demurrer as frivolous.*] When a clerical error makes a plea demurrable, the plaintiff should not demur, but should require the defendant to amend. If the plaintiffs omit to do so, the demurrer will be set aside. BLAKE *v.* FARRELL - - - - C. C. II. *M.* 713

70. —— *Setting aside notice of trial—Liberty to rejoin.*] In an action against an insurance company the plaintiff relied upon the conditions indorsed on the policy; after notice of trial was served the defendant applied to the Judge on Circuit to set aside the notice of trial and for leave to rejoin, relying on a notice at the foot of the conditions. This was refused, the Judge stating that he did not consider such a notice a condition. (By Whiteside, C.J.) M'CABE *v.* NORWICH FARMERS' LIVE STOCK INSURANCE CO. [Cir. Cas. VII. *M.* 400

71. —— *Setting aside replication.*] In an action for trespass and conversion, the defendant pleaded justification under a judgment and execution, to which the plaintiff replied that the judgment and execution were after the defendant had been paid and contrary to good faith; a motion to set aside the replication, as having been filed without order of the Court, and because the term "contrary to good faith" was vague and did not raise any question of fact for the jury, was refused. LANCASHIRE *v.* BEDFORD - C. P. VII. *M.* 246

72. —— *Setting aside summons and plaint.*] A writ of summons and plaint was set aside where the plaintiff was a minor, and no consent to act as his next friend had been filed. ALI BEN MOHAMED *v.* MONTAGU - Q. B. VII. *M.* 480

73. —— *Setting aside summons and plaint—Absence of indorsement of particulars.*] A summons and plaint, in which particulars were not indorsed, was set aside with costs. RYAN *v.* RYAN - - - - - C. C. VII. *M.* 429

74. —— *Setting aside summons and plaint—Action by administrator—Ambiguity.*] Where a summons and plaint was so framed that it was uncertain whether the plaintiff was suing as administrator or in his personal capacity, and no particulars were indorsed as to a liquidated claim, the Court ordered the writ to be set aside. PRENDERGAST *v.* CODY - E. IX. 7

75. —— *Setting aside summons and plaint—Uncertainty.*] A writ of summons and plaint which was so framed as to make it uncertain whether the action was in contract or in tort, was directed to be set aside or amended. HALL *v.* MARTIN [C. P. VII. *M.* 302

76. —— *Setting aside a traverse to an averment not made.*] An under-tenant, served with a writ in an action of ejectment, filed a defence traversing the tenancy between him and the plaintiff, which had not been averred in the summons and plaint. A motion to set it aside was granted, with liberty to the under-tenant to amend. STAFFORD *v.* VYSE [C. C. VII. *M.* 378

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PRACTICE—COMMON LAW (Before the Judicature Acts)—PLEADING—*continued.*

77. —— *Several defences—When unnecessary—Payment into Court of part of the demand—Pleading to residue.*] To a plaint for work, care, and attendance and medicine, a defence was put in averring that all the work, &c., was of the value of £35, and that save and except work, &c., to the value of £35, no work, &c., was done, and stating the bringing into Court of £35, and pleading *plene administravit* except to the value of £35:—*Held*, that the plead was good, as it divided the cause of action into two parts. RYAN *v.* ROUGHAN C. P. IV. *M.* 335

78. —— *Striking out pleadings—Defendant pleading in person—Residence—Fictitious statement.*] The defendant, in person, pleaded an irregular defence, giving as his residence the address stated on the plaint. The plaintiff, finding he did not reside there, obtained leave to proceed by posting on the premises the order and notice of motion to set aside the defence. The posting having been completed:—*Held*, that the defence should be set aside. RICHEY *v.* CRAUFORD - E. II. *M.* 353

79. —— *Striking out pleadings—Dilatory plea—After extension of time to plead.*] A. commenced an action against B., and entered a rule to discontinue on the 4th of January, and he issued a writ for the same cause of action against the same defendant on the 7th of January. The costs of the first action were not paid till the 25th of January. The defendant subsequently twice applied for and obtained extensions of time to plead, and finally filed a defence, alleging that at the time of issuing the second writ the former suit was pending. This plea was set aside on the ground that the Court, when the extension of time to plead was granted, should have been informed of the intention to plead a dilatory plea. MURPHY *v.* RYAN - - - - - - C. C. I. *M.* 702

80. —— *Time for pleading extended—Defendant seeking to file plea, and Plaintiff seeking to mark judgment.*] The defendant had obtained an extension of time for pleading, and on the morning after its expiration his solicitor, bringing to the office a plea of payment into Court, met there the plaintiff's solicitor seeking to mark judgment:—*Held*, that the true construction of sec. 39 of the Common Law Procedure Act, 1853, is that up to the moment of marking judgment the officer has a right to receive a plea, even though the time has been extended, as the effect of the extension of time is to put the party in the same position as he was in by the section; and that judgment, which had been marked, was set aside, each party to pay their own costs. ROBINSON *v.* WOODROFFE [C. C. IV. *M.* 181

81. —— *What may be pleaded.*] Inferences, but not evidence, may be pleaded. MURPHY *v.* HALPIN [E. VII. *M.* 585

—— Damages—Negligence - - - I. *M.* 247
See DAMAGES. 1.

—— Distress for rent—9 & 10 Vic., c. 111 - I. *M.* 504
See LANDLORD AND TENANT—DISTRESS. 4.

—— Duplicity—Fraudulent representation VIII. 184
See FALSE REPRESENTATION. 1.

—— False imprisonment.
See FALSE IMPRISONMENT. 1, 3, 4.

—— False representation—Amendment - I. *M.* 660
See FALSE REPRESENTATION. 2.

—— Papal Rescript—Public policy - - VII. 100
See ROMAN CATHOLIC CLERGYMAN.

—— Replication—Foreign judgment—Supplying defects in plea [I. *M.* 676
See FOREIGN JUDGMENT.

—— Seduction - - - - - VII. 150
See SEDUCTION. 5.

—— Slander—Privileged communication - I. *M.* 138
See DEFAMATION—PRIVILEGE. 9.

—— Trover and Detinue—Amendment - VI. 10
See REMITTING ACTION TO CIVIL BILL COURT. 143.

PRACTICE — COMMON LAW (Before the Judicature Acts)—POSTPONEMENT OF TRIAL.

1. —— *Absence of witness.*] A trial was postponed through the absence of two material witnesses on behalf of the defendant, upon the terms of his lodging £200 in Court, and paying all the costs incurred by reason of the postponement. BIDDULPH *v.* M'VEIGH - - - C. P. VII. *M.* 330

2. —— *Absence of Defendant.*] A motion to postpone a trial from one Assizes to the next, on the ground of the absence in London of the defendant, was refused. BRYAN *v.* ARMSTRONG - - - C. P. VII. *M.* 390

3. —— *Illness of witness.*] The trial was postponed on the ground of the illness of a material witness, on the terms of the plaintiff paying the costs of the day. BROWNE *v.* PHELAN - - - - - C. P. VII. *M.* 519

4. —— *Illness of Defendant.*] A motion to postpone the trial on the ground of the defendant's illness was granted, on the terms of his lodging £25 in Court within two days. JACKSON *v.* SOMERVILLE - - E. VII. *M.* 355

PRACTICE — COMMON LAW — REFERENCE TO MASTER—*Compulsory reference—Order to make up report.*] On a compulsory reference to the Master of the Court under the 6th section of the Common Law Procedure Act, 1856, to take an account between the parties on foot of the defendant's plea of set-off, and to strike a balance; and that the plaintiff should be at liberty to enter judgment for the balance (if any) that should appear to be due to him on the taking of such account, the officer found a balance due to the plaintiff, and declared his intention to grant a certificate to enable the plaintiff to mark judgment, and refused to order the party having carriage of the proceedings to make a report:—*Held*, that the defendant was entitled to have the report made up, in order that the proceedings before the Master should be reviewed. DE FREYNE *v.* FRENCH [E. I. *M.* 280

PRACTICE — COMMON LAW — RENEWAL OF WRIT—*Summons and plaint.*] Leave was given to renew a writ when otherwise the Statute of Limitations would run; and the defendant was keeping out of the jurisdiction. ROSENTHAL *v.* DE LUSI - - - C. C. VII. *M.* 508

PRACTICE — COMMON LAW — RULE TO PROCEED.

1. —— A motion to make absolute a conditional order for leave to proceed with an action which had been about to be compromised, but the death of one of the parties and other causes prevented it, was granted, with liberty to proceed against the surviving defendants. IMPERIAL MERCANTILE CREDIT ASSOCIATION *v.* NUGENT - C. P. VII. *M.* 329

2. —— Leave to proceed in an action where more than a year and a day had elapsed since the service and filing of the summons and plaint, was granted, by conditional order. ANGLIN *v.* O'CONNOR - - - E. VII. *M.* 409
HAYDEN *v.* KIRKPATRICK - - - E. VII. *M.* 460

3. —— Leave to proceed in an action where more than two years had elapsed from the filing of the defence, was granted, as of course, by absolute order. NELSON *v.* DOYLE [C. P. VII. *M.* 460

4. —— A motion for leave to proceed in an action in which nothing had been done for three years, when the venue was changed by consent, was granted. ALLEN *v.* M'MENAMIN [Q. B. VII. *M.* 565

5. —— *After a year and a day from filing summons and plaint*—178 *G. O.*, 1854.] A year and a day elapsed after filing of the plaint, and the defendant did not file any defence. The Court refused to set aside a side bar rule to proceed, which the plaintiff had got under 178th General Order. BELL *v.* BELL [E. I. *M.* 647

6. —— *After a year and a day*—178 *G. O.*, 1854.] No proceeding since the settlement of issues having been taken by

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PRACTICE—COMMON LAW (Before the Judicature Acts)—RULE TO PROCEED—*continued.*

either party for a year and a day, and the plaintiff having then, after only eight days' further delay, served notice of trial, the Court gave him liberty to proceed, notwithstanding that over six years had elapsed since a portion of the cause of action arose, and that the defendants had been deprived of some facilities in proving their defence. BRADSHAW *v.* IRISH NORTH-WESTERN RAILWAY CO. - - - C. P. VI. 127

7. —— *Obtained irregularly.*] An order for reference having been obtained under which nothing was done, the defendant subsequently obtained an order to proceed to trial upon an affidavit omitting all reference to the order for reference. The Court set this aside. OLIVER *v.* DAVIES [C. C. I. *M.* 83

8. —— *Power of Judge sitting in Consolidated Chamber.*] A Judge sitting in Consolidated Chamber has power under G. O. 134 to decide a motion for liberty to proceed after a year and a day. GOGGIN *v.* O'DRISCOLL - C. C. I. *M.* 64

9. —— "*Proceeding*"—*Service of notice of trial*—178 *G. O.*, 1854.] A notice of trial served, though countermanded, is a "proceeding" taking the case out of the operation of the 178th G. O., 1854. FITZPATRICK *v.* MEEGAN [Q. B. XI. 73

10. —— "*Proceeding*"—178 *G. O.*, 1854.] A writ of summons and plaint was served on 2nd July, 1868, and issues were served for trial on the 8th March, 1869, and signed on the 10th. The plaintiff was unable to attend the trial, and the usual time for withdrawing notice of trial having lapsed, by consent it was withdrawn on the 17th March, 1869. A notice for trial was served on 26th February, 1870, and the defendant moved to have it set aside, because after defence filed no proceeding had been taken for a year and a day, no compromise was pending, and no rule to proceed had been entered. The motion was refused with costs. MASON *v.* FRANKLIN [C. C. IV. *M.* 275

11. —— *Parties contracting so as to take the case out of* 177 & 178 *G. O.*, 1854.] It is competent for parties to an action to contract themselves out of the operation of the 178th G. O., 1854, so that no rule need be entered before proceeding in the action, although no proceedings be taken for more than a year and a day after the defence and before judgment. ARKINS *v.* MAGRATH - - - - - - C. P. VIII. 21

12. —— *Setting aside a "rule to procced compromise off."*] A "rule to proceed compromise off" was set aside when it appeared that there had been an implied settlement of the matters in dispute. KEMEFECK *v.* HANNIGAN [C. P. VII. *M.* 500

13. —— Stet processus—*Bill of exchange—Action against administratrix—Subsequent payment by acceptor.*] To an action against the administratrix of the drawer of a bill, a defence of *plene administravit* was filed. The plaintiff afterwards recovered the amount, by a civil bill process, from the acceptor. The defendant obtained a rule to proceed:—*Held*, that the plaintiff should not be permitted to enter a *stet processus*, without costs. HERON *v.* M'ALEER [E. II. *M.* 369

14. —— *Terms—Consecutive.*] The three terms which must elapse before a rule to proceed can be entered, must be *consecutive* terms. ANDERSON *v.* WALSH - E. III. *M.* 136

15. —— *Within twenty days—Defendant insolvent.*] The insolvency of the defendant affords no ground for setting aside an absolute rule that plaintiff do proceed to trial within twenty days from the service of such rule, and in default the defendant shall be dismissed with costs of suit, pursuant to the Common Law Procedure Act of 1853, sec. 106. FARRELL *v.* WILKINSON. [Q. B. V. 4

PRACTICE—COMMON LAW—SECURITY FOR COSTS.

1. —— *Acceptance of service by Defendant's solicitor.*] The Court ordered security for costs to be given by a plaintiff who resided in Glasgow, although the defendant's solicitor had written accepting service and undertaking to appear and file a defence CLARK *v.* MARSH - C. C. I. *M.* 622

2. —— *Admission of part of demand.*] Where a motion was made under the Summary Procedure Act for £64 10s. 6d. and the defendant obtained leave to defend for £32, he bringing the residue into Court and applying for security for costs:—*Held*, that the sum brought in by the defendant should remain in Court as security. CADIZ AND OPORTO WINE CO. LIMITED *v.* CUNNINGHAM - Q. B. I. *M.* 6

3. —— *Affidavit by attorney.*] To support a motion for security for costs the defendant's attorney made an affidavit which was held to be sufficient without one from the defendant. DAVIS *v.* DAVIS - - Q. B. I. *M.* 157

4. —— *Affidavit of merits.*] A motion for security for costs in an action by plaintiffs resident in France was granted, where the defendant's affidavit stated that he had a good defence upon the merits, the goods having been injured and not to order. CHAIGNEAU *v.* O'GORMAN - C. C. VIII. *M.* 179

5. —— *After defence filed—Special circumstances.*] A motion for security for costs was granted, the preliminary notice being served four days before the defence was filed, which was not filed without prejudice, and the defence being partly a lodgment of money in Court. OATES *v.* CARAHER C. C. VIII. *M.* 64

6. —— *After issues filed.*] On the 19th of February, 1867, the defendant gave the preliminary notice for security for costs, and on the same day filed, without prejudice, a defence. The notice was not complied with, nor was any step taken till the 29th of February, 1868, when the plaintiff served issues. On the 4th of March, 1868, the defendant served notice of a motion for security for costs:—*Held*, that it should be granted. ANDERSON *v.* WALSH - - - E. II. *M.* 244

7. —— *Amount of.*] The Master fixed £45 as the amount of security for costs, without which an action would be remitted. M'CAFFERTY *v.* M'KERNAN - - M. O. X. *M.* 557

8. —— *Betting agent.*] A betting agent resident in London, was ordered to give security for costs. BROOKES *v.* TAYLOR [C. P. VII. *M.* 542

9. —— *Contents of affidavit.*] An affidavit to ground a motion for security for costs stated that the defendant "was advised and believed that he had a good and legal defence on the merits of the action":—*Held*, insufficient. ASHWORTH *v.* WHITE [Q. B. V. 189

10. —— *Defective affidavit—Notice of motion not served till after defence filed.*] Motion for security for costs from a plaintiff residing out of the jurisdiction. On the 8th of January, there was filed a defence of payment into Court of £100, and the preliminary notice for security, along with the notice that the defence was filed without prejudice to this application, was served. Notice of the application was served two days later, and the affidavit stated that the defendants intended to resist, and that they verily believed they had good grounds for resisting the further maintenance of the action:—*Held*, that the preliminary notice did not save the defendants' right to apply for security for costs; and that the affidavit was defective, because the defence, admitting the cause of action, showed that the defendants had not any merits when the action was brought. LUNHAM *v.* DUBLIN W. & W. RAILWAY CO. - - - - - Q. B. II. *M.* 24

11. —— *Defence filed without prejudice—Waiver—Special circumstances*—52 *G. O.*, 1854.] In reply to a preliminary notice by the defendant, requiring the plaintiff to give security for costs, the plaintiff, on January 14th, served notice consenting to give security and to stay proceedings until security given, upon being furnished with an affidavit of merits. The defendant filed a defence on January 16th without prejudice to his right to get security. On January 17th he furnished the affidavits of merits, and security not being given on January 20th served notice of motion:—*Held*, that by the

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PRACTICE—COMMON LAW (Before the Judicature Acts)—SECURITY FOR COSTS—*continued.*

filing a defence before the service of notice of motion, the defendant had waived his right to obtain security for costs in the absence of special circumstances within 52 G. O., 1854, and that the plaintiffs having consented to give security on being furnished with an affidavit of merits which was not furnished until after the defence filed, did not constitute a special circumstance within the G. O. SPAIDE *v.* GRAINGER **[Q. B. VIII. 53**

12. —— *Defendant admitting liability but disputing the amount.*] A motion to compel a plaintiff to give security for costs will not be granted where the defendant, in the affidavit on which it is grounded, admits his liability but disputes the amount without specifying the sum disputed. ORDRONNEAN *v.* CAREW - - - - - **C. C. VII. 69**

13. —— *Delay.*] The Court refused a motion for security for costs when the defendant was guilty of considerable delay. SAMUELSON *v.* ANDREWS - - - **C. P. II. *M.* 636**

14. —— *Ejectment on the title.*] The Court ordered security for costs in an action of ejectment on the title where no defence had been filed. BLAKE *v.* BLAKE **Q. B. I. *M.* 701**

15. —— *Extension of time to plead.*] After the service of the preliminary notice, the time for filing defence was extended, and the notice of motion for security was served along with the defence, which was filed without prejudice. The motion was granted. OATES *v.* CULKEEN - - **E. VIII. *M.* 64**

16. —— *Infant Defendant—Next friend.*] An infant can appear without a next friend upon a motion to give security for costs. CALLISHER *v.* MASON - - **C. P. I. *M.* 45**

17. —— *Informality of Defendant's affidavit—Costs.*] The defendant's affidavit was not drawn in compliance with the General Orders, but contaned a sufficient averment of merits. The plaintiff not opposing, the order for security for costs was made, but the defendant to pay the plaintiff £3 3s. by reason of his defective affidavit. ROCHE *v.* ROCHE **[C. P. VII. *M.* 287**

18. —— *Interpleader—Defendant out of jurisdiction.*] The Court refused to order that an execution creditor, named as defendant in an interpleader issue, should give security for costs. GREHAM *v.* KAVANAGH - - - **C. C. VIII. 8**

19. —— *Interpleader.*] A claimant in an interpleader issue who resided in England was ordered to give security for costs. HOBAN *v.* MUNRO (No. 2) - - **E. I. *M.* 647**

20. —— *Measuring sum in Court.*] To prevent delay the officer will name a sum sufficient as security for costs. FELL *v.* M'GAFFIN - - - - - **C. C. I. *M.* 83**

21. —— *Particulars within the knowledge of the Defendant—Sufficiency of affidavit.*] A motion for security for costs was refused when the defendant, though admitting part of the claim, was not able to give particulars as to the disputed part till he got them from the plaintiff. GARROD *v.* SMYTH **[E. I. *M.* 702**

22. —— *Plaintiff resident abroad—Practice.*] A Judge sitting in the Consolidated Chamber refused to determine whether the prevailing practice should be allowed in conformity with *Raeburn* v. *Andrews* (L.R. 9, Q. B. 120). MURLEY *v.* KEATING - - - **C. C. VIII. 52 note**

23. —— *Plaintiff resident in Wales—Judgments Extension Act*, 1868.] When a plaintiff, served with a preliminary notice requiring him to give security for costs, alleging that he resides out of the jurisdiction, does not contradict that statement, and his residence is so described in the summons and plaint, it is not necessary to state that he so resides, in an affidavit to ground a motion for security for costs. A defendant notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to stay proceedings in an action brought by a plaintiff, resident in Wales, until security for costs has been given, where a satisfactory affidavit is made disclosing that the defendant has a defence upon the merits. *Clarke* v. *Croker* (VIII. 96), approved. *White* v. *Carroll* (VIII. 63). *Raeburn* v. *Andrews* (L.R. 9, Q. B. 118), disapproved. HUNT *v.* SMYTH - - **E. VIII. 203**

24. —— *Plaintiff resident in England—Judgments Extension Act*, 1868—*C. L. P. Act*, 1853, *s.* 52.] Motion to compel a plaintiff resident in England to give security for costs, refused, it not appearing that there were any circumstances to render the giving of security necessary notwithstanding the passing of the Judgments Extension Act, 1868. *Raeburn* v. *Andrews* (L.R. 9, Q. B. 118), followed. WHITE *v.* CARROLL **[Q. B. VIII. 63**

25. —— *Plaintiff resident in England—Judgments Extension Act—Practice.*] In consequence of the Judgments Extension Act, 1868, a plaintiff resident in England will not be required by this Court to give security for costs, unless special circumstances be shown to induce the Court, in its discretion, to order otherwise. *White* v. *Carroll* (VIII. 63), followed. *Clarke* v. *Croker* (VIII. 96), and *Hunt* v. *Smyth* VIII. 203), disapproved. YORK *v.* M'LOUGHLEN - **Q. B. VIII. 201**

26. —— *Plaintiff resident in England—Judgments Extension Act*, 1868.] A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to stay proceedings in an action brought by a plaintiff living in England, until security for costs has been given, where a satisfactory affidavit is made that the defendant has a defence upon the merits. *Clarke* v. *Croker* (VIII. 96), followed. *White* v. *Carroll* (VIII. 63), not followed. CHEESEMAN *v.* CAMPBELL - - - - **C. P. VIII. 203**

27. —— *Plaintiff resident in England—Judgments Extension Act*, 1868.] A defendant, notwithstanding the passing of the Judgments Extension Act, 1868, is entitled to obtain an order to compel a plaintiff, resident in England, to give security for costs, upon an affidavit showing that the defendant has a good defence to the action on the merits. *White* v. *Carroll* (VIII. 63) and *Raeburn* v. *Andrews* (L. R. 9, Q. B. 118), not followed. CLARKE *v.* CROKER - - - **C. P. VIII. 96**

28. —— *Plaintiff resident in America—Temporary residence—Property in Ireland.*] A plaintiff resident out of the United Kingdom will be ordered to give security for costs, notwithstanding that he has property within the jurisdiction, adequate to enable the costs of the action to be realised. GAYNOR *v.* SHORT - - - - **C. C. VIII. 116**

29. —— *Plaintiff resident in England—Judgments Extension Act*, 1868—*C. L. P. Act*, 1853, *s.* 52—*Special circumstances.*] A motion to compel a plaintiff, resident in England, to give security for costs, was refused, as no special circumstances were shown to induce the Court, in its discretion, to grant the order. *White* v. *Carroll* (VIII. 63), followed. COLEMAN *v.* FAYLE - - - - - **[Q. B. VIII. 88**

30. —— *Plaintiff resident out of jurisdiction—Judgments Extension Act*, 1868.] Motion to compel a plaintiff resident in England to give security for costs granted, notwithstanding the passing of the Judgments Extension Act, 1868. *Raeburn* v. *Andrews* (L. R. 9, Q. B. 118), not followed. THOMAS *v.* COX **[C. C. VIII. 52**

31. —— *Satisfaction of Master—Insolvency of Sureties.*] The Master, and not the Judge, is the tribunal to fix the solvency and amount of the security for costs under the 33 & 34 Vic., c. 109. SPENCE *v.* DUFFY - - - **C. P. V. 5**

32. —— *Seduction—Affidavit of merits.*] In a seduction action the Court granted an order for security of costs, where the defendant swore that the seduced girl lived in Ireland and rendered no service to her mother, the plaintiff; and held that the affidavit of merits need not be so strong as a special plea. BRENNAN *v.* FRANCE - - - - **E. I. *M.* 404**

33. —— *Temporary absence in England.*] A plaintiff, who stated he merely went to England to carry out a contract, and intended returning, was ordered to give security for costs. WALPOLE *v.* WARD - - - **C. C. VII. *M.* 400**

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PRACTICE—COMMON LAW (Before the Judicature Acts)—SECURITY FOR COSTS—*continued.*

34. —— Viva voce *examination of a foreign sailor.*] Where the plaintiff, who was the master of a foreign ship, applied to be examined *vivâ voce*, as he would not be within the jurisdiction of the Court at the time of the trial, it was held that security for costs must be first given. DES POYENTES *v.* PIM [C. C. VII. 69

PRACTICE—COMMON LAW—SERVICE.

1. —— *Endorsement upon writ—Dispensing with.*] The defendant, when served with the plaint took the original writ from the process server, turned him out of the house, and retained or destroyed the writ. Leave to issue a duplicate writ having been obtained, the plaintiff moved for leave to mark judgment, though there was not on the writ any endorsement of service:—*Held*, that a conditional order should be granted. BRUNTON *v.* DOYLE [E. II. *M.* 42

2. —— *Endorsement upon writ.*] The service of six defendants was effected from 9th January to 2nd February, and the endorsement of service was not made till the latter date:—*Held*, that the service could not be deemed good, but leave was given to take the writ off the file for re-service. STEWART *v.* CUSACK - - C. C. X. *M.* 200

3. —— *Enlarging time for serving order.*] The time for serving an order will be enlarged if it has not expired already; if it has, a new order must be obtained. LANE *v.* CARY [E. VII. *M.* 190

4. —— *Out of the jurisdiction—Personal service.*] The Courts of Common Law have jurisdiction to order that service of a writ of summons and plaint by serving the defendant in person, out of the jurisdiction, shall be deemed good service. *Kelly* v. *Dixon* (Ir. R. 6, C. L. 25) discussed, and (*dub.* Fitzgerald and Barry, JJ.) followed. REEDE *v.* PIPON - - Q. B. VII. *M.* 542; VIII. 18

5. —— *Out of the jurisdiction—Registered letter.*] The Court granted a conditional order for service of the defendant out of the jurisdiction by registered letter, the order not to be made absolute by side-bar rule. BARRETT *v.* M'NEIGHT [Q. B. VIII. *M.* 64

6. —— *Out of the jurisdiction—Personal.*] Personal service of the defendant, who was in London and had no agent in Ireland, and service by registered letter, was ordered. PATMAN *v.* ORR - - - - C. C. VII. *M.* 623
HEADLEY *v.* CRIPPIN - - C. C. VII. *M.* 635

7. —— *Posting.*] When it appeared that the process-server visited the premises on two days, on the first of which he was informed that the defendant was out, and the second the premises were closed, the Court directed that in the event of admittance to the premises being denied, the posting of the writ and order on the hall door of the defendant's house be deemed good service. GARDINER *v.* LOUGHLIN [C. P. VII. *M.* 191

8. —— *Substitution of—Notice of inquiry.*] Service of a notice of inquiry was directed to be substituted by serving the defendant's attorney. COGHLAN *v.* STRANGMARE [C. C. VII. *M.* 368

9. —— *Substitution—Writ of summons and plaint—Motion to make absolute a conditional order.*] A conditional order for substitution of service had been obtained and served, but the process-server omitted to indorse the service on the writ on the day or next day after the service, and the officer refused to make the order absolute by side-bar rule. The Court declined to make the order absolute, but granted a new order, the circumstances not having changed. ANON. - C. P. VII. *M.* 273

10. —— *Substitution—Writ of summons and plaint—Wife and son—Farm about to be sold.*] An order to substitute the service of the summons and plaint on the wife and son of the defendant (who was in America) was granted, it appearing that there was a danger that the farm of the defendant would be sold and his family would join him in America. DOHERTY *v.* M'DAID - - - - - Q. B. VII. *M.* 408

PRACTICE—COMMON LAW (Before the Judicature Acts)—SERVICE—*continued.*

11. —— *Substitution—Writ of summons and plaint—Wife—In possession of Defendant's farm.*] It appearing that the defendant's wife was in possession of his farm which was well stocked, and that he was in America, the service of the summons and plaint in an action for money paid as surety was ordered to be substituted on her.
O'BRIEN *v.* O'BRIEN - - C. C. VII. *M.* 367
BLACK *v.* SMITH - - - C. P. VII. *M.* 489
JAMESON *v.* O'DONNELL - - C. C. VII. *M.* 507

12. —— *Substitution—Writ of summons and plaint—Service at registered address of the solicitor directed to be served.*] The service of a writ of summons and plaint, directed to be substituted by serving a solicitor, was held good when it appeared that the writ was left at the registered address of the solicitor with another solicitor. BERMINGHAM *v.* BILLING [C. P. VII. *M.* 330

13. —— *Substitution—Writ of summons and plaint—Service on daughter of person directed to be served.*] The service of a conditional order for substitution of service upon a gentleman was made upon his daughter, as he was ill, and the officer refused to make the order absolute by side-bar rule; a motion that the service be deemed good was granted. MUFFENY *v.* COLTRIDGE OIL WORKS CO. - C. P. VII. *M.* 330

14. —— *Substitution—Writ of summons and plaint—Service by registered letter.*] A conditional order for the service of the defendant, who resided in Liverpool, by registered letter was granted, the order not to be made absolute without a motion to the Court. KELLY *v.* MASON [C. C. VIII. *M.* 472

15. —— *Substitution—Writ of summons and plaint—Railway company—Through ticket—Agent—Cause of action.*] An Irish railway company at Londonderry issued a through ticket to Birmingham, on the back of which was printed a notice stating that the Irish company would not be responsible for the safe carriage of passengers' luggage beyond the limit of their line, and that the ticket was issued by them as agents for other companies. The plaintiff travelled by this ticket to Birmingham, and lost his luggage on the English line. There was evidence that the Irish company had no power to contract for the defendant company. The Court ordered service to be substituted on the agent of the defendants in Dublin. STEVENSON *v.* LONDON AND NORTH WESTERN RAILWAY CO. - - - - C. P. I. *M.* 632

16. —— *Substitution—Writ of summons and plaint—Railway company—Cause of action, where arising.*] The granting of an order, under the C. L. P. Act, 1853, sec. 34, for substitution of service on defendants, resident without the jurisdiction, is not *ex debito justiciæ*, but lies in the discretion of the Court, which will not be so exercised where it appears, upon the facts, that it would be more proper or expedient that the action should be tried elsewhere than in Ireland. In an action by passengers against common carriers resident in England for not safely carrying them from Holyhead to Greenore, and for not safely carrying or delivering their luggage, on a contract to carry same from Derby to Greenore, and there to deliver same, it appeared that the contract had been entered into at Derby, and that the loss and injuries complained of occurred in consequence of a collision between steamships at Holyhead:—*Held* (Fitzgerald, J., *diss.*), that a part of the cause of action arose within the jurisdiction, and that it was a fit case in which to order a substitution of service of the writ of summons and plaint. *Chambers* v. *L. & N. W. Railway Co.* (IX. 175); *Ashton* v. *L. & N. W. Railway Co.* (I. M. 246), followed. *Watson* v. *Atlantic Steam Nav. Co.* (10 Ir. C. L. R. 163), overruled. WILLIS *v.* LONDON AND NORTH WESTERN RAILWAY CO. [Q. B. X. 28

17. —— *Substitution—Writ of summons and plaint—Part of cause of action arising within the jurisdiction.*] Where, in an action against a defendant resident out of the jurisdiction, several causes of action are joined, the Court will permit service of the writ to be substituted, if any one of the causes of action arises within the jurisdiction. MACKEN *v.* ELLIS [Q. B. VIII. *M.* 88

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PRACTICE—COMMON LAW (Before the Judicature Acts)—SERVICE—*continued.*

18. —— *Substitution—Writ of summons and plaint—Notice of filing—Defendant out of jurisdiction.*] When one of the defendants had not been served, and all of them had left the jurisdiction, leave was given to substitute service on him, and notice of filing of the plaint on the other defendants by serving their solicitor. QUIGLEY *v.* HOPE **C. C. VII. *M.* 635**

19. —— *Substitution—Writ of summons and plaint—Motion to make conditional order absolute.*] In an action against a defendant who had gone to America, but whose brother was stated to be in possession of his farm, as manager, a conditional order for the substitution of service of the writ on the brother was made. He showed cause, and relied on a deed of purchase of the lands. The Court made no rule on the motion. NUNN *v.* M'DERMOTT - **C. P. VII. *M.* 206**

20. —— *Substitution—Writ of summons and plaint—Evasion by party on whom service was ordered to be substituted—Liability of defendant.*] On a motion for an order that the defendant should plead within twelve days from the day on which the order to substitute service might have been made absolute, or take short notice of trial, on the ground of alleged evasion of service by the party on whom the service had been substituted sufficient to throw the plaintiff out of a trial:—*Held*, that the defendant should not suffer for a mistake with which he had nothing to do, and that the motion should be refused. LANCASHIRE *v.* BEDFORD - - **C. C. VII. *M.* 125**

21. —— *Substitution—Writ of summons and plaint—Ejectment—Trustees.*] Where there were two trustees of a settlement, defendants in an action of ejectment, one residing in Ireland and the other in England, service on the trustee who resided in England was ordered to be substituted by serving the other trustee. M'DOUGALL *v.* O'SHAUGHNESSY **[C. C. I. *M.* 138**

22. —— *Substitution—Writ of summons and plaint—Defendant's wife—Showing cause.*] Service was directed to be substituted on the defendant's wife, who showed cause, stating that she was not in communication with him; it appeared that she had forwarded money to him, and that his attorney knew his address. The cause shown was disallowed. STEPHENSON *v.* MOORE - - - - **C. P. VII. *M.* 343**

23. —— *Substitution—Writ of summons and plaint—Defendant's attorney acting in another action between the same parties.*] A motion to substitute the service of the summons and plaint on the defendant's attorney, who was acting as such in a cross-action by the defendant against the plaintiff, was granted, the defendant also to be served by registered letter. FRECKLETON *v.* GOSLETT **Q. B. VII. *M.* 329**

24. —— *Substitution—Writ of summons and plaint—Defendant out of jurisdiction—Cause of action arising within jurisdiction.*] Action for wrongful dismissal by an agent in Ireland of an English company. Both the appointment and the dismissal had been made by resolutions of the directors passed in England, and communicated by letters to the plaintiff, who received them in Dublin:—*Held*, that the cause of action had arisen within the jurisdiction so far as to enable the Court to substitute service of the plaint. HAMILTON *v.* FOREIGN AND MERCANTILE ASSURANCE CO. - **E. III. *M.* 389**

25. —— *Substitution—Writ of summons and plaint—Defendant residing out of jurisdiction—Cause of action, where arising—Campbell's Act.*] In an action under Lord Campbell's Act (9 & 10 Vic., c. 93) against defendants who resided out of the jurisdiction, the summons and plaint alleged:—(1) That the defendants, as carriers, received Edwin Chambers to be carried from Birkenhead to Dublin, *viâ* Holyhead, yet by their negligence, before he had been carried into or on board a steamer at Holyhead, he was injured during his transit by reason whereof he died. (2) That by reason of the defendants' negligence in keeping a jetty and gangway at Holyhead in a dangerous condition, said Edwin Chambers, during his transit as such passenger, but before he had been taken or carried into said steamer, was injured, by reason whereof he died. It appeared that the deceased had taken his ticket at Birkenhead and that he died in Dublin:

PRACTICE—COMMON LAW (Before the Judicature Acts)—SERVICE—*continued.*

—*Held*, that the plaintiff was entitled to an order for substitution of service on the defendants' agent, under the C. L. P. Act, 1853, s. 34. *Ashton* v. *London & N. W. Railway Co.* (I. M. 246) followed. CHAMBERS *v.* LONDON AND NORTH WESTERN RAILWAY CO. - - - **C. C. IX. 175**

26. —— *Substitution—Writ of summons and plaint—Defendant resident out of jurisdiction—Cause of action arising within jurisdiction.*] In an action by a passenger against a carrier, resident out of the jurisdiction, for not safely carrying the plaintiff's luggage to Greenore, in Ireland, the Court granted liberty to substitute service of the writ by serving the defendants' agent in Ireland, under the C. L. P. Act, 1853, s. 34, where it appeared that the plaintiff had, in London, taken a through ticket from London to Dundalk, and the goods had been lost at Holyhead during transit. *Ashton* v. *London & N. W. Railway Co.* (I. M. 246). *Chambers* v. *London & N. W. Railway Co.* (IX. 175) followed. FINNIGAN *v.* LONDON AND NORTH WESTERN RAILWAY CO. **[C. C. IX. 230**

M'ELEAVY *v.* LONDON AND NORTH WESTERN RAILWAY CO. **[C. C. IX. 231 note**

27. —— *Substitution—Writ of summons and plaint—Defendant residing out of the jurisdiction—Action for wrongful dismissal—Cause of action arising out of the jurisdiction—Service by registered letter and on defendant in person out of the jurisdiction.*] The defendant having verbally agreed with the plaintiff in England to appoint him as a commission agent for the sale of goods in Ireland, and to send him patterns for the purpose, the plaintiff sent to the defendant in England by post a draft agreement to be signed by him, appointing the plaintiff as such agent, but not containing all the terms verbally agreed on. The draft agreement was accepted and signed by the defendant in England and posted to the plaintiff, who received it in Ireland. After having acted as such agent for some years in Ireland, the plaintiff was dismissed by a letter written by the defendant in England, and received by the plaintiff in Ireland, by post. An action having been brought by the plaintiff against the defendant, who resided in England, for wrongful dismissal, and for breach of contract to deliver to the plaintiff in Dublin samples of goods to be so sold:—*Held*, that the plaintiff was not entitled to an order for service of the writ of summons and plaint upon the defendant through the medium of a registered letter and by serving him in person in England. (Whiteside, C.J., *dub.*) *Per* O'Brien, J.: If either the contract were entered into, or the breach of it occurred, in Ireland, the "cause of action" would have arisen within the jurisdiction under the Common Law Procedure Act, 1853, sec. 34. *Per* Fitzgerald, J.: "Cause of action" within the section means the breach of contract or duty constituting the misfeasance or malfeasance of which the plaintiff complains. But even if such cause of action arose within the jurisdiction, the Court would not have power to order service upon the defendant in England either by personal delivery of the writ to him there or by transmission through post (doubting *Kelly* v. *Dixon*, Ir. R. 6, C. L. 25). *Hamilton* v. *Foreign and Mercantile Assurance Co.* (III. *M.* 389), distinguished. DEAN *v.* SANDFORD - - - - **Q. B. IX. 86**

28. —— *Substitution—Writ of summons and plaint—Defendant resident in England—Registered letter.*] The Court of Common Pleas refused to give liberty to serve a defendant in England by registered letter. ROGERS *v.* WHITE **[C. P. XI. *M.* 7**

29. —— *Substitution—Writ of summons and plaint—Continuity of agency.*] A. contracted with B. that A. should deliver at Dublin wheat of a certain quality, provided that such portion of the cargo as should be sea-damaged was to remain for A., the seller's, account. Some of the wheat was sea-damaged, and was returned to C., who was employed by A. to superintend its discharge in Dublin, but was not his agent for any other purpose. In an action against A. for breach of contract in delivering wheat of an inferior quality, the Court ordered substitution of service on C. MEGAW *v.* DE LIZARDI - **C. C. V. 62**

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PRACTICE—COMMON LAW (Before the Judicature Acts)—SERVICE—*continued.*

30. —— *Substitution—Writ of summons and plaint—Cause of action wholly arising out of the jurisdiction.*] In an affidavit on a motion to substitute service of the summons and plaint, in an action under Lord Campbell's Act, 9 & 10 Vic., c. 93 (amended by 27 & 28 Vic., c. 95), it was stated that the deceased was employed on board one of the defendant's steamers, and that his death was caused by the bursting of part of the machinery, the accident occurring on the high seas during a passage from Milford to Waterford. The machinery appeared to have been in a state of corrosion for some months, during which time the vessel had been several times in an Irish port:—*Held*, that no part of the cause of action arose within the jurisdiction, and the motion was refused. WALSH *v.* THE GREAT WESTERN RAILWAY - - - E. VII. 11

31. —— *Substitution—Writ of summons and plaint—Cause of action arising within the jurisdiction.*] Substitution of service was allowed when the cause of action was the want of care of a railway company in carrying passengers from London to Dublin. ASHTON *v.* LONDON AND NORTH-WESTERN RAILWAY Co. - - - - - - - C. P. I. *M.* 246

32. —— *Substitution—Writ of summons and plaint—Cause of action arising in the jurisdiction.*] The plaintiff while in London was appointed agent in Dublin for the defendant, a merchant in London. The Court refused to substitute service of the summons and plaint in an action for damages for wrongful dismissal, no part of the cause of action having arisen in Ireland. MATHEWS *v.* ALEXANDER - Q. B. VII. *M.* 568

33. —— *Substitution—Writ of summons and plaint—Brother.*] The Court allowed service to be substituted on a brother of the defendant, who paid the defendant an annuity out of some lands. BRADSHAW *v.* SHINE - - C. P. I. *M.* 316

34. —— *Substitution—Writ of summons and plaint.*] A defendant in an action for seduction was in Australia. He had recently become entitled by will to a moiety of rents of freeholds and considerable personal property, and had requested the plaintiff to send her photograph to his brother, who lived in Co. Antrim, to be forwarded to him in Australia. A motion to substitute service of the writ on his brother and the executors of the will was refused. M'KNIGHT *v.* MACARTNEY - - - - - - C. C. I. *M.* 102

35. —— *Substitution—Writ of summons and plaint—Attorney's clerk.*] Service which was directed to be substituted on an attorney was effected by serving his clerk at his registered address:—*Held*, to be good service. LANCASHIRE *v.* BEDFORD - - - - - C. P. VII. *M.* 469

36. —— *Substitution—Writ of summons and plaint—Attorney.*] An order was made to substitute service on the attorney of a railway company, and to serve the defendants by registered letter at their London office. GORMANSTOWN *v.* NAVAN AND KINGSCOURT RAILWAY Co. [C. C. VII. *M.* 342

37. —— *Substitution—Writ of summons and plaint—Attorney.*] Service of a summons and plaint was ordered to be substituted by serving the attorney of the defendant, and serving the defendant by registered letter. JOHNSON *v.* SMITH [C. C. VII. *M.* 368

38. —— *Substitution—Writ of summons and plaint—Agent—Costs.*] A motion to make absolute a conditional order for substitution of service by serving the defendant's agent in Dublin, whose name appeared in the office of the defendant and on the time-tables, was granted. MEIR *v.* GREAT WESTERN RAILWAY Co. - - - - - C. P. VII. *M.* 260

39. —— *Substitution—Writ of summons and plaint—Agent.*] A writ of summons and plaint was directed to be served on the agent in Dublin of the defendants. SMITH *v.* JOINT STOCK COAL Co. - - - - - - C. C. VII. *M.* 419
WILSON *v.* MURPHY - - - - - VII. *M.* 430
CULLEN *v.* LONDON & NORTH WESTERN RAILWAY Co.: BROWN *v.* FITZ-HEINE: GARDNER *v.* HINCKLEWOOD VII. *M.* 439

PRACTICE—COMMON LAW (Before the Judicature Acts)—SERVICE—*continued.*

40. —— *Substitution—Writ of summons and plaint—Agent—Defendant in India—Time to plead.*] The service of the writ was directed to be substituted on the agent of the defendant, who was in India, he to have six months to plead. CASEY *v.* SPARROW - - - - - C. C. VII. *M.* 526

41. —— *Substitution—Writ of summons and plaint—Agent and manager.*] A conditional order for substitution of service on the defendant's agent and manager was granted. GREENE *v.* HAMILTON - - - - - E. VII. *M.* 429

42. —— *Substitution—Writ of summons and plaint—Tender after writ—Costs of motion.*] When an action was commenced by a motion to substitute service, and the defendant after service tendered the full amount and £2 10s. for costs:—*Held*, that the Court had no power to direct a taxation of costs so as to enable the plaintiff to obtain the costs of the motion to substitute service. ATKINSON *v.* GREGORY [Q. B. I. *M.* 157

43. —— *Substitution—Writ of summons and plaint—Non-service of conditional order to substitute.*] A conditional order to substitute not having been served within one week under 133 G. O., 1854, a motion for a new order, and for leave to take the writ off the file for re-service, was granted as of course. MAHER *v.* KENNEDY - - C. P. VII. *M.* 206

44. —— *Substitution—Writ of summons and plaint—Making absolute a conditional order.*] When the time arrives for serving a notice of motion to make absolute a conditional order for substitution of service, the party showing cause can enter a side bar rule which the officer is bound to accept although the plaintiff may have filed a further affidavit. VINT *v.* LANGTREE - - - - - [Q. B. I. *M.* 279

45. —— *Substitution—Writ of summons and plaint—Motion to renew order for substitution of service.*] The Court allowed a conditional order for substitution of service to be renewed, when it appeared that though the service of the writ had been effected, it was impossible to make the order absolute, as the process-server had left the country without making the necessary affidavit. O'REILLY *v.* TRADE AUXILIARY Co. [C. P. VII. *M.* 500

46. —— *Substitution—Writ of summons and plaint—Advertisements—Public company.*] A plaintiff obtained an order for substitution of service; he had inserted advertisements under sec. 33 of the Common Law Procedure Act:—*Held*, that he was not entitled to the costs of the advertisements. MAPE *v.* LONDON & NORTH WESTERN RAILWAY Co. - E. I. *M.* 648

47. —— *Substitution—Writ of revivor.*] Service of a writ of revivor was directed to be made by registered letter on the defendant, it appearing that he was keeping in his house to evade service of the writ, which was served on his son. WHITSITT *v.* FLANAGAN - - - Q. B. VII. *M.* 314

48. —— *Substitution—Writ of revivor.*] The service of a writ of revivor was directed to be substituted on the defendant's wife, and copies of the writ and order to be transmitted to the defendant, addressed to the Post Office, New York: the defendant to have six weeks to plead. COSTELLO *v.* KEERAN - - - - - E. VII. *M.* 303

49. —— *Substitution—Writ of revivor—Joint conusors.*] In order to entitle the plaintiff to a conditional order for substitution of service of a writ of revivor, issued on foot of a joint judgment, on one of joint conusors, who is in America and whose address there is not known, by serving the other conusors for him with the writ and orders, it should appear upon affidavit that he had not property in this country. BROWNE *v.* O'SULLIVAN [C. C. IX. 76

PRACTICE—COMMON LAW—STAYING PROCEEDINGS.

1. —— *Abuse of process of the Court.*] By consent a brother of a man who had been ejected for non-payment of rent, claiming an interest in the lands, was put into possession of them,

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PRACTICE—COMMON LAW (Before the Judicature Acts)—STAYING PROCEEDINGS—*continued.*

he undertaking to the Judge in Chambers not to bring an action. On his bringing an action against the solicitor for the plaintiff, the Court stayed proceedings as being an abuse of the process of the Court. KELLY *v.* FALLS - - - E. I. *M.* 702

2. —— *Action and cross-action—Staying proceedings in cross-action upon terms.*] A., the plaintiff in one action, moved to stay the proceedings in a cross-action in which he was defendant. The Court granted the motion, on the condition of A. lodging in Court the full amount of money claimed in the action in which he was defendant, and paying the costs of the action up to the time of lodging the money in Court, and undertaking to expedite the trial of the action in which he was plaintiff. FRAZER *v.* M'CLEAN - - - - - C. P. VII. 204

3. —— *Persecution.*] The Court will not permit its process to be made the engine for persecution, and has ample power to stay proceedings when it appears that the action brought is contrary to good faith. BREEN *v.* COOPER [Q. B. IV. *M.* 65

4. —— *Motion to stay action on the ground of Plaintiff's bankruptcy.*] In an action for breaking and entering the plaintiff's dwelling-house, the defendant pleaded a denial of the plaintiff's title, and leave and license. The plaintiff became bankrupt after the commencement of the action, and the Court refused a motion to stay it. (By Whiteside, C.J.) WOODS *v.* MORAN - - Cir. Cas. VII. *M.* 409

5. —— *Restraining action after injunction of Court of Chancery.*] The plaintiffs were Parliamentary agents, and had been employed by the defendants in promoting a local Bill in Parliament; some of the ratepayers filed an information at the suit of the Attorney-General, and obtained an injunction restraining the Corporation of Waterford, their attorneys, solicitors, officers, and agents, from applying any portion of the corporate property in payment of the costs in connection with the Bill. A motion, under section 189 of the C. L. P. Act, 1853, to restrain an action by the plaintiff against the defendants to recover the amount of the costs, was refused. HOLMES *v.* WATERFORD (MAYOR, &c.) [C. C. X. *M.* 387

6. —— *Till taxed costs in another action were paid.*] The proceedings in a second action were stayed until the taxed costs of an order of another Court were paid by the plaintiff. WHITE *v.* JOSEPHS - - - - C. P. V. 8

PRACTICE—COMMON LAW—SUBPŒNA.

1. —— *Motion for leave to issue a special subpœna.*] A motion for leave to issue a special subpœna to the officer in Somerset House in charge of certain books to produce them was granted. CAMPION *v.* STACK - - - C. C. VII. *M.* 389

2. —— *Motion for leave to serve a special subpœna.*] A motion for leave to serve a special subpœna will only be granted when the facts cannot be proved by witnesses within the jurisdiction. BYRNE *v.* M'DONNELL - C. C. VII. *M.* 377

3. —— *Motion for special subpœna under* 17 & 18 *Vic., c.* 34.] A motion for a special subpœna for the allowance of the plaintiff and another, under 17 & 18 Vic., c. 34, in an action of ejectment on the title, was granted as of course. LEINSTER *v.* LOWE - - - - C. C. VII. *M.* 367

4. —— *Production of a public record—Report of Inspector of National Schools.*] A motion to issue a subpœna to the secretaries of the Commissioners of National Education in Ireland, for the production of a report made to them by the defendant as Inspector of National Schools, was refused, on the ground that, within the 73rd G. O., 1854, the document was not a "record," nor were the Commissioners "officers of Her Majesty." QUIRK *v.* HARKIN - C. C. VII. 160

PRACTICE—COMMON LAW—SURETIES—*Who is to be satisfied with regard to their solvency?*] The Master of the Court, and not the Judge in Chamber, is the person to be satisfied as to the solvency of sureties; and the defendant may have an opportunity of cross-examining them. SPENCE *v.* DUFFY - - - - C. P. VII. *M.* 147

PRACTICE—COMMON LAW (Before the Judicature Acts)—TIME.

1. —— *Computation of—Christmas holidays.*] The Christmas holidays are to be excluded from the time fixed for making absolute a conditional order. NUGENT *v.* LONDON AND NORTH WESTERN RAILWAY CO. - C. P. X. *M.* 73

2. —— *Common Law Procedure Amendment Act (Ireland),* 1870—*Retrospective operation.*] The Common Law Procedure Amendment Act (Ireland), 1870, applies to actions commenced before the statute came into operation, and Sunday is not to be included in counting days; service of a notice of motion up to 9 o'clock is sufficient. NOWLAN *v.* MORGAN [E. V. 18

PRACTICE—COMMON LAW—VACATING JUDGMENT.

1. —— The plaintiffs, who had marked judgment against the defendant, applied to vacate it on the ground that the defendant had paid the amount by his cheque, which had been retained by their solicitor till after judgment was marked. The Court granted the motion, the defendant to pay the amount for which the cheque was drawn. HENRY *v.* BYRNE [E. VII. *M.* 623

2. —— *Mistake.*] A motion to vacate a judgment should be on notice. HOLMES *v.* WATERFORD AND PASSAGE RAILWAY CO. - - - - - C. C. I. *M.* 27

PRACTICE—COMMON LAW—VENUE.

1. —— *Averment that defendant intends to examine witnesses.*] On a motion to change the venue, the omission of an averment that the defendant intends to examine witnesses for the proposed venue did not of itself constitute sufficient ground for refusing the motion. GIBBINGS *v.* O'DELL [Q. B. I. *M.* 369

2. —— *Change of, on application of the Plaintiff—Costs.*] A motion by the plaintiff for a change of venue was granted, with costs against him. STEWART *v.* M'DONALD [Q. B. VII. *M.* 287

3. —— *Change of—Balance of convenience.*] A motion to change the venue of action for damages for the diversion of a water-course was granted, it appearing that a view jury would be necessary, and on the ground of convenience. ATKINSON *v.* MILLS - - - - - Q. B. VII. *M.* 287

4. —— *Change of—Balance of convenience.*] The Court changed the venue of an action for damages for the drowning of the plaintiff's husband through the negligence of the defendants, from Kildare to Dublin. GORMAN *v.* CITY OF DUBLIN STEAM PACKET CO. - - C. C. VII. *M.* 378

5. —— *Change of—Balance of convenience.*] The venue was changed from Dublin to the county where the cause of action arose and all the witnesses resided, on the ground of the balance of convenience. LETT *v.* GASCOIGNE - Q. B. VII. *M.* 302
SMYTHE *v.* DOUPE - - - E. VII. *M.* 585

6. —— *Change of—Balance of convenience—Local feeling.*] In an action which arose out of an ejectment, a motion was made to change the venue from Dublin to Meath on the ground of convenience, the witnesses residing in that county. The plaintiff opposed the motion, showing that a fair trial could not be had in Meath, and the motion was refused. HANDLEY *v.* M'DERMOTT - - - - C. C. VII. *M.* 367

7. —— *Change of—Balance of convenience.*] A venue was changed to the county where the witnesses resided, on the ground of the balance of convenience. BROWN *v.* O'REARDON [Q. B. VII. *M.* 584

8. —— *Change of—Balance of convenience—Influence on jury.*] A motion to change the venue of an action from Dublin to Sligo, where all the witnesses lived, was granted, it not appearing that it was a case where the jurors would be likely to be influenced. CONNOLLY *v.* KIDD - C. P. VII. *M.* 314

9. —— *Change of—County where cause of action arose.*] The plaintiff has a *primâ facie* right to select his own venue, subject to its being displaced on special grounds of preponderance of convenience or propriety in favour of a different venue, irrespective of the accruing of the cause of action in a particular place. O'TOOLE *v.* MULHALL - E. VIII. *M.* 375

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PRACTICE—COMMON LAW (Before the Judicature Acts)—VENUE—*continued.*

10. —— *Change of—Delay.*] The venue will not be changed when there has been great delay in applying for the change. QUIN *v.* QUIN - - - - - **E. I. *M.* 404**

11. —— *Change of—Delay.*] The Court refused to change the venue, on the ground that the delay in making the application was unexplained. BLAYNEY *v.* KIRWAN **[C. C. VIII. *M.* 137**

12. —— *Change of—Delay.*] The venue will not be changed on the motion of a party who has shown delay, and which will result in delay of the cause being heard. WALSH *v.* HOPKINS **[E. I. *M.* 26**

13. —— *Change of—Delay.*] A motion to change the venue of an action which arose in Dublin, and the witnesses in which lived there, from the Queen's County to Dublin was granted; the plaintiff himself having been guilty of delay could not object. MEEHAN *v.* MIDLAND GREAT WESTERN RAILWAY CO. **[C. C. VII. *M.* 365**

14. —— *Change of—Family influence—Jury under old system.*] A motion to change the venue of an action of breach of promise of marriage on the ground that an impartial trial could not be had owing to family influence, was refused; the jury, however, to be struck under the old system. SHEEHY *v.* O'LEARY - - - - - - **C. C. VII. *M.* 365**

15. —— *Change of—Local feeling.*] An order was made for the change of venue of an important fishery case where there had been three trials in the original venue, on the ground of local feeling. DEVONSHIRE *v.* PIM - **E. VII. *M.* 569**

16. —— *Change of—Local prejudice.*] In an action for breach of warranty of cattle sold at Ballinasloe, a motion to change the venue to Dublin on the ground of local prejudice in consequence of the farmers in the original venue having lost cattle in the same way, was refused. M'CORMICK *v.* BARRETT **[Q. B. VII. *M.* 260**

17. —— *Change of—Local venue.*] A motion to change the venue of an action for flooding in Dublin from Kildare to Dublin was granted. SMITH *v.* MIDLAND RAILWAY CO. **[C. C. VII. *M.* 367**

—— Counsel—Argument of case under 20 & 21 Vic., c. 43, s. 2 **[VII. 74**

See COUNSEL—JUNIOR. 1.

—— Transitory - - - - - - **I. *M.* 646**

See PRACTICE—COMMON LAW—PLEADING. 5.

—— Writ of *ca. sa.* for sum under £10 - - **IV. *M.* 275**

See ARREST. 9.

PRACTICE—COURT FOR LAND CASES RESERVED—*Order of hearing counsel.*] Counsel will be heard in the Court in the order in which they are heard in the Court of Exchequer Chamber. HOLT *v.* LORD HARBERTON **[L. C. R. VI. 1**

PRACTICE—CRIMINAL LAW.

See CRIMINAL LAW—BAIL.
CRIMINAL LAW—CERTIORARI.
CRIMINAL LAW—INDICTMENT.
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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT.

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—ADJOINING OWNER—*Objection by adjoining owner to the accuracy of the map attached to the settlement of the rental.*] An adjoining owner having filed an objection stating that the map attached to the notice of the settlement of the rental served on him included as part of the lands ordered to be sold a portion of his estate, and it appearing that such portion was included in a map attached to a conveyance executed to him by the Incumbered Estates Court, but was misdescribed in the body of such conveyance, the Court allowed the objection. *In re* HASSARD'S ESTATE **[L. E. C. V. 31**

—— Claim of right-of-way by - - - **IV. *M.* 759**

See PRACTICE—LANDED ESTATES COURT—DECLARATION OF TITLE. 1.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—AFFIDAVIT—*Taken before Commissioner abroad—Insufficient description of Commissioner—Single jurat in joint affidavit.*] An order made that an affidavit be received and filed, which was sworn by two deponents, but contained only one jurat, and in the jurat of which, though the affidavit was, in fact, made before a Commissioner in Canada, the place of swearing did not appear. *Re* NIXON'S ESTATE - - - - **L. E. C. VIII. 30**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—ANNUITY—*Sale subject to an annuity*—21 & 22 *Vic., c.* 72, *ss.* 1, 54, 64.] The Court has jurisdiction, under sec. 54 of the Landed Estates Court Act, to sell an estate, subject to an annuity, although such annuity is made purchaseable on payment of a gross sum of money, and is, therefore, an incumbrance within the definition of the Act. HACKETT, OWNER; BANK OF IRELAND (GOVERNOR AND CO.). PETITIONERS - - - - - **L. J. XVII. 43**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—APPEAL.

1. —— *Application for liberty to appeal after time expired.*] According to the reasonable construction of section 41 of the Landed Estates Court Act, 21 & 22 Vic., c. 72, after three months have elapsed from a decision of the Court, unless an appeal is depending, or the period for appealing has been extended, the order becomes final. *Re* BORROWES ESTATE **[L. E. C. VI. 178**

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PRACTICE — LANDED ESTATES (AND LAND JUDGES') COURT—APPEAL—*continued.*

2. —— *Lease—Landed Property (Ireland) Improvement Act, 1860—Discretion.*] The Court of Appeal in Chancery declined to entertain an appeal from an order of one of the Judges of the Landed Estates Court, refusing to sanction a lease under the 25th section of the Landed Property (Ireland) Improvement Act, 1860, on the ground that the refusal to sanction a lease under that Act was a matter of personal discretion for the Judge himself. *In re* DE SALIS' ESTATE
[Ch. A. IV. *M.* 490

3. —— *Limit of time within which decisions may be reviewed.*] The lapse of the period within which an appeal must be brought to the Court of Appeal in Chancery does not preclude the L. E. Court from reviewing its own decisions or proceedings. ESTATE OF THE ASSIGNEES OF BUNBURY
[L. E. C. III. *M.* 741

4. —— *Re-hearing.*] A party who has been actively prosecuting a petition of appeal from an order made by a Judge of the Landed Estates Court cannot, without withdrawing his appeal, procure the cause to be re-heard in the Court below. *Re* LITCHFIELD'S ESTATE - L. E. C. V. 9

5. —— *Setting aside sale—Court of Appeal in Chancery—Jurisdiction of Landed Estates Court.*] The Court of Appeal in Chancery will not set aside a sale made in the Landed Estates Court when the grounds of appeal are objections made to particulars which constitute part of the *res gestæ* of the auction, and the Judge states that the circumstances did not surprise any one. *Re* BOURNES' ESTATE
[Ch. A. III. *M.* 794

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—ATTACHMENT.

1. —— *Application by landlord for leave to commence an action to recover possession for non-payment of rent—Jurisdiction of Court—Contempt.*] When a receiver has been appointed over lands, the landlord must obtain leave of the Court before he can commence an action to recover possession for non-payment of rent; and, in granting such application, the Court has jurisdiction to impose terms, such as that the proceedings shall not be commenced for a specified time. *In the matter of the* ESTATE OF R. H. BATTERSBY, OWNER; J. H. KILBEE, PETITIONER - - - - - - L. J. XXVII. 34

2. —— *Caretaker.*] Although, as a rule, the Court will not grant a conditional order for attachment against a caretaker refusing to give up possession to the Receiver of the Court, but will leave the Receiver to proceed at Petty Sessions; yet when the lands are in the possession of the Court, and a person becomes caretaker under the Court under a letting by the Receiver under the Court, a conditional order for attachment will issue for contempt, if possession be not given up to the Receiver on demand made. *Re* D'ALTON
[L. J. XXVI. *M.* 662

3. —— *Contempt—Conditional order—Caretaker under Court refusing possession.*] Although, as a rule, the Court will not grant a conditional order for attachment against a caretaker refusing to give up possession to the Receiver of the Court, but will leave the Receiver to proceed at Petty Sessions; yet, where the lands are in the possession of the Court, and a person becomes caretaker under the Court, and under a letting by the Receiver of the Court, a conditional order for attachment will issue for contempt if possession is not given up to the Receiver on demand made. WREN *v.* STOKES
[L. J. XXVII. 26

4. —— *Default by purchaser in lodging money—Re-sale.*] A purchaser not having lodged his purchase-money within the time, a conditional order for an attachment issued against him, and on a motion to make it absolute no rule was made, and the lands were sold on a private offer. The latter sale was confirmed on appeal. *In re* LAWDER'S ESTATE - Ch. A. V. 1

5. —— *Discharge of attachment for non-payment of purchase-money—Terms of re-sale.*] The Court will discharge an order for an attachment for non-payment of the purchase-money

PRACTICE — LANDED ESTATES (AND LAND JUDGES') COURT—ATTACHMENT—*continued.*

by a purchaser in trust upon the terms of a consent to a re-sale, an undertaking to pay any deficiency in price under the purchase-money at the former sale, to pay interest in the meantime and any costs which should be incurred, and further, that if the second sale should bring more than the first, the surplus should be for the benefit of the incumbrancers. *Re* LINDESAY'S ESTATE - - L. E. C. III. *M.* 449

6. —— *Resistance to Ordnance Surveyor.*] A writ of attachment for resistance offered to an Ordnance Surveyor was refused because it did not appear that he had told the defendants that he was acting under the Court. *Re* CASHEL'S ESTATE - - - - - L. E. C. I. *M.* 690

PRACTICE—LANDED ESTATES (AND LAND JUDGES' COURT)—CARRIAGE OF PROCEEDINGS.

1. —— *Application to explain delay before motion for transfer of carriage.*] When after a sale of lands a creditor wishes to have the carriage of the proceedings transferred on the ground of delay, since the sale, by the solicitor having the carriage, the creditor must, before notice of motion to transfer the carriage is served, serve on the solicitor notice requiring him to explain the delay. *Re* LYNCH'S ESTATE
[L. E. C. II. *M.* 266

2. —— *Petitions for sale by owner and incumbrancer.*] Where the owner filed a petition for sale on the 12th April without setting out an incumbrancer's charge, and the latter on the 17th April filed a petition for sale, the interest on his mortgage being unpaid for more than a year, and the conditional orders for sale were dated the same day, the Court made the order for sale on the incumbrancer's petition absolute, staying the proceedings on the owner's petition, and giving the incumbrancer the carriage of the proceedings. *Re* RYAN'S ESTATE
[L. J. XXIV. *M.* 316

3. —— *Transfer of—Solicitor's costs—Lien.*] Upon a motion to transfer the carriage of proceedings to a new solicitor, the former solicitor having a lien on the title deeds:—*Held*, that he must be left to his lien, and that he had no right to any further security for his costs. *In re* FRENCH'S ESTATE
[L. E. C. I. *M.* 732

4. —— *Transfer of.*] The solicitor having carriage of sale must be called upon to account for delay before an application to transfer the carriage from him will be heard. *Re* BOYLE'S ESTATE - - - - - L. E. C. I. *M.* 139

—— Consolidation of petitions - - - I. *M.* 337
See PRACTICE—LANDED ESTATES COURT—CONSOLIDATION.

—— Duty of solicitor having - - III. *M.* 101
See SOLICITOR—DUTIES. 2.

—— Transfer - - - - - II. *M.* 300
See PRACTICE—LANDED ESTATES COURT—COSTS. 7.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—COMPENSATION.

1. —— *Alleged letting value of tenancies from year to year.*] A purchaser of lands in the Landed Estates Court having applied for compensation, on the ground that, delay having taken place in the execution of his conveyance, he was prevented from ejecting tenants from year to year, and obtaining higher rents; and there being no evidence that he could have let the lands at higher rents, the Court refused him compensation. *Re* CONOLLY'S ESTATE - L. E. C. V. 180

2. —— *Alteration in rental made and notified at the sale.*] The printed rental stated that part of the premises sold were in possession of a tenant from year to year, the fact being that he had served a notice to surrender. An order was made giving leave to amend the rental, but knowledge of that order was not brought home to the purchaser:—*Held*, that he was not entitled to compensation. *Re* DARGAN'S ESTATE
[L. E. C. IV. *M.* 137

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—COMPENSATION—*continued.*

3. —— *Claim of purchaser to be discharged.*] A purchaser in the Landed Estates Court applied to have the sale set aside or for compensation, because of the statement in the rental that a certain man was tenant (which was not the case); the dilapidation of the houses on the premises; and want of a wall ten feet high (which the descriptive particulars stated):—*Held*, that these matters did not give the purchaser a claim to be discharged; that, as regards the wall, which did not exist at all in some places, and at no place was of the height mentioned, that the purchaser was entitled to compensation and to the costs; and if the owner could bring forward a case of misdescription, the solicitor should pay the costs. *In re* FORSTER'S ESTATE - - - L. E. C. I. *M.* 28

4. —— *Deficiency in acreage.*] One of the conditions of sale stipulated that no purchaser should complain by reason of slight inaccuracies in the quantity. Out of 414 acres there was a deficiency of between two and three acres:—*Held*, that the deficiency was within the condition, and the purchaser was not entitled to compensation. *Re* KER'S ESTATE [L. E. C. IV. *M.* 642

5. —— *Deficiency in quantity—Second survey.*] A purchaser moved for compensation on the ground that the lands conveyed to him were less in quantity than the rental stated. He supported his application by the testimony of a civil engineer, who had since the conveyance surveyed the lands. For the Ordnance Office, it was stated that the quantities were accurate:—*Held*, that a second and very accurate survey should be made by the Ordnance Office: the purchaser to pay the costs if the first survey proved accurate; if otherwise, to get his costs. *In re* GORE'S ESTATE - L. E. C. III. *M.* 137

6. —— *Drainage charge—Omission in rental.*] A purchaser of lands, which had been drained under a public Act, which imposed on the lands the contingent liability of being called upon to pay their share for the maintenance of the works, claimed compensation because the rental had omitted to state this contingent and fluctuating charge:—*Held*, that he was not entitled to compensation, as he must have known from the Act that the lands were liable to the contingency. *In re* RYAN'S ESTATE - - - - L. E. C. III. *M.* 11

7. —— *Duty of receivers—Licensed premises.*] It is not part of a receiver's duty after purchase, and before conveyance, to begin to make new lettings of vacant premises. Where the payment of the licence duty of licensed premises by the receiver to the Excise Officer would not be sufficient to preserve the license, the receiver, by failing to make the payment, is not guilty of such default as to render a purchaser entitled to compensation. *In the matter of the* ESTATE OF JOHN MAGEE - - - L. J. XXVII. 51

8. —— *Exception of mines—Setting aside sale.*] When a purchaser in the Landed Estates Court claimed compensation because the mines, minerals, and royalties were excepted from the conveyance, though not mentioned in the rental, the Court held that if the purchaser wished he could get back his purchase-money and costs, but there was no way to estimate the compensation to be given. *Re* BUNBURY'S ESTATE [L. E. C. I. *M.* 504

9. —— *Fixture.*] A purchaser of a house in the Landed Estates Court is entitled to compensation for the removal of a safe built into the wall, which had been removed after the publication of the rental and the inspection by the purchaser, but before the sale. *In re* DE BURGH LYNCH'S ESTATE [L. E. C. I. *M.* 489

10. —— *Fixture—Removal of, and cutting down trees—Proper course for purchaser to adopt.*] The removal of fixtures from lands sold in Landed Estates Court is not properly the subject of compensation to the purchaser. Before the conveyance the purchaser should apply to that Court for an injunction, after the conveyance to the Court of Chancery. *Re* CANNON'S ESTATE - - L. E. C. IV. *M.* 634

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—COMPENSATION—*continued.*

11. —— *Loss by reason of non-delivery of possession at date fixed—Head-rent—Apportionment.*] Where a purchaser, on 3rd October, 1891, bought in the Court of the Land Judge leasehold lands, subject to a grazing letting, determining on 1st December, 1891, the rental stating that the purchaser should not be entitled to the rents of such letting:—*Held*, that he could not claim that the gale of head-rent accruing on 1st November, 1891, and an apportioned part of the ensuing gale, should be paid out of the purchase-money. Where the Guardians of the Poor, owing to the existence of disease amongst the sheep on the lands so let, refused to allow their removal at the expiration of the term of such letting, and the purchaser was unable to obtain possession of or use the lands:—*Held*, that at least until conveyance no compensation could be awarded in respect of the loss thereby incurred by him. *In the matter of the* ESTATE OF CASSIDY - - - L. J. XXVI. 133

12. —— *Measure of, in cases of tenancies from year to year.*] A purchaser is entitled to compensation in respect of a deficiency of the rents stated in the rental as payable by tenants from year to year, the measure of compensation being 1½ year's purchase. *Re* LAWDER'S ESTATE - L. E. C. IV. *M.* 4

13. —— *Mis-description of value of bog—Particulars—Rental.*] The rule applicable to sales outside the Court, that the purchaser should satisfy himself by personal inquiry as to the value of the thing he buys, and cannot complain of being misled by reason of the seller putting an exaggerated value upon it, does not apply to sales in the Landed Estates Court. As between the Court and the public, the Court is bound to guarantee the truth and faithfulness of its rentals. *In re Wolfe's Estate* (II. M. 370), approved. A purchaser bought a lot, upon which there was a bog of 11 acres, described in the descriptive particulars attached to the rental as "very valuable, and would let for much more than arable land." It appeared that 2 acres of the bog were good, about 4 acres of inferior quality, and the rest of very little value:—*Held*, that there was mis-description, and that the purchaser was entitled to compensation. *In re* STIRLING'S ESTATE - L. E. C. X. 17

14. —— *Motion for—Practice.*] A purchaser moved for compensation for the cutting of timber. A cross-motion was made for leave to examine witnesses to contradict the purchaser's case, and to fix a day for the examination:—*Held*, that the cross-motion was irregular, and that the proper course would have been to subpœna the witnesses to attend on the motion for compensation, or else to apply for a postponement of that motion. *Re* CARPENTER'S ESTATE - L. E. C. II. *M.* 105

15. —— *Non-existing road.*] An intending purchaser in the Landed Estates Court visited the lands before the sale. Having been declared the purchaser at the sale, he afterwards applied to the Court for compensation because what was marked upon the map as a county road was a lane leading nowhere:—*Held*, that he was not entitled to compensation. *Re* KIRWAN'S ESTATE - - - - L. E. C. I. *M.* 387

16. —— *Omission of one acre out of twenty—Mistake in rental.*] It is not beneath the dignity of the Court, on a question of compensation, to consider that one acre out of twenty has been excluded from a lot which a purchaser bought supposing that it contained that acre. It appearing that there had been a material mistake in the printed rental, which led the purchaser to suppose that the field in question formed part of the lot which he purchased:—*Held*, that he should receive compensation. *Re* MEREDYTH'S ESTATE [L. E. C. III. *M.* 726

17. —— *Public right of way—Purchaser not a stranger.*] The purchaser of property in the Landed Estates Court, situate in a town of which he had been an inhabitant, applied for compensation on account of rights of way subsequently adjudicated to belong to the public, and exercised over a pleasure-ground which formed part of the property sold to him. It was in evidence that he was previously aware of the exercise of these rights, but he alleged that the owner never admitted that such exercise was legal:—*Held*, that he was not

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—COMPENSATION—*continued.*

entitled to compensation. *Held*, also, that had the purchaser been a stranger to the neighbourhood he would not have been entitled to compensation, there being no means of ascertaining the amount of it. *Re* CONOLLY'S ESTATE [L. E. C. V. 122

18. —— *Rental—Tithe rent-charge.*] When land is sold in the Landed Estates Court, and the rental contains no reference to tithe rent-charge, the purchaser cannot claim compensation in respect of it, as the presumption is that land is sold subject to it. *Re* BARNWELL'S ESTATE - Ch. A. I. *M.* 349

19. —— *Reservation of turbary.*] A mistake was made in a rental with respect to rights of turbary. The date of the sale was the 30th November, 1869, and the mistake was discovered by the purchaser on the 18th January, 1870; he, however, had the conveyance executed to him before he raised the question on the 28th April, 1870, and claimed compensation:—*Held*, that he was late in his application; that the injury was incapable of calculation; but that the solicitor having carriage of the sale should not have his costs in respect of the preparation of the rental. *Re* LISLE'S ESTATE [L. E. C. IV. *M.* 532

20. —— *Square tax.*] A purchaser in the Landed Estates Court of a house in Rutland Square is not entitled to compensation in respect of a tax to which the houses in the Square are liable under 25 Geo. III., c. 43. *Re* SIDNEY'S ESTATE - - - - - L. E. C. I. *M.* 351

21. —— *Tithe rent-charge.*] Where property was purchased in May, 1890, on a rental published in 1889, the Court declined to compensate the purchaser for the omission in the rental of a statement that the lands sold were subject to tithe rent-charge, of the existence of which the purchaser swore he was ignorant when purchasing. For the future in the Land Judges' Court, when the particulars of tithe rent-charge or the annuities in lieu thereof are not specified, a condition will be inserted that the lands are sold free from the tithe rent-charge or annuity. *Re* BAILIE'S ESTATE [L. J. XXVII. *M.* 224

22. —— *Undisclosed authority to tenant to till land contrary to covenant.*] Subsequently to a petition for a sale being filed and service of the final order on the tenants, the owner authorised his solicitor to put an indorsement on a lease giving permission to the tenant to till the land contrary to the covenant:—*Held*, that the purchaser was entitled to compensation. *Re* FOWLER'S ESTATE [L. E. C. IV. *M.* 417

—— Discharge of purchaser - - - II. *M.* 398

See PRACTICE—LANDED ESTATES COURT—DISCHARGE OF PURCHASER. 2.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—CONSOLIDATION — *Petitions—Carriage of proceedings.*] Two petitions were filed for the sale of certain premises, the first dealing with the entire of the land, and brought by a salvage creditor; the second brought by an incumbrancer on the life estate in one moiety. On a motion that the second petition should be stayed and that the first petitioner should be allowed to adopt the abstract of title given in the second matter, the Judge made an order consolidating both petitions, but gave the carriage of the sale to the second petitioner, who had acted properly. *Re* JENNINGS' ESTATE - - L. E. C. I. *M.* 337

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—CONVEYANCE — *Motion to suspend the execution of conveyances by the Court.*] An order of the Judge of the Landed Estates Court refusing to suspend the execution of conveyances to certain purchasers in that Court, pending inquiries for a will of a former owner, which, it was charged, gave the property to the applicants, was affirmed on appeal. *Re* CULLEN'S ESTATE [Ch. A. X. *M.* 644

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—COSTS.

1. —— *Of puisne incumbrancer from whom carriage of sale was transferred to a prior incumbrancer.*] A puisne incumbrancer, who has, when he presents a petition for sale, every prospect of being paid, but afterwards discovers that the produce of the sale will not pay prior incumbrancers, and thereupon transfers the carriage of the proceedings to a prior incumbrancer, will be allowed all his costs of which the estate received the benefit. *Re* SMYTH'S ESTATE [L. E. C. II. *M.* 670

2. —— *Priority of costs of owner — Incumbered estate.*] Although as a general rule in the Landed Estates Court the costs of a party who is owner and petitioner will be paid out of the residue, after payment of all incumbrances, yet on special grounds such costs may be ordered to be paid in priority to the incumbrances. In a case where the sale was concurred in by the creditors, and had been prudently and necessarily carried out, the owner was allowed his costs in priority. *Re* WILSON'S ESTATE - - - L. E. C. I. *M.* 299

3. —— *Priority of costs of owner of insolvent estate—Rule as to the date of creation of incumbrances.*] Where an owner, bringing an estate to sale, has himself created incumbrances upon it, the costs of sale will not be allowed priority to the incumbrances; but the rule is otherwise if he have to come to the possession of the estate so incumbered by inheritance or devise. The costs of sale of an owner, who had been in receipt of the rents of the premises, and had not paid a mortgage debt affecting them contracted by himself, or the head-rents, were disallowed priority to the incumbrances. *Re* WOODS' ESTATE [L. E. C. VI. 131

4. —— *Priority of costs of owner of insolvent estate.*] The rule laid down in *Re Wilson's Estate* (I. R. 1 Eq., 92) does not in all cases deprive the owner of an insolvent estate of the costs of sale. Where the owners were also incumbrancers of the estate, and where the petition had been presented with the assent of the creditors, the owners' costs were allowed in priority to the incumbrancers, there being a deficient fund. *Re* BOYCE'S ESTATE - - - L. E. C. I. *M.* 280

5. —— *Priority of costs of owner—Misconduct of solicitor having carriage of sale.*] Objection to a draft schedule of incumbrances on an estate incumbered beyond its value, "that the costs of the owner and petitioner should be paid, not in priority to a mortgage debt due to an objector, or to his assignee, but should be payable out of the residue, if any, after payment of incumbrances." It was alleged that the insufficiency of the purchase-money to discharge incumbrances had been caused by the refusal of the petitioner's solicitor to bring under the notice of the Court an offer higher than the price realised at the sale. The petitioner's solicitor had the carriage of the proceedings:—*Held*, that the Court would not have accepted the alleged offer if brought before it; and that the solicitor should not be deprived of his costs. *Re* KELLY'S ESTATE [L. E. C. II. *M.* 212

6. —— *Priority—Costs of owner—Insolvent estate.*] The owner of an insolvent estate is not entitled to have his costs as a first charge upon the estate. *Re* C. M. WILSON'S ESTATE [L. E. C I. *M.* 119

7. —— *Priority of owner's costs—Transfer of carriage.*] The costs of an owner and petitioner having the carriage of the proceedings, and acting *bonâ fide*, will have priority of the creditor's demands, and transfer of the carriage will be refused if the party having the carriage has not been called upon to explain delay. *Re* JONES' ESTATE L. E C. II. *M.* 300

8. —— *Priority of costs of sale of insolvent estate.*] When the proceedings were taken by the owner, at the suggestion of a creditor, the costs of sale would be paid in priority to the incumbrances. *Re* DEVEREUX'S ESTATE - L. E. C. V. 9

9. —— *Priority of petitioner's costs of sale when he was a puisne incumbrancer.*] The petitioner, a puisne incumbrancer, was given his costs of sale in priority to the demand of a prior mortgagee: the costs were directed to stand as part of the charge of selling the estate. *Re* MALONE'S ASSIGNEES [L. E. C. III. *M.* 118

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—COSTS—*continued.*

10. —— *Priority of costs of Probate.*] Funeral expenses and the costs of obtaining probate will be paid in priority to the incumbrances on the schedule, when the fund realised by the sale of the testator's estate proves to be deficient. *Re* WOODROOFE'S ESTATE - - **L. E. C. II. *M.* 636**

11. —— *Priority of costs of owner.*] On a petition for sale by an owner, when he has acted *bonâ fide*, his costs should be placed on the top of the schedule. *Re* R. DILLON'S ESTATE **[L. E. C. I. *M.* 83**

12. —— *Review of taxation—Schedule of fees* (1859), *item* 76 *—Copying Poor Law valuation.*] Where the solicitor merely copies the Poor Law valuation, without any independent investigation of the nature of the tenancy and the rent paid, he will not be allowed the fee of 2s. per tenancy, provided by the Schedule of Fees (July 18th, 1859), item 76, but only the costs of such transcription. *In re* TEMPLE'S ESTATE **[L. J. XXVII. 6**

13. —— *Solicitor of owner changed, but carriage not transferred.*] The owner and petitioner changed his solicitor, P., who continued to have the carriage of the proceedings. No allegation of misconduct or delay was made against him, nor did the petitioner apply to have the carriage of the proceedings transferred:—*Held*, that P. must have all his costs, in priority. *Re* DODWELL'S ESTATE **L. E. C. II. *M.* 92**

14. —— *Taxation of costs of advertisements.*] A solicitor ordered to pay for advertisements allowed in his costs, although the claim would in strictness have been barred by the Statute of Limitations. *In re* GRAYDON'S ESTATE **[L. E. C. IV. *M.* 510**

—— Guardians of Poor applying for Poor Rate **II. *M.* 121**
See POOR RATE. 2.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—DECLARATION OF TITLE.

1. —— *Claim of right of way by adjoining owner—Issue.*] An adjoining owner came in and objected to the declaration of title without reserving to him a right of way which he had enjoyed for 40 years over the land. The Court directed an issue to try the question, the adjoining owner to be the plaintiff in it. *Re* CARSON'S ESTATE **L. E. C. IV. *M.* 759**

2. —— *Motive of petitioner.*] The owner filed a petition to obtain a declaration of title, his object being to ascertain the tenure by which a tenant held:—*Held*, that this was a proper case for declaration of title. *Re* DARNLEY'S ESTATE **[L. E. C. III. *M.* 741**

3. —— *Objection by adjoining owner—Several fishery.*] The Landed Estates Act, sec. 53, contemplated a preliminary inquiry whether or not it is *expedient*, under all the circumstances of the case, that the Court shall proceed with the investigation of a title, with a view to a judicial declaration thereof. Therefore it is not premature to lodge an objection to a petition for a declaration of title before a conditional order for a declaration of title has been made. *Re* ACHESON'S ESTATE - **L. E. C. II. *M.* 316; L. E. C. II. *M.* 494; [Ch. A. III. *M.* 196**

4. —— *Right of way.*] To a petition for a declaration of title there was an objection made that the title would be declared subject to an existing public road or right of way. The evidence showed a continuous user by the public since 1847, when the road was made under the Relief Act:—*Held*, that the petitioner must have a possession pursuant to his title before the Court would make a declaration for him. NETTERVILLE'S ESTATE - - - **L. E. C. III. *M.* 407**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—DISCHARGE OF PURCHASER.

1. —— *Misdescription in map attached to rental.*] Where the vendors had caused a map to be prepared, with the portion to be sold (consisting of two lots) coloured green, and, after the preparation of the map, changed their intention and determined to sell the smaller lot, the purchaser, who thought *bonâ fide* that he was purchasing both lots, and had paid his purchase-money, was held entitled to be discharged from the purchase. *Re* GREER'S ESTATE **L. E. C. VIII. 87**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—DISCHARGE OF PURCHASER—*continued.*

2. —— *Misdescription of premises—Compensation.*] "Compensation" does not mean a large sum amounting to a considerable proportion of the bulk of the purchase-money. A purchaser applied for compensation because of misdescription in the rental. The Court did not think that the case was one for compensation; and, if it was, could not calculate what amount should be given:—*Held*, that the purchaser might be discharged, if he pleased; otherwise, the application to be refused with costs. *Re* BLAKE'S ESTATE **[L. E. C. II. *M.* 398**

3. —— *Omission in rental—Interest on purchase-money.*] The rental of lands offered for sale, having omitted to state the proviso contained in leases of them made by the owner, by which the owner was bound to take up the possession of the premises demised, subject to the possession and occupation by the under-tenants of portions of the lands then under-let, and in the possession of such occupiers, and a portion of said premises having been under-let at the date of said leases, and continuing under-let, the Court discharged the purchasers. A purchaser of lands sold subject to leases should inspect the leases within a week after the sale, and a purchaser who omitted to do so, was allowed only a week's interest on his purchase-money, with interest from the date of serving notice of an application to the Court to the date of his discharge. Whether the Landed Estates Court has jurisdiction to allow interest on purchase-money, where the purchaser is discharged, and where the money is not fructifying, *quære*? *Magennis* v. *Fallon* (2 Mol. 593). *Re* KELLY'S ESTATE **L. E. C. V. 195**

4. —— *Removal of valuable trees after publication of rental.*] One of the lots of an estate sold in the Landed Estates Court having been described in the rental as being planted with valuable and ornamental trees, and forming a beautiful site for a mansion house, and a portion of the ornamental timber having been removed by the owner subsequently to the publication of the rental, the Court discharged the purchaser. *Re* WIGMORE'S ESTATE - - - **L. E. C. V. 168**

—— Compensation.
See PRACTICE—LANDED ESTATES COURT—COMPENSATION. 3, 8.

——Misstatement in rental. - - **II. *M.* 370**
See PRACTICE—LANDED ESTATES COURT—RENTAL. 1.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—EASEMENT.

1. —— *Insertion of an easement in the rental.*] The Court is bound to inquire as to easements and ascertain whether they exist; and it therefore refused to insert in the rental a statement that the lands would be sold "subject to the right of angling *if any*, conveyed to the said" by a certain deed. *Re* PALMER'S ESTATE - - **L. E. C. II. *M.* 196**

2. —— *Right of commonage—Effect of order of Court of Chancery Appeal.*] An order made by the Court of Chancery Appeal having recited that the owner and petitioner, by his counsel, in open Court, relinquished all claim on behalf of himself and any tenant of his, except the tenants of certain townlands, to rights of commonage over the lands ordered to be sold in the matter, a motion subsequently made on behalf of other tenants of the owner, that the owner and petitioner be directed to amend the rental by inserting therein the words, "The tenants and occupiers of Coolbawn, &c., have the right of common of turbary, turf mould, and pasture on said lands," was refused. *Re* SPAIGHT'S ESTATE **[L. E. C. VI. 177**

3. —— *Right of way.*] Objection by an adjoining owner, who claimed a right of way. The lands were held under a

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—EASEMENT—*continued.*

lease, made in 1846, for lives renewable for ever. That lease was, within the last year or two, converted into a fee-farm grant. The lands had been for upwards of twenty years in possession of a person who was *sui juris*:—*Held*, that under the circumstances the Prescription Act did not apply, while the interest remained a leasehold one, and that the right of way was not an easement by prescription; but the law, as it stood before the Prescription Act, applies to such cases. That, since the evidence showed that the right had, with public notoriety, been exercised for upwards of sixty years, it was a subsisting right. *Re* VAN HOMRIGH'S ESTATE **L. E. C. II. *M.* 283**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—EJECTMENT—*Counsel—Costs.*] An application for leave to bring an ejectment for non-payment of rent of lands comprised in the order for sale, should be by summons in Chamber, without counsel. *Re* PALMER'S ESTATE **[L. J. XXIII. *M.* 8**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—FINAL NOTICE TO TENANTS—*Omission to file an objection—Compensation to tenant.*] A tenant was described in the rental as a yearly tenant, instead of as holding under an agreement for a lease. The parol agreement proved was for a lease for twenty years, renewable for another period of twenty years. Her solicitor neglected to make the objection in proper time:—*Held*, that she was entitled, so long as there was a fund in Court, to be recouped out of the estate, which had been benefited by the solicitor's omission, the purchaser having given an additional price for the property, and she being entitled to bring an action for negligence against her solicitor only when she was damnified, which she would not be if she were given compensation. *Re* CONOLLY'S ESTATE - **L. E. C. III. *M.* 569**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—GUARDIAN AD LITEM—*Application to be discharged.*] The Court refused, but without costs, the application of a guardian *ad litem* to be discharged, on the ground that he was unacquainted with the person of the minor, and of the business required of him. *Re* MONTGOMERY'S ESTATE - - **L. E. C. V. 169**

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—INCUMBRANCE.

1. —— *Costs—Claim against petitioner—Schedule of incumbrances.*] Upon a petition for sale being presented in the Landed Estates Court, the owner applied to have the conditional order for sale set aside on the ground that the petitioner owed him more for costs than he owed the petitioner, and the costs being subsequently taxed, it appeared that some of them were barred by the Statute of Limitations. The petitioner was declared on motion to be entitled to credit upon the schedule of such taxed costs. *Re* ARMSTRONG'S ESTATE **[L. E. C. I. *M.* 46**

2. —— *Smallness of amount due—Order for sale.*] The Court granted a conditional order for sale where the petitioner's debts only amounted to £27 14s., but it was due to him as a purchaser in the Court. *In re* MURRAY'S ESTATE **[L. E. C. X. *M.* 121**

—— Petitioner—Tenant for life and incumbrancer—Payment by remainderman - - - **I. *M.* 715**

See TENANT FOR LIFE AND REMAINDERMAN. 6.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—INJUNCTION—*Owner of estate in Landed Estates Court cutting down timber.*] The Court granted a conditional order for an injunction when it appeared by affidavit that the owner was cutting down, and was intending to cut down timber for sale. *Re* LAWDER'S ESTATE **[L. E. C. IV. *M.* 47**

—— To put purchaser into possession - **V. 180**

See PRACTICE—LANDED ESTATES COURT—POSSESSION. 1.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—INTEREST.

1. —— *Arrears—Wife living with husband—Payable by him to her.*] When a mortgage debt is due by a husband and payable to the separate use of his wife, who lives with him, only one year's arrears of interest will be allowed to her. *In re* KIRWAN'S ESTATE - - **L. E. C. I. *M.* 776**

2. —— *On unpaid purchase-money.*] An agreement to sell lands contained a clause providing that the purchaser should be at liberty either to retain the purchase-money and pay interest thereon after the rate of 5 per cent. per annum until the execution of the conveyance by the Landed Estates Court, or at once bring in and lodge it in the Court, to the credit of the petition, so as to relieve him from liability to the payment of interest from such lodgment. On the 23rd November, 1867, the purchaser wrote to the vendors a letter complaining of delay, and stating that he would in future pay only such interest on the purchase-money as it produced in the lands. The purchaser did not apply to the Court for an order to lodge his purchase-money:—*Held*, that alleged delay on the part of the vendors subsequent to the letter of the 23rd November, 1867, did not exempt the purchaser from the payment of the stipulated rate of interest. *Re* HAMILTON'S TRUSTEES' ESTATE - - - **L. E. C. V. 20**

3. —— *On untaxed costs secured by mortgage, made to solicitor pending the relation of client and solicitor.*] The late owner executed to his solicitor a mortgage of the lands sold in this matter to secure £250, due for costs, with interest at £6 per cent. The solicitor claimed three years' interest. This claim was objected to:—*Held*, on the authority of *Fowler* v. *Moore* (2 Jones, 415), but contrary to the opinion of the Judge, that interest could not be allowed. *Re* O'CONNOR'S ESTATE - - **L. E. C. III. *M.* 482**

4. —— *Statute of Limitations.*] Where an incumbrancer who has proved his demand in an administration suit presents a petition for sale in pursuance of the judgment in the action and proceeds to a sale, the Landed Estates Court when paying the incumbrancers will direct the arrears of interest to be calculated in the same way as if the distribution were being made by the Master of the Rolls or Vice-Chancellor. Consequently the Statute of Limitations will not run against an incumbrancer's claim after the commencement of the administration action. *Re* EBB'S ESTATE **[L. J. XXVII. *M.* 200**

—— Purchase-money - - - - **V. 195**

See PRACTICE—LANDED ESTATES COURT—DISCHARGE OF PURCHASER. 3.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—JURISDICTION.

1. —— *Accounts—Laches—Statute of Limitations—Staying proceedings.*] A petition for the sale of certain estates, charged by the will of a former owner with the payment of incumbrances then affecting them, having been presented for the purpose of recovering a legacy bequeathed by a previous owner, the owners disputed the identity of the alleged legatee, and besides setting up the Statute of Limitations alleged laches on the part of the legatee, and that the bequest was void for ambiguity:—*Held*, that the Landed Estates Court would not determine these questions, but would make an order retaining the petition until the petitioner should have instituted proceedings in Chancery to ascertain his right. The machinery of the Landed Estates Court was not intended to be applied to the ascertainment of charges involving the taking of complex or exceptional accounts. The Landed Estates Court was intended to be a court of sale in the case of incumbrances which are easy of ascertainment. *Re* CUTHBERT'S ESTATE - - - - **L. E. C. VI. 71**

2. —— *Agreement between landlord and tenant—Apportionment of rent—Landlord and Tenant (Ireland) Act*, 1870.] The Court has no jurisdiction to carry out an agreement for sale between the landlord and tenant of a portion of land com-

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—JURISDICTION—*continued.*

prised in a fee-farm grant, indemnified by the remainder of the lands against the rent reserved by the grant. *Re* DOMVILE'S ESTATE - - - - - - L. E. C. VI. 62

3. —— *Breach of trust.*] Trustees of money in 1825, agreed to give the dividends thereon to the father of their *cestui que trust* (an infant three years old) until he came of age, and took from the father a mortgage to secure themselves. They claimed to have it placed on the schedule as of the date of its execution. Creditors puisne to the mortgage set up the defence that the trustees had not committed any breach of trust:—*Held*, that this Court had not jurisdiction to deal with such a defence. *Re* CUTHBERTSON'S ESTATE [L. E. C. III. *M.* 252

4. —— *Effect of Decretal Order of Court of Chancery.*] The rules which regulate the effect of the Court of Chancery proceedings as binding the Landed Estates Court considered. If the Court of Chancery ruled a question brought before it by suitors there, the Landed Estates Court will act on its decision; when the parties in the proceedings in that Court put the case on the ground that by reason of such proceedings they were unable to show the truth, the Landed Estates Court was unwilling to allow such an estoppel to bind it, but adjourned the case for the purpose of allowing the parties to apply to the Court of Chancery to have their rights adjudicated upon. *Re* BROWNE'S ESTATE [L. E. C. I. *M.* 578; II. *M.* 7

5. —— *Judge being interested in estate as a trustee for an incumbrancer.*] A Judge of the Landed Estates Court refused to allow a sale to proceed when it appeared that he was returned upon the schedule of incumbrances as a trustee under a deed which he had not seen or signed and which could not be produced to the Court. *Re* O'LOGHLEN'S ESTATE [L. E. C. IX. *M.* 32

6. —— *Sale subject to contingent estate—Re-sale by purchaser—Estate defeasible on contingency.*] The title to lands for the sale of which a petition had been presented in the Landed Estates Court consisted amongst others of a conveyance in fee-simple, executed by one of the Judges of that Court, "subject and without prejudice to a contingent estate tail in the first and other sons successively of R., in case it shall be held that at the time of presenting the petition to the Court such estate tail was subsisting and capable of taking effect":—*Held*, that the Court would not direct a sale of the inheritance. *Re* BATTY'S ESTATE [L. E. C. V. 47

7. —— *Trust for sale—Advowson—Distribution of purchase-money—Executor—Legatee—Charge.*] A testator devised advowsons to trustees and to the survivor of them and to the heirs of the survivors, upon trust to sell as soon as possible, and to pay the proceeds to his executors to sink into the residuary estate; by a codicil he bequeathed £10,000 to A.:—*Held* (reversing the judgment of the Landed Estates Court), that the legacy was not charged upon the advowsons, and the Landed Estates Court had no jurisdiction to administer the personal estate of the testator into which the proceeds of the sale went. *Re* CUTHBERTS' ESTATE [L. E. C. III. *M.* 648; Ch. A. IV. *M.* 66

8. —— *Trustee and* cestui que trust—*Impeachment of lease—Staying proceedings.*] R. (one of the trustees of the settlement executed on the marriage of B, and the agent of the property put in settlement by it) in 1858 caused his nephew to be substituted for himself as trustee, and a few days subsequently B. and her husband, in pursuance of an agreement in writing entered into previously to the change of trustees, executed a lease of the lands to R. for 100 years, and also a deed covenanting to procure the execution by their two daughters (who were entitled in remainder under the settlement to two-thirds of the lands) when of age, of a lease of the lands in perpetuity at the same rent. In 1861 a lease of the lands in perpetuity at the same rent was made to R. by the trustees, B. and her husband, and their two daughters, and purported to be executed by all the parties. Upon the sale of the lands one of the daughters having objected to the lease being returned upon the rental, upon the grounds that she was without independent advice when she executed it, and that it was made at an undervalue, &c.:—*Held*, that as there was not a full representation of the parties, and the Court could not give the relief to which they might be entitled, it would not decide the question, but would stay the proceedings to a sale, to enable proceedings to be taken in Chancery to set aside the lease. *Re* DE BAZENCOURT'S TRUSTEES' ESTATE L. E. C. VI. 76

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—JURISDICTION—*continued.*

9. —— *Wife's equity to a settlement.*] In a matter in the Landed Estates Court a sum of money was paid into Court on foot of a mortgage, and the petitioner applied to have it transferred to his credit on foot of a mortgage debt to which he was entitled in right of his wife. She put in a claim to an equity to a settlement, which the petitioner resisted as she was allowed alimony under an order of a Court, and also on the ground that sec. 37 of the Landed Estates Court Act gave no jurisdiction to Judges of that Court concerning a wife's equity to a settlement. The Judge desired the case to stand for the purpose of having proceedings taken in Chancery. *Re* LYNCH'S ESTATE L. E. C. I. *M.* 299

—— Arranging debtor—Petition for sale - I. *M.* 746
See BANKRUPTCY—ARRANGEMENT. 22.

—— Effect of decree in administration action in Court of Chancery so as to bind the Landed Estates Court [I. *M.* 533
See ESTOPPEL. 2.

—— Mistake—Conveyance.
See LANDED ESTATES COURT CONVEYANCE. 3, 4.

—— Question of title - - - - - VIII. 153
See SETTLEMENT—CONSTRUCTION. 8.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—LIEN.

1. —— *Expenses incidental to sale.*] A petitioner having applied to the Court that he might be declared entitled to a lien in the same priority with his mortgage upon the moneys to be produced by a sale of the lands ordered to be sold for the expenses of removing an accumulation of water from a quarry, which formed a portion of the premises, or declared entitled to them as part of the expenses of the sale, the Court refused the application. *Re* WRIGHT'S ESTATE L. E. C. V. 179

2. —— *Lodgment of deeds—Landed Estates Court.*] In obedience to an order made by the Incumbered Estates Court on the 14th March, 1854, J. O., a solicitor, lodged with the Commissioners certain deeds relating to premises ordered to be sold, and upon which he had a lien for costs due to him by the owner, for whom he had, some time previously, transacted business as a solicitor. Portions of the lands having been sold, and further proceedings stayed, on the 20th November, 1863, an order was made by the Landed Estates Court to transfer the deeds to the representative of J. O., who had died, and they were transferred. The proceedings having been subsequently continued, on the 23rd July, 1867, an order was made by the Landed Estates Court that the representative of J. O. should lodge with the keeper of the deeds such deeds in his possession, &c., as related to the estate; and the deeds, consisting partly of those previously lodged by J. O., were accordingly lodged:—*Held*, affirming the decision of Judge Flanagan, that the representative of J. O. preserved his lien. *Re* HUTCHINS' ESTATE - - - Ch. A. VI. 183

3. —— *Lodgment of deeds—Practice—Landed Estates Court.*] The former solicitor of the owner had a lien of some of the deeds, and he lodged them in Court, the receipt from the officer expressing that the lodgment was made subject to the lien. The Court decided that the lien was lost by the lodgment. *Re* BURROWES' ESTATE - - Ch. A. I. *M.* 336

—— Costs - - - - - - I. *M.* 732
See PRACTICE—LANDED ESTATES COURT—CARRIAGE OF PROCEEDINGS. 3.

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—OBJECTION.

1. —— *Filing objection and not claim—Costs.*] A claimant, who neglects to file his claim within the prescribed time, but subsequently files an objection, will be allowed only the costs of filing a claim, unless he can show that he had not seen in time the published notice to claimants. *Re* CASEMENT'S ESTATE - - - - - L. E. C. II. *M.* 637

2. —— *Schedule—Costs of litigation.*] A case came on upon argument of objections to the schedule, two of which involved the trial of the matters in the Court of Chancery and the third a trial before the Judge of Assize. The owner objected to these as being at the expense of the estate. *Lynch, J.*, said he would accede to the application to hear the objections without producing evidence if the parties came to him to argue then. *Re* CANTWELL'S ESTATE - L. E. C. I. *M.* 103

—— Adjoining owner - - - - - - V. 31

See PRACTICE—LANDED ESTATES COURT—ADJOINING OWNER.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—ORDER FOR SALE.

1. —— *Absolute order rescinded.*] An absolute order for sale was discharged on the ground that the nominal owner was not in receipt of the rents and profits of the land ordered to be sold. *In re* HUNT'S ASSIGNEES' ESTATE L. E. C. I. *M.* 28

2. —— *Absolute order for sale—Effect of rescission of.*] An absolute order for sale of land grounded on a different construction of the clause in a settlement having been made, and the lands having been sold, and the purchase-money having been paid out, the Court of Chancery Appeal held that, without prejudice to the sale or the title of the purchaser, the absolute order for sale ought not to be held binding on the owner, as a decision of the validity of a deed of 1861, which purported to execute the articles, and that the owner was entitled to the cash standing in Court and to the sums paid out, and that the orders should be rescinded under which such payments were made. *Re* GRIER'S ESTATE - Ch. A. VI. 20

3. —— *Outstanding mortgage—Cause against absolute order for sale.*] The existence of an outstanding mortgage, which contained a provision that the mortgagee was not to be required to take a repayment of his loan for five years, is no cause against making absolute a conditional order for sale. *Re* WOODWARD'S ESTATE - - - L. E. C. I. *M.* 443

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—PARTITION.

1. —— *Amendment of order for—Jurisdiction—Landed Estates Court Act*, 1858, *ss.* 79, 85.] Even though an order for partition be signed by the Judge, and sealed with the seal of the Court, the Court has jurisdiction to amend the order before conveyance. *Re* MARTIN'S ESTATE [L. J. XIII. 102

2. —— *Joint owners—Dissent to—Sale*—31 & 32 *Vic., c.* 40, *s.* 4.] The owners of five-sixths of an estate held in undivided shares having petitioned the Court that pursuant to the provisions of the 31 & 32 Vic., c. 40, the entire estate might be sold and the proceeds distributed amongst the owners, the owners of the remaining one-sixth share showed cause against making absolute the conditional order for sale, on the grounds, 1st, that part of the property consisted of houses and tenements situate in different streets in the City of Dublin, and part of it of lands in the County Cavan, held by a large number of tenants, the tenements lying at considerable distances from one another; 2nd, that in the opinion of the parties showing cause, their share of the purchase-money would not yield them the income derived by them from their share of the estate. (The grounds of this opinion were not stated.) 3rd, that the dissenting owners were nuns, residing in a convent, and not conversant with the business of the world:—*Held*, that this was not a "good reason to the contrary" within the meaning of the 4th section of 31 & 32 Vic., c. 40, and that the order for sale should be made absolute. *Re* LANGDALE'S ESTATE [L. E. C. VI. 12

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—PARTITION—*continued.*

3. —— *Landed Estates Court Act, s.* 79.] Upon motion to make absolute a conditional order for sale of an undivided share under the Partition Act, 1868, cause was shown that the title to one of the undivided shares was not ascertained, as the share was alleged to be the property of W. D. or P. D.:—*Held*, that the cause shown should be disallowed. *Re* DANE'S ESTATE [L. E. C. VII. 46

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—PETITION.

1. —— *Benefit of all creditors—Debt—Statute of Limitations.*] A petition for sale presented by one creditor in the Landed Estates Court becomes a petition presented on behalf of all creditors. Time does not run against a debt which at the date of the presenting of the petition is not barred by the Statute of Limitations. *Re* IRWIN'S ESTATE L. E. C. I. *M.* 103

2. —— *Copies of deeds.*] An application for leave to get copies of deeds lodged in Court in a petition matter, when not made by the solicitor having carriage, must be on notice. MULLINS *v.* PILKINGTON - - L. J. XXVII. *M.* 658

3. —— *Incumbrancer—Minor owner—Prior ascertainment as to whether incumbrance could be paid off in reasonable time—Dismissal of petition.*] A petition was presented for the payment of four months' interest on a mortgage of the life estate of the late owner, the present owner being a minor. No application had been made to the family before presenting the petition, and the estate was ample security:—*Held*, that the petition should be dismissed without costs. *Re* MEREDITH'S ESTATE - - - - - - L. J. XIII. *M.* 373

4. —— *Real Property Limitation Act*, 1874 (37 & 38 *Vic., c.* 57), *s.* 8.] The filing of a petition for sale by an incumbrancer is a proceeding within the meaning of the 8th section of the Real Property Limitation Act, 1874, and prevents the statute from running from that date as against the petitioner. *In the Matter of the* ESTATE OF JOHN STINSON AND THOMAS STINSON - - - - - - L. J. XXVII. 26

5. —— *Trustees for sale.*] When a former trustee of a will had committed a breach of trust in investing trust funds in the purchase of land, and the Master of the Rolls appointed new trustees who presented a petition for the sale of the land, the Court refused to fiat the petition as they were not trustees for sale, and it had no jurisdiction to do so—but allowed the petition to be retained in Court till a decree for sale had been obtained in the Court of Chancery. *Re* HULL'S ESTATE - - - - - - L. E. C. I. *M.* 138

—— Statute of Limitations - - VIII. 111; IX. 31

See LIMITATIONS, STATUTE OF. 10.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—POSSESSION.

1. —— *Injunction to put purchaser into immediate possession.*] Where it was shown that premises purchased in the Landed Estates Court were in the possession of a labourer, and were likely, in consequence, to be deteriorated in value, the Court granted an injunction to put the purchaser into immediate possession, although according to the conditions of sale the purchase-money was not to have been lodged until three months after the confirmation of the sale. *Re* WYSE'S ESTATE - - - - - - L. E. C. V. 180

2. —— *Petition for sale of lands not in the owner's hands—Staying proceedings.*] When a tenant who was described in the schedule as an overholding tenant of part of the lands ordered to be sold came in and claimed to be owner in fee by virtue of possession without paying rent for 30 years, the Court, as it will not try ejectments, stayed proceedings till the owner took steps to get possession of that portion. *Re* THE ESTATE OF THE ASSIGNEES OF BERMINGHAM [L. E. C. I. *M.* 761

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—PURCHASE BY TENANTS.

1. —— *Lots—Discretionary power of Court—Landlord and Tenant (Ireland) Act*, 1870, *s.* 46.] Where an estate has been brought for sale in the Landed Estates Court, and on the settlement of the rental has been sub-divided into lots co-extensive with the holdings of the occupying tenants, there is no absolute right conferred by the 46th section of the L. & T. (Ir.) Act, 1870, upon any tenant or number of tenants to purchase his or their respective holdings at a price offered therefor, or to be fixed by the Court. The right of an occupying tenant to be afforded reasonable facilities for purchasing his holding being qualified by the provision that such must be consistent with the interests of the persons interested in the estates or the purchase-money thereof. An owner is not coerced to sell to him at an offered price less than he could obtain from third persons; and the Landed Estates Court, notwithstanding the estate having been so sub-divided into several lots, may sell the estate in one lot, either by private sale or public auction, if, in the exercise of its discretion, it considers that the most advantageous course consistent with the interests of those interested in the estate or its purchase-money. *Re* DOMVILE'S ESTATE
[L. E. C. & Ch. A. IX. 134

2. —— *Practically unincumbered estate—Right of tenants to purchase—Right of owner to sell privately.*] The owner of an estate which was practically unincumbered agreed to sell it to a purchaser; the tenants claimed to have the right of buying it under sec. 46 of the Landlord and Tenant (Ireland) Act, 1870:—*Held*, that the Act did not impose upon the Court an imperative duty to sell at all hazards to the tenants, and as the agreement with the intending purchaser was entered with *bonâ fide*, he should be declared entitled to have it carried out. *Re* LE FANU'S ESTATE - L. E. C. XI. *M.* 308

—— *Locus standi* of tenant - - XXVI. 27, 30
See PRACTICE—LANDED ESTATES COURT—SALE. 3.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—RECEIVER.

1. —— *Appointment of—Incumbrancer—Amount of interest due—Judicature Act, s.* 39.] The Court will not, except under unusual circumstances, appoint a receiver on the application of an incumbrancer where only one year's interest is due, and there is sufficient security. *Re* MURRAY'S ESTATE
[L. J. XIII. *M.* 374

2. —— *Appointment of—Application by incumbrancer—Conditional order for sale—Jurisdiction—Judicature Act, s.* 39.] The Court refused to appoint a receiver, on the application of an incumbrancer, where the conditional order for sale had not been made absolute. *Re* GAUSSEN'S ESTATE
[L. J. XIII. *M.* 374

3. —— *Extension—Prior incumbrances—Impeachment of incumbrances—Fraud—Judicature Act, s.* 40.] The Court will not grant a motion under sec. 40 of the Judicature Act, 1877, by a prior mortgagee, to extend his claim to a receiver appointed on behalf of a puisne mortgagee, if the latter resists the motion, on the ground that the earlier mortgage has been obtained by fraud; but will direct the prior mortgagee to bring an action for the purpose of extending the receiver. *Semble*, the Court must be satisfied that the impeachment of the incumbrances is *bonâ fide*. *In re* O'FLAHERTY'S ESTATE - L. J. XIV. 12

4. —— *Judgment mortgage for not more than £150—Chancery Receivers' (Ir.) Act*, 1867, *s.* 3—*Judicature Act, s.* 28 (8).] The petitioner, a judgment mortgagee for a sum not exceeding £150, having applied to have a receiver appointed over the lands on account of certain delays in the proceedings necessitated by difficulties in the title:—*Held*, that the provisions of the 3rd sec. of 19 & 20 Vic., c. 77 (for amending the practice of the Court of Chancery in Ireland in relation to the appointing of receivers over Real Estate) providing that no receiver shall be appointed over lands on the application of a judgment-mortgagee for a sum not exceeding £150, were repealed by

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—RECEIVER—*continued.*

sec. 28, sub-sec. 8 of the Judicature Act, enabling the Court to appoint a receiver wherever the Court thought it "just or convenient," and that a receiver should be appointed. *Garnett v. Bradley* (L. R. 3, App. Cas. 944) applied. M'CULLAGH *v.* BELL - - - - - - - - L. J. XVII. 77

5. —— *Purchaser—Incumbrances.*] Where a receiver over an estate became the purchaser of incumbrances upon it and of the estate itself, the owner applied to have an inquiry made as to the sums paid for the purchase of the incumbrances by the receiver. The motion was refused, as no notice had been given to the parties who were settled upon the schedule. *Re* (C. M.) DILLON'S ESTATE - - L. E. C. I. *M.* 46

—— Appointment - - - - - XV. 76
See SETTLEMENT—VOLUNTARY SETTLEMENT. 4.

—— Duty—Licensed premises - - - XXVII. 51
See PRACTICE—LANDED ESTATES COURT—COMPENSATION. 7.

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—RECORD OF TITLE.

1. —— *Equitable mortgage of lease—Subsequent acquisition by lessee of lessor's title, and title recorded.*] In 1846 a lease for 99 years was granted to O'K., who in 1864 deposited it by way of equitable mortgage, with the Bank of Ireland; in 1868 O'K. purchased the lessor's interest, and recorded his title:—*Held*, that the equitable mortgage could not be recorded against the interest purchased by O'K. *Re* O'KEEFFE
[L. E. C. VIII. *M.* 178

2. —— *Land certificate—Lien.*] When a title is recorded by an owner, the mortgagee, under a mortgage from a previous owner, is entitled to retain the land certificate. *Re* ROONEY
[L. E. C. VIII. 83

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—RENTAL.

1. —— *Mis-statement—Issue directed.*] An owner was tenant for life, with an ultimate limitation to himself in fee, dependent on the death, without issue, of himself and his brother the purchaser. The rental stated that there was not any issue of the owner, who died after the sale, but before the execution of the conveyance. It was now alleged that a daughter of the owner was alive. On a motion by the purchaser to be discharged because of the misrepresentation:—*Held*, that an issue to try the truth of the allegation should be granted. *Re* WOLFE'S ESTATE
[L. E. C. II. *M.* 370

2. —— *Motion to amend—Mistake.*] A tenant of lands sold in the Landed Estates Court having been erroneously returned on the rental as holding 11a. 3r. 29p. under a lease for years, whereas the quantity comprised in the lease was 9a. 0r. 33p., and 2a. 2r. 36p. were held under a different tenure, but one admitted to be, by agreement, intended to be co-extensive with the lease, a reduction having been made in the entire rent equivalent to the rent payable for the latter quantity, the Court refused an application by the purchasers to amend the rental by stating in it that the tenant held 9a. 0r. 33p. under the lease, and 2a. 2r. 36p. as tenant at will. *Re* MULLARKEY'S ESTATE - L. E. C. VI. 60

3. —— *Ulster tenant-right custom—Landlord and Tenant Act*, 1870.] On an application being made that statement be placed upon the rental that lands ordered to be sold in the Landed Estates Court are subject to the Ulster tenant-right custom:—*Held*, affirming Lynch, J., that the Landed Estates Court will not, upon the application of tenants, cause an indorsement to be inserted upon the rental of lands situate in Ulster, and ordered to be sold in that Court, that such lands are subject to the Ulster tenant-right custom, such indorsement being unnecessary for their protection. The effect of the Land Act, 1870, on the rights of tenants in districts where custom exists considered. *Re* MARQUIS OF WATERFORD'S ESTATE - - - L. E. C. V. 9; Ch. A. V. 125

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—RENT-CHARGE—*Mode of recovering arrears of rent-charge—Petition for sale dismissed.*] An owner in possession of lands granted a rent-charge to A., who presented to the Landed Estates Court a petition for sale to raise arrears:—*Held*, reversing the decision below, that A.'s remedy was by distress and that a Court of Equity would not sell in such a case. *In re* KELLY'S ESTATE
[Ch. A. II. *M.* 369

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—SALE.

1. —— *Application to stay a sale—Laches.*] The Court refused to stay the sale of lands ordered to be sold until the owner should have brought an ejectment against a person alleged to be wrongfully returned on the schedule of tenancies as tenant from year to year of a portion of the lands at an undervalue, the owner having taken no step to dispute such tenancy from the time of service of the final notice to tenants until a motion was made by an incumbrancer, for the purpose of expediting the sale. *Re* HASSARD'S ESTATE
[L. E. C. V. 83

2. —— *Confirmation of country sale—Estate sold in lots.*] Where an estate consisting of several lots is sold in the county the sale of each lot should be treated as the sale of a separate estate. *Re* CRAWFORD'S ESTATE - L. E. C. IV. *M.* 642

3. —— *In Court—Bidding by solicitor, having carriage, personally—Bidding by third party, instructed by solicitor, having carriage, on behalf of private client—Rescission of sale—Right of persons, other than owner or incumbrancer, to apply to have sale rescinded by reason of such bidding—Inherent right of Court to rescind sale, where such irregularity is brought to its knowledge—Landed Estates Court Act*, 1858, *s.* 57.] At a sale in the Land Judges' Court, W., the solicitor having carriage, acting on the instructions of K., an intending purchaser, authorised N. to bid. The Judge was not aware of the circumstances, and N. being the highest bidder, K. was declared the purchaser. On appeal from an order refusing an application by J. R., and others, tenants on the estate, who alleged their wish to purchase through the Land Commission, and asked that the sale should be rescinded, on the ground that the same was had in violation of 21 & 22 Vic., c. 72, s. 57 (the application not being supported by the owner or the incumbrancers):—*Held*, that a solicitor having carriage may not bid at a sale in Court of a particular estate, either personally or through an agent or nominee, both being equally forbidden, not only by sec. 57 of the Landed Estates Court Act, 1858, but also on grounds of public policy, by the principles and practice of the Court; and that—whether the sale were had *bonâ fide*, and for the best price obtainable or not, and whether impeached by the owner or any incumbrancer or not—the Court has power of its own motion to rescind such sale, and should rescind same if once the fact of such irregularity is brought to its knowledge, even by parties not entitled of themselves to apply for the rescission of same. (*Per* Palles, C.B.) (*Dubitante*, Barry, L.J.):—The applicants—tenants desirous of purchasing through the Land Commission—had no *locus standi* entitling them to make such application. *In re* YOUNG'S ESTATE L. J. XXVI. 27; C. A. XXVI. 30

4. —— *Postponement.*] On the day previous to that fixed for the sale one of the owners applied for a postponement of the sale. It appeared that the inconvenience and loss to the owner, if the sale was not postponed, would probably be greater than the inconvenience caused to the public by a postponement:—*Held*, that the sale should be postponed, the lands being sufficient security for the debt. *Re* BOLAND'S ESTATE - - - - L. E. C. II. *M.* 444

5. —— *Remuneration of solicitor for negotiating sales to tenants.*] A solicitor who negotiates sales to tenants, through the Land Commission, of land in the Land Judges' Court will be paid a reasonable amount for his trouble; he must send in a detailed statement of his services, attendances, &c., just as if for taxation, which the Land Judge will examine. There is no rule of allowing 2 per cent. commission. *In re* FORBES' ESTATE - - - - L. J. XXVI. *M.* 184

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—SALE—*continued.*

6. —— *Re-opening sale.*] A sale will not be re-opened merely on the ground of inconvenience and disappointment to an intending purchaser, and by rule 27 no sale can be re-opened by reason solely of an advance in price. *Re* BURKE'S (ASSIGNEES) ESTATE - - L. E. C. I. *M.* 280

7. —— *Setting aside—Suppression of facts.*] A sale in the Landed Estates Court was set aside upon the ground that the lands had been sold at an undervalue, and that the father of the tenant for life had received money for consenting to the sale and also on the ground of the suppression of evidence. BEECHER *v.* DOWNING - - - C. I. *M.* 63

8. —— *Setting aside—Intending purchaser induced not to bid.*] A sale was set aside on account of an inducement offered to an intending purchaser to forbear from bidding. STANLEY'S ESTATE - - - - L. E. C. V. 8

9. —— *Stay on the proceedings under an absolute order for sale—Consent—Compulsory sale by puisne incumbrancer—Unsuitable time for sale.*] The Court has jurisdiction (against the remonstrance of a creditor, who insists on being paid) to postpone, at a time unsuitable for selling landed property, the sale of an estate which has not been offered for sale before. In no case, however, has an incumbrancer who was anxious to sell been prevented from testing the value of his security by having the land put up at least once to public competition. *Re* D'ARCY IRVINE'S ESTATE
[L. J. XXVII. 66

——Setting aside by Court of Appeal - III. *M.* 794
See PRACTICE—LANDED ESTATES COURT—APPEAL. *b.*

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—SCHEDULE.

1. —— *Insertion of an incumbrance upon schedule after it had been ruled.*] A schedule having been finally ruled, a creditor was, nevertheless, permitted to insert his incumbrance upon it, three months not having elapsed between the datb of the final ruling and that of the application for leave to file this objection. A party does not acquire an indefeasible right in an order of the L. E. Court until three months from its date have elapsed. *Re* BURKE'S ESTATE
[L. E. C. II. *M.* 78

2. —— *Notice to incumbrancers—Solicitor.*] Notice of ruling the schedule of incumbrances when the incumbrancer is a solicitor should be served at his residence and not at his registered place of business. *Re* TRESTON'S ESTATE
[L. E. C. I. *M.* 139

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—SECURITY FOR COSTS—*Petitioner without, and property within, the jurisdiction.*] A party, resident out of the jurisdiction, claiming to be a co-owner of land and filing a petition for sale and partition before the Land Judge, may be compelled to give security for costs, if the title to the land is disputed. *In re* M'ALISTER'S ESTATE
[L. J. XXIV. 89

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—TENANCIES, LEASES, UNDER-LEASES.

1. —— *Conveyance discharged from tenancy.*] Motion on behalf of a purchaser that a conveyance might be made to him discharged from a tenancy was refused with costs. *Re* RAM'S ESTATE - - - - - L. E. C. V. 179

2. —— *Jurisdiction—Selling subject to disputed lease.*] The Landed Estates Court Act, sec. 54, does not authorise a sale "subject to a disputed lease." *Re* COCHRANE'S ESTATE
[L. E. C. II. *M.* 384

3. —— *Lease of premises sold—Application to sell discharged from.*] Upon an application made that the lands ordered to be sold should be sold discharged from a lease of portion of them which was made in consideration of a fine and at a rent which was not the best rent (contrary to the terms of the settlement) by the tenant for life for a term longer than was authorised

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PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—TENANCIES, LEASES, UNDER-LEASES—*continued.*

by it, the Court refused to do so, but stated that the rental should state the lease and that the tenant for life had power only to grant it for his own life. *Re* WATT'S ESTATE [L. E. C. I. *M.* 157

4. —— *Setting aside lettings.*] Subsequently to an order for sale of certain lands ordered to be sold in the Landed Estates Court, and the registering of the petition as a *lis pendens*, the owner entered into agreements with certain persons to let to them portions of the lands, and received from them considerable sums of money as fines. Objections to the final notice to tenants having been filed by these parties, by which they claimed to be returned upon the rental as tenants under such agreements, the Court disallowed them. *Re* WELCH'S ESTATE [L. E. C. V. 140

5. —— *Setting aside leases.*] On an application to set aside leases of premises which were being sold in the Landed Estates Court it was ordered that the other portions of the premises should be sold first, and that proceedings should be taken within one month of the sale to have the leases set aside; otherwise the motion would be refused. *In re* SMALLMAN'S ESTATE - - - - L. E. C. I. *M.* 65

6. —— *Setting aside leases.*] A mortgagee applied to have leases made by the owner set aside as being far below the letting value, and stated that he would give £300 more than was offered for the lands if they were set aside. The Court gave the mortgagee three weeks to file a bill in Chancery for that purpose, otherwise the motion to be refused. *Re* O'LOGHLEN'S ESTATE - - L. E. C. X. *M.* 47

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—TITLE—*Legal but equitably avoidable title—Order for sale.*] When possession goes with a legal but equitably avoidable title, the grounds of equitable avoidance ought to be regularly established before the case is ripe for a petition in the Landed Estates Court; but where visible possession remains with the title shown, and only an allegation of title exists against it, the rule is reasonably flexible, and admits of the exercise of a fair judgment, whether an alleged title ought to stay the action of the Court. *Re* COFFEY'S ESTATE - - - L. E. C. III. *M.* 349

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT—TURBARY—*Right to turbary—Exception from sale.*] An objection was made to the final notice to tenants, as the notice did not set out H.'s right to cut turf for use at his house at S. It was proved that the right had been exercised for upwards of 40 years, as of right and not by permission:—*Held*, that the estate in the lands should be sold subject to the right to cut turf. *Re* FULLER'S ESTATE - - - - - L. E. C. I. *M.* 602

PRACTICE—LANDED ESTATES (AND LAND JUDGES') COURT.

——Apportionment—Head-rent - - XXVI. 133
See PRACTICE—LANDED ESTATES COURT—COMPENSATION. 11.

——Claim of Crown to foreshore—Filing objection. [I. *M.* 504
See SEA-SHORE. 2.

——Duty of Solicitor having carriage - III. *M.* 101
See SOLICITOR—DUTIES. 2.

——Lodgment of purchase-money.
See PRACTICE—LANDED ESTATES COURT—ATTACHMENT. 4, 5.

——Payment out to sole trustee - III. *M.* 578
See TRUSTEE—SOLE. 1.

——Staying proceedings—Valuation - I. *M.* 715
See TENANT FOR LIFE AND REMAINDERMAN. 6.

PRACTICE—MATRIMONIAL.

1. —— *Commissioners for taking affidavits.*] There is no provision for the appointment of Commissioners for taking affidavits in matrimonial causes, and they must be made before the Judge himself. WILSON *v.* WILSON - Mat. V. 28

2. —— *Costs of wife in matrimonial suit—Rule* 126.] Where the wife had, prior to the hearing, obtained an order under Rule 126 for a reference to the Taxing Master to fix a sum to be lodged in Court, or secured by the husband, to cover her costs of the trial, but her solicitor took no steps to have the order carried out, and proceeded to the trial without any sum being lodged or secured:—*Held*, that the wife, having failed to establish her case, was not entitled to costs against her husband. CARNEGIE *v.* CARNEGIE - Mat. XIX. 59

3. —— *Costs of suit in Provincial Court.*] The Court has power to compel the payment of costs in a cause which had been heard before the Provincial Court. HASTINGS *v.* HASTINGS [Mat. V. 44

4. —— *Divorce* a mensâ et thoro—*Personal service out of jurisdiction—Evidence of identity—Photograph.*] Where a petition for divorce *a mensâ et thoro* was presented, and an order made for personal service of the citation on the respondent in Australia, it was held that it was unnecessary for a deponent who effected the service to state that he was personally acquainted with the individual served, but that some sufficient evidence of identity should be produced. BEAMISH *v.* BEAMISH [Mat. X. 26

5. —— *Divorce* a mensâ et thoro—*Adultery and cruelty—Mode of trial.*] On a motion to fix the mode of trial of a petition for divorce on the grounds of adultery and cruelty, it was ordered that the issue of adultery should be tried before a jury, and that the issues of cruelty should be reserved. MORGAN *v.* MORGAN - - - - - Mat. X. 17

6. —— *Jurisdiction to enforce order of Court for Matrimonial Causes and Matters.*] The Court for Matrimonial Causes and Matters has no jurisdiction to enforce any order made by it. HASTINGS *v.* HASTINGS - - - Mat. V. 65

7. —— *Petition for alimony.*] Where the respondent had not filed an answer to a petition for alimony, the Court refused to allow him to cross-examine the petitioner in Court as to the statement of his means. *Constable v. Constable* (2 P. and M. 17) followed. (By Madden, J.) GANNON *v.* GANNON [Vac. J. XXVII. *M.* 522

8. —— *Rule* nisi—*Taxation of costs—O. LXX., r.* 39 & 92—*Rules of* 1871 (*Matrimonial*), 58, 128.] Since the Rules of the High Court of Justice (1891) have abolished the rule *nisi* for a new trial, there is no longer any stay on the taxation of costs by reason of Rule 128 of the Rules (Matrimonial) of 1871, and there is no longer any stay, by force of that rule, after the expiration of time allowed for moving for a new trial or re-hearing. The Court, however, may by its inherent jurisdiction stay execution, if there be proper cause. RIORDAN *v.* RIORDAN - - - - - Mat. XXVII. 54

9. —— *Substitution of service of citation.*] The Court will not make an order for substitution of service of the citation unless it be satisfied that personal service cannot be effected. MOORE *v.* MOORE - - - - Mat. V. 54

PRACTICE—PROVINCIAL COURT—*Petition for alimony.*] A wife being a respondent must, when applying for alimony *pendente lite*, file a separate petition to effect that purpose. MURPHY *v.* MURPHY Prov. Ct. II. *M.* 730

PRECATORY TRUST.

See Cases under WILL—PRECATORY TRUST.

PREFERENTIAL SHAREHOLDERS.

—— Railway—arrears of dividend - III. *M.* 500
See RAILWAY—PREFERENTIAL SHAREHOLDERS.

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PRESCRIPTION.

See Cases under WAY.
EASEMENT.

—— Evidence - - - - - - II. *M.* 6
See EVIDENCE. 5.

PRESENTING TERM—*Dublin Improvement Act.*] By the Dublin Improvement Act there is only one presenting term for fiscal business, and an office which has been temporarily filled up to the next presenting term is held to the next Michaelmas. *Re* THE APPOINTMENT TO THE OFFICE OF LOCAL INSPECTOR OF PRISONS - Q. B. I. *M.* 227

PRESENTMENT.

See Cases under GRAND JURY—PRESENTMENT.

—— Sessions.
See Cases under GRAND JURY—PRESENTMENT SESSIONS.

PRESUMPTION—Death.
See EVIDENCE. C-9.

PREVENTION OF CRIMES ACT, 1882—s. 11—Conviction under—Finding of Justices - XVII. 64
See JUSTICES—JURISDICTION. 12.

PREVIOUS CONVICTION.
See CRIMINAL LAW—INDICTMENT. 3.

PRINCIPAL AND AGENT.

1. —— *Deceit—Non-liability of principal for fraudulent concealment of agent.*] A tenant, who had signed an agreement for a lease (which, however, failed to satisfy the Statute of Frauds), was ejected on notice to quit, and brought an action against the landlord for damages for deceit:—*Held*, that the defendant was entitled to succeed, because no fraudulent concealment of the existence of the agreement for a lease had been proved, as there was no duty cast upon a clerk of the agent of the defendant to disclose the flaws of his employer's case to the opponent; and even if he had, the opponent would not have been liable. ARCHBOLD *v.* HOWTH - C. P. I. *M.* 760

2. —— *Money had and received—Construction of agency agreement.*] An agency agreement provided that, at the termination of each month, the defendants (the employers) should furnish to the plaintiff (the agent) an account of the sums with which he was to be charged; that, at the end of every third month, the defendants should place to the credit of the plaintiff the sums which he should have paid for them, or which he should have been entitled to in account with them, together with his commission; and that the plaintiff should pay to them the difference during the fourth month:—*Held*, that the settling or offering to settle the accounts was not a condition precedent to bringing an action for wrongful dismissal. MEARA *v.* SMITHWICK - - E. II. *M.* 718
[This was reversed on appeal. I. R. 4, C. L. 514.]

3. —— *Money paid.*] Where a father owned, but the son managed, a shop, and the son paid the amount of a bill on his father, saying "You have taken money out of the till and robbed me, and you may pay the bill":—*Held*, in a process by the son to recover the money from his father as money paid to his use, that there was no agency, and the claim was dismissed. (By Fitzgerald, B.) DIXON *v.* DIXON
[Cir. Cas. I. *M.* 229

—— Action for wrongful dismissal.
See PRACTICE—COMMON LAW—SERVICE. 27, 32.

—— Subject matter of action—Injunction - XII. 148
See PRACTICE—INJUNCTION. 7.

PRINCIPAL AND SURETY.

1. —— *Circumstances under which a detaining partner is discharged from partnership debts.*] Action on the money counts; plea on equitable grounds that the defendant, with W. and S., formed a partnership during which the causes of action accrued against them as partners: that the partnership was dissolved, with notice to plaintiffs of the memorandum of dissolution whereby W. took on himself all debts, &c., and indemnified S. and the defendant; that W. became the principal debtor thereupon, and S. and the defendant only sureties, whereof plaintiffs had notice, who afterwards took a bill from W. for the amount and thereby gave him time, whereby defendant was discharged from liability:—*Held*, a bad plea at law, because it did not aver an agreement of the plaintiffs to accept W. as the sole principal debtor, and bad in equity for not setting forth a state of facts such as amounted to a dealing showing that the plaintiffs intended to treat W. as the principal debtor, and the defendant as surety only. MAINGAY *v.* LEWIS - - - - - Q. B. III. *M.* 477 & 676
[This was reversed on appeal. I. R. 5, C. L. 229.]

2. —— *Contribution—Interest—Recognisance.*] A surety in a receiver's recognisance who has paid the whole amount of the recognisance, is entitled in equity to recover against his co-surety not only his share of the debt so paid, but also interest thereon, not exceeding for principal and interest the total amount of the recognisance. (Decision of Flanagan, J., reversed.) *In re* SWAN'S ESTATE - Ch. A. IV. *M.* 382

3. —— *Distribution of a fund between the estates of two insolvents.*] Funds had been lodged in the Court of Chancery to the credit of two estates in insolvency:—*Held*, by the Court, deciding the equities of the estates of the two insolvents, that the estate of the surety must be fully recouped before any portion of the fund transferred by the Court of Chancery would be paid to the credit of the principal's estate. *In re* GRAYDON - - - - - In. V. 66

4. —— *Faithful discharge of duty by employee—Conditions precedent—Policy of insurance—Covenant to prevent defaulting employee—Rules for construing mixed covenants, whether as collateral or precedent stipulations.*] A policy to insure the faithful discharge by an employee of certain duties declared that "subject to the conditions therein contained, which should be conditions precedent to the right of the employer to recover under the policy," the company insuring should, "at the expiration of three months next, after proof satisfactory to the directors" of the loss had been given, make good the pecuniary loss to the employer. One of the conditions was: "Provided that the employer shall, if and when required by the company (but at the expense of the company if a conviction be obtained) use all diligence in prosecuting the employed to conviction for any fraud or dishonesty (as aforesaid) which he shall have committed, and in consequence of which a claim shall have been made under this policy, and shall, at the company's expense, give all information and assistance to enable the company to sue for and obtain reimbursement by the employed or by his estate of any moneys which the company shall have become liable to pay." The employee embezzled the money of the insured, who thereupon claimed to be indemnified by the company under their policy. The company called upon the insured to prosecute his late employee under the above proviso, which he neglected to do; and they refused to make good the amount embezzled. To an action thereupon brought against them by the insured, they pleaded, *inter alia*, that the covenant as to prosecution was a covenant precedent to the right of the insured to recover. To this plea the plaintiff demurred, and the Court of Exchequer in Ireland allowed the demurrer. The Irish Court of Appeal being equally divided, the company appealed to the House of Lords:—*Held* (Selborne, C., *diss.*), that the proviso as to prosecution was a condition precedent, and that therefore the demurrer should be overruled. *Per* Lord Watson:—Where the parties to a contract make a stipulation in which nothing is expressed as to time, and which might, according to its own terms, be fulfilled either within or after the period during which it could operate as a condition precedent, and the parties then go on to declare that it shall be a condition precedent, the declaration must *prima*

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PRINCIPAL AND SURETY—*continued.*

facie be held to be a sufficient expression of their intention to limit the time of performance to the antecedent period. *Per* Selborne, C.:—A condition cannot be construed to be precedent unless it is so necessarily and under all the circumstances to which it can apply. *Bettini* v. *Guy* (I. Q. B. D. 185) followed. LONDON GUARANTEE AND ACCIDENT Co. *v.* FEARNLEY - - - **C. A. & H. L. XIV. 59**

5. —— *Guarantee—Cheque—Special indorsement.*] Where a process was brought by plaintiffs on foot of a cheque for £8, purporting to be drawn by W. Ross, Warden and Co., on plaintiffs, and indorsed by the defendant to the plaintiffs, said indorsement being as follows: "I know this to be a genuine firm.—John B. Mahaffy":—*Held*, that the indorsement did not amount to such a guarantee so as to render the defendant liable to the plaintiffs for payment made. ULSTER BANKING Co. *v.* MAHAFFY - - **Q. S. XV. 94**

6. —— *Indemnity.*] A surety has a right, after the debt has become due, to be indemnified by the principal against liability on a guarantee before he has actually paid anything in discharge of it. *Padwick* v. *Stanley* (9 Hare 627) commented on MATHEWS *v.* SAURIN AND THE PROVINCIAL BANK OF IRELAND, LIMITED - - - - - **R. XXVII. 25**

7. —— *Laches of creditor.*] To an action by the payee against the maker, upon a promissory note payable one month after demand, the defendant pleaded upon equitable grounds that he made it jointly with two others; that he and one of those persons made it as sureties only for the other; that at the time it was made by them the plaintiffs were aware of this, and agreed that they should be sureties only, and that the plaintiffs had delayed an unreasonable time—ten years—to demand payment from the principal debtor:—*Held*, a bad defence. BELFAST BANKING Co. *v.* STANLEY - - **Q. B. I. *M.* 246**

8. —— *Release of surety—Creditor giving time to principal debtor—Arrangement with creditors by principal debtor—Order of Court of Bankruptcy enlarging time for lodging money to secure payment of instalment.*] The principal debtor on certain promissory notes filed a petition in the Court of Bankruptcy for arrangement with his creditors, proposing to pay 20s. in the £ by equal instalments of four, eight, twelve, and sixteen months from January 29th, 1884, the last of such instalments to be secured by the petitioner lodging in Court the amount thereof within fourteen days from said 29th of January, or such further time as the Court might allow. This proposal was assented to by the creditors and approved by the Court, and the payees of the promissory notes proved for the amount thereof as creditors. The Court from time to time enlarged the period for the lodgment of the amount of the last instalment until the 16th of May, 1884. On that date the Court enlarged the time further until the 1st of July in respect of a portion of the amount, the residue having been lodged; and it was stated in the order that the payees of the promissory notes were willing that this further time should be allowed. The surety on the promissory notes having relied on this order, in an action subsequently brought against him by the payees, as releasing him from liability:—*Held*, that the transaction did not amount to such a giving of time to the principal debtor for payment of the debt as would exonerate the surety from liability. The decision of the Queen's Bench was affirmed on appeal. PROVINCIAL BANK *v.* CUSSEN - **Q. B. D. XX. 49; C. A. XX. 73**

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PRISONERS.

—— Expenses of conveyance of—Presentment.
See CASES UNDER GRAND JURY—PRESENTMENT—PRISONERS.

PRIVATE ACT OF PARLIAMENT—*Agreement in derogation of.*] The plaintiff, an engineer, was a promoter of the defendant's company, and was employed by the other promoters in 1859, and £400 was due to him when, in Oct., 1859, he agreed with them to act as their engineer in procuring an Act, and that he was to be paid in a stipulated priority, only out of the profits and in that priority. £350 additional became due to him before the Act passed in 1860. The company not having paid any of the claims which were to have priority over that of the plaintiff, he sued the company as such under 23 & 24 Vic., c. 190 (L. & P.), s. 49, which enacts that "all the costs, charges and expenses of and attending" its passing shall be paid by the company. The Judge directed a verdict for £750, but reserved leave to have that sum reduced, or a verdict entered for the defendants:—*Held*, that the agreement was an answer to all the claims provided for by it, and that judgment must be entered for the defendants. BURDEN *v.* RIVER FERGUS NAVIGATION Co. - - - - **C. P. II. *M.* 91**

PRIVILEGE.

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PROBATE (AND ADMINISTRATION)—ADMINISTRATION BOND.

1. —— A conditional order to put an administration bond in suit as against the surety, the grant having been limited and the time having expired, was made absolute. *In the Goods of* PIGOTT - - - - - - **P. I. *M.* 633**

2. —— *Assignment—Putting in suit against sureties*—20 & 21 *Vic., c.* 79 *s.* 88.] An administration bond will be assigned to a creditor of the deceased, the *devastavit* being non-payment of his individual debt, in order that it may be put in suit against the sureties to the bond. *In the Goods of* HARDING **[P. XVIII. 82**

3. —— *Assignment—Breach of—Appeal from order refusing assignment—Liability of sureties for money received in the life of the deceased by the principal.*] In a case where administration had been granted to the guardian of minors, who converted the assets to his own use, the widow of the deceased applied to have the administration bond delivered up to be put in suit as against the sureties:—*Held*, that it should be given up, but it was doubtful if the sureties were liable for money

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PROBATE (AND ADMINISTRATION)—ADMINISTRATION BOND—*continued.*

received by the principal during the lifetime of the deceased, or that an appeal would lie against the order if the application were refused. *In the goods of* P. SULLIVAN [P. I. *M.* 689

4. —— *A stranger and not husband of married woman joining in the administration bond with her.*] A married woman whose husband lived apart from her, applied to have administration to the goods of her father granted to her, a third party joining in the administration bond; the husband had neglected to act with her in reference thereto, but had instructed a solicitor to act for him in reference to the assets:—*Held*, that the motion should be granted, the order to be conditional in the first instance, unless cause were shown within six days after service of the order upon the husband, service on his solicitor to be deemed service on him. *In the Goods of* MOORE [P. IV. *M.* 275

5. —— *Condition for payment of debts—Breach—Order to assign*—20 & 21 *Vic., c.* 79, *s.* 88.] Where a *primâ facie* case has failed to be made out that there has been a breach of the condition of an administration bond, the Court will refuse to order it to be assigned to a creditor of the deceased, under 20 & 21 Vic., c. 79, sec. 88. *In the Goods of* HENNESSY [P. XI. 73

PROBATE (AND ADMINISTRATION)—EXECUTION.

1. —— *Acknowledgment of signature by testator.*] A will may be signed with the testator's name by one of the attesting witnesses before it is submitted to him for acknowledgment, and his subsequent acknowledgment perfects the execution. MURPHY *v.* O'DONOGHUE - - Q. S. XIX. 26

2. —— *Acknowledgment of signature—Presence of attesting witnesses.*] A testator who had affixed his mark to his will in the absence of the subscribing witnesses, having been asked in their presence "Do you acknowledge this to be your last will and testament?" replied, "I do.":—*Held*, to be a sufficient acknowledgment of the testator's signature. *Semble*, it is sufficient in the case of a signature acknowledged in the presence of witnesses, if it shall appear that the will was so situated as that such signature might have been seen by them; and the absence of proof that the witnesses saw the signature at the time of the attestation shall not invalidate the attestation. KELLY *v.* KEATINGE - - - - - P. V. 63

3. —— *Acknowledgment of signature by blind testator.*] A testator who is so blind that he cannot see the signature written by him to a will may acknowledge such will. The existence of fraud in such cases must be proved by the parties alleging it. *In the Goods of* MULLEN. KING *v.* BERRY [P. V. 121

4. —— *Attestation—Signature of christian name only.*] In order to constitute a due attestation of a will any name, designation, or mark, by which the witness intends to attest the document, and to identify himself as the person so attesting, is sufficient; but, unless his intention so to attest the will is completed, the will is not duly executed. A witness to a will intended to attest by signing his full christian and surname, but merely wrote his christian name, and was prevented from completing his signature by the document being taken from him:—*Held* (reversing the County Court Judge), an insufficient execution. *Hindmarsh* v. *Charlton* (8 H. L. 167), and *In the Goods of Maddock* (3 P. & D. 169), followed M'CONVILLE *v.* M'CREESH. M'CREESH *v.* M'CONVILLE [Q. S. XII. 76; P. XIII. 35

5. —— *Attestation by marksman—Evidence against by one of the witnesses.*] The evidence of the witness who had himself signed his own name after the testatrix, and who positively deposed to factum of due execution, was held to be relied upon as against the evidence of the second witness, a markswoman, who proved undue execution; and that a markswoman, who held the pen while the other witness, at her request, wrote her name to the document as a witness, validly attested the will. BELL *v.* HUGHES - - Q. S. XIV. 50

PROBATE (AND ADMINISTRATION)—EXECUTION—*continued.*

6. —— *Attestation by marksmen, both dead before probate—Evidence warranting presumption of due execution—Rule* 7 *(non-contentious) explained.*] A will concluded with the following attestation clause: "Signed in presence of Michael Dunne and John Delany—mark X his—mark X his." It was proved that the entire of the will, inclusive of the attestation clause, was in the deceased's handwriting; that at the time it purported to be executed he had two farm servants, named Michael Dunne and John Delany, neither of whom could read or write; and that they were both since dead. The document was found by his widow, about a month after his death, on a file in his bedroom, upon which he kept his papers:—*Held*, that the evidence was sufficient, and that the document was entitled to probate. *Doe d. Counsell v. Caperton* (9 C. & P. 112), followed. Rule 7 (non-contentious) explained. CLARKE *v.* CLARKE - - - - - - P. XIII. 103

7. —— *Formal attestation clause—Evidence of attesting witness—Presumption of due execution.*] Where a suit was instituted to obtain the revocation of letters of administration on the ground that a will had been executed, which on the face of it appeared to have been properly executed, and where evidence was given by one attesting witness of undue execution, which was not strong enough to rebut the presumption of due execution, arising from the circumstances of the case, it was ordered that the letters of administration be revoked and that probate of will be granted. *In the Goods of* KEARON [P. X. 61

8. —— *Grant of probate notwithstanding opinion of attesting witnesses that the deceased was not of testamentary capacity.*] When a will appears, *primâ facie*, to have been duly executed, the Court will never condemn it upon motion, grounded on affidavits by attesting witnesses, that the deceased, in their opinion, was not of testamentary capacity, but will require the will to be propounded, and the witness examined *viva voce*. A will had been duly executed, and bore a full attestation clause, setting forth that it was signed in presence of two witnesses—one a medical gentleman, the other a solicitor. Subsequently, both these witnesses stated that, in their opinion, the deceased was not of testamentary capacity when she signed the document. The Judge refused to condemn the will upon motion. The will was propounded, and his Lordship directed the jury that it was for them to determine, notwithstanding the opinions of the witnesses, whether the facts to which they deposed established testamentary capacity and knowledge and approval. The jury having found on both questions in the affirmative, probate was decreed. CALMADY *v.* TAYLOR - - - - - - P. XIII. 17

9. —— *Linc.*] A will of an illiterate testator, which he executed by a line, and not a cross, was held invalid. *In the Goods of* BALL - - - - - - P. I. *M.* 405

10. —— *Position of signatures.*] A will written on the first and third pages of a sheet of note-paper, and the names of the testator and the witnesses written longitudinally on the second page:—*Held*, on affidavit of attesting witnesses, a valid execution, save as to a clause written below the names of the testator and his witnesses. *In the Goods of* SHEEHY [P. I. *M.* 209

PROBATE (AND ADMINISTRATION)—GRANT OF ADMINISTRATION.

1. —— *Citation to recall letters of administration—Parties to a suit.*] A creditor of a person who takes an interest under a will has sufficient interest to entitle him to a citation to recall letters of administration which have been granted, owing to an accidental circumstance, or where administration has been obtained by a statement that the deceased had died intestate, and by the suppression of the will. *In the Goods of* TIMOTHY WHITE - - - P. XXVII. 46

2. —— *Creditor—Married woman—Separation—Order to pay* pro rata.] A solicitor to whom money was due for costs was

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PROBATE (AND ADMINISTRATION)—GRANT OF ADMINISTRATION—*continued.*

appointed administrator of a married woman (who had been separated from her husband) on his undertaking to distribute the assets *pro rata*. *In the Goods of* POWER **P. I. *M.* 299**

3. —— De bonis non—*Assent of executor.*] Where the executors had given their assent to certain legacies, the subject-matter of these legacies ceased to be assets, and, therefore, on an application by the next-of-kin for a grant of administration *de bonis non*, it was ordered that the application should be refused, on the ground that there were no unadministered assets. *In the Goods of* LANGLEY - **P. X. 11**

4. —— *Executor according to the tenor—Executor of.*] V., by will, directed her son-in-law, B., to pay her debts, but did not name an executor. Probate of her will was granted to B., as executor according to the tenor. B. by will, appointed executors, and died. His widow became, under V.'s will, absolutely entitled to a bond debt, subject to the life interest therein of a third party, and with the consent of B.'s executors applied for letters of administration, *de bonis non*, to V.:—*Held*, that they could not be granted. *In the Goods of* GRIFFIN - - - - **P. II. *M.* 244**

5. —— *Grant during lunacy of sole executor*—38 *Geo. III., c.* 87—20 & 21 *Vic., c.* 79—22 & 23 *Vic., c.* 31.] James Maher, as sole executor, proved the will of the deceased in common form on 18th June, 1880, and was afterwards committed by Bench warrant, on 26th Nov., 1885, as a dangerous lunatic, and still was in custody thereunder. Upward of £1,200 of deceased's assets were in the hands of a third party ready to be paid over on the receipt of a proper party. On application by the residuary legatee:—*Held*, that the applicant as residuary legatee was entitled to a general grant of administration *de bonis non* of the assets of the deceased for the use and benefit of the executor, limited during his incapacity, and until he became of sound mind, on justifying security being given. Under special circumstances affidavits by a medical witness, as to continuance of incapacity, and of an inquisition having been held, will be dispensed with. *Re* LONERGAN - **P. XXI. 12**

6. —— *How far impeachable in a common law action—Judgment* in rem—*Action by administrator—Defence—Administration obtained by fraud.*] In an action for ejectment to recover a chattel interest, where plaintiff claims as administrator of the deceased tenant, the letters of administration are conclusive, and cannot be impeached by the defendants in the ejectment action on the ground that the administration was obtained by fraud. (By Andrews, J.) WHITE *v.* SHEEHY **[N. P. XXVII. 10**

7. —— *Joint grant*—20 & 21 *Vic., c.* 79, *s.* 73—*Administration Bond—Sureties—Amount.*] Where there are special circumstances to justify it, the Court will make a joint grant of administration to more than three. *In the Goods of* MACCROSSAN **[P. XXVI. 138**

8. —— *Justifying security—Debts.*] Administration, without justifying security will not be granted if there is any doubt as to whether the testator left any unpaid debts. *In the Goods of* MORGAN - - - - **P. X. 89**

9. —— *Legatee — Without citing next-of-kin.*] Principal legatee under a will not allowed to administer the assets of deceased without citing next-of-kin, even though the will is sought to be proved only in common form, and for the purpose of getting possession of part of the estate. *In the Goods of* PATTON **[P. XVII. 115**

10. —— *Minors—Wards of Court.*] When minors, next-of-kin, are made wards of Court, the Court of Probate usually appoints the guardian or receiver appointed by the Court as administrator of the personal estate of the deceased. *In the Goods of* MICHAEL KELLY - - - **P. I. *M.* 102**

11. —— *Rights of widow and next-of-kin—Special circumstances.*] The widow's right to administration to her husband deceased will not be postponed in favour of the next-of-kin because the widow is in prison, having been arrested on suspicion of being implicated in the murder of her husband. *In the Goods of* DEVERY - **P. VIII. 120**

12. —— *Sole next-of-kin — Justifying security — Administration.*] The Court dispensed with justifying security when the person applying for administration was sole next-of-kin, and there were no debts due by the deceased. *In the Goods of* JANE GORDON - - - - **P. I. *M.* 350**

13. —— *To an infant—Cancellation.*] The cancelling letters of administration improvidently granted to an infant is in the discretion of the Court, which will not cancel them unless there is an appearance of fraud in obtaining them. Administration may legally be granted to a minor, although it is not the practice of the Court to do so. DUNPHY *v.* DUNPHY **[P. III. *M.* 100**

14. —— *Without citing executor who had not proved*—20 & 21 *Vic., c.* 79, *s.* 78.] D. died in 1880, having appointed H. sole executor of his will, who failed to prove it, and in October, 1884, went to Australia. D.'s widow (tenant for life under his will) died in 1886, leaving two universal legatees in remainder surviving. The assets were under £300:—*Held*, that administration with the will annexed might issue to one of the universal legatees under 20 & 21 Vic. c. 79, s. 78, without citing H. *In re* DUDGEON - - - - **P. XXI. 14**

PROBATE (AND ADMINISTRATION)—GRANT OF PROBATE.

1. —— *Evidence that testatrix was a widow—Advertisements.*] An application was made for probate of the will of a lady whose husband had gone to America twenty-five years before. Evidence of the fact, and of acts in which she acted and described herself as a widow, and of family reputation, having been given, the Court directed advertisements to be put in the "New York Herald," the London "Times" and the "Standard," and subject to that, granted the application. *In the Goods of* DERINZY - - - - **P. V. 79**

2. —— *Executor according to the tenor—Infant—Will—Construction.*] V., after other bequests, gave her house and household furniture to her daughter, Matilda, who was directed to pay two legacies within twelve months after V.'s death, and to pay all V.'s lawful debts and her funeral expenses. No executor was named in the will. At the time of V.'s death, Matilda was only eleven years old. On motion to appoint R. guardian of Matilda, as being executrix according to the tenor of the will:—*Held*, that she was not, and that the direction to pay debts and legacies merely meant that the property bequeathed to Matilda was to be charged therewith. *In the Goods of* MURPHY - - - - **P. II. *M.* 92**

3. —— *Executor according to the tenor—Will—Probate.*] Where the Court can gather from the words of a will that a person named therein is required to pay the debts, and generally to administer the estate, probate will be granted to him as executor according to the tenor thereof. *In the Goods of* BLUETT - - - - - **P. XIX. 33**

4. —— *Fac-simile probate of draft executed will issued.*] Where the testatrix duly executed a draft will, with marginal notes and alterations, it was ordered that a fac-simile probate of the paper should issue. *In the Goods of* SWANTON **[P. IX. 199**

5. —— *Joint will—Death of one testator.*] One of two joint testators of a will which appointed executors only, and did not dispose of any personal property, died, and probate or administration (in case the executors did not prove it) was ordered. *In the Goods of Raina* (1 Sw. and Tr. 144), disapproved of. *In the Goods of* MISKELLY - - - **P. IV. *M.* 199**

6. —— *Two wills.*] Under a settlement made on her second marriage in 1828, V. was entitled to a life estate in real property, with power, in the events which happened, to appoint it among the children of both marriages. There were not any children of the second marriage. By will in 1857, V., her husband

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PROBATE (AND ADMINISTRATION)—GRANT OF PROBATE—*continued.*

being then alive, appointed the lands between her children, C. and D. After her husband's death, V., in 1863, gave, devised, bequeathed, and appointed all her real and personal estate and effects of every kind to C., her heirs, executors, &c., absolutely. C. was named executrix in both wills, and proved the latter in England. After 1828 V. acquired personal property over which she had a disposing power, and on which the second will could operate:—*Held*, that probate of both should be granted. *In the Goods of* RICHARDSON [P. II. *M.* 398

7. —— *Will executed dependent on a condition—Condition unperformed—Probate of prior will.*] R. M. made a will, dated 1st September, 1878, containing these words: "I intend this will to have effect, provided my last will has not been duly signed and witnessed; if it has, I will that it should stand." A previous will, substantially to the same effect, had been duly executed by deceased on 26th July, 1878:—*Held*, that the will of 1st September, having been executed on a condition which had not been performed, was invalid; and probate was accordingly granted of the previous instrument. *In the Goods of* M'HALE - - - - - - - P. XII. 158

PROBATE (AND ADMINISTRATION)—INTERLINEATIONS.

1. —— *Alterations in will—Presumption as to period of alteration—Evidence—Declarations of testator—Wills Act, ss.* 9, 21—*Appeal—Decision of Judge of Court of Probate on question of fact.*] Where erasures and interlineations are apparent on the face of a will, there must be evidence, internal or external, direct or circumstantial, that they were made before the execution of the will, in order to justify their inclusion in probate. *Per* Ball, C.:—Oral declarations made by the testator subsequently to the execution are admissible to prove that the alterations were made before the execution, on the authority of *Sugden* v. *St. Leonards* (34 L. T., N. S. 372); but such evidence should be received with the greatest caution, as much depends on the accuracy of recollection and the surrounding circumstances. *Per* Christian, L.J.: In the absence of all evidence as to whether interlineations and erasures were made before or after execution, they are to be rejected from probate, not because, as was said in *Cooper* v. *Bockett* (4 Moo. P. C. C. 445, 449), and *In the Goods of Duffy*, (L. R. 5, Eq. 506), it is to be presumed that they were made after but because, as more accurately stated in *Simmons* v. *Rudall* (1 Sim. N. S. 115), and *Williams* v. *Ashton* (1 Johns. & Hem. 115), the burden of proof in this respect is cast upon the person claiming the benefit of such alteration; but very slight evidence will suffice to supply the want of any presumption that they were made before the execution of the will. DUFFY *v.* DUFFY - - - - P. X. 73; C. A. XI. 126

2. —— *Residuary clause following signature*—1 *Vic., c.* 26, *s.* 9—15 *Vic., c.* 24, *s.* 1.] A will contained no residuary clause in the body thereof, but one was added at the bottom below the attestation clause:—*Held*, that the probate of the residuary clause could not be granted, nothing appearing on the face of the will to take it out of the provisions of the Wills Act. *In the Goods of* RAGHTIGAN - - - P. XXVI. 93

—— Fac-simile probate - - - - - IX. 199
See PROBATE—GRANT OF PROBATE. 4.

PROBATE (AND ADMINISTRATION)—KNOWLEDGE OF CONTENTS OF WILL.

1. —— *Clauses of revocation and appointment of executors inserted in it without instructions from testatrix—Probate granted omitting them.*] Where clauses of revocation and of appointment of executors were inserted in a will without the direction of the testatrix, and the will was otherwise duly executed, and proof was given of mental capacity of testatrix, it was ordered that probate be granted omitting the inserted clauses, and that administration, with the will annexed, be granted to the sole legatee. *In the Goods of* WRAY P. X. 17

PROBATE (AND ADMINISTRATION)—KNOWLEDGE OF CONTENTS OF WILL—*continued.*

2. —— *Legacy to person who has prepared will and taken active part in its execution—Probate refused of such portion of will, and granted of remainder.*] A party propounding a will which he has himself prepared, without the intervention of any third person, and under which he takes a benefit, is bound to satisfy the Court of the righteousness of the transaction, that the clause under which he takes the benefit was understood by the testator, and that he knew what he was doing. In the absence of evidence removing the suspicions attaching to such a gift, probate of that portion of the will may be refused, and granted of the remainder. *Fulton* v. *Andrews* (L. R. 7, H. L. 448), explained. HEGARTY *v.* KING - P. XIV. 35

—— Pleading - - - - - - I. *M.* 228
See PROBATE—PLEADING. 2.

PROBATE (AND ADMINISTRATION)—LIMITED ADMINISTRATION.

1. —— Limited administration may be granted for the purpose of sustaining different suits, as a limited administration only operates to the extent of the power it specifically gives. JOHNSON *v.* HODGENS - - - Ch. A. VII. 145

2. —— *Absence of special circumstances.*] Limited administration will not be granted to a person entitled to general administration, where no special circumstances are shown. *In the Goods of* COWAN - - - P. VIII. 120

3. —— *Guardian of ward of Chancery—Justifying security.*] Where the Court of Chancery gave liberty to a guardian to apply to the Court of Probate for administration, limited to the purpose of transferring Government Stock to the credit of a minor's matter, without justifying security, and there were other assets, the application was refused, the guardian being entitled to a more extensive grant. *In the Goods of* VAUGHAN [P. IX. 222

4. —— *Letters of administration limited to substantiate proceedings in Chancery.*] A petition should be filed in Chancery before the application is made to the Court of Probate for limited administration to substantiate proceedings in Chancery. *In the Goods of* GORDON - - P. I. *M.* 119

5. —— *Nominee of residuary legatee—Dispensing with justifying security.*] W., by her will, charged a sum of £650 New 3 per cent. Stock with three legacies of £100 each, and directed the residue should go to W. W. absolutely; W. died in March, 1880. W. W. in 1887 applied through his nominee under power of attorney for administration limited to the residue of the stock after the payment of the three legacies; the cheques, signed by the legatee, for the payment of these were produced in Court as evidence of the payment, the executor being dead:—*Held*, that limited administration could be granted, the presumption being, from the period which had elapsed since the probate issued, that the general assets had been duly administered; the applicant's own bond, without justifying security, to be sufficient. *In re* SARAH WARBURTON [P. XXI. 23

6. —— *Re-conveyance of satisfied mortgage.*] Administration limited to a re-conveyance of mortgaged premises, the mortgage money having been repaid, and the mortgagee's next-of-kin being renounced, and consenting, was granted to the mortgagor's nominee. *In re* BOWDEN - - - P. XXI. 14

7. —— *Specific assets—Administrator out of jurisdiction—*38 *Geo. III., c.* 87, *s.* 38—20 & 21 *Vic., c.* 79, *s.* 79—22 & 23 *Vic., c.* 31, *s.* 14.] A grant of letters of administration limited to dealing with certain specific assets of the deceased was made, where the administrator had gone out of the jurisdiction. *In the Goods of* DARCY - - P. XXV. 65

—— Grant of
See LANDLORD AND TENANT (IRELAND) ACT, 1870. 202-205.

—— Grant of—By Land Commission Court.
See LAND LAW (IRELAND) ACT, 1881. 114-116, 166, 167.

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PROBATE (AND ADMINISTRATION) — LOST WILL.

1. —— Probate was given to the executors of the contents of a lost will, which in fact only appointed executors, the affidavits showing due execution, capacity, the loss of the will, and its contents. *In the Goods of* KENNEDY [P. I. *M.* 210

2. —— *Administration granted to next-of-kin upon proof of some of its contents.*] A widow moved for a grant of administration, *cum test. an*, to her late husband, and in her affidavit stated that there had been read to her an affidavit, made by one of the witnesses to the will, in which were stated, as she believed truly, *some* of the contents of the will. The executors were dead, and the will could not be found. Upon an affidavit being made that the witness's affidavit had been read truly to the widow:—*Held*, that administration should be granted to the applicant, as widow of the testator, *until* administration *cum test. an*, or with the contents of the will annexed, should be granted. *In the Goods of* RYAN [P. II. *M.* 61

3. —— *Clause in grant providing "that grant be valid only until original will lodged"—Title—Sale or mortgage of property.*] It is the rule, where probate is given of the contents of a lost will, to insert in the grant a provision that it "shall only take effect till the original will is found and lodged in the registry." Such grant is sufficient to confer the authority of an executor, and gives a good title to dispose of the property by sale or mortgage. *In the Goods of* BRENNAN - - - - - - P. XXI. 47

4. —— *Parol evidence of contents—Nature of evidence.*] Where it was sought to obtain probate of a lost will on proving the contents thereof by parol evidence alone, and the evidence offered was not sufficiently precise or clear and was otherwise unsatisfactory, it was ordered that the application be refused, and that the applicant be at liberty to propound the will as advised. *In the Goods of* STANLEY P. IX. 222

5. —— *Probate of copy—"Manager of all."*] An original will in which the testator's widow was named as "manager of all," was by mistake burnt after the testator's death, among the papers of a solicitor who had given her a copy of it in his own handwriting. Administration with the contents of the will annexed, as contained in the copy, was granted to her. *In the Goods of* QUIN P. I. *M.* 661

6. —— *Revocation*—Onus probandi.] In the case of a testator becoming after the execution of his will, which he kept in his own custody, of unsound mind, and at his death the will not being forthcoming, the onus of showing that it was destroyed *animo revocandi* by the testator when of sound mind lies on the party who opposes the will; and in the absence of such evidence, the contents of the will, if clearly proved, will be established. FRY *v.* DRAPER - P. I. *M.* 7

PROBATE (AND ADMINISTRATION)—PLEADING.

1. —— *Particulars—Undue influence.*] A defence averred undue influence by a person and "others in his interest"; the plaintiff applied to have it amended by stating the names of the persons:—*Held*, that the proper course was for the defendant to give a bill of particulars, following *West* v. *West* (4 Sw. and Tr., 22). JACKSON *v.* HILLAS P. IV. *M.* 107

2. —— *Plea of want of knowledge and instructions as to residuary clause.*] A plea that the alleged testator did not know and did not give any instructions for a residuary clause was directed to be pleaded in addition to those of undue execution, want of capacity and undue influence. BLOOMFIELD *v.* CLANCY - - - - - - P. I. *M.* 228

PROBATE (AND ADMINISTRATION) — PRACTICE.

1. —— *Affidavit of scripts—By attorney.*] The plaintiff's attorney was allowed to file an affidavit of scripts made by himself, instead of one made by the plaintiff. M'CANN *v.* MURTAGH - - - - P. II. *M.* 266

PROBATE (AND ADMINISTRATION)—PRACTICE—continued.

2. —— *Affidavit—Costs.*] An appearance renders it unnecessary to file an affidavit to show cause against recalling probate. Such an affidavit having been filed contemporaneously with the entry of appearance:—*Held*, that the costs of the affidavit must be disallowed. PATTERSON *v.* FAREN [P. II. *M.* 43

3. —— *Amendment of caveat—Setting aside caveat.*] The next-of-kin of the deceased having been erroneously described in the caveat entered on her behalf, and a second caveat having been entered, the Court directed the first to be amended, and the second to be set aside. *In the Goods of* ASHE [P. V. 106

4. —— *Application for costs of special jury two days after hearing.*] On the second day after a verdict establishing a will, which had been impeached on the ground of undue influence, the Court granted a certificate for the costs of a special jury. EASTWOOD *v.* EASTWOOD - - - P. III. *M.* 425

5. —— *Application for examination of witness, and for leave to amend plea.*] The Court directed a material witness, who was about to return to America, to be examined before the Court, and gave leave to the plaintiff to amend his plea. BURTON *v.* BURTON - - - - P. X. *M.* 556

6. —— *Application to have case tried at the Assizes—Affidavit—Consent.*] In a suit to establish a will, when an application is made to have the case tried at the assizes, it is necessary to have an affidavit stating the facts on which the application is grounded, even though the application is made on consent. WILLIAMSON *v.* WILLIAMSON P. III. *M.* 503

7. —— *Appointment of administrator*—Pendente lite.] The plaintiffs, executors of a disputed will, applied to have an administrator *pendente lite* appointed. The Court refused the application, which would have led to great expense, but on the terms of the defendant expediting the hearing. FENTON *v.* CARDWELL - - - - - P. X. *M.* 556

8. —— *Caveat—Security for costs—Uncertificated bankrupt.*] On a motion that the defendant, who was an uncertificated bankrupt, should give security for costs, or that the caveat lodged by him should be set aside, it was ordered that the caveat lodged by him should be set aside and contentious proceedings discontinued, unless within fourteen days security for costs be given by him or on his behalf, after service of a copy of the order on his assignees. LAMBERT *v.* BASSETT [P. XI. 30

9. —— *Challenge of jurors—Action in Court of Probate—Defendants in different interests.*] In an action in the Court of Probate, by a legatee under a former will, against the executors of the last will, and the heir-at law, who would be entitled in case of intestacy, the defendants have not separate challenges, but can together challenge only six jurors. LONGFORD *v.* PURDON - - - - P. XI. 58 note

10. —— *Citation—To take out probate—One of two executors taking possession of assets—Failure to take out probate—Form of order.*] Where one or two executors takes possession of the testator's assets without taking out probate, the Court, on the application of a legatee, will grant an order compelling him to do so within a limited time. *In the Goods of* FITZGERALD - - - - - P. XXVI. 132

11. —— *Citation of heir-at-law.*] Where the heir-at-law of a testator is a party to a suit to establish a will in any capacity, it is not necessary to cite him as heir-at-law so as to have the real estate bound by the proceedings. WHITNEY *v.* DEIGNAN - - - - - P. XIX. 23

12. —— *Citation of next-of-kin of deceased Defendant—Non-appearance—Entry of suggestion.*] The sole defendant in a suit by the executors of W., to establish his will, having died intestate, his next-of-kin were cited to take out administration, or show cause why it should not be granted to a person named by the plaintiffs. There was no appearance to the citation upon which the Registrar granted administration

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PROBATE (AND ADMINISTRATION)—PRACTICE— *continued.*

to a person named by the plaintiffs. The Court subsequently granted liberty to the plaintiffs to enter a suggestion on the record of the death of the defendant and that the person named by them was his administrator, it appearing by the grant of administration that the next-of-kin had been cited and had not appeared. CARROLL *v.* WALSH - **P. VI. 24**

13. —— *Citing heir-at-law.*] An order for liberty to cite the heir-at-law, who had been previously cited as one of the next-of-kin, was made. TOLLON *v.* GORDON - **P. V. 19**

14. —— *Citing heir-at-law—Suit pending.*] In order to get an order for leave to cite an heir-at-law, there must be a suit actually instituted to try the validity of a will affecting the real estate. *In the Goods of* KELLY - **P. I. *M.* 7**

15. —— *Compromise of action—Costs.*] A will was disputed on the ground of undue influence, among other grounds. After the case was opened an arrangement was come to by which the widow was to receive a fifth of the assets, and £25 for costs. The Court said it could not administer the assets, but had control over the costs when undue influence was raised, and directed the consent regarding the £25 for costs to be entered on the register. BYRNE *v.* BYRNE - - **P. V. 80**

16. —— *Conditional order for attachment not served within time limited—Violence of Defendant—Substitution of service.*] A process-server was unable, through fear of violence, to serve the defendant with a conditional order for an attachment within the hours limited by G. O. 33:—*Held*, that the service could not be deemed good. NICHOLLS *v.* NICHOLLS **[P. II. *M.* 370**

17. —— *Costs—Costs of trial, what constitutes.*] Where a new trial was granted on the terms of a party paying the costs of the first trial, those costs included only counsel's fees, witnesses' expenses, solicitors' attendance and fees, the costs of the notice of trial, and two-thirds of the shorthand-writer's notes. ANON. - - - - **P. XXIII. *M.* 566**

18. —— *Costs—Next-of-kin.*] However vexatious the conduct of the defendants may be in requiring proof of a will in solemn form, the Court has no jurisdiction to condemn a next-of-kin in costs, where he has duly served the notice, under Rule 46, and has not required the case to be tried by a jury. PEYTON *v.* PEYTON - - **P. XXVII. 10**

19. —— *Costs—Intention to cross-examine only—Jury trials—Judicature Act, s. 53—Rule 46 (Pro) contentious.*] Service of notice in probate suits under the 46th Rule (cont.) of intention only to cross-examine, will no longer avail to save a party from being condemned in costs who wantonly, and without due inquiry, engages in litigation and requires the case to be tried by a jury. Effect of 53rd sec. of Judicature Act upon 46th Rule considered. In cases of trial by jury the Court is free, notwithstanding service of notice under 46th Rule, to direct that costs shall follow the event, unless there be good reason to the contrary. *Semble*, that the practice of the old Prerogative Court as to costs under 46th Rule will still prevail, if, in addition to serving notice, the party applies to have the case heard before the Court without a jury. FOLEY *v.* BROGAN - - - **P. XVII. 114**

20. —— *Costs—Real estate—Executor—Heir-at-law—Forged will.*] An unsuccessful plaintiff in the Probate Division will, in general, be allowed costs only where the conduct of the testator or defendant caused litigation. An executor *bonâ fide* propounded an instrument which he subsequently discovered to be a forgery; he at once informed the heir-at-law and himself instituted a motion to have the document condemned:—*Held*, that he should abide his own costs, but that the Court would not condemn him to pay the costs of the heir-at-law. HOWARD *v.* HOWARD **P. XVII. 17**

21. —— *Costs of Defendant who had opposed will—Neglect of Plaintiff to lodge documents.*] In a suit to establish a will, and codicil, undue influence, undue execution, and want of capacity were pleaded. The will and codicil were established,

PROBATE (AND ADMINISTRATION)—PRACTICE— *continued.*

Plaintiffs neglected to lodge, till three days before the trial, the memoranda of a conversation in which the testator had given instructions for a codicil and a draft of the will:—*Held*, that the defendants should have their costs out of the estate. FARLEY *v.* FARLEY - - **P. III. *M.* 198**

22. —— *Costs of unsuccessfully litigating a will.*] Two questions are to be considered with reference to an application for costs of unsuccessfully litigating a will—*viz.* (1) was there reasonable ground for litigation? and (2) was it conducted *bonâ fide*? O'REILLY *v.* FORDE - - - **P. V. 54**

23. —— *Death of Defendant after issue joined and before trial—Service of citation on next-of-kin.*] Where the defendant in a probate action died after issue joined and before trial, leaving two minor children her next-of-kin, and no assets, and no administration was taken out to her, to enable which to be taken out the hearing of the action was postponed:—*Held*, that the plaintiff should be at liberty to proceed with the trial on serving a citation upon the two minor children, by serving it on their uncle and aunt with whom they lived. ANDREWS *v.* GRACE - - - - - **P. XV. *M.* 628**

24. —— *Devisee of real estate obtaining liberty to intervene.*] A devisee of real estate under the will which was the subject of a suit, who had not been cited, having applied for liberty to intervene, was allowed to do so, but was not allowed to put a statement on the record that he supported the bill and codicil, the allegation appearing to be unnecessary. BURKE *v.* ROSINGRAVE - - - - - - **P. V. 193**

25. —— *Discontinuance of proceedings—Conditional order.*] An executor moved to set aside a caveat in order to obtain probate in common form. The caveat had been warned and a declaration filed. The defendant had entered an appearance, but had not filed any pleading, though noticed to do so:—*Held*, that a conditional order to discontinue the proceedings should be granted. ROONEY *v.* FEENY - **P. III. *M.* 280**

26. —— *Executor's refusal to lodge will in Court pursuant to citation—Intermeddling with assets—Costs.*] An executor of an unproved will which provided that a legatee and her children should be at liberty to reside in the dwelling-house of the testator, and be maintained there, expelled them therefrom, and refused to give up the will which he had in his possession. A citation was issued against him to lodge it or enter an appearance, which he disregarded, and the Court ordered that his non-appearance should be taken as a renunciation. A subpœna commanding him to lodge the will was subsequently issued, and on his not complying with it a conditional order for attachment was made and issued against him, when he lodged the will in Court:—*Held*, that expelling the legatees from the house was an intermeddling with assets, and that he should pay the costs subsequent to the issuing of the subpœna. *In the Goods of* HURLEY - - - **P. V. 64**

27. —— *Filing affidavit of scripts—Plaintiff's solicitor—Plaintiff resident in Australia.*] The plaintiff's solicitor will not be ordered to file the affidavit of scripts to the best of his information and belief, although the plaintiff himself is residing in Australia, unless it appears that the solicitor, having knowledge of the facts, is better qualified to make it than the plaintiff. FITZGIBBON *v.* HYNES - **P. X. 82**

28. —— *Fixing mode of trial—Service of citation.*] An application to fix the mode of trial was postponed until the time limited for showing cause against a conditional order for substitution of service of the citation by serving the next-of-kin out of the jurisdiction had expired. MITCHELL *v.* MITCHELL - - - - - **P. I. *M.* 648**

29. —— *Framing of issues—Trial by jury.*] Where both parties concur in desiring an action to be tried before a special jury they are entitled to it; the practice of sending general issues to the jury and not special issues, discontinued for the future. ISAAC *v.* GRANT - - **P. VIII. *M.* 401**

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PROBATE (AND ADMINISTRATION)—PRACTICE— *continued.*

30. —— *Heir-at-law—Costs.*] In a probate suit two wills were put in issue, the latter being propounded by the heir-at law. The jury found in favour of the first will, and the Judge said that if the heir-at-law had only impeached the first will he would have a clear right to do so, and so would get his costs; having, however, as devisee and legatee put forward another will which he had failed to sustain, he must pay his costs. FLEMING *v.* GUY - - - **P. I. *M.* 262**

31. —— *Issues—Codicil—Alleged mistake in reference to will—Amendment.*] A codicil referred to a will of November, 1863, which was propounded by the plaintiff. Some defendants pleaded a will of January, 1864, as the last will, which had revoked the former, and averred that the codicil was intended to be a codicil to it, and that the testator did not intend by the codicil to declare an intention to confirm and revive the first will. Other defendants, in addition to a similar plea, pleaded undue execution of the codicil and undue influence as to it:—*Held*, that the proper issue was whether the will of November, 1863, was revived by the codicil, and also that the special plea should be amended by omitting the latter branch of it. GROGAN *v.* M'CONNELL - - - **P. I. *M.* 27**

32. —— *Legatee disputing will—Lodgment of legacy in Court.*] The fact that part of a legacy bequeathed to a man by a will which is disputed by him, has been paid to his wife, does not dispense with the rule that it must be paid into Court, as she is her husband's agent. RUSSELL *v.* KEENAN **[P. IV. *M.* 200**

33. —— *Letters of administration—Direction of an issue—Evidence of marriage—Certified copy in Register Office.*] Upon a contested application for letters of administration, the Judge refused to hold a certified copy of the entry in the Register Office (as required by s. 71 of 7 & 8 Vic., c. 81) to be conclusive evidence that a marriage had taken place between the plaintiff and the deceased, the following circumstances being alleged and relied upon to resist the application: 1. That the alleged marriage had been kept a secret from the relatives of both parties. 2. Non-cohabitation. 3. The non-production of any witness of the ceremony. 4. That the signature of the deceased in the certified copy was spelled and written in a manner different from that invariably adopted by her. Under the above circumstances the Judge directed an issue. BAKER *v.* PHIBBS - - - - - **P. VII. 52**

34. —— *Lodging caveats.*] A caveat lodged by a solicitor for the next-of-kin of the deceased, who were abroad, but lodged on the same day on which a conditional order for a new trial respecting the validity of the will of the deceased had been refused, and lodged under the directions of the solicitor, who acted on the trial for the defendants, was set aside with costs, the same to be paid by the solicitor who lodged the caveat. *In the Goods of* NORRIS. **[P. I. *M.* 459**

35. —— *Mode of trial—Trial at Assizes—Number, character, and residence of witnesses to be examined for the defendant, and small amount of assets.*] Though *primâ facie* the Probate Division is the proper tribunal in which testamentary cases should be tried, an issue to the Assizes will be directed when the assets are but a little over the County Court limit of jurisdiction, and the residence of all the witnesses, and the professional position of some of the most important ones, render a trial in the local venue desirable. *Cooper* v. *Moss* (1 S. & T. 143), distinguished. CHAMBERS *v.* CRAWFORD **[P. XXI. 14**

36. —— *Motion to appoint administrator* pendente lite, *and receiver.*] The Court refused to appoint a receiver over the rents and profits, but referred to the Registrar the naming of a proper person to act as administrator *pendente lite*. LONGFORD *v.* PURDON - - - - **P. XI. *M.* 192**

37. —— *New trial motion—Certificate of counsel—No evidence to go to jury.*] Where a new trial was sought, on the grounds that the Judge ought not to have withdrawn from the jury questions of fraud and undue influence, the motion was refused on the grounds that there was no evidence to go to a jury on those issues, and also because senior counsel did not make the proper certificate. MACKEN *v.* M'GARRY **P. X. 131**

38. —— *Parties—Married woman—Security for costs.*] Where a plaintiff in a Probate suit was a married woman, she was ordered to give security for costs, either in a penal sum or to lodge that amount in Court as security; in the former case the bond should be executed by a solvent person acceptable to the defendants. FITZPATRICK *v.* WEBB **P. I. *M.* 157**

39. —— *Photograph of signature of deed lodged in Court.*] The Court made an order that the defendant's solicitor should be permitted to procure a photographic copy of the signature to a deed which was impounded by the Court, the copy being necessary for the purposes of the defence. DARRACOTT *v.* UNDERWOOD - - - - **P. III. *M.* 740**

40. —— *Power of striking jury under the old system.*] Under the C. L. P. Act (Ir.), 1853, s. 112, aided by the Probate Act (Ir.), s. 42, the Court has jurisdiction to order a jury to be struck under the old system. BROWNE *v.* ESMONDE **[P. II. *M.* 669**

41. —— *Proof of application for grant by creditors.*] A creditor, who was supported by a majority of the creditors of a deceased, procured a renunciation of his right to take out administration from one son of the deceased, who was in Ireland (the other being abroad). The Court granted administration to him as against another creditor, who applied earlier. *In the Goods of* PATTON - - - - **P. I. *M.* 648**

42. —— *Probate duty.*] Where the assets of a deceased consisted of only £5, but proceedings were pending in Chancery for purpose of making the executor a trustee for the next-of-kin in respect of a lease which he had obtained, the probate must be stamped with a stamp adequate to cover the value of the property. *In the Goods of* COMYNS - **P. I. *M.* 633**

43. —— *Proof of will in solemn form—Notice to cross examine under Rule* 46*—Vexatious opposition—Costs.*] However vexatious the conduct of the defendant may be in requiring proof of will in solemn form, the Court has no jurisdiction to condemn a next-of-kin in costs when he has duly served the notice under Rule 46, and has not required the case to be tried before a jury. PEYTON *v.* PEYTON - **P. XXVII. 10**

44. —— *Receiver—Equitable execution—Legacy—Judicature Act (Ir.), 1877, s. 28, sub-s.* 8.] An order of the Court of Probate directing payment by the plaintiff to the defendants of their costs of the action, having been disobeyed, the Court held that, on proof that garnishee proceedings were not applicable, receivers by way of equitable execution could be appointed over a legacy to which the plaintiff was entitled. M'KENNA *v.* HARLEY - - - **P. XXVII. 89**

45. —— *Remitting action to Civil Bill Court—Jurisdiction—Valuation—*20 & 21 *Vic., c.* 79, *s.* 58—22 & 23 *Vic., c.* 31, *s.* 6—40 & 41 *Vic., c.* 56, *ss.* 31, 46.] A consent to remit to the Civil Bill Court a probate action was made a rule of Court, where the assets consisted of: (1) pure personalty £150; (2) two holdings at K., combined valuation, £29 15s.; combined rent, £30; (3) like at D., valuation, £8; rent, £12. TIERNAN *v.* GALLAGHER - - - - **P. XII. *M.* 541**

46. —— *Re-trial of a cause after a consent.*] A cause was on the list for trial, and when it was called on a consent for a compromise was effected and the will admitted to probate; to this one of the parties, K., interested under the will, was not a party. After the will was proved K. served a notice repudiating the consent, and caused a citation to issue that cause should be shown why the will should not be brought into Court. The Court granted a re-trial, as it appeared that a case of undue execution remained to be tried. *In the Goods of* MULLEN. KING *v.* BERRY - - - - **P. V. 80**

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PROBATE (AND ADMINISTRATION)—PRACTICE— *continued.*

47. —— *Security for costs—Defendant resident in Liverpool—Affidavit of merits—C. L. P. Act*, 1853, *s.* 52—*Judgments Extension Act*, 1868.] A motion for security for costs to be given by the defendant who resided in England was refused: (1) because there was no affidavit of merits, and (2) because the practice is never to require it from a party resident in the United Kingdom. KEEGAN *v.* KEEGAN P. XV. *M.* 140

48. —— *Sending cause for trial to the Assizes—Costs—Final decree.*] Where it appeared, that in a suit to recall probate, the assets were under £300 in value, and the parties and their witnesses resided in Cork, the Court at the desire of both parties, sent the issues for trial at Cork Assizes, upon the parties consenting to abide by such order as the Judge of Assize should think proper, as to costs, and that the final decree should follow the verdict. COTTER *v.* SULLIVAN - P. X. 135

49. —— *Statement of claim—Calculated to embarrass—Rules, June*, 1891, *O. XIX., r.* 28—*O. XXVIII., rr.* 1, 2—*Amendment on terms—Amendment without leave—C. L. P. Act*, 1853, *s.* 231—*Discretion of Judge as to practice in his own Court.*] Letters of administration with will annexed were granted to a sole legatee, daughter of the testatrix; the grandson of deceased, and son of the testatrix's deceased son, alleging testamentary incapacity, lodged a caveat intending to have the will proved in solemn form. A citation issued and documents were relodged; motion to order the plaintiff to issue writ and statement of claim granted. Motion to set aside statement of claim, as "calculated to embarrass" granted. Order to amend in four days, on payment of six guineas costs:—*Held*, that the Judge of Probate Court had power to make the order. PLUNKETT *v.* DOYLE - - - - C. A. XXVI. 97

50. —— *Subpœna for attendance of witnesses to the execution of a will.*] Where witnesses to a will refused to make, without a fee, affidavits as to its execution, the Court refused to dispense with their testimony, and act on the affidavit of one of the executors. *In the Goods of* DUNNE - P. III. *M.* 198

51. —— *Subpœna* ad testificandum—*Witness to will.*] A subpœna *ad testificandum* for the attendance of a surviving witness to a will, who, while admitting the due execution of the will, refused to make the ordinary affidavit, was granted. *In the Goods of* DORGAN - - P. VIII. *M.* 486

52. —— *Substitution of service—Subpœna* ad testificandum *in a Probate suit.*] The Court allowed substitution of the service of a subpœna *ad testificandum* to be made when it appeared that the parties were keeping out of the way and evading service. FITZPATRICK *v.* KAVANAGH [P. IV. *M.* 304

53. —— *Testamentary suit—Citation to see proceedings—Heir-at-law—O. XVI., r.* 10 (1891)—20 & 21 *Vic., c.* 77, *s.* 65.] The practice as to citation to see proceedings heretofore in use in the Probate Court has been altered by the Rules of the Supreme Court, 1891, and now where a decree in a testamentary suit is sought to bind the heir-at-law or devisees of real estate they may be made parties instead of being cited. *In the Goods of* MARY TALLON - - - P. XXVII. 90

54. —— *Power of attorney.*] The plaintiff, acting under a power of attorney from the widow of the deceased, instituted a suit in his own name, and moved for a grant of letters of administration to himself:—*Held*, that the donor of the power of attorney should be plaintiff, and that the title of the cause should be amended accordingly. WEST *v.* GRAHAM [P. II. *M.* 670

PROBATE (AND ADMINISTRATION)—RENUNCIATION.

1. —— Where one of two executors renounced, and the other appeared but refused to prove, alleging testator's incapacity:—*Held*, that the executor so appearing must either prove or renounce. *In re* WARING - P. XXVI. 59

PROBATE (AND ADMINISTRATION)—RENUNCIATION— *continued.*

2. —— *Executor—Probate—Propounding will—Consent—Withdrawal—Intermeddling.*] The institution of a probate suit by an executor and his entering into a consent which contained provisions dealing with the assets, constitute in law an intermeddling with the assets which renders him liable to act as executor. CARBERRY *v.* CODY P. I. *M.* 103

3. —— *Intermeddling with assets.*] Where an executor, having filed a renunciation, has been proved to have intermeddled with the assets, and fails to explain his conduct as founded on mistake, without any intention to act as executor, his renunciation will be set aside. LEDWIDGE *v.* LYNCH [P. XI. 81

4. —— *Jurisdiction—Intermeddling—Consent.*] Where an executor has intermeddled in his deceased's estate the Court of Probate has jurisdiction in a proper case to allow him to renounce. *In the Goods of* FITZPATRICK P. XXVI. 125

PROBATE (AND ADMINISTRATION)—TESTAMENTARY INSTRUMENT—*Unsigned document—Paper writing prior to Wills Act.*] Where a deceased who was for many years in a lunatic asylum left an unfinished paper, undated and unsigned, the Court granted administration as in case of intestacy. *In the Goods of* JANE GORDON P. I. *M.* 350

PROBATE (AND ADMINISTRATION)—UNDUE INFLUENCE.

1. —— *Evidence—Execution of will—Letters.*] In a suit to establish a will the due execution of it and the capacity of the testator were not merely proved by the plaintiff, but admitted by the defendant's counsel:—*Held*, that letters written subsequently could not be admitted to show either feeling of the testator towards a legatee, or undue influence. BRUNKER *v.* DICKSON - - - - - - P. I. *M.* 248

2. —— 46*th G. R.*] The 46th G. Rule (contentious) does not apply to a case in which undue influence is pleaded. MACEVILLY *v.* GILL - - - - - P. III. *M.* 448

—— Pleading - - - - - IV. *M.* 107
See PROBATE—PLEADING. 1.

PROBATE (AND ADMINISTRATION).

—— Continuance of action by administrator before grant [VIII. 6
See EXECUTOR—ACTION BY. 8.

—— Motion to obtain letters of administration with will annexed—Junior counsel - - VII. 53
See COUNSEL—JUNIOR. 2.

—— New trial—Probate suit - - - - - X. 9
See LUNATIC—CONTRACTS AND DISPOSITIONS. 1.

PROBATE DUTY.

See REVENUE—PROBATE DUTY.

PROCTOR—*Admission as solicitor of Court of Judicature—Judicature Act*, 1877, *s.* 78.] A proctor, who was admitted as such to practice before the Probate Court after the passing of the Probate Act, is entitled to be admitted as a solicitor under sec. 78 of the Judicature Act, 1877. *Re* BEATTY [C. XII. *M.* 240

PROMISSORY NOTE.

See BILL OF EXCHANGE.

—— Joint and several—Husband and wife - XV. 39
See HUSBAND AND WIFE. 18.

—— Motion for final judgment—Specially indorsed writ.
See PRACTICE—JUDGMENT. 25, 27, 86, 88.

—— Statute of Limitations - - - - XXVI. 13
See LIMITATIONS, STATUTE OF. 23.

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PROOF OF DEBTS—Bankruptcy.

See Cases under BANKRUPTCY—PROOF OF DEBTS.

PROPERTY—Infant.

See Cases under INFANT—PROPERTY.

—— Lunatic.

See Cases under LUNATIC—PROPERTY.

PUBLIC HEALTH ACTS.

1. —— *Act*, 1878, *ss.* 107, 110, 111, 113—*Houses unfit for human habitation—Separate order not required for each house—Notice signed by clerk of sanitary authority—Improvement scheme—Housing of the Working Classes Act* (53 & 54 *Vic.*, *c.* 70), *ss.* 4, 29, 32, 49 (3) *and* 86 (2).] M., agent for the owners of 27 houses in Patterson Court, Belfast, was served with notice by the Corporation of the City of Belfast, which notice was signed by the executive sanitary authority of the said city, to have same made fit for human habitation, and as he did not do so a summons was issued against him for that he permitted them to be used as dwelling-houses although they were in a state so injurious to health as to be unfit for human habitation, and an order was made by the magistrates that the 27 houses were unfit for human habitation and prohibiting the use of them as such until they were rendered fit for habitation to the satisfaction of the Court:—*Held* (on appeal to the Recorder, affirming the magistrates), that it was not necessary to obtain a closing order for each separate house, that the notice signed by the executive sanitary authority was a compliance with the statute, and that the Corporation need not proceed for an improvement scheme under the Housing of the Working Classes Act (53 & 54 Vic., c. 70). MALCOLM *v.* THE LORD MAYOR, ALDERMEN AND CITIZENS OF BELFAST - - **Q. S. XXVII. 84**

2. —— *Act*, 1878—*ss.* 257, 258—*Remuneration of medical officers of health—Attendance at legal proceedings—Local Government Board order under ss.* 257, 258.] A medical officer of health is entitled to one guinea or two guineas *per diem* according to the rate of remuneration fixed by the sanitary authority, for attendance and assistance at legal proceedings, irrespective of the number of cases in which he shall have so attended in any one day. ROULSTON *v.* STRABANE UNION GUARDIANS - - - - - **C. A. XXII. 69**

3. —— *Dangerous houses—Order of Justices to have them pulled down.*] The Justices made an order on the owners of dilapidated premises, as being in such a state as to cause a nuisance or injurious to health, to have them pulled down. ATHY UNION GUARDIANS *v.* M'ELWAINE **[P. S. XXII. *M.* 542**

4. —— *Landlord and tenant—Sanitary accommodation.*] A landlord is bound to provide sanitary accommodation on his tenant's premises when directed by the sanitary authority, and is liable to pay the expenses thereof, if through his neglect the sanitary authority provides it. DUNGARVAN TOWN COMMISSIONERS *v.* MULHALL - - **Q. S. XXVI. *M.* 661**

5. —— *Nuisance by default of "owner"—Remedy.*] In case of a breach of a public duty imposed by the Public Health Act, 1878, the remedy is confined to that given by the statute, and no right of action accrues to the party aggrieved. HILDIGE *v.* O'FARRELL **[C. P. D. XIV. 117; C. A. XIV. 118 note**

6. —— *Sanitary inspector—Salary.*] Under the Public Health Acts the corporation have full power with regard to the dismissal of a sanitary inspector over and above their ordinary Common Law powers. DUBLIN CORPORATION *v.* O'CONNOR - - - - - **Cy. Ct. A. XV. *M.* 195**

PUBLIC HEALTH ACT, 1874—Special rate under—Deduction from rent - - - **XII. 6**

See LANDLORD AND TENANT—RENT. 6.

PUBLIC-HOUSE—*Prostitutes assembling in—Dublin Police Act*, 5 *Vic.*, *c.* 24, *s.* 7—*Conviction.*] To justify a conviction under the 5 Vic., c. 24, s. 7, it is not sufficient that prostitutes are in a public-house together. The magistrate must conclude that they came to the house for the purpose of prostitution or other disorderly conduct. MURPHY *v.* AHERN **[C. P. III. *M.* 467**

PUBLIC POLICY—Agreement against.

See CONTRACT. 5, 6.

—— Condition—Will - **XII. 22; XII. *M.* 293**

See WILL—CONDITION. 1.

—— Papal rescript - - - - **VII. 100**

See ROMAN CATHOLIC CLERGYMAN.

PUBLICATION TENDING TO INJURE PROPERTY—Injunction - - - **X. 134**

See DEFAMATION—LIBEL. 14.

PURCHASE BY TENANTS—Landed Estates and Land Judges' Court.

See Cases under PRACTICE—LANDED ESTATES COURT—PURCHASE BY TENANTS.

PURCHASE OF LAND (IRELAND) ACTS.

See LAND PURCHASE ACTS.

PURCHASER—Landed Estates Court—Claim for compensation.

See Cases under PRACTICE—LANDED ESTATES COURT—COMPENSATION.

—— Landed Estates Court—Claim to be discharged.

See Cases under PRACTICE—LANDED ESTATES COURT—DISCHARGE OF PURCHASER.

—— Without notice—Inquiry as to incumbrances.

See VENDOR AND PURCHASER. 5, 6.

—— Without notice—Pleading - - - **I. *M.* 578**

See PRACTICE—CHANCERY—PLEADING. 2.

Q.

QUANTUM MERUIT—Invalid special contract **[I. *M.* 349**

See FRAUDS, STATUTE OF. 3.

QUARRY—*Landlord and tenant—Right to open and take stones from—Compensation.*] A landlord can grant permission to quarry and take stones from a portion of a tenant's land which is not an open quarry, and the payment of compensation therefor is not a condition precedent. DOLAN *v.* DAVIS **[Q. B. D. XXVII. 93**

QUEEN'S UNIVERSITY.

See UNIVERSITY.

QUO WARRANTO.

1. —— *Practice—Vacation.*] An application for an information in the nature of a *quo warranto* relating to the appointment to a Water Commissionership of Belfast, cannot be made out of term. R. *v.* SUFFERN **[C. C. X. *M.* 507**

2. —— *Time—Sufficiency of notice—Election of County Treasurer.*] The notice of election to the office of County Treasurer is fourteen clear days, and the true date of the notice is the day when it appears in the *Gazette*. R. (LATOUCHE) *v.* LAWDER - - - - - - - **Q. B. I. *M.* 156**

——Dismissal of Town Clerk - - **XX. 67**

See TOWN CLERK.

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B.

RABBITS—Game—Trespass - - - **XXIV. 5**
See GAME. 6.

RAILWAY. Col.
ABANDONMENT - - - - - - 645
BYE-LAW - - - - - - 645
CARRIAGE OF GOODS - - - - - 645
COMPULSORY POWERS - - - - - 650
DEBENTURES, BONDS, AND MORTGAGES - - 650
LIABILITIES - - - - - - 651
PASSENGER - - - - - - 651
PASSENGERS' LUGGAGE - - - - 654
POWERS - - - - - - - 655
PREFERENCE SHAREHOLDERS - - - - 656
RECEIVER - - - - - - 656
SCHEME OF ARRANGEMENT - - - - 657
TRAVERSE - - - - - - 657

RAILWAY—ABANDONMENT—*Winding up—Consent of depositors—Saving rights of depositors.*] The Court has jurisdiction to make an order for winding up a railway company who have obtained a warrant of abandonment, against the consent of the party claiming the fund deposited under the standing orders of Parliament in respect of the application for the Act; and will not save the rights of such a party, as he can assert them under the winding-up order. *Re* WATERFORD, LISMORE, AND FERMOY RAILWAY CO. - **B. IV. *M.* 622**

RAILWAY—BYE-LAW.

1. —— *Removal of passenger—Non-payment of fare.*] A bye-law of a railway company provided that no passenger should be allowed to enter any carriage without having first paid his fare and obtained a ticket, which he should show whenever required by, &c., and that any passenger not producing it would be required to pay the fare from the place whence the train started, or in default, &c.:—*Held* (by Whiteside, C.J.), that the bye-law only applied to a passenger having a ticket and refusing to show it, and that the company had not power to remove from a carriage a passenger travelling fraudulently on an insufficient ticket, but could only summon him before a magistrate:—*Held* (by Fitzgerald, J.), that the company had under the bye-law power to prevent from travelling on the line; and for that purpose to remove from a carriage any traveller, who had not obtained and who refused to take a proper ticket. M'CARTHY *v.* DUBLIN, WICKLOW AND WEXFORD RAILWAY CO. **[Q. B. III. *M.* 648**

[Judgment of Whiteside, C.J., reversed on appeal. I. R. 5 C. L. 244.]

2. —— *Wilful obstruction of officer in execution of his duty.*] A bye-law of a railway company imposing a fine for wilfully obstructing an officer of the company in the execution of his duty gives the magistrates power to impose a fine. DUBLIN AND DROGHEDA RAILWAY CO. *v.* FARLEY **P. S. I. *M.* 212**

—— Passenger.

See RAILWAY—PASSENGER. 1, 2.

RAILWAY—CARRIAGE OF GOODS.

1. —— *Acceptance by railway company of goods to be carried beyond the limits of their line—Condition exonerating them from liability.*] Where goods are consigned to a railway company for carriage, to be continued beyond the limits of their own line of railroad, over another line not worked by them, subject to a condition printed on a consignment receipt, accepted (though not signed) by the consignor, that the company will only be accountable for loss occurring on their own line, and not for any occurring beyond the line as worked by themselves, the company will not be liable for loss or damage occurring during transit, upon another line not worked by them. RANAHAN *v.* MIDLAND GREAT WESTERN RAILWAY CO. **[Q. S. VIII. 34**

RAILWAY—CARRIAGE OF GOODS—*continued.*

2. —— *Coal—Constructive delivery.*] Coals were consigned to a railway company and arrived at their destination. Notice was sent to the owner that the coals had arrived and lay at the station at his risk, and requesting the defendant to remove them from the trucks. By the direction of a servant of the plaintiff, the coals were placed on a siding next the plaintiff's yard, but after nine days were emptied by the defendants out of the trucks in which they lay on to a place at the side of the railway, where they were much injured and rendered almost useless:—*Held*, that the notice to the plaintiff to remove the goods amounted to a constructive delivery, and that the defendants' duty as common carriers was fully performed, and, there being no count in trover, the plaintiff could not recover against the company as common bailees. BRADSHAW *v.* IRISH NORTH WESTERN RAILWAY CO. **[C. P. VII. 158**

3. —— *Condition exempting them from liability—Loss of goods—Evidence of wilful neglect or misconduct.*] Where carriers purport, by a lower rate of carriage, to relieve themselves from all liability in case of loss, damage, or delay, except upon proof that such loss, damage, or delay should have arisen from the wilful neglect or misconduct of the servants of the company, acting within the scope of their authority, the onus of proof of wilful neglect is thrown upon the owners of the goods, and, in the absence of such proof, the carriers are not called upon to produce witnesses to negative negligence on their part. (By Murphy, J.) MIDLAND GREAT WESTERN OF IRELAND RAILWAY CO. *v.* CANDON **[Cir. Cas. XVII. *M.* 429**

4. —— *Consignment—Detention.*] The plaintiff delivered to the M. G. W. R. Co., at their station in Boyle, certain goods directed to the plaintiff at Belfast, for which the company gave a consignment note as follows:—"Goods consigned to self at Belfast, *viâ* Cavan, which we promise to deliver at Cavan." The company's line terminated at Cavan. The goods were detained between Cavan and Belfast on a line not belonging to the defendant company:—*Held*, that they were not liable for the detention. (By Hughes, B.) NOONE *v.* MIDLAND GREAT WESTERN RAILWAY CO. **[Cir Cas. I. *M.* 139**

5. —— *Contract — Where entered into — Through booking.*] Where there are no actual agreements between the carrying companies as to through booking, and the English carrying companies keep agents in Ireland to tout for them, there is evidence of a contract with such company entered into in Ireland, within the jurisdiction. CUMMING *v.* GREAT NORTHERN RAILWAY CO. **[E. D. & C. A. XXVII. 74, 75 note**

6. —— *Delay—Negligence.*] Where, owing to the very circuitous route taken by a goods train, but which route was the company's ordinary one for goods trains, there was long delay and exposure, in consequence of which the plaintiff's cow died:—*Held*, that it was for the plaintiff to have ascertained the time required for the transit in ordinary course by such goods train, and that the railway company were not liable. (By Gibson, J.) M'NALLY *v.* LONDON AND NORTH WESTERN RAILWAY CO. - - **Cir. Cas. XXVI. 138**

7. —— *Delay beyond carrier's control—Strike.*] A railway company is not liable for damages for the delay of goods in consequence of a strike on the line. O'LOUGHLIN *v.* GREAT SOUTHERN & WESTERN RAILWAY CO. **[Rec. C. XXV *M.* 102**

8. —— *Delay—Railway trucks.*] In an action for damages for delay in carrying cattle from Dublin to Sheffield, it was proved that the cattle arrived before the steamer started, but as she was full they had to be kept till the next steamer, and they were further detained at Holyhead for want of trucks to send them on in:—*Held*, that the Judge had left the proper question of unreasonable delay to the jury, and that they were warranted in finding for the plaintiffs, as the delay was caused by the want of trucks, and not by any unavoidable impediment. DONOHOE *v.* LONDON AND NORTH-WESTERN RAILWAY CO. - - - **E. I. *M.* 359**

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RAILWAY—CARRIAGE OF GOODS—*continued.*

9. —— *Delivery to consignee—Refusal to admit by receipt that consignment was in good order—Custom—Damages for detention.*] A railway company, acting as a common carrier of goods, possesses no implied authority to compel the consignee to admit, on the face of a receipt for the goods, that the goods were received by him "in good order" as a condition precedent to delivery; and his refusal to sign such receipt will constitute no justification for a refusal by the company to deliver the goods within a reasonable time, even though it be generally customary to demand such receipts. M'ELHINNEY *v.* LONDONDERRY AND LOUGH SWILLY RAILWAY Co. - - - - - - **Q. S. XXV. 68**

10. —— *Delivery of goods to consignee—Goods purchased by consignor by alleged, but unauthorised, agent of consignee—Delivery to alleged agent without authority—Action by consignor for misdelivery.*] Goods received by a railway company for carriage and delivery were delivered to a person who had purchased them from the consignor for the consignee, alleging that he was agent of the latter, but being in fact unauthorised, or allowed to hold himself out as authorised, either to purchase or to receive them. The jury found that the conduct of the consignee in his dealings with the company had not been such as to lead them to believe that the alleged agent had his authority to receive the goods; and that the delivery was not made by them acting on such belief:—*Held*, that an action lay by the consignor against the company in respect of the misdelivery, as the property in the goods had not passed to the consignee, and as it did not appear that the defendants had been led by the plaintiff to believe that the alleged agent was authorised to receive the goods; and that on the findings of the jury a verdict was properly directed for the plaintiff. EGAN *v.* GREAT NORTHERN RAILWAY Co. - **Q. B. D. XIV. 28**

11. —— *Excisable commodity—Lien of the Crown.*] A consignor delivered to the defendants several hogsheads of whiskey, upon which no duty had been paid, to be carried to L. Station, and several were consigned to the Custom warehouses at L.; and the consignor entered into bonds conditional that the whiskey would, on its arrival at L., be delivered into the custody of the Custom House officers there. The defendants delivered them to the consignee, who did not pay the duty thereon, and the consignor was compelled to pay it:—*Held*, that the defendants should have lodged them in the Queen's Stores, and they were not justified in handing them to the consignee, and they should pay to the consignor the duty which he was obliged to pay to the Crown. CORK DISTILLERIES Co. *v.* GREAT SOUTHERN & WESTERN RAILWAY Co. **[Q. B. IV. *M.* 634**

[This was reversed in the Exchequer Chamber and House of Lords. I. R. 5 C.L. 177; I. R. 8 C.L. 334.]

12. —— *Hazardous goods—Special contract—Conditions of non-liability*—8 & 9 *Vic., c.* 20, *s.* 105—17 & 18 *Vic., c.* 31, *s.* 7.] The Railway and Canal Traffic Act, 1854 (17 & 18 Vic., c. 31), does not take away the right reserved to railway companies by the 105th sec. of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vic., c. 20), to refuse to carry dangerous goods, if they are goods for the carriage of which the companies have no facilities, and which form no part of the traffic they propose to carry; but if, having facilities for carrying, and in fact carrying such goods as a component part of their every-day traffic, such companies receive instead of refusing such goods, the 7th sec. of the Railway and Canal Traffic Act, 1854, applies to the contract so as to require that the conditions of carriage shall be just and reasonable. A condition exempting a railway company from any risk or responsibility in respect of loading, stowage, or unloading, is an unreasonable condition in reference to the carriage of vitriol. M'MASTER, HODGSON & Co. *v.* GREAT SOUTHERN & WESTERN RAILWAY Co. - **Rec. C. XXII. 86**

13. —— *Illegal and unreasonable rates—Undue preference—Jurisdiction.*] By a Special Act the railway company were authorised to charge a maximum rate of 1½d. per ton for all

RAILWAY—CARRIAGE OF GOODS—*continued.*

expenses incidental to the conveyance of coal, except a reasonable charge for loading and unloading, and any other service incidental to the business or duty of a carrier. The company charged a special reduced waggon rate per cargo where vessels were unloaded at a certain pier on which they kept a special engine:—*Held*, that where a small part only of the cargo was unloaded at this pier, the company were not confined to this special reduced rate nor to the 1½d. per ton for carriage, but were entitled to make reasonable charges for extra services rendered in conveying the coal from the pier to the station, loading, &c. The Railway Commissioners are the proper tribunal for deciding as to the reasonableness of these extra charges. (By Gibson, J.) M'COWEN *v.* WATERFORD AND LIMERICK RAILWAY Co. - - **Cir. Cas. XXVII. 90**

14. —— *Liability—Train late—Loss of market.*] The railway company which had undertaken to carry pigs to Dublin, where they were too late in arriving to catch a certain steamer so as to be sent on to a certain market in England, is not liable for the damage done to their owners through their having to sell the pigs (which were unfed in transit) at a worse price. (By Christian, J.) MIDLAND GREAT WESTERN RAILWAY Co. *v.* M'GARRY - - - - - **Cir. Cas. I. *M.* 159**

15. —— *Liability for damage to cattle in transit—Printed notice.*] A railway company will not be liable for damage done to cattle while carrying them, if the ticket given to the consignor contained a printed condition against their liability for damage to cattle *in transitu*. (By Deasy, B.) BARRETT *v.* CORK AND BANDON RAILWAY Co. **Cir. Cas. VII. 175**

16. —— *Negligence—Railway company—Unreasonable delay in carrying and delivering goods—Contract or tort.*] Goods were delivered on December 14th, 1890, to the Midland Railway Co. of England for carriage to the plaintiff at Newcastle West, Limerick, *viâ* Waterford. The goods were transferred in due course on the following day to the Waterford and Limerick Railway Co. at Waterford, but were not delivered by that company to the plaintiff at Newcastle until the 12th May, 1891. In an action brought against the Waterford and Limerick Railway Co. as defendants:—*Held*, that damages were recoverable against the defendants as tort-feasors in respect of such unreasonable delay. LAVEN *v.* WATERFORD AND LIMERICK RAILWAY Co. - - - **Q. B. D. XXVI. 44**

17. —— *Negligence—Conditions as to restiveness of dog carried—Unseen conditions*—17 & 18 *Vic., c.* 31.] The owner of a dog, carried by the defendants, authorised a porter to get a ticket for the dog, which ticket was paid for and handed to the owner, but not read or signed by him. The dog was, with the plaintiff's knowledge, tied to some luggage in the guard's van by a chain and collar furnished by the owner, but escaped in course of transit and was lost. On civil bill brought to recover damages for the loss:—*Held*, that the plaintiff entered into a contract upon the terms and conditions of the ticket supplied by the porter; that the contract not being signed in accordance with 17 & 18 Vic., c. 31, *s.* 7, did not relieve the defendants from liability for negligence, but they were guilty of negligence in the mode in which the dog was tied up and in placing it with the passenger's luggage; and that the plaintiff was not disentitled to recover by reason of his knowledge of the mode in which the dog was tied up. (By Palles, C.B.) STRITCH *v.* NORTHERN COUNTIES RAILWAY Co. **[Cir. Cas. X. 169**

18. —— *Officer of company violating his orders—Company bound as to third parties acting* bonâ fide.] A railway company's clerk violated an order of the company with respect to the booking of the plaintiff's cattle. The plaintiff had not notice of the violation, and his cattle suffered injury, for which the jury gave a verdict of £50. On a motion to reduce the damages:—*Held*, that the public were justified in supposing that the clerk had not departed from his directions, and that he had authority to determine what acts were equivalent to a delivery of the cattle to the company. PAGE *v.* LONDON AND NORTH-WESTERN RAILWAY Co. - - **C. P. II. *M.* 77**

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RAILWAY—CARRIAGE OF GOODS—*continued.*

19. —— *Special rate of freightage—Delay—Loss of market.*] A railway company were held not liable for delay and consequent loss of market of fowl taken at a low rate of freightage, the terms thereof being that the company should be freed from loss or damage or delay in carriage, except by the wilful neglect or default of their servants (which was negatived), there being a reasonable alternative rate. AYLWARD *v.* WATERFORD AND LIMERICK RAILWAY CO. **Q. S. XXVII. *M.* 76**

20. —— *"Through" contract—Condition against liability for loss occurring beyond the company's line—Responsibility of company by whom goods are subsequently carried for damage during such carriage.*] Goods were delivered to the Midland Great Western Railway Co. at Ballinasloe, and were booked through to Gort, a station on the line of the Waterford and Limerick Railway Co., the consignor signing a delivery note, on which was indorsed the following condition:—"Through traffic has, for the public convenience, been arranged to places outside and beyond the company's line, but the company will not be liable in respect of traffic outside or beyond their own railway, and the several stations thereof; they undertake to forward, if practicable, traffic destined for places outside their limits to another company, or to the ordinary carriers or messengers of the district, whereupon their responsibility will cease. Such traffic, when consigned to places having continuous and unbroken railway communications with this company's line, to be carried by the subsequent carriers on the terms contained in this note. Any money received by them for conveyance of traffic outside their limits will be received only for convenience of customers, and to be paid to the parties entitled thereto." The goods having been damaged during the transit on the line of the Waterford and Limerick Railway Co., and an action having been brought against them by the consignor:—*Held*, that the Waterford and Limerick Railway Co. were liable. (By Barry, J.) BURKE *v.* THE WATERFORD AND LIMERICK RAILWAY CO. - - - - **Cir. Cas. IX. 104**

21. —— *Through booking by rail and steamer*—17 & 18 *Vic., c.* 78, *s.* 12.] A railway company contracted to carry goods "through," partly by land and partly by sea, and to an action for loss of the goods relied on a condition exempting the company from liability for accidents beyond the company's line. The loss occurred at sea, and no evidence was given to show that the company had hired the steamer:—*Held*, that the presumption was that the steamer had been hired by the company which issued the through ticket, and not by another company, whose line intervened between that of the defendant company and the port of embarkation. O'BRIEN *v* WATERFORD AND LIMERICK RAILWAY CO. **Q. S. XII. 161**

22. —— *Transit of cattle—Reasonable time—Delay caused by fog and frost.*] The contract of a carrier to carry cattle within a reasonable time does not extend so as to create responsibility for injuries caused by delay, where such delay has been unavoidably occasioned by fog and frost. GRANT *v.* LANCASHIRE AND YORKSHIRE RAILWAY CO.
[Q. B. D. XVII. 36

23. —— *Transit beyond own line*—17 & 18 *Vic., c.* 31—*Reasonableness of condition.*] Goods were delivered to the Cork and Bandon Railway Company at Bandon consigned to a consignee in London, and were booked through, the consignor not paying for carriage, and signing a consignment-note containing a condition that the company would not be responsible for loss or damage happening beyond their own line. The goods were safely carried to Cork, and there delivered to a carrier, to be taken to the Bristol steamer. The carrier was not acting as such for the railway company, but on his delivering the goods at the steamer, received from the steamship company payment for the carriage from Bandon to Cork. The goods were then forwarded by the steamship company to Bristol, charged with the money so paid, to be repaid, together with the dues for carriage to London, by the consignee at London. In the carriage between Bristol and London damage occurred for which the consignor sued the Cork and Bandon Railway Company:—*Held*, that the defendants were not liable, as the contract between them and the consignor was only to carry from Bandon to Cork; and *semble*, that had the contract been to carry from Bandon to London the defendants would have been exempted from liability by virtue of the condition in the consignment-note. (By Fitzgerald, J.) BARRY *v.* CORK AND BANDON RAILWAY CO. - - - - - - **Cir. Cas. VIII. 67**

24. —— *Warranty—Live stock.*] A railway company, carrying live animals, are not insurers thereof, and, in absence of any evidence of negligence or proof of the cause of injury to the animals, will not be liable to damages for such injury. (By May, C.J.) M'INDOE *v.* MIDLAND GREAT WESTERN RAILWAY CO. - - - - **Cir. Cas. XVI. 99**

—— Injury to horses—Damages - - - **XII. 145**
See DAMAGES. 4.

—— Place of contract - - - - **IX. *M.* 195**
See PRACTICE—CIVIL BILL COURT—JURISDICTION. 4.

RAILWAY—COMPULSORY POWERS.

1. —— *Money lodged in Court.*] When money is lodged in Court under the Railways (Ireland) Amendment Act, 1862, the Court refused to order payment to be made to the owner of the land taken, even upon a consent, but directed it to be paid to the company on their undertaking to apply it according to the consent. *In the matter of the* BELFAST CENTRAL RAILWAY - - - - - - **B. I. *M.* 25**

2. —— *Traverse of award of arbitrator—Claims for gravel—Purchase of estate and interest in land required for railway.*] Where a valuable esker or gravel hill, adjacent to the railway, and in a favourable position for affording ballast to the line, is required by the company for that purpose, the arbitrator shall include that item in his estimate of the amount to be paid for the estate and interest of the landowners. (By O'Brien, J.) *Re* MIDLAND GREAT WESTERN RAILWAY CO.
[Cir. Cas. XI. 64

RAILWAY—DEBENTURES, BONDS, AND MORTGAGES.

1. —— *Debenture—Loan contracted before borrowing power arose.*] When money is borrowed in contravention of the Special Act, which does not authorise the borrowing until the line is open, such creditors will not be allowed to come in on equal terms with other *bonâ fide* debenture and mortgage creditors. *Re* THE BAGNALSTOWN AND WEXFORD RAILWAY CO.
[B. IV. *M.* 48
[This was reversed on appeal. I. R. 4 Eq. 505.]

2. —— *Debenture — Priority — Judgment mortgage — Undertaking.*] Where a railway company is made bankrupt, and an Act of Parliament is obtained to enable the assignees in bankruptcy to sell the undertaking, which is done and the proceeds brought into Court, and claimed by two classes of mortgage creditors—(1) those having mortgages granted by the company under their Special Act, and the borrowing powers contained therein; (2) those having statutable mortgages registered under the Judgment Mortgage Act, and declared by the Court of Appeal to be well charged upon the lands of the company—the mortgages created by the company in pursuance of their powers will be entitled in priority to payment out of the fund in Court. The word "undertaking" is an ambiguous one, and where it occurs it must be decided by the context; but a sale of a railway as an undertaking means the lands on which it is constructed, as well as the whole line, with its tolls, &c. There cannot be a sale of the land on which a railway is constructed without a sale of the entire undertaking. Debentures, bonds, and mortgages issued by a railway company and regularly entered in their books according to the provisions of their Act, must be presumed to be valid, and no question can be raised respecting them. *Re* BAGNALSTOWN AND WEXFORD RAILWAY CO., *ex parte* SMITH - - - - - **B. I. *M.* 387**

3. —— *Rent—Incumbrance—Mortgage of railway—Extension of receiver—Funds received before extension.*] The directors

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RAILWAY—DEBENTURES, BONDS, AND MORTGAGES—*continued.*

of a railway company are not trustees as regards its creditors. The mortgagees or bondholders of a railway company stand in no higher position than ordinary incumbrancers on real estate. LANAUZE *v.* BELFAST, HOLYWOOD AND BANGOR RAILWAY CO. - - - - **R. III. *M.* 538**

4.——*Statutory bondholders—Tolls.*] Statutory bondholders have not a lien on the property of the company whose bonds they hold. Decision of *Chatterton, V.C.*, reversed. IMPERIAL MERCANTILE CREDIT ASSOCIATION (LIMITED) *v.* NEWRY AND ARMAGH RAILWAY CO. AND THE JOINT STOCK DISCOUNT CO. (LIMITED) - **V. C. I. *M.* 758; Ch. A. II. *M.* 281**

5.—— *Tolls—Debenture mortgages.*] It was agreed that the Irish N.-W. Railway Co. should work the E. B. & S. Railway and pay all expenses incident thereto at a haulage rate of two shillings a mile. The Irish N.-W. Railway Co. were to retain all toll received on the other line, but a committee composed of the directors of both companies was to direct in what manner they should be disposed. The agreement did not provide for the disposition of the balances remaining in the hands of the Irish N.-W. Railway Co. after deduction of the haulage rate, but it was admitted that that balance belonged to the E. B. & S. Railway Co.:—*Held*, that the balance was not tolls within the meaning of that word in debenture mortgages. SWINEY *v.* ENNISKILLEN, BUNDORAN AND SLIGO RAILWAY CO. **[Q. B. II. *M.* 195**

RAILWAY—LIABILITIES.

1.——*Engine—Injury to property by sparks*] When injury is done to property by sparks issuing from an engine running along a railway, the company is not liable, if the engine is constructed according to the improvements suggested by modern science. MAXWELL *v.* MIDLAND RAILWAY CO. - **Q. S. III. *M.* 121**

2.—— *Fence—Damage to cattle*—8 *Vic., c.* 20, *ss.* 68, 73—14 & 15 *Vic., c.* 70, *ss.* 4, 5, 8, 9, 26—27 & 28 *Vic., c.* 71, *ss.* 15, 16, 18.] No action lies for damages for injury to cattle belonging to the owner of land beside a newly-constructed railway, in consequence of the kind or insufficiency of the fence put up by the railway company, the remedy being to apply to the Commissioners of Public Works to appoint an arbitrator under 27 & 28 Vic., c. 71, s. 16. MOORE *v.* BELFAST AND COUNTY DOWN RAILWAY CO. - - **Q. S. XXVII. 14**

3.—— *Lessees—Drains.*] The lessees of the haulage of a line of railway are bound to keep the drains connected with the line in order. (By O'Brien, J.) MULHARE *v.* MIDLAND GREAT WESTERN RAILWAY CO. - **Cir. Cas. I. *M.* 635**

4.—— *Non-repair of bridge.*] The magistrates can make an order for the repair of the bridge over a railway company's line and the approaches to it. BRAZIL *v.* GREAT SOUTHERN AND WESTERN RAILWAY CO. - - **P. S. I. *M.* 85**

5.—— *Railway Clauses Act*, 1845, *s.* 68—*Neglect of statutory duty—Employment of independent contractor no defence to injury arising therefrom.*] Where an injury resulted from the defective condition of the fences on a line of railway in process of construction:—*Held*, that the employment of an independent contractor did not relieve the company of the duty imposed upon them by section 68 of the Railways Clauses Act, 1845 (8 Vic., c. 20). DONOGHUE *v.* GREAT SOUTHERN AND WESTERN RAILWAY CO. - - - **Q. S. XXVII. 40**

6.—— *Timber set on fire.*] A plantation of timber was alleged to have been set on fire by sparks issuing from a passing engine, but there was no evidence produced of the sparks doing it:—*Held*, that the owner could not recover damages in respect of it. (By Christian, J.) BLOSSE *v.* MIDLAND GREAT WESTERN RAILWAY CO. - - - **Cir. Cas. I. *M.* 195**

RAILWAY—PASSENGER.

1.—— *Bye-law as to passengers' ticket—Condition limiting time for return journey—Ticket referring to regulations in time-table—Passenger returning on day when ticket not available—Wilful refusal to pay fare.*] A return ticket from Newry to Dublin, issued to a railway passenger, contained on its face a notice that it was "issued subject to the company's regulations, and to the conditions in its time-tables." One of the conditions in the time-tables (duly published and posted up at the station) limited the right of returning on the ticket to the day of issue and three days following. The passenger returned from Dublin on a later day. On departing for the return journey, he was informed by the ticket-checker that his ticket was not then available, but refused to take a new one or to pay the fare; and on arrival at Newry he was required to pay the fare from Dublin, but refused. In an action to recover the amount of the fare from Dublin to Newry:—*Held*, that the passenger was bound by the condition in the time-table, and was liable to pay the fare for the distance actually travelled; and that, had the company proceeded to enforce payment of a penalty, under their bye-laws, he would have been liable, under such circumstances. The defendant having appealed from the decree, given accordingly:—*Held*, by *Fitzgerald, B.*, that it should be affirmed. GREAT NORTHERN RAILWAY CO. *v.* MAGENNIS **Q. S. & Cir. Cas. XV. 74**

2.—— *Bye-law as to passenger's ticket—Passenger travelling by carriage of class superior to that authorised—Defence relying both on bye-law and on his being a trespasser.*] By a railway bye-law it was provided that any person travelling, without the special permission of some duly-authorised servant of the company, in a carriage of a class superior to that for which his ticket was issued, was subjected to a penalty, specified, and should be liable to pay the fare, according to the class in which he was travelling, from the station whence he had started, unless he showed he had no intention to defraud. In an action by a passenger against the company, they pleaded that, the said bye-law being published, &c., the plaintiff, without the special permission of any duly-authorised servant of the company, travelled in a carriage of a class superior to that for which his ticket was issued; "and the plaintiff, while so travelling in a carriage of such superior class, as aforesaid, was required by the defendants' servants to leave said carriage in which he was so wrongfully travelling, which the plaintiff refused to do, and insisted on remaining in the said carriage": —*Held*, that the defence was embarrassing, and that the last paragraph should be struck out. MURPHY *v.* DUBLIN, WICKLOW AND WEXFORD RAILWAY CO. - **Q. B. D. XV. 67**

3.—— *Contract—Condition to travel at passenger's own risk—Drover of cattle—Incorporation of condition in invoice with document signed by Plaintiff—Personal injuries—Liability of railway company.*] Where a passenger signs a contract to travel at his own risk, in consideration of being allowed to travel free of charge, he cannot claim for personal injuries against the carriers. A cattle drover signed a contract for the carriage of cattle by rail, which contained the words, "It is hereby agreed . . . that the animals named on the other side are to be conveyed only upon the conditions mentioned upon the back of the invoice handed to the undersigned by the company's agent." On the back of the invoice were the words, "As a drover is allowed to attend the cattle during transit, they will allow such drover to travel free of charge, upon condition that he so travel at his own risk." The plaintiff swore that he had not read the condition, and was not aware that he was to travel at his own risk. In an action for personal injuries caused to the plaintiff by an accident on the defendants' railway:—*Held*, that the condition in the invoice must be read as if it were stated in the document signed by the plaintiff; that an election to travel free under the contract was an election to travel at his own risk; that such a contract—being for the conveyance of a passenger, and outside the Railway and Canal Traffic Act, 1854—was valid; and, consequently, that the plaintiff was without remedy against the defendants for negligence during the journey. DUFF *v.* GREAT NORTHERN RAILWAY CO. - **E. D. XIII. 100**

4.—— *Duty to passenger—Measure of care for safety—Intoxication of passenger—Knowledge of company—Negligence—Contributory negligence—Trespass to person—Scope of railway servants' authority.*] The measure of care to be exercised

RAILWAY—PASSENGER—*continued.*

by carriers towards their passengers, individually and collectively, is what is reasonably needed for the protection of average capacity, and in an ordinary condition; and where passengers are in an exceptional condition, physical or mental, arising from natural causes, or from others, such as intoxication, brought about by their own conduct, no additional obligation is imposed, under the ordinary contract of carriage, to exercise such an especial degree of care as might be so exceptionally needed in order to save them from injury, even although, when the passengers are being conveyed, their condition is known to the carriers. The holder of a railway return ticket, so intoxicated that he could not walk or speak, and unable to take care of himself, though not unconscious, was brought late at night from the waiting-room, at the instance of the railway officials and without any apparent dissent on his part, by two of the porters supporting him, to a train proceeding to the station to which his ticket entitled him to return, and was placed by them on a seat near the door of a carriage which was indicated by another official. It was an empty compartment, and the door, which was closed, was not locked; nor was any other care bestowed, of a special description, in order to protect him from injury. He was subsequently found dead on the railway line at a point which had been passed by the train a few minutes after starting. In an action for damages, brought by the representatives against the railway company, under Lord Campbell's Act:—*Held*, that the defendant was not liable, either as for trespass to the person, or as for negligence, or breach of duty arising out of the contract of carriage. CAHILL *v.* GREAT SOUTHERN AND WESTERN RAILWAY COMPANY - **Q. B. D. XXVI. 17**

5. —— *Injury to—Substantial injury—Damages.*] In an action for damages for personal injuries, when the defendant on the pleadings admits negligence, in order to entitle the plaintiff to recover it is not necessary that he should prove that he sustained substantial injury. If a railway company contract to carry A. from B. to C., upon their line of railway, and, before the train in which A. is travelling reaches C., an accident happens to the train, by reason of the railway company's negligence, and if in consequence A. is thrown out of the carriage in which he was travelling, he is entitled to recover damages against the company, whether he sustained any permanent injury or not. PHILPOTT *v.* CORK AND MACROOM RAILWAY CO. **[E. D. XIII. 155**

6. —— *Liability.*] A railway company was held liable to pay damages because a train advertised in the time-table as proceeding on fair day to K. was delayed nearly three hours *en route*, and the passengers were late for the fair. (By O'Hagan, J.) BURNS *v.* ULSTER RAILWAY CO. **[Cir. Cas. I. *M.* 534**

7. —— *Negligence—Personal injury—Free pass—Condition exempting from liability for injury to licensee—Intention of passenger to determine license and travel for hire not communicated to carrier—Onus of proof.*] A passenger by steamer holding from the carriers a free pass exempting them from liability in respect of injury to the holder, however caused, during the passage between two stations, entered on board the steamer with the intention of travelling as a passenger for hire, and of proceeding beyond the distance to which he was entitled to travel gratuitously, but that intention was not communicated to the carriers and the fare was not paid to them. During that part of the transit to which the free pass applied, the passenger sustained personal injuries, and in consequence did not travel beyond that distance. In an action against the carriers for damages in respect of the injuries so sustained:—*Held*, that the onus lay upon the plaintiff of showing that he was travelling as a passenger for hire, and not as a licensee upon the free pass; that the plaintiff not having communicated his intention to the defendants, had failed to show he was travelling otherwise than in right of his free pass; and that the defendants were not responsible accordingly. NEVILLE *v.* CORK, BLACKROCK & PASSAGE RAILWAY CO. - - - - **C. P. IX. 69**

8. —— *Negligence—Train late.*] Where an intending passenger (who had not taken a ticket farther than the junction) missed a train owing to the train in which he was travelling arriving late there:—*Held*, that the loss of time might be *primâ facie* evidence of negligence, and that the question was, Was there reasonable delay and negligence in the conducting of the train? (By Fitzgerald, J.) WATERFORD & LIMERICK RAILWAY CO. *v.* DILLON - - - **Cir. Cas. I. *M.* 85**

9. —— *Right of solicitor to recover for loss of business by train being late—Condition on ticket and time-tables.*] A solicitor claimed to recover against a railway company for loss of business through a train being late:—*Held*, that he was bound by the conditions on the ticket and time-tables as to the non-liability of the company in such cases. SAYERS *v.* WATERFORD AND LIMERICK RAILWAY CO. **[Q. S. XXVI. *M.* 682**

10. —— *Season ticket—Special conditions—Unreasonable delay—Liability.*] Plaintiff applying for a season ticket from Carrick-on-Suir to Waterford, signed a condition that the company "do not hold themselves liable to subscribers for any interruption or delay which may take place in the intercourse along the railway." The ticket was granted "subject likewise to the published regulations and bye-laws of the company." The distance from Waterford to Limerick is 69¼ miles, and the advertised time is 4½ hours. The advertised time of arrival at Waterford was 8 30 p.m., and the train, owing to delay occasioned by the Cahir races, did not arrive in Waterford until 9 12, owing to which plaintiff, having lost the last train (at 9 p.m.) to Tramore, where he lived, was obliged to hire a car to take him home, the price of which he sought to recover from the defendants. The time-tables provided that the company did not guarantee the punctual departure or arrival of the trains as advertised:—*Held*, that the plaintiff was not entitled to recover from the defendants. (By May, C.J.) KENNY *v.* WATERFORD AND LIMERICK RAILWAY CO.; MURPHY *v.* WATERFORD AND LIMERICK RAILWAY CO. **[Cir. Cas. XVIII. 56**

—— Action by, for damages for negligence
See NEGLIGENCE. 11, 12.

—— Detention of - - - - - **VIII. 24**
See DAMAGES. 2.

—— Injury to—Pleading - - - **V. 52**
See PRACTICE—COMMON LAW—PLEADING. 27.

RAILWAY—PASSENGERS' LUGGAGE.

1. —— *Jewellery over £10 in value—Non-declaration of value—Felony by carriers' servant—Loss of—Evidence.*] In an action by a passenger against a railway company for loss of luggage, it appeared that the plaintiff, who was being carried by the defendants from Cork to Tullamore, had, amongst other luggage, a box containing jewellery of over £10 value (which was not declared), directed "Miss Gogarty, *Mullingar, viâ* Tullamore," which was placed in the luggage van at Cork. Mullingar was a station on a different line. On arriving at Portarlington, where passengers for Tullamore change trains, one of the company's porters (of whom there were eight employed at the station) was seen carrying the box across the line from the Cork train towards the Tullamore train into which the plaintiff had got. The box in question was not delivered at Tullamore, nor for many months before action were any tidings of it discovered. The guard of the train proved that he had delivered at Tullamore all the luggage which he had in fact received at Portarlington for Tullamore. Only two of the Portarlington porters were produced as witnesses, one of whom had been directed by the station-master there to see that the luggage was taken across the line, and stated that he and the other porters had done so; but neither of whom could particularise anything as to the box in question, save that it was not abstracted by them. Upon an issue under sec. 8 of the Carriers Act (1 Wm. IV., c. 68), whether the loss had arisen from the felonious acts of the defendants' servants:—*Held*, reversing the decision of the Court of Common Pleas that the fact did not justify a finding of the jury that the loss had arisen from a

RAILWAY—PASSENGERS' LUGGAGE—*continued.*

felony having been committed, and that such felony had been committed by the defendants' servants. (Palles, C.B., O'Brien, J., and Fitzgerald, B., *diss.*) *Vaughton* v. *The L. & N.W.R. Co.* (L.R. 9 Ex. 93) distinguished. GOGARTY *v.* GREAT SOUTHERN AND WESTERN RAILWAY Co.

[C. P. VIII. 161; E. C. IX. 99

2. —— *Loss of—Liability of railway company—Carriers' Act.*] The plaintiff, a passenger by the defendants' train from D. to R., got out of the train at M., the usual place on the line for refreshment; on his return to the platform the train was in motion and he lost his seat; his luggage, which was in the luggage van, was carried on to R., and lost by reason of the negligence of the defendants' servants:—*Held*, affirming the order of the Chairman, that the defendants were liable for the loss of the luggage. The value of the luggage, which was £25, was made up in part of a sum of £12 10s. in gold coin contained therein, of which no declaration had been made in pursuance of the provisions of the Carriers Act, (1 Wm. IV., c. 68, secs. 1 & 2):—*Held*, that the said decree, which was for £25, should be reduced by £12 10s., the value of the gold coin, and not merely by £2 10s., the excess over £10, the sum mentioned in the Act. *Held*, also, that the defendants were not liable for the £12 10s., even though the notices required by the Act had not been posted in such a place as the plaintiff could read them. (By Pigott, C.B.) RUSH *v.* MIDLAND GREAT WESTERN RAILWAY Co.

[Cir. Cas. II. *M.* 528

3. —— *Paintings—Personal luggage—Articles over £10 value —1 Wm. IV., c. 68, s. 1.*] A civil bill process against a railway company for the loss of a case containing pictures valued over £10, and of which the plaintiff did not declare the value under 1 Wm. IV., c. 68, s. 1, was dismissed. COLLINS *v.* NEWRY, WARRENPOINT AND ROSTREVOR RAILWAY Co.

[Q. S. XV. *M.* 79

4. —— *Through traffic—Transit by rail and steamer—Loss of passenger's luggage*—34 & 35 *Vic., c.* 78, *s.* 12.] Where a passenger from Dublin to Glasgow procured in Dublin three tickets, one to Belfast, the second for the journey thence to Ardrossan, and the third for that thence to Glasgow, and on the journey, apparently on the steamer, lost his luggage, the railway company which issued the tickets in Dublin was held liable. PERRIN *v.* GREAT NORTHERN RAILWAY Co.

[Rec. C. XXI. *M.* 192

5. —— *Workman's materials.*] A railway company is not compelled to carry a workman's materials as personal or ordinary luggage. Where ordinary luggage is mixed with other luggage, a railway company is justified in refusing to carry it, unless paid for, and it is not their duty to separate the one class of luggage from the other. CAMPSIE *v.* GREAT SOUTHERN AND WESTERN RAILWAY Co.

[E. D. XXVI. *M.* 334

RAILWAY—POWERS.

1. —— *Sum paid for promoting the undertaking—Salvage Claim—Preference shares—Priority.*] In 1860 an Act empowered the Ulster Railway Company to take shares to the extent of £25,000 in the Banbridge Railway Company, and enacted that they should be paid a dividend of £4 per cent. thereon, in preference to the interest or dividend on any other shares in the Banbridge Company. In 1861 funds were needed to complete the Banbridge Railway, and the Provincial Bank advanced £15,000 on the promissory note of four of the directors of the Banbridge Railway; and they, in 1866, repaid that amount with interest. Afterwards the company sealed an agreement that that sum with interest should be a charge on the railway undertaking and on the rents and profits, and should be a debt due by the company. The Ulster Company filed against the Banbridge Company, and against those four directors, this petition, praying to be declared entitled to payment of their dividend in priority to the interest payable to the four directors on the loan; and an injunction:—*Held*, that the loan was not contracted beyond the company's borrowing powers; that the directors, making advances for the completion of the works, have in equity a claim to be recouped, as

RAILWAY—POWERS—*continued.*

trustees have to be recouped expenses properly incurred in executing their trusts; and that that doctrine extends to the directors of railway companies. ULSTER RAILWAY Co. *v.* BANBRIDGE, LISBURN, AND BELFAST RAILWAY Co.

[R. II. *M.* 104

2. —— *Tramways (Ir.) Act, 1860, s. 29—Parliamentary deposit—Repayment—Attachment order—Tramway promoted by existing railway company—Completion of line*—Ultra vires.] A railway company who had opened a portion of their line within the time specified in their Act, 1879, and had been repaid a proportionate part of their Parliamentary deposit, promoted a tramway, and under their Tramway Order, 1886, completed the undertaking authorised by their original Railway Act, 1879:—*Held*, that they were not entitled to a return of the remaining portion of the Parliamentary deposit lodged under their Act of 1879, which had, under its provisions, become forfeited to the Crown, the line not having been completed within the period prescribed by that Act. The deposit required by the Tramways Act (Ir.), 1860, s. 29, was raised by the issue of guaranteed shares, which formed part of the capital authorised by the Tramway Order of 1886. The line being opened for traffic within the time limited by that order, an order was obtained by the depositors for repayment of this deposit:—*Held*, that this deposit fund could not be attached by a creditor of the railway company on foot of a judgment obtained against them for rolling-stock supplied to the railway company for their undertaking under the Act of 1879, which debt was incurred long previous to the obtaining of the Tramway Order of 1886. *Quære*, whether the issue of guaranteed shares for the purpose of raising the Parliamentary deposit was not *ultra vires? In re* WEST DONEGAL RAILWAY Co. V. C. XXIV. 42

3. —— Ultra vires—*Issue of shares redeemable at a certain date at the option of the holders.*] Statutes authorised a railway company to issue shares "of such amount, and to be appropriated and disposed of in such a manner and to such persons and on such terms and conditions," etc., as might be determined by a general meeting. The company, pursuant to such determination, issued preference shares redeemable at a certain date at the option of the holders:—*Held* (by Lawson, J.), that the words "terms and conditions" applied to shareholders *qua* shareholders, and could not be applied so as to create shareholders and then destroy that character by turning them into creditors. (By Monahan, C.J.):—That those words authorised the issue on the terms and conditions of the present case. POTTS *v.* DUBLIN, WICKLOW AND WEXFORD RAILWAY Co. C. P. III. *M.* 466

RAILWAY—PREFERENCE SHAREHOLDERS—*Arrears of dividend out of subsequent profits—Acquiescence—Pleading—Parties.*] The question whether preferential shareholders have any right, in the abstract, to be paid arrears of dividend upon their shares out of subsequent profits, depends in each case on the contract between them and the company at the time when they take and pay for their shares. SMITH *v.* CORK AND BANDON RAILWAY Co.

[C. III. *M.* 500

[Affirmed on appeal. I.R. 5 Eq. 65.]

RAILWAY—RECEIVER.

1. —— *Control over expenditure—Insolvent company—Repairs—Remuneration of directors.*] The H. Railway was by statute transferred to the B. H. & B. Railway Co. in consideration of (*inter alia*) a rent which was allowed to run into arrear. A cause petition to raise the arrears was filed, and the rent was declared a charge on the B. H. & B. Railway, and a receiver was appointed; but the order did not expressly provide for paying the expenses of management, &c.:—*Held*, that the salaries of the directors, and certain expenses defrayed by them in the *bonâ fide* exercise of their judgment in the management of the line, might be deducted by the manager before handing over the income to the receiver. BELFAST AND COUNTY DOWN RAILWAY Co. *v.* BELFAST, HOLYWOOD, AND BANGOR RAILWAY Co.

[R. III. *M.* 588

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RAILWAY—RECEIVER—*continued.*

2. —— *Judgment creditor—Receiver—Railway Companies' Act, 1867, s. 4—Parliamentary deposit—Commissioners of Public Works in Ireland—Prior mortgagees*—1 & 2 *Wm. IV., c. 33, ss. 45, 46, 47.*] Where the Commissioners of Public Works in Ireland, as prior mortgagees of a railway undertaking, are willing to go into possession of the line, a receiver will not be appointed, under the Railway Companies Act, 1867, s. 4, on the application of a judgment creditor of the company. *Re* WEST DONEGAL RAILWAY CO., *ex parte* OLDBURY RAILWAY CARRIAGE AND WAGON CO. [V. C. XXIV. 46

RAILWAY—SCHEME OF ARRANGEMENT.

1. —— *Compulsory confirmation—Railway Companies' Act, 1867.*] The M.R. confirmed a scheme under the Railway Companies' Act, 1867. To an appeal from that order it was objected to the jurisdiction of the Court, that the scheme had been enrolled, and had thereby acquired the effect of a statute. The objection was overruled, as the Act did not limit the time for appealing; and as no G. O. had been framed under it, the *cursus curiæ* attached; and the party was entitled to appeal within three months under the 19 & 20 Vic., c. 92, sec. 11. *Re* THE IRISH NORTH WESTERN RAILWAY CO. - - R. II. *M.* 621; Ch. A. III. *M.* 98

2. —— *Railway Companies' Act, 1867—Injunction.*] A railway company was unable to pay its debentures, and had undertaken a scheme of arrangement under the Railway Companies' Act, 1867; an injunction was granted to them to restrain proceedings in law brought by a mortgagee, on their undertaking to pay the amount of the mortgage. IRISH NORTH-WESTERN RAILWAY CO., *in re* SALAMAN - R. I. *M.* 675 & 731

3. —— *Raising money for completion of line—Railway Companies' Act, 1867.*] The Court refused to confirm a scheme of arrangement with creditors where the whole object of the scheme was to raise capital for the completion of the line, and was not mainly a scheme for arranging with creditors, and which provided that they were not to be paid till the line was completed and stocked. An unpaid vendor of land who appeared to oppose was given his costs. *Re* LETTERKENNY RAILWAY CO. - - - - - V. C. IV. *M.* 738

RAILWAY—TRAVERSE.

1. —— *Costs.*] No more than £20 will be allowed in any case against a railway company. (By Harrison, J.) BURKE *v.* ATHENRY AND TUAM EXTENSION TO CLAREMORRIS CO. [Cir. Cas. XXVI. *M.* 362

2. —— *Costs—Special jury—Juries Act (Ir.), 1871, s. 37.*] The costs of the special jury, which had been applied for by the railway company, held to be within s. 37 of the Juries Act, 1871. Where the award is increased, such costs must be borne by the company. (By Gibson, J.) FINEHAN'S TRAVERSE; DALY'S TRAVERSE; SHINNOCK'S TRAVERSE [Cir. Cas. XXVII. 78

3. —— *Payment of special jury—Railways Act (Ireland), 1851, 14 & 15 Vict., c. 70—Railways Act (Ireland) 1864, 27 & 28 Vic., c. 71—Juries Act (Ireland), 1871, 33 & 34 Vic., c. 65.*] K. was the owner of lands in the County of Carlow, which the Great Southern and Western Railway Co. required for the purpose of the extension of their line from Baltinglass to Tullow. The arbitrator appointed under the Railways Act (Ir.), 1851, awarded K. £489 15s. 5d. K. traversed the award, and in his notice of intention to traverse stated that he desired the case to be tried by a common jury. The railway company, under s. 2 of the Railways Act (Ir.), 1864, served notice requiring a special jury. The amount awarded by the arbitrator was increased to £780: Andrews, J., made an order giving K. £20 for his costs, under sec. 20 of the Railways Act, 1851, and directed the railway company who had served the notice for the special jury to pay the jury. *Scriven* v. *The Corporation of Dublin* (12 L. R. Ir. 389), discussed and distinguished. (By Andrews, J.) KEHOE *v.* GREAT SOUTHERN & WESTERN RAILWAY CO. - - - - - Cir. Cas. XX. 27

RAILWAY.

—— Petition—Railway Acts—Amendment - I. *M.* 25
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RAPE.
See CRIMINAL LAW—RAPE.

RATED OCCUPIER—Franchise.
See PARLIAMENT—FRANCHISE. 49-64.

RATES.

1. ——*Borough—Poor rate—Local Act—Meaning of occupier.*] The owner of an unoccupied mill which was not proved to be furnished held not liable to rates. The Local Act, which authorised a corporation to strike the rate gave them power to levy rates on the occupiers of all such kinds of property as were assessable to rates for the relief of the poor, contained provisions for rating, in certain cases, unoccupied premises at one-half the amount at which the tenements would be liable to be rated if they were occupied, and for striking a rate when unoccupied premises afterwards became occupied:—*Held*, notwithstanding the 25 & 26 Vic., c. 53, that unoccupied premises within the borough were not liable to poor rates. CORPORATION OF SLIGO *v.* WYNN - C. P. VII. 79

2. —— *Exemption—Towns Improvement Act, 1847, ss. 168, 185, 186.*] A public hospital, the whole of the revenues of which are devoted to the maintenance and succour of the sick poor, is "a building exclusively used for purposes of public charity" within the meaning of the Towns Improvements Act, 1847, sec. 168, although the medical attendants receive a salary, and although pay patients are admitted to the hospital whenever there are vacant beds, the amount received from them, however, not being sufficient to defray the expenses incurred in their maintenance. Where a rate is struck under a local Act which incorporates the Towns Improvement Act, the hospital is therefore exempt from rating. TRUSTEES OF FEVER HOSPITAL *v.* CORPORATION OF WATERFORD - Q. S. XVII. 88

3. —— *General sanitary—Water and gas supply—Public and private purposes—Area of taxation—Proper mode of impeaching rate—Public Health Act, 1878, Part II., ss. 61, 75, 80, 81, 226, 254, 260, 269—9 Geo., IV. c. 82, s. 53.*] The liability to a general sanitary rate, levied by urban sanitary authorities, under the Public Health Act, 1878, does not depend on the receipt of benefit; and any person whose house is situated within the area of the sanitary district is bound to pay such rate. If the rate is good on the face of it the proper mode of impeaching it is to appeal from it under sec. 269. (By Sir Peter O'Brien, C.J.) BANGOR TOWN COMMISSIONERS *v.* M'CALLUM
[Q. S. XXVI. *M.* 321; Cir. Cas. XXVI. *M.* 322 note

4. —— *Liability of premises used for purposes of railway—Towns Improvement Act, 1854—Bray Township Improvement Acts, 1852, 1860.*] As the Bray Town Improvement Acts incorporate the Towns Improvement Act of 1854, premises used for the purposes of a railway are liable to only one-fourth of the Town Improvement rate. DOYLE *v.* DUBLIN, WICKLOW, AND WEXFORD RAILWAY CO. - Q. B. D. XII. *M.* 120

5. —— *Municipal—User or possession—Sheds erected on quays alongside of which vessels are berthed—Rateability—*

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RATES—*continued.*

Dublin Port and Docks Board Act, 1869—Irish Poor Law Act, 1838.] By the Dublin Port and Docks Act, 1869, 32 & 33 Vic., c. C., the care, management and superintendence of the Port of Dublin is vested in that Board together with the buildings, repairs, and maintenance of all quay-walls, bridges, and embankments, included within the Port. The Board are also empowered to construct closed or unclosed sheds as they may consider necessary for the accommodation of the shipping traffic, and to grant or lease the use or occupation of such sheds at such rents and upon such terms as may be agreed upon between the Board and the persons taking, using, or occupying the same. The defendant company had been allotted a certain extent of quay-wall alongside which to moor their steamers. Since such allocation their place had never been moved, but the Board had admittedly a right to remove them to other berths. In 1873 the Board offered to erect sheds over the portion of the quay so allocated to the defendant company free of cost for the use of the company without payment of rent, on the company giving an undertaking that they did not thereby acquire or seek for any vested right in such sheds, or for compensation for disturbance, or on the occasion of a voluntary surrender. These terms the defendant company accepted, and the sheds were built accordingly. The company subsequently, at the request of the Board, insured the sheds for £2,300. The sheds were used to cover the quay while goods were being shipped and landed, not as a store, but for the temporary deposit of such goods as would otherwise remain on the open quay, and the keys were kept by the defendant company's servants. The defendant company having been rated under the provisions of the 12 & 13 Vic., c. 91, in respect of such sheds, refused to pay the amount on the ground that they were not occupiers of the shed in question, but that they had merely the use thereof during the pleasure of the Port and Docks Board:—*Held*, affirming the judgments of the Exchequer Division and the Court of Appeal, that the occupation by the defendant company was not such as to render them liable for municipal rates. BYRNE *v.* CITY OF DUBLIN STEAM PACKET CO. - **H. L. XVII. 65**

6. —— *Municipal—Liability as occupier*—12 & 13 *Vic., c.* 91, *sec.* 67—*Rate-book evidence—Appeal.*] The 67th section of the 12 & 13 Vic., c. 91, does not apply to the case of a person not liable as occupier, and, therefore, he is entitled when sued to show his non-liability. LEMON *v.* M'INTYRE

[C. P. XI. 174

7. —— *Municipal—Occupation of goods shed on quays—Alteration of rate book—Substitution of name of person rated.*] The House of Lords having decided in May, 1883, that the several steam companies using certain sheds for the accommodation of their goods on one of the Dublin quays were not occupiers of such sheds, so as to be liable to municipal rates, the then Collector-General of Rates altered the names in the rate-book to that of the Port and Docks Board by whom the sheds had been erected, and the Collector-General having subsequently sued the Port and Docks Board to recover the rates of the current and several preceding years:—*Held*, that the Collector-General had no power to make the alteration; and (*per* O'Brien, J.), that the Port and Docks Board had not such a beneficial occupation of the sheds as to render the board liable to be rated therefor. KENNEDY *v.* THE DUBLIN PORT AND DOCKS BOARD

[Q. B. D. XX. 78

8. —— *Public purposes—Ratcability—Appeal against valuation—Order on former appeal*—17 *Vic., c.* 8, *sec.* 2.] A corporation empowered to purchase gas works and supply the borough with gas, purchased the works of a gas company. No member of the Town Council received any profit from the gas works, but the improvement rate of the borough was diminished by the profits. On a former valuation the Court of Quarter Sessions had decided on appeal, that the gas works were exempt from taxation:—*Held*, 1st, that the gas works were not exempt as held for the public service within the 17 Vic., c. 8, s. 2; 2nd, that the Court of Quarter Sessions

RATES—*continued.*

were not bound by the former decision of that Court on the appeal then before it. THE MAYOR OF LIMERICK *v.* THE COMMISSIONERS OF VALUATION - - **Q. B. VI. 160**

9. —— *Sanitary authority—Loan by Commissioners of Public Works for purpose of water supply—Refusal to strike additional water rate to pay off arrears of instalments—Retrospective rate—Control of Special Act by subsequent General Act—Local Government Board Provisional Orders Confirmation Act,* 1876—*Public Health Act,* 1878.] Under the Provisional Orders Confirmation Act of 1876 and the Public Health Act of 1878 the Corporation of Wexford, as the urban sanitary authority, borrowed from the Commissioners of Public Works, Ireland, the sum of £25,000 for the purpose of supplying the town with water, and to secure the repayment thereof, with interest, by half-yearly instalments, the Corporation assigned to the Commissioners "the water-rate and rents leviable and chargeable by the said Corporation within the Wexford sanitary district, and all the other rates accruing or which may accrue, arise, or be taken or collected or received by or for the use of them as such sanitary authority within the said district." On the 1st of May, 1885, there was due to the Commissioners the sum of £3,046 4s. 5d., for arrears of the half-yearly payments, and upon being required by the Commissioners to strike a rate for the purpose of paying off the arrears, the Corporation refused on the grounds that, while they had already expended all the money which the water-rates produced, they had no power to levy any further rate. The Wexford Waterworks Provisional Order, which the Corporation had obtained on December 2, 1875, for the purpose of enabling them to supply the town with water, and which order was confirmed by the Local Government Board Provisional Orders Confirmation Act, 1876 (39 & 40 Vic., c. 155, loc. and per., but to be deemed a public Act under Local Government Act, 1871, s. 5, sub-s. 7), provides that "it shall be lawful for the Corporation, and they are hereby authorised and required to access and levy, once in every year (in addition to all other rates which they are authorised to levy) a rate, to be called 'The Domestic Water Rate,' not exceeding one shilling in the pound, upon and from the occupiers of all houses within the said borough, according to the annual value of such houses, as the same now are, or from time to time hereafter shall be, valued or rated in pursuance of the 15 & 16 Vic., c. 63, or any Act or Acts amending the same" (s. 5), and that "for the purpose of providing a supply of water for better security against fire, for flushing sewers, for drinking fountains, and for sanitary uses generally in the borough it shall be lawful for the Corporation to levy upon and from the owners of all rateable property within the borough a rate, to be called 'The Public Water Rate,' on the annual value of such property, as the same now is, or shall from time to time hereafter be, valued and rated under the provisions of the 15 & 16 Vic., c. 63, or any Act amending same, not exceeding in any one year sixpence in the pound on the valuation of all such property" (s. 6). Those rates the Corporation had every year assessed and levied. But the Public Health (Ir.) Act, 1878 (41 & 42 Vic., c. 52, s. 227), enacts that "any limit imposed on or in respect of any rate by any Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by the sanitary authority of any urban sanitary district for sanitary purposes." While the Towns Improvements Clauses Acts, 1847, by sec. 169, incorporated by the Provisional Order, authorises prospective rates for expenses to be incurred and retrospective rates for expenses already incurred. On application by the Commissioners for a writ of *mandamus*, directing the Corporation out of the rates payable by the owners of all rateable property within the borough to pay to the Commissioners the arrears, and, if necessary, to assess and levy upon and from the owners of all rateable property within the borough a rate sufficient for payment thereof:—*Held*, that the limit on the Public Water Rate prescribed by the Provisional Order was removed by the Public Health (Ir.) Act, 1878, the doctrine "*Generalia specialibus non derogant*" not applying; that the rate to be struck for payment of the arrears, while the period of payment was still

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RATES—*continued.*

running, would not be invalid as a retrospective rate; and that the writ of *mandamus* should be granted accordingly. *R. v. Churchwardens of All Saints', Wigan* (I. App. Cas. 161), distinguished. R. (COMMISSIONERS OF PUBLIC WORKS, IRELAND) v. WEXFORD (MAYOR AND BURGESSES OF) **Q. B. D. XX. 51**

10. —— *Successive occupiers—Towns Improvement (Ireland) Act*, 1854.] Under the Towns Improvement (Ireland) Act, 1854, the occupier when the rate is struck is bound to pay the rate for the entire year, and a subsequent occupier is not liable for, or bound to pay the occupier when the rate is struck, a proportion of it during his occupation. CRAIG v. ROONEY **[Q. S. XXVI. *M.* 403**

11. —— *Township rate—Courthouse—Premises—Poor Law Act* (1 & 2 *Vic., c.* 56), *s.* 63—*Amendment Act*, 1849, *s.* 10—*Towns Improvement Act* (17 & 18 *Vic., c.* 103), *ss.* 6, 7, 60.] A process for the amount of township rate assessed upon half of the rent payable to the defendant as landlord of the Courthouse and some other buildings in a town held for public purposes, was dismissed. NORTON v. DE BURGH **[Q. S. XXVII. *M.* 403**

12. —— *Water—Main pipes laid down, but water not supplied to premises*—9 *Geo. IV., c.* 82—10 *Vic., c.* 17—41 & 42 *Vic., c.* 52.] Where the Armagh Town Commissioners, being the urban sanitary authorities of Armagh, brought a process for recovery of £13 2s. as "water rate," assessed on mill premises in defendant's possession, within the limits of the Corporation of Armagh, and it appeared that main pipes had been laid down past the premises, but no connection constructed from the main to the premises, and although a supply was applied for, it was not given:—*Held*, that the liability to pay rate assessed as one entire water rate only arises when a supply of water has been placed within the control of party assessed, and that the process should be dismissed accordingly. (By Palles, C.B.) ARMAGH TOWN COMMISSIONERS v. M'CRUM **[Q. S. and Cir. Cas. XX. 19, 20 note**

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See POOR RATE.
GRAND JURY—CESS.

—— Municipal—Distress—Bankruptcy - **XXVII. *M.* 658**
See BANKRUPTCY—STAYING PROCEEDINGS. 7.

—— Water Rate—Local Act—Covenant by tenant to pay all taxes - - - - - - **XXII. 78**
See LANDLORD AND TENANT—LEASE. 13.

RECEIVER.

See Cases under PRACTICE—RECEIVER.
PRACTICE—CHANCERY—RECEIVER.
PRACTICE—LANDED ESTATES COURT—RECEIVER.
RAILWAY—RECEIVER.

—— Fees—Reserved in lease—Fixing judicial rent **[XXVI. *M.* 304**
See LAND LAW (IRELAND) ACTS, 1881, 1887. 6.

—— Paying rent—Right of action against tenant **I. *M.* 406**
See LANDLORD AND TENANT—RENT. 11.

——Under deed—Receiver under Court—Mortgage **[XXV. 53**
See TENANT FOR LIFE AND REMAINDERMAN. 4.

RECEIVING.

See CRIMINAL LAW—POSSESSION OF STOLEN GOODS.

—— Evidence - - - - - **III. *M.* 348**
See CRIMINAL LAW—EVIDENCE. 4.

RECITAL—*Erroneous recital of deed in will—Residuary gift—Implied devise.*] A testator bequeathed a farm to his eldest son and stated: "I observe by my marriage settlement that the lands of G. M'G. and K. are settled upon him at my wife's death. I therefore consider these ample provision for him, and I do, therefore, bar him from any further participation in my property, save, &c." The lands of G. M'G. were not settled on the son. The residuary clause gave all the remainder of the testator's property to his wife, with power to apportion it by will:—*Held*, that the son took the lands of G. M'G. as heir-at-law. HARRIS v. HARRIS **V. C. III. *M.* 406**
[This was affirmed on appeal. I.R. 3 Eq. 620.]

—— Omission—Registration—Breach of trust **I. *M.* 24**
See TRUSTEE—BREACH OF TRUST. 2.

RECOGNISANCE—Civil Bill Appeal - **I. *M.* 535**
See PRACTICE—CIVIL BILL APPEAL—RECOGNISANCE.

—— Forfeiture—Conviction under sec. 11 of the Prevention of Crimes Act, 1882 - - - - **XVII. 64**
See JUSTICES—JURISDICTION. 12.

—— Receiver—Vacating of notice of motion - **I. *M.* 5**
See PRACTICE—CHANCERY—RECEIVER. 9.

RECORD OF TITLE.

See Cases under PRACTICE—LANDED ESTATES COURT—RECORD OF TITLE.

REDEMPTION OF RENT (IRELAND) ACT, 1891.

1. —— *Action for rent—Liability of lessee for rent after consent of lessor to redeem.*] The lessee of a holding to which the Redemption of Rent (Ir.) Act, 1891, applied served a notice on the Land Commission on Sept. 25, 1891, for redemption and an advance under the Land Purchase Acts: and the landlord on Nov. 23, 1891, served the lessee with notice of his consent to the redemption. The Land Commission on June 20, 1892, ordered the redemption of the rent at a fixed price, and sanctioned an advance for the amount. In June, 1892, before the sale was completed, the landlord sued the lessee for one and a half year's rent up to and ending March 25, 1892:—*Held*, (1) That the notice by the tenant and the consent by the landlord under the Redemption of Rent (Ir.) Act, 1891, was equivalent to a contract for purchase under the Land Purchase Acts; (2) that the sanction by the Land Commission of the advance to the tenant for the purpose of redemption prevented the landlord from taking any proceedings for rent due prior and up to the date of his signing the consent to redeem. VICKERY v. DEANE **[Q. B. D. XXVII. 52**

2. —— *Buildings and improvements by the lessee—Purchase of Land Amendment Act*, 1888, *s.* 2—*Limit of advance—Labourers' cottages.*] In fixing the redemption price the Court will not take into account that the buildings have been erected and improvements made by the lessee or his predecessors in title. Section 2 of the Purchase of Land (Ir.) Amendment Act, 1888, applies to cases under the Redemption of Rent (Ir.) Act, 1891. ROCH, lessor; MULCAHY, lessee **[L. C. XXVII. 12**

3. —— *Demesne—Sub-letting—Relationship of landlord and tenant.*] Where the grantor had conveyed his reversion in premises, and the relation of the landlord and tenant did not exist, the Court dismissed the application to fix a fair rent. CLARKE v. COCHRANE - **L.-Sub-C. XXVII. *M.* 294**

4. —— *Fair rent—Non-agricultural holding—Change in character of holding.*] A holding which was at one time non-agricultural in character (being a mill-holding) may, owing to altered circumstances, become agricultural, and be brought within the fair rent clauses of the Land Acts. MURDOCK v. PARKS - - **L. Sub-C. XXVII. *M.* 293**

5. —— *Fee-farm grant—Application by grantee to redeem his rent—Undemesning demesne lands—Land Law (Ir.) Act*, 1881, *s.* 58.] A lessee in fee-farm of demesne lands sought to redeem the rent under the provisions of the Redemption of Rent Act, 1891, on the ground that the lands had been undemesned:—*Held*, that the mere fact of demesne lands being

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held under a fee-farm grant, or under a lease for so long a period as to negative any intention of resumption at some future time by the head landlord, does not undemesne the said lands. SPENCER, GRANTOR; TEDCASTLE, GRANTEE
[L. C. XXVI. *M.* 420; C. A. XXVII. 3

6. —— *Fee-farm grant—Sale in Landed Estates Court—Collateral agreement by tenant to contribute portion of the purchase-money—Partnership transaction—Land Law (Ir.) Act*, 1881, *ss.* 7, 8 (10)—*Otherwise than to the landlord—Improvements—Ulster tenant-right.*] Where, prior to the purchase by the landlord, in the Landed Estates Court, of the landlord's interest in land, it was agreed between him and a tenant that the latter should advance some of the purchase-money in consideration of getting a fee-farm grant at a reduced rent:—*Held*, that the money so advanced should not be taken into consideration in fixing a fair rent. M'CREA *v.* HAMILTON
[L. Sub-C. XXVII. *M.* 658

7. —— *Fee-farm grant—Mill-holding—Substantiality of mill part—Holdings excluded from Land Acts—Land Law (Ireland) Act*, 1881, *s.* 58, *sub-s.* 1.] A holding is not excluded from the Land Acts as non-agricultural unless a substantial part of the demise is excepted as neither agricultural nor pastoral. A holding may be within the Land Acts, although it comprises a mill and water power, if these do not form a substantial portion of the demise. KNIPE *v.* EDGAR
[L. Sub-C. XXVII. *M.* 5

8. —— *Fee-farm grant—Holding let to be used wholly or mainly for purposes of pasture—Evidence of intention affected by character of demise.*] When a holding has been let in perpetuity, the ordinary presumption arising from the nature, character, and user of the lands at the time of the letting, that they were let to be used wholly or mainly for purposes of pasture, does not apply so as to exclude the holding from the provisions of the Redemption of Rent (Ir.) Act, 1891. BEYCE *v.* WHELAN - L. Sub-C. XXVII. *M.* 174

9. —— *Fixing fair rent—Payment of fine by lessee—Allowance for, in fixing fair rent—Land Law (Ireland) Act*, 1881, *s.* 8 (10)—*Landlord and Tenant (Ireland) Act*, 1870, *s.* 7.] Where a lessee had his lease converted into a fee-farm grant, and by payment of a fine had the rent proportionally reduced, he is entitled, on applying to have a fair rent fixed under the Redemption of Rent Act, 1891, to consideration for the fine. The payment of a fine is to be considered as a part purchase of the interest in the holding, and allowance is to be made for it on that basis. GAULT *v.* WILSON (TRUSTEE OF)
[L. Sub-C. XXVI. *M.* 432

10. —— *Land Law (Ir.) Act*, 1881, *s.* 58 (2)—*Demesne land.*] Where a tenant held demesne under a lease for ever, the Court refused to give a fair rent. FISHER *v.* BARTON
[L. Sub-C. XXVII. *M.* 308

11. —— *Land adjoining demesne and residence—Adjunct to demesne—Lease—Letters.*] An application was refused where it appeared that the land had been taken by the tenant for the purpose of making it an adjunct to his demesne. LYLE *v.* GREER - - - L. Sub-C. XXVII. *M.* 175

12. —— *Lands included in originating notice held under sub-grant—Sub-lettings—Adjunct to residential holding—"Full agricultural rent."*] Where a joint originating notice was served under the Redemption of Rent Act, and it appeared that one of the grantees held portion of the lands which were included, under a sub-grant, the Court—refusing to allow the originating notice to be amended by describing the sub-grantee as a sub-tenant—dismissed the application. KELLY (Grantor) *v.* THOMAS M'CAUGHEY AND HUNTER JOHNSON (Grantees); SAME (Grantor) *v.* THOMAS M'CAUGHEY (Grantee)
L. C. XXVII. 22

13. —— *Motion to set aside tenant's originating notice.*] The question whether a holding is agricultural or not will not be decided summarily on motion. NESBITT *v.* FERIS
[L. C. XXVI. 135

REDEMPTION OF RENT (IRELAND) ACT, 1891—*con.*

14. —— *Notice under—Stamp.*] Originating notices under the Act do not require a stamp. BROWNE *v.* PHIPPS (REPRESENTATIVES OF) - - L. C. XXV. *M.* 587

15. —— *Payment of fine—Calculation of allowance on account of.*] In redemption of rent cases, a fine paid by the tenant at the taking out of the lease is to be considered as part purchase of the interest in the holding. POYNTON *v.* SMYTH
[L. Sub-C. XXVI. *M.* 612

16. —— *Purchase of Land (Ireland) Act*, 1891, *s.* 42—*General Rule, August* 18, 1891.] Early application to fix the annual value of a holding is necessary. SULLIVAN *v.* PURCELL - - - - - L. C. XXVI. 112

17. —— *Relationship of landlord and tenant—Glebe lands.*] Where the predecessor of the landlord had, at the instance of the tenants, purchased the fee under the Church Act, the tenants agreeing to take out leases that would pay him 4½ per cent. on his purchase-money:—*Held*, that the relationship of landlord and tenant existed, and the tenants were entitled to have fair rents fixed in default of sale by the landlord. MURRAY *v.* NESBIT L. Sub-C. XXVII. *M.* 543

18. —— *Residential holding—Non-agricultural part merged in agricultural.*] Where a residential holding is joined in a lease with an agricultural holding, the combined holding so formed may become agricultural in character, and a fair rent may be fixed. ESLER *v.* WARDLAW
[L. Sub-C. XXVII. *M.* 360

19. —— *Residential holding—Lease for lives renewable for ever—Clause giving liberty to cut down all trees—Evidence of user.*] Where the lease gave liberty to the lessee to cut down all the trees, and treated the land as being the principal part of the holding, and the lands had been in fact used as a farm:—*Held*, that a fair rent should be fixed. JEFFARES *v.* BYRNE - - - L. Sub-C. XXVII. *M.* 388

20. —— S. 1—*Character of holding to which the Act applies—"Full agricultural rent"—Proximity—Evidence as to value of holdings for building purposes—Nature of occupation and user prior to making of grants—Dairy farms—Temporary lettings for grazing purposes—Sub-lettings—Effect of filing consent to redeem—Application for advance where sub-tenancies have been created—Holdings purchased after 5th August*, 1891—*Practice as to inspection—Costs where originating notice dismissed.*] The filing of the grantor's consent to redeem under the Redemption of Rent Act having the effect of the lodgment of an agreement for purchase under the Land Purchase Acts, the advance must be secured by an annuity charged upon the entire of the premises included in the grant, in respect of which an originating notice has been lodged. Where a grantee had made a substantial sub-letting of portion of such premises, the Court refused to make an advance, but considered that several persons in occupation claiming as co-grantees would nevertheless, on their joint application, be entitled to an order for redemption. Temporary letting for grazing purposes of a portion of a holding held under a fee-farm grant will not prevent a grantee from being considered in occupation. The Redemption of Rent Act applies to holdings where the grantee's interest has been purchased after the passing of the Act. MACARTNEY, grantor, *v.* WHARRY AND OTHERS, grantees - - - - L. C. XXVII. 91

21. —— S. 1—*Fee-farm grant*—Bonâ fide *occupation—Sub-letting—Consent of landlord—Demise of lands partly in landlord's and partly in tenant's possession—Land Law (Ireland) Act*, 1881, *s.* 57—*Land Law (Ireland) Act*, 1887, *s.* 1.] If a landlord makes a letting of lands, partly in his own hands and partly in the hands of a tenant, the tenant of the entire lands cannot be deemed to be in occupation of the part in the hands of the sub-tenant, within the exception of sec. 57 of the Land Law (Ireland) Act, 1881, and, therefore, cannot maintain an application to determine a judicial rent of the lands under the Land Law (Ireland) Acts, 1881, 1887. By lease, dated 22nd May, 1867, A. granted to B., in fee-farm, 329a. 0r. 9p. of land, subject to the rents and covenants therein contained. At

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the date of this lease A. was in possession of 259a. 1r. 0p. of said lands, the residue, 69a. 3r. 9p., being let by A. to C. as tenant from year to year. B. having applied under the Redemption of Rent (Ireland) Act, 1891, s. 1, to redeem his rent or have a fair rent fixed:—*Held*, that the relation of landlord and tenant, as between B., the fee-farm grantee, and C., the sub-tenant, being created, not by any letting made by B. to C., but by virtue of the grant of 22nd May, 1867, the case was not one "where the tenant sub-lets part of his holding with the consent of the landlord," within sec. 57 of the Land Law (Ireland) Act, 1881, and that, accordingly, the originating notice should be set aside. BUCHANAN *v.* COWELL
[L. C. XXVI. 24

22. —— S. 1—*Fee-farm grant executed after the passing of the Land Law (Ir.) Act*, 1881.] The 1st section of the Redemption of Rent (Ir.) Act, 1891, so far as it deals with leaseholders, is confined to such as hold under leases existing at the time of the passing of the Land Act of 1881; and, in order to redeem, a grantee under a fee-farm grant must be a person who, if the landlord does not consent to redemption, may appropriately be deemed to be a tenant of a present tenancy. *Gun-Cunningham* v. *Byrne* (30 L. R. Ir. 384), considered. MACKY *v.* ALEXANDER
[L. C. XXVII. 97

23. —— S. 1—*Fixing fair rent—Fine paid by lessee for fee-farm grant—Improvements by grantee—Landlord and Tenant (Ir.) Act*, 1870, *s.* 70—*Land Law (Ir.) Act*, 1881, *s.* 8, *sub-ss.* 1, 9, 10—*Land Law (Ir.) Act*, 1887, *s.* 1—*Redemption of Rent (Ir.) Act*, 1891.] The payment of a fine by a lessee on obtaining a fee-farm grant, where the fine is paid for security of tenure or reduction of rent, is not to be taken as a ground for reducing the rent of his holding when a fair rent is fixed under the Redemption of Rent (Ir.) Act, 1891. A fee-farm grantee does not come within the definition of tenant in s. 70 of the Landlord and Tenant (Ir.) Act, 1870, and is therefore not entitled to be exempted from rent in respect of any of his improvements. *Per* Bewley, J.: A fine paid to the landlord by an incoming tenant of a holding subject to the Ulster custom in respect of tenant-right, or one paid for the purpose of acquiring improvements made by a previous tenant or by the landlord, are payments which must be taken into consideration in fixing a judicial rent. KIERAN *v.* MOLLAN
[L. Sub-C. & L. C. XXVII. 129

24. —— S. 1—*Full agricultural rent—Sufficiency of redemption price—"Adequacy of the security."*] Adequacy of the security refers to security for the rent and not security for the advance by the Land Commission. The redemption price is not so large when the rent to be redeemed is in excess of the full agricultural rent as when they are identical. WARREN *v.* RICHARDSON - - - - L. C. XXVI. 116

25. —— S. 1—"*Grantee under a fee-farm grant*"—*Rent-charge.*] A perpetual yearly rent-charge is not within section 1, and cannot be redeemed. PEACOCKE *v.* CHRISTIE
[L. C. XXVI. 120

26. —— S. 1—"*Grantee under a fee-farm grant.*"] The applicant for redemption was the holder of a deed dated 9th Feb., 1846, in which the grantor granted to John Hubert Kelly, his heirs, executors, administrators, and assigns, part of the lands of Lalistown for ever, at the yearly rent of £320 sterling, with power reserved to the grantor to distrain for arrears of rent, and in default of sufficient distress to re-enter and occupy as of his former estate. There were covenants by the grantee to keep the premises in tenantable repair and order, and by the grantor for peaceful enjoyment:—*Held* (affirming Mr. Justice Bewley), that the relation of landlord and tenant did not exist in the case, and that, therefore, the case was not within the Redemption of Rent Act, 1891, or the Land Acts. KELLY, lessee; RATTEY, lessor
[L. C. XXVII. 29; C. A. XXVII. 88

27. —— S. 1—*Practice—Right to order for redemption.*] A preliminary order to have rent redeemed, and a redemption price fixed, is matter of right where preliminary conditions have been fulfilled. LORD ANNALY *v.* MACFARLANE.
[L. C. XXVII. 99

REDEMPTION OF RENT (IRELAND) ACT, 1891—*con.*

28. —— S. 1—*Sub-perpetuity grants under the Church Temporalities Acts*—3 & 4 *Wm. IV., c.* 37—4 & 5 *Wm. IV., c.* 90—6 & 7 *Wm. IV., c.* 99.] A sub-perpetuity grant under the Irish Church Temporalities Acts, is a fee-farm grant within the meaning of the Redemption of Rent (Ir.) Act, 1891, *s.* 1, and the rent reserved by it is a fee-farm rent and not a mere rent-charge. HAMILTON *v.* CASEY.
[L. C. XXVII. 46

29. —— S. 1—*Superior fee-farm grants—Jurisdiction to redeem rent reserved by sub-grant—Purchase of Land (Ireland) Act*, 1891, *s.* 20—*Security—Building erected by grantee or predecessor.*] The provisions of the Redemption of Rent (Ir.) Act, apply where the grantor holds under a superior fee-farm grant. In estimating the redemption price such of the buildings as were erected by the grantee should be included. O'HEA *v.* MORRISON
[L. C. XXVI. *M.* 431; and XXVI. 139

30. —— S. 2 (2)—*Superior rent affecting lessor's interest—Stay upon order for redemption.*] Where the lessees were *primâ facie* entitled under their originating notices to order for redemption, but it appeared that the lessor's interest was subject to a superior rent, the Court, having regard to the value of the residue of the land comprised in the superior lease, refused to make any final order for redemption until evidence was given that the redemption could be carried out and provision made for the apportionment and redemption of the superior rent. LEAHY, Jun., lessor, *v.* GEANY, lessee; Same lessor, *v.* MURPHY, lessee.
[L. C. XXVII. 11

REDEMPTION OF RENTS—Tithe rent-charges.
See LAND PURCHASE ACTS. 5, 15, 16, 21-26.

REDUCTION OF CAPITAL—Company - XIX. 48
See COMPANY. 3.

REDUCTION OF RENTS—Application to Court—Administration action - - - XXIII. 40
See EXECUTOR—ADMINISTRATION ACTION. 10.

REFERENCE TO MASTER.
See PRACTICE—COMMON LAW—REFERENCE TO MASTER.

REFERENTIAL LIMITATION—Will III. *M.* 117
See WILL—REFERENTIAL LIMITATION.

REGISTRATION—Judgment mortgage
See Cases under MORTGAGE—JUDGMENT MORTGAGE.

—— Rentals—Omission—Trustee—Breach of trust I. *M.* 34
See TRUSTEE—BREACH OF TRUST. 2.

REGISTRATION OF DEED.

1. —— *Notice—Solicitor.*] A mortgagee claiming under a registered deed, is bound by notice by his solicitor of a prior unregistered deed. *Re* MASON'S ESTATE L. E. C. V. 183

2. —— *Priority over prior unregistered deed—Voluntary conveyances—Notice.*] As between two voluntary conveyances, one of which is registered and the other unregistered, the registered conveyance has priority, even though the unregistered one has been the first executed. The title of a purchaser for value from the grantee of a registered instrument would be unaffected by the grantee's notice of the prior unregistered conveyance, for, though such notice might bind the conscience of the grantee, it would not bind the estate. *Re* M'DONOGH'S ESTATE - - L. J. XIII. 170

3. —— *Priority—Assignee of mortgage—Priority from negligence—Deposit of deed.*] The owner of an equitable mortgage made by deposit of a mortgage, claimed priority over subsequent assignees of the same mortgage, whose assignment was duly registered. The latter had taken no steps to ob-

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REGISTRATION OF DEED—*continued.*

tain possession of the mortgage:—*Held*, that the state of facts constituted notice to the subsequent mortgagees, as they did not take ordinary care to get possession of what they were purchasing, and that the equitable mortgagee took priority. *In re* ALLEN'S ESTATE [L. E. C. I. *M.* 602 and 732

4. —— *Priority — Judgment not re-registered — Subsequent mortgage—Notice.*] Notice of the existence of a judgment, and that the amount of it was due at the time of the execution of a mortgage by the judgment debtor, in consequence of which additional lands were included as security in the mortgage, was held not to disentitle the mortgagee to take advantage of the infirmity of the judgment by reason of its not having been registered under the 7 & 8 Vic., c. 90. *Beere* v. *Head* (9 Ir. Eq. R. 76), followed. *Re* STANLEY'S ESTATE [L. E. C. V. 82

5. —— *Priority—Registered legal mortgage—Equitable mortgage by deposit—Notice.*] A registered legal mortgage takes priority over a previous equitable mortgage, created by verbal contract upon the deposit of the title deeds, and of which the owner of the registered mortgage had not express notice. *Re* M'KINNEY'S ESTATE - - L. E. C. VI. 179

6. —— *Priority—Voluntary deed—Effect of marriage of person taking an interest under it*—Ex post facto *consideration—Registry Acts.*] D., in 1840 by a voluntary deed, duly registered, charged certain sums of money on land in favour of his three daughters. M. subsequently married one of them, being aware of the charge in her favour, and understanding it was to be paid, and a settlement, unregistered, granting said charge to M. on trust was executed in 1848, on the marriage. D., in 1871, by a registered lease, demised the lands to his son at a gross undervalue:—*Held* (1), That the marriage imported valuable consideration into the voluntary deed of 1840, and that the lessee was not a purchaser for value so as to entitle him to defeat the prior voluntary deed; (2) That, assuming the lessee under the registered lease of 1871, to have been a purchaser for value, he was not entitled to priority, as the purchaser for value under the unregistered settlement of 1848 was entitled to fall back upon the registered deed of 1840. *In re Flood's Estate* (13 Ir. Ch. R. 315) followed. *Re* DOOLEY'S ESTATE [L. E. C. VIII. 141

7. —— *Registered mortgage—Subsequent unregistered mortgage — Judgment mortgage — Priority — Notice.*] M. by a registered deed mortgaged premises to L. in 1877, and in 1879 by an unregistered deed mortgaged them to L. In 1882 the plaintiff registered a judgment mortgage against the interest of M. in the premises, L. having sold them under a power of sale contained in the deed of 1877:—*Held*, following *Eyre* v. *M'Dowell* (9 H. L. 620), that the unregistered deed of 1879 took priority over the judgment mortgage. MEGRAW *v.* MEGRAW - - Q. S. XVII. *M.* 99

8. —— *Tenancy from year to year—Graft of leasehold interest—Priority—Purchaser—Notice.*] On the marriage of M'C. with O'C., in 1867, lands of which M'C. was tenant from year to year were vested in trustees for her separate use without power of anticipation. In 1873, during the coverture, O'C. obtained a lease of the lands for himself for 31 years. The marriage settlement was registered. In 1876, O'C., with the consent of the landlord, borrowed from the petitioners £1,000, which he secured by mortgage of his interest under the lease, and the mortgage was registered. The petitioner had no notice of the settlement:—*Held*, that those claiming under the limitations of the settlement took priority as against the petitioners, the leasehold interest being a graft on the tenancy from year to year. *Re* ESTATE OF O'CONNELL, owner; NATIONAL BANK, petitioner [L. J. XVII. *M.* 99

—— Equitable mortgage—Priority.
See MORTGAGE—EQUITABLE MORTGAGE. 3-5.

—— Priority of Equitable Mortgage - - XVIII. 45
See VENDOR AND PURCHASER. 5.

—— Sale in Landed Estates Court - - II. *M.* 282
See LANDLORD AND TENANT—EJECTMENT—NON-PAYMENT OF RENT. 16

RELEASE—Executors claiming release under seal from Legatee - - - - IV. *M.* 472
See TRUSTEE—TRUSTEE RELIEF ACT. 6.

REMAND—Insolvent.
See CASES UNDER INSOLVENCY—REMAND.

REMITTED ACTION.
See PRACTICE—CIVIL BILL COURT—REMITTED ACTION.

REMITTING ACTION TO CIVIL BILL COURT.

1. —— S. 5—*Action which might have been brought in Civil Bill Court—Costs.*] The costs of a motion to remit an action which might have been instituted in the Civil Bill Court were not allowed to the plaintiff, who did not resist the motion. Defendant's costs to be costs in the cause. JOYCE *v.* TOWNLEY [E. D. XIX. *M.* 296

2. —— S. 5—*Action under Summary Procedure on Bills of Exchange Act—Jurisdiction.*] The Court has jurisdiction under the Common Law Procedure Amendment Act, 1870 (33 & 34 Vic., c. 109), to remit to an Inferior Court an action brought under the Summary Procedure on Bills of Exchange Act (24 & 25 Vic., c. 43). THE MUNSTER BANK *v.* HYNES [C. P. V. 137

3. —— S. 5—*Affidavit in support of motion—Residence of Defendant*—14 & 15 *Vic., c.* 57, *s.* 69.] Where there are more defendants than one to an action, which it is sought to remit for trial to the County Court of the county where all the defendants reside, it is sufficient under the C. L. P. A Act, 1870, to state, in the affidavit in support of the motion, the residence of any one of the defendants within the Civil Bill Division of the county named in the notice of motion. ROBINSON *v.* DAVIDSON - - - - E. D. XIII. 49

4. —— S. 5—*Amount indorsed on writ over* £50—*Real amount in issue under* £50.] In a motion to remit an action of contract under the 5th sec. of the C. L. P. A. Act, 1870, though the amount indorsed on the writ exceeds £50 and there is no set-off, if the real amount in issue does not exceed £50 the Court has jurisdiction to remit the action. CLANCY *v.* RYAN - - - - - C. P. D. XVII. 110

5. —— S. 5—*Appeal from decision of Judge in Chamber—Refusal to remit—Jurisdiction to review order—C. L. P. Act*, 1853, *s.* 7.] Where a Judge, sitting in Consolidated Chamber, had refused a motion to remit an action to an inferior Court, under the C. L. P. A. Act, 1870, s. 5, and no special reason was shown for reviewing that decision, the Court refused on appeal to order that the action be remitted. *Quære*, whether an appeal to the Court lies from an order made by a Judge in Consolidated Chamber, under the C. L. P. A. Act, 1870, s. 5? *Per* Fitzgerald, J.: Where a Judge refuses to remit an action, there should not be an appeal from his decision, but, if the order is to remit, and the plaintiff can show special circumstances in favour of not remitting the action, the Court may review the order. COSGRAVE *v.* WOODS - Q. B. X. 12

6. —— S. 5—*Balance of convenience—Visible means.*] The Court remitted an action for goods sold, on the grounds of the balance of convenience and want of visible means. HICKEY *v.* HALL - - - - - C. P. VII. *M.* 596

7. —— S. 5—*Bills of Exchange Act—Personal representative of acceptor—Leave to defend.*] In an action under the Bills of Exchange Act (25 & 26 Vic., c. 23), against the executrix of the acceptor, no application had been made under that Act for leave to defend. The Court refused to remit the case to the Civil Bill Court under the Real Actions Abolition Act (33 & 34 Vic., c. 109). KINSELLA *v.* MURPHY - Q. B. V. 61

8. —— S. 5—*Case fit to be tried in Superior Court.*] An action on a bill of exchange, in which the defendant appeared as acceptor, but he stated that his name had been signed by his wife without his sanction, was not remitted to the Civil Bill Court. LEMON *v.* CHAINE [C. P. VII. *M.* 287

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REMITTING ACTION TO CIVIL BILL COURT—*con.*

9. —— S. 5—*Charge of forgery.*] The Court refused to remit an action, part of the claim in which was on a bill of exchange, which the defendant alleged was forged. HACKETT *v.* M'NEILL - - - - - C. C. VIII. *M.* 89

10. —— S. 5—*Civil bill decree against Defendant not leviable unless upon removal by* certiorari—*C. L. P. A. Act*, 1870, *s.* 5—27 & 28 *Vic.*, *c.* 99, *s.* 9.] It is not enough in opposition to a motion to remit an action, to show that the sole effects of the defendant capable of being realised, under an execution, consist of a farm, which could only be made available in case of a decree being obtained for a sum over £20, and removed into a Superior Court by *certiorari* under 27 & 28 Vic., c. 99, s. 9. LUNNY *v.* M'CAFFREY [C. P. XI. 103

11. —— S. 5—*Claim for more than £50—Reduction by payment.*] Where a claim on a writ is indorsed specially for more than £50, and is reduced below that sum, by a payment after issue of the writ, but before service, the Court has no jurisdiction to remit the action under section 5. DONOHOE *v.* DONOHOE - - - - - - - E. D. XIX. 31

12. —— S. 5—*Consent—Jurisdiction—Amendment of order.*] An action against an executor by the indorsee of a promissory note, indorsed after maturity, was remitted on consent to a county other than that where the defendant resided; the order was permitted to be amended, by remitting to the latter county. CAVE *v.* GASKIN - - C. P. VI. 22

13. —— S. 5—*Consent to remit to division of county other than where Defendant resided—Amendment of order—Costs.*] Where the plaintiff had consented to the remitting of an action to the Civil Bill Court for a division of the county other than where the defendant resided, a motion to have the order amended by inserting the division in which the defendant resided instead thereof, was granted, costs to be costs in the cause. BROPHY *v.* CASEY C. P. D. XIII. *M.* 123

14. —— S. 5—*Contract—Affidavit.*] A notice of motion to remit an action of contract, grounded on the defendant's affidavit—"a copy of which will be furnished to-morrow"—was served on the last day for doing so. The affidavit was sworn the same day, but filed and served the next day:—*Held*, sufficient, but it would have been otherwise in motions under sec. 6. ALLEYN *v.* MOON - - C. P. VII. *M.* 55

15. —— S. 5—*Contract—Plaintiff resident in Scotland—Part of claim admitted—Lodgment in Court.*] An action for goods sold was brought by a plaintiff, resident in Glasgow, against a defendant resident in Londonderry, the venue being laid in Dublin. The defendant, who admitted part of the plaintiff's claim moved to have the action remitted to the Recorder of Londonderry:—*Held*, that the motion should be granted, in the event of the defendant lodging in Court the amount admitted to be due; otherwise, the motion to be refused. GUILLE *v.* M'CAUL - - - - - Q. B. XI. 62 note

16. —— S. 5—*Contract—Plaintiff resident in England.*] Where an action of contract, against a defendant resident in the County of Tyrone, was brought, laying the venue in Dublin, by a plaintiff who resided in Surrey, in England, the Court refused to remit the action to Omagh Quarter Sessions, although the defendant was willing to consent that the Chairman should be at liberty to allow additional expenses for witnesses coming from England. *Hall* v. *Miller* (V. 28), discussed. DE CHASTELAINE *v.* BUCHANAN - Q. B. XI. 61

17. —— S. 5—*Counter-claim by Defendant.*] On a motion to remit an action, where the defendant set up a counter-claim, the Court made no rule. BUTTERWORTH *v.* HEALY [E. D. XV. *M.* 23

18. —— S. 5—*Counter-claim—Final Judgment*—33 & 34 *Vic.*, *c.* 109, *s.* 5.] The Court will not remit a case to the County Court, under 33 & 34 Vic., c. 109, s. 5, where the facts stated by the defendant, in his affidavit, amount to a counter-claim, and do not constitute a defence to the action. DUNCAN *v.* HIGGINS - - - - Q. B. D. XXVII. 53

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19. —— S. 5—*County not specified in notice of motion.*] Where the notice of motion sought to have the action remitted "to the County Court Judge, at the next ensuing Civil Bill Sessions to be held at Belfast, for the Division of Belfast, in said county" but did not specify what county:—*Held*, that the motion should be refused. (By Sullivan, M. R.) FERGUSON *v.* BURROWS - - Vac. J. XVI. 93

20. —— S. 5—*Delay in motion.*] A motion was made to remit an action to the Civil Bill Court, the summons and plaint of which was served on the 29th July, 1871, the notice of motion was not served till 20th October:—*Held*, that the application was not made in time, as the eight days in such a case run into the long vacation. GLANAGHER *v.* CUNNINGHAM, CORNWALL *v.* BARRY - Q. B. V. 197

21. —— S. 5—*Entry of appearance—Omission to state that the appearance was without prejudice to Defendant's right to move to remit.*] Where, through inadvertance, the appearance entered omitted to state that the same was without prejudice to the defendant's right to move to remit:—*Held*, that the appearance should be amended, and the case remitted. (By Warren, J.) SMYTH *v.* HUTCHESON - Vac. J. XXV. 64

22. —— S. 5—*Entry of appearance without prejudice to motion—Waiver of right to have action remitted.*] A defendant entered an appearance on the face of which he notified that the same was "entered without prejudice to the motion, notice of which is served herewith." The appearance expressly required a statement of claim, and the notice to remit was served on the same day:—*Held*, that the defendant had not by his appearance waived his right to have the case remitted. M'MORROW *v.* MONSON - - - C. A. XV. 15

23. —— S. 5—*Joinder of Equitable and Common Law causes action—County Courts Act*, 1877, *s.* 36.] The Court refused to remit to the Civil Bill Court an action in which equitable and common law causes of action were joined, but gave the plaintiff his choice to strike out either cause of action. On the common law cause of action having been struck out, the action was remitted to the equity side of the Civil Bill Court. COX *v.* DALTON - - - - E. D. XVIII. *M.* 39

24. —— S. 5—*Jurisdiction—Costs—English Plaintiff's.*] Motion to remit an action of contract to the Recorder's Court granted, the defendant undertaking that the Recorder should be at liberty to allow additional expenses of witnesses coming from England. BARRETT *v.* FOWLER - C. C. VI. 24

25. —— S. 5—*No goods of Defendant to satisfy civil bill decree—Costs of* certiorari.] The fact that the defendant has no goods so seizable under a civil bill decree is one reason for refusing to remit, but is not in itself decisive. Where such an allegation is made in the plaintiff's affidavit, he will be entitled to the costs of a *certiorari* to remove the decree into the Superior Court. BURNS *v.* MONAGHAN - E. XI. *M.* 293

26. —— S. 5—*No means of recovering decree.*] The Court refused to remit an action where it appeared that there would be no means of recovering under a decree against the defendant. FLANAGAN *v.* WATSON - - C. P. VIII. *M.* 54

27. —— S. 5—*Notice of motion framed under sec.* 6.] The Court remitted an action as on a motion under sec. 5 where the notice of motion was framed under sec. 6. MACDERMOT *v.* COX [C. C. VIII. *M.* 448

28. —— S. 5—*Payment on foot of part of demand.*] Where a writ claimed £100, of which £35 was cash, and £65 alleged to be due for wages as a *quantum meruit*, and the defendant offered in Court to bring in the £35 (which he admitted) and costs, and alleged that the balance was an unliquidated demand, and was really under the tort section, the Court refused to remit the action. The payment spoken of in section 5 must be made before action brought, and such cases must be dealt with, having regard to the claim at the commencement of the action. DUNLOP *v.* HANNA - - E. D. XXVII. *M.* 511

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REMITTING ACTION TO CIVIL BILL COURT—*con.*

29. —— S. 5—*Plaintiff resident in England.*] The fact that the plaintiff is resident in England will not prevent the action being remitted. JAMES *v.* WILSON [Q. B. D. XV. *M.* 140

30. —— S. 5—*Plaintiff resident in London.*] The Court refused to remit an action to the Civil Bill Court, where the plaintiff and his witnesses (except one) resided in London. CLARKE *v.* PELLING - - - Q. B. VIII. *M.* 54

31. —— S. 5—*Plaintiff resident in England.*] Where a plaintiff residing in England is admittedly solvent, the Court will not, as a general rule, remit the action, under sec. 5 of the C. L. P. A. Act, 1870, where the result might operate injuriously to the plaintiff, in restricting the sums allowable for witnesses' expenses, or in procuring the attendance of witnesses by subpœna. TURNER *v.* NOLAN [Q. B. D. XXII. 45

32. —— S. 5—*Plaintiff resident in England.*] A motion was refused, under special circumstances, to remit to the Civil Bill Court an action brought by a plaintiff resident in England. FOLEY *v.* CAVANAGH - - - Q. B. D. XIV. 77

33. —— S. 5—*Plaintiff resident in London—Defendant resident in Donegal.*] Where the plaintiff resides in England, the the Court will not send an action to the Civil Bill Court. HALL *v.* MILLER - - - - C. C. V. 28

34. —— S. 5—*Plaintiff resident in England having travelling agent in Ireland.*] An action will be remitted where the plaintiff, though resident in England, has substantially acted through an agent within the jurisdiction. LINLAY, LINACRE AND BINGHAM *v.* TIPPING - - Q. B. D. XXVII. 18

35. —— S. 5—*Question of law.*] The Court remitted an action although it involved a question as to the existence of a partnership. KEATING *v.* MOORE - C. C. VII. *M.* 608

36. —— S. 5—*Question of law.*] The Court remitted an action for goods sold and delivered, although a question of law was raised as to whether the taking by a creditor of a promissory note for a debt from an arranging trader bars an action for the whole amount. LEWIS *v.* CARSON [Q. B. VII. *M.* 595

37. —— S. 5—*Smallness of amount claimed.*] The conduct of a solicitor in bringing an action in the Superior Court for £7 was commented on, and the action was remitted. GRAY *v.* LEE - - - - - C. C. X. *M.* 525

38. —— S. 5—*Striking out counts in detinue as sham and in fraud of the Act.*] When it manifestly appears that a count in detinue, claiming a return of the chattels, is a mere sham, and has been inserted in a summons and plaint for the purpose of ousting the jurisdiction of the Court to remit the action to the Civil Bill Court, there being no *bonâ fide* foundation for the alleged claim, the Court will strike out the count and remit the action, unless it appears that the remaining causes of action are fit to be prosecuted in the Superior Court. *Ludlow* v. *Headley* (VII. 136), discussed. KEOGH *v.* ALLEYNE [E. VIII. 73

39. —— S. 5—*Time for service of notice of motion—Order to substitute service of writ.*] When a conditional order to substitute service of a writ of summons is obtained and served, the time for serving a notice of motion to remit the action runs from the day on which the conditional order to substitute is made absolute, not from the day of service. M'ELVOGUE *v.* SCULLION - - - - C. P. D. XVIII. 101

40. —— S. 5—*Time for lodging documents in Civil Bill Court—Power of Superior Court to vary or discharge its former order after lapse of Sessions limited in original order—County Courts Act*, 1877, *s.* 51.] An order to remit an action to the County Court, for trial at the October Sessions, miscarried, through the plaintiff's neglect to lodge the original order, the case being nilled by the County Court Judge accordingly:—*Held*, that the action remained in the Superior Court, and (Fitzgerald, B., *diss.*) that the original order

REMITTING ACTION TO CIVIL BILL COURT—*con.*

should be discharged, the plaintiff undertaking, in the event of his succeeding in the action in the Superior Court, to ask only such costs as he would have been entitled to had the case been determined in the County Court; and, in the other event, to abide such rule as to costs as the Court might thereafter make. *Per* Palles, C.B. (Fitzgerald and Dowse, B.B., *diss.*) The Court had jurisdiction, and ought to have exercised it, to vary its former order by substituting another Sessions for that originally limited for the trial of the action in the County Court. *Whelply* v. *Buhl* (3 Q. B. D. 80, 253), approved and applied. *Greene* v. *Byrne* (I. R. 9, C. L. 208), commented on. O'SULLIVAN *v.* KEARNEY - E. D. XIII. 33

41. —— S. 5 — *Venue where parties resided — Mistake in notice of motion.*] A notice of motion served to remit an action to Limerick, where the parties resided in Cork, was refused with costs. MALONEY *v.* DUANE E. X. *M.* 73

42. —— S. 5—*Witness resident in England.*] Where the evidence of a witness, resident in England, was material to the plaintiff, and his attendance could not be assured in the County Court, a motion to remit was refused. FOSTER *v.* M'DONNELL - - - - C. P. D. XV. 48

43. —— S. 5—*Writ specially indorsed—County Courts Act*, 1877, *s.* 5—*O. III., r.* 6 (1891)—*Estoppel.*] Where a writ of summons purports to be specially indorsed the plaintiff is stopped from denying that his claim is for a liquidated demand. *Byrne* v. *Melia* (XXVI., 119) followed. ARCHDALE *v.* MORRISON - - - E. D. XXVII. 135

44. ——Ss. 5, 6—*Action for work and labour, and wrongful dismissal—County Courts Act*, 1877, *s.* 51—*C. L. P. A. Act*, 1870, *ss.* 5. 6.] Where a summons and plaint contains a count in contract for a liquidated demand, and another count for unliquidated damages in respect of a breach of contract or a wrong or injury not disconnected with contract, there is no power to remit either under the C. L. P. A. Act, 1870, section 5 or under section 6, as amended by the 51st section of the County Courts Act, 1877. M'DONNELL *v.* KAVANAGH [E. XI. 144

45. ——Ss. 5, 6—*Action for tort and on contract—Striking out count—Detinue not claiming return of goods.*] Upon a motion in an action of tort and contract that the counts in contract be struck out, and the action remitted to the Civil Bill Court, it appearing that those counts were not sham and frivolous:—*Held*, that the counts in contract should not be struck out, and that the action remaining of tort and contract could not be remitted under the Common Law Procedure Amendment Act, 1870. *Concessum*, that where an action of detinue does not claim a return of the chattels, it may be remitted to the Civil Bill Court. HARTE *v.* PANTER C. C. VII. 137

46. ——Ss. 5, 6—*Action for tort and on contract—Striking out count.*] In an action for false imprisonment and wrongful dismissal, an application was made on the part of the defendant, under sec. 87 of the C. L. P. Act (1853), to set aside the count for wrongful dismissal as sham and frivolous, and to remit the case, under the 5th sec. of the 33rd and 34th Vic., c. 109, to the Civil Bill Court:—*Held*, that the motion should be refused with costs, the defendant not having satisfied the Court that the plaintiff had not a fit cause of action to be tried in a Superior Court. NORTON *v.* LAWRENCE - - - - Q. B. V. 94

47. ——Ss. 5, 6—*Computation of time to move—Sunday—C. L. P. Act*, 1853, *s.* 232—33 & 34 *Vic., c.* 109, *ss.* 5, 6—*Judicature Act, s.* 60—*O. LVII., r.* 2.] Sundays are not included in the time allowed for moving to remit actions to the Inferior Courts under the C. L. P. A. Act, 1870. MIDDLETON *v.* EGAN - - C. P. D. XII. 170

48. —— Ss. 5, 6 — *Contract—Unliquidated damages.*] An action of contract (breach of promise of marriage) for unliquidated damages will not be remitted to the Civil Bill Court when the amount claimed exceeds £40. O'MEARA *v.* CUMMINS - - - - C. C. VII. 160

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REMITTING ACTION TO CIVIL BILL COURT—*con.*

49.—— Ss. 5, 6—*Contract and tort—Striking out part of claim.*] Where a plaintiff, in his statement of claim, claims damages both in contract and tort, the Court has still no power to remit the action to an Inferior Court, under the C. L. P. A. Act, 1870, even though the total damages claimed are less than £50. OWENS *v.* GORRAL **E. D. XVII. 21**

50.—— Ss. 5, 6—*Contract and tort—Notice of motion.*] In order to remit to the County Court an action claiming both in contract and tort, it is necessary that the notice of motion to remit should claim, in the alternative, security for costs. RYAN *v.* DAWSON - - - - **E. D. XVII. 15**

51.—— Ss. 5, 6—*Counts in contract and in tort.*] The Court has no jurisdiction to remit an action which contains counts in contract and in tort. FITZPATRICK *v.* WILSON **[E. XI. 145 note**

52.—— Ss. 5, 6 — *County Courts Act*, 1877, *s.* 5.] A plaintiff who purports to specially indorse a writ is estopped from denying that his claim is for a liquidated demand. BYRNE, MALONY AND CO. *v.* MELIA **Q. B. D. XXVI. 119**

53.—— Ss. 5, 6—*Tort—Notice of motion—Omission of alternative as to Plaintiff's giving security under s.* 6.] A motion to remit an action of tort to the Civil Bill Court was refused where the notice was framed under section 5, instead of section 6, of the C. L. P. A. Act, 1870. NEILL *v.* BELFAST STEAM PACKET CO. - - - **Q. B. D. XV. 51**

54.—— S. 6 — *Action against magistrate for illegal imprisonment—Amount of damages recoverable.*] The Court refused to remit an action for damages against a resident magistrate who had illegally sentenced the plaintiff to imprisonment on Sunday in a police barrack. *Per* Dowse, B.: £100 damages would not be set aside as excessive in such a case. EGAN *v.* TRAILL - - - - **E. D. XV.** *M.* **234**

55.—— S. 6 — *Action against witness for non-attendance pursuant to subpœna.*] Motion under the Common Law Procedure Amendment Act, 1870, to remit to the Civil Bill Court an action against a witness for non-attendance pursuant to a subpœna, refused with costs, it appearing that the cause of action was a fit one to be tried in a Superior Court. *Quære*, whether an action in a case against a witness for non-attendance pursuant to a subpœna can be remitted to sessions under 33 & 34 Vic., c. 109, s. 6? RYAN *v.* CLEARY. RYAN *v.* NOLAN **[C. C. V. 178**

56.—— S. 6—*Action against sheriff—Civil Bill Act*, 1851—*Landlord and Tenant Act*, 1860, *s.* 65—*Arrears of Rent Act*, 1882.] The defendant, sheriff of the Co. Roscommon, was sued in trespass for executing a civil bill decree in ejectment for non-payment of rent. The decree had been made in June, 1882, for non-payment of six years' rent up to May 1st, 1882; and after the date of the decree a joint application was made by landlord and tenant under the Arrears of Rent Act, 1882, and before the execution of the decree on June 9th 1883, an order had been made on May 29th, 1883, under that Act, cancelling all arrears of rent except the half-year due at May 1st, 1882. Defendant applied to have the case remitted for trial at the County Court, under the C. L. P. A. Act, 1870, the plaintiff having no visible means, and an order was made remitting the action accordingly, The plaintiff having appealed:—*Held*, that the action should be remitted; that the civil bill decree in ejectment could be properly executed so long as any sum of rent and costs was due; and that the fact that the sheriff's warrant to the bailiff stated that six years' rent was due, was immaterial. The sheriff's warrant referred to in sec. 65 of the L. & T. Act, 1860, is not the warrant by the sheriff provided by 27 & 28 Vic., c. 99, but the old warrant to the sheriff now embodied in the decree—formerly a distinct document. GAFFREY *v.* BAILEY - **C. A. XVII. 89**

57.—— S. 6—*Action beneath the dignity of the Superior Court—Costs.*] The Court has no discretion over the costs of an action incurred in the Superior Court before an order for remittal to the County Court; they must be costs in the cause. An action for £2 15s. for board and lodging is beneath the dignity of the Superior Court; and, *Semble*, the Court would, on application of the defendant, order the writ to be taken off the file. MULLIGAN *v.* GRIMES; M'GONIGLE *v.* GRIMES **[E. D. XV. 7**

58.—— S. 6—*Action by dismissed servant for not sustaining a written character.*] An action by a dismissed servant against a late master for not sustaining a written character was remitted. THOMPSON *v.* M'DONNELL **[Q. B. D. XII.** *M.* **295**

59.—— S. 6—*Action for maliciously procuring an order of committal under Debtors Act*, 1872, *s.* 7, *and opposing discharge from custody.*] The plaintiff in an action having procured and carried into effect an order to commit the defendant to prison, under Debtors Act, 1872, s. 7, on the ground that he was about to quit Ireland, and that his absence would prejudice the plaintiff in the prosecution of the action, subsequently entered final judgment therein. The defendant thereupon obtained a conditional order for his discharge from custody, in opposition to which the plaintiff filed an affidavit, the effect of which was to delay the defendant's release for some days, but the making absolute of the conditional order was not further resisted. An action having been brought to recover damages for obtaining the order of committal maliciously and without probable cause, and for the continuance of the imprisonment after final judgment:—*Held*, without deciding whether such an action well lay, that it was not one that ought to be remitted to an Inferior Court. STEWART *v.* ULSTER BANKING COMPANY - - **[E. D. XVII. 14**

60.—— S. 6—*Action for negligence—Admission of liability.*] An action against a Corporation for injury to the plaintiff caused by the negligence of their servant, in leaving a heap of stones in a public highway, was remitted to the Civil Bill Court by a Judge's order:—*Held*, on appeal, that the action should be remitted to the Inferior Court, the defendants admitting that it was their duty to keep the road in repair, clear of obstruction and properly lighted. CASEY *v.* CORPORATION OF DUBLIN - - - - **Q. B. V. 95**

61.—— S. 6—*Admission of title of Plaintiff.*] The Court directed an action for damages for breaking and entering a yard of the plaintiff, to be remitted for want of visible means of the plaintiff, the defendant undertaking to admit the plaintiff's title to the yard. TAYLOR *v.* DUNLOP **[C. P. VII.** *M.* **329**

62.—— S. 6—*Affidavit—Want of visible means.*] An affidavit, following the words of the statute "that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff" is sufficient to throw upon the plaintiff the onus of showing that he has visible means; and an affidavit by the plaintiff is wanting in sufficient particularity to satisfy that onus, which merely states that his business was that of a general insurance agent, and that he was possessed of sufficient means, besides the emoluments derived by him through the agencies for English companies which he represented in Ireland. RYAN *v.* BROUGHALL - - - - - **E. D. XIV. 119**

63.—— S. 6—*Affidavit by attorney.*] On a motion to remit case to Chairman of Quarter Sessions, the affidavit of the defendant could not be obtained in time, and Morris, J., permitted the affidavit of the attorney to be used instead CLORAN *v.* REILLY - - - - **C. C. V. 43**

64.—— S. 6—*Affidavit of Defendant and his solicitor—Defendant's residence—Amendment of notice of motion—Tort.*] A notice of motion to remit, which by mistake applies to have an action remitted to the Civil Bill division of the country in which the defendant does not reside, may be amended. The affidavit of the defendant, in order to confer jurisdiction to remit, need not state the Civil Bill division of the defendant's residence; it will be sufficient for the Court if that be shown satisfactorily by any means, such as by affidavit of any person who knows the district. (By Andrews, J.) M'KEEFRY *v.* MULLAN - - **Vac. J. XXIV. 8**

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REMITTING ACTION TO CIVIL BILL COURT— *continued.*

65.—— S. 6—*Affidavit—Grounds of defence—Residence of Defendant.*] It is sufficient that the affidavit to ground a motion to remit should state that the plaintiff has no visible means, without disclosing any ground of defence, but it is essential that the Civil Bill jurisdiction, within which the defendant resides, should be disclosed. BUCKLEY *v.* BUCKLEY **[E. D. XII. *M.* 49**

66.—— S. 6—*Amendment of order.*] On consent an order remitting an action was amended by inserting Hilary Sessions for Michaelmas Sessions. CASSIDY *v.* CINNAMOND **[E. D. XV. 3**

67.—— S. 6—*Amendment—Notice of motion.*] The Court has power to amend the residence of the defendant given in the notice of motion to remit. (By Warren, J.) COBAIN *v.* MOORE - - - - - **Vac. J. XXIV. 97**

68.—— S. 6—*Amendment—Mistake—Notice of motion.*] On an application on behalf of the defendant to remit an action under sec. 6 of the C. L. P. A. Act, 1870, the defendant's residence was, by mistake, omitted in the notice of motion, but it was set out in the affidavit of the defendant, on which the motion was grounded. On an objection raised on behalf of the plaintiff that the Court had no jurisdiction to make an order under the Act:—*Held*, that the objection raised did not go to jurisdiction but to practice, and the Court made the order, being satisfied on the merits that the case was one that should be remitted. *Nagle* v. *Sullivan* (XIV. 43; 6 L. R. Ir. 149) followed. *Ferguson* v. *Burrows* (XVI. 93) dissented from. SAYERS *v.* QUINN - - **E. D. XXIII. 79**

69.—— S. 6—*Amount of damages—Action of tort—Practice—County Officers and Courts Act*, 1877, *ss.* 50, 52.] Notwithstanding that section 52 of the County Officers and Courts Act, 1877, provides that in actions of tort remitted under sec. 6 of the C. L. P. A. Act, 1870, the Civil Bill Court shall have the same jurisdiction as to the amount of damages to be awarded as might have been exercised by the Superior Court, the amount of damages that ought to be awarded is still to be considered in determining whether the cause of action is fit to be prosecuted in the Superior Court, and unless the Court is satisfied that the plaintiff ought not to recover more than £50, the action should not be remitted. RICHARDSON *v.* SKELLY **[E. XI. 145**

70.—— S. 6—*Appeal—Interference with discretion of Court of first instance.*] Where the Court of Appeal finds that the damages are not reasonably likely to exceed £50, and there is no question of difficulty in the case, and the circumstances of the parties are such that the case should be disposed of in the County Court, the discretion of the Court remitting the action below will not be interfered with in the absence of special circumstances. NEENAN *v.* O'KEEFE **C. A. XXIV. 81**

71.—— S. 6—*Appearance entered after service of notice of motion.*] After service of a notice of motion to remit an action to the Civil Bill Court, the defendant entered an appearance requiring a statement of claim:—*Held*, that the appearance was a submission to the jurisdiction of the Superior Court, and that the action could not be remitted. O'BRIEN *v.* COX **[E. D. XV. 7**

72.—— S. 6—*Application to put Defendant under terms to admit plaintiff's title.*] An action to recover damages for trespass to land, and for an assault, was remitted to the Civil Bill Court, but an application to put the defendant under terms to admit the plaintiff's title to the lands was refused. MONTGOMERY *v.* MONTGOMERY - - **Q. B. VII. *M.* 313**

73.—— S. 6—*Assault, trespass, detinue, and conversion—Separate defence by married woman.*] The Court refused to remit an action, brought by a husband and wife, against a husband and wife, for assault, trespass, detinue, and conversion, and made no rule on a motion that the female defendant should defend separately, under sec. 11 of the Married Women's Property Act, 1870. GANNON *v.* MOORE **[E. XI. *M.* 282**

REMITTING ACTION TO CIVIL BILL COURT— *continued.*

74.—— S. 6—*Assault, false imprisonment, and malicious prosecution.*] An action for damages for assault, false imprisonment, and malicious prosecution, which arose out of a drunken squabble, was remitted to the Civil Bill Court. ROBINSON *v.* RAMSAY - - - **C. C. VII. *M.* 389**

75.—— S. 6—*Assault—Want of visible means.*] An action by one boy against another for an assault was remitted on the ground of want of visible means. KENNEDY *v.* MARSHALL **[C. C. VII. *M.* 366**

76.—— S. 6—*Assault and slander.*] In an action for assault and slander, the Court not being satisfied of the ability of the plaintiff to pay the costs of a verdict against him, and the question being one of fact, the Court ordered the plaintiff to give security for costs, or that the case should be sent to the Civil Bill Court. CRAWFORD *v.* DOWD - **Q. B. V. 4**

77.—— S. 6—*Assault and battery—Want of visible means—Defendant's affidavit.*] On a motion to remit an action for damages for assault and battery under the C. L. P. A. Act, 1870 (33 & 34 Vic., c. 109), s. 6, the defendant in his affidavit, deposed that the plaintiff was a "small farmer" and "that neither the plaintiff nor I have any means to carry on expensive litigation in the Superior Courts;" and the plaintiff deposed to his having two large farms of land:—*Held*, that the defendant's affidavit did not sufficiently comply with the requirements of the statute, as to negativing the plaintiff's having visible means of paying the costs should a verdict not be found for the plaintiff. M'MANUS *v.* MAGUIRE **[C. P. D. XVI. 31**

78.—— S. 6—*Assault—Want of visible means.*] An action for assault, where the visible means were a grocery and lodgings, was remitted. SCOTT *v.* COMERFORD **C. C. X. *M.* 200**

79.—— S. 6—*Assault and battery.*] Where it appeared that the action was for biting off the plaintiff's nose, and the defendant's affidavit merely stated that he had a good defence, the Court refused to remit the action. AIKINS *v.* WILSON **[C. C. VII. *M* 449**

80.—— S. 6—*Assault.*] An action for damages for a trivial assault brought by a cook against an hotel-keeper was remitted. MINNIS *v.* O'REARDON - - **C. P. VII. *M.* 542**

81.—— S. 6—*Assault.*] An action by a nurse against a medical student for assaulting her, which he said was merely removing her from the patient's room for being drunk, was remitted. O'BEIRNE *v.* O'DOWD - **C. P. VII. *M.* 230**

82.—— S. 6—*Assault.*] An action by an engineer against a barrister for assault was remitted. ORMOND *v.* SCULLY **[Q. B. D. XXVII. *M.* 199**

83.—— S. 6—*Breach of promise of marriage.*] The Court refused to remit an action of breach of promise of marriage, where the amount claimed exceeded £40. CUDDEN *v.* O'BRIEN **[C. C. VIII. *M.* 89**

84.—— S. 6—*Breach of promise of marriage—Jurisdiction—County Courts Act*, 1877, *s.* 51.] Under the provisions of section 6 of 33 & 34 Vic., c. 109, as extended by section 51 of 40 & 41 Vic., c. 56, an action for unliquidated damages for breach of promise of marriage may be remitted to the Civil Bill Court. DENNIS *v.* CONWAY - **E. D. XIII. 35**

85.—— S. 6—*Breach of promise of marriage.*] The Court considered an action for breach of promise of marriage a case fit to be tried in the Superior Courts, and refused to remit it. O'MARA *v.* CUMMIN - - - **C. C. VII. *M.* 377**

86.—— S. 6—*Case fit to be tried in the Superior Courts.*] An action for fraudulently causing the plaintiff to give up possession of his holding, was not remitted to the Civil Bill Court, it being a case fit to be tried in the Superior Courts. CANTWELL *v.* CASSIN - - - - **C. C. VII. *M.* 343**

87.—— S. 6—*Case fit to be tried in the Superior Courts.*] An action by an employee who had been privately persecuted by the defendant for a felony, and was discharged, there being no evidence against him, is a case fit to be tried in the Superior Courts. ELLIS *v.* MAGAW **Q. B. VII. *M.* 218**

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REMITTING ACTION TO CIVIL BILL COURT— *continued.*

88.——**S. 6**—*Case fit to be prosecuted in Superior Court.*] *Appeal—Discretion of Court below.*] The Court of Appeal will not reverse the decision of the Court below, remitting an action, where that Court has exercised its discretion, except in a very strong case, even though the members of the Court of Appeal might have exercised their discretion in a different way. Where the plaintiff has no visible means, two classes of action ought to be remitted: (1) Where the action is not a *bonâ fide* action; (2) Where the action, though honest, is of a small magnitude and free from complexity. There is a third class of actions which ought not to be remitted *simpliciter*; that is, where the cause of action is substantial, but it is doubtful whether the damage will be above or below the limit of the original jurisdiction of the County Court, and difficult and complicated questions are involved; and in such cases the Court ought not to remit, unless the defendant makes such admissions as render the case sufficiently simple to be tried by a County Court Judge. MARRON *v.* HUNTER - **C. A. XXIII. 2**

89.——**S. 6**—*Case fit to be tried in the Superior Courts—Damages for injury.*] The Court refused to remit to the Civil Bill Court an action for damages for injury, where it appeared that the plaintiff might obtain greater damages than £40. HEALY *v.* SHIELDS - - - **E. VII.** *M.* **557**

90.——**S. 6**—*Consent to remit.*] An action cannot be remitted on consent signed by the parties. (By Holmes, J.) FOLAN *v.* GREENE - - - - - - **Vac. J. XXI.** *M.* **578**

91.——**S. 6**—*Contents of affidavit—Ground of defence.*] It is only in actions of slander and similar actions, where the cause of action is not disclosed by the plaintiff, that the defendant need not disclose his ground of defence in his affidavit to remit. *Buckley* v. *Buckley* (XII. M. 49) explained. MULLIGAN *v.* BROOKE - - **E. D. XXII.** *M.* **624**

92.——**S. 6**—*Crim. Con.—Labourer Plaintiff.*] The Court refused to remit an action for *crim. con.* to the County Court, where the plaintiff was a labourer stated to own a farm. KITT *v.* COLLINS - - **E. D. XXVII.** *M.* **486**

93.——**S. 6**—*Damages for being fired at.*] An action for damages for being fired at with a gun by the defendant, when there was a statement that it was accidental and caused no injury (which was controverted), was remitted on the usual terms as to costs. KELLY *v.* LAWRENCE **[C. C. VII.** *M.* **419**

94.——**S. 6**—*Damages—Appeal.*] The Chairman's jurisdiction in an action of tort, remitted to the Civil Bill Court under the C. L. P. A. Act, 1870, is limited to £40. An appeal lies to the Judge of Assize from the Chairman's decree in a case remitted to him under the C. L. P. A. Act, 1870. DOYLE *v.* HANKS - - - - - - **Cir. C. R. VI. 85**

95.——**S. 6**—*Deeds to be produced—Action not a sham one.*] In an action against a sheriff for wrongfully seizing the goods of the plaintiff under an execution against a third party, it appearing that the value of the goods was £33, that the title to them was to be established by certain deeds, and that the sheriff had been called on by the plaintiff not to sell, and had been indemnified, the Court refused the defendant security of costs, or to send the case to the Civil Bill Court. REID *v.* STUART - - - - - - - - **Q. B. V. 3**

96.——**S. 6**—*Defendant's affidavit not filed.*] The Court refused, with costs, a motion to remit where the defendant's affidavit was not sworn or filed when the notice of motion was served. KENNEDY *v.* HERMAN - - **E. D. XII.** *M.* **75**

97.——**S. 6**—*Defendants resident in different civil bill jurisdictions—Tort—Striking out one Defendant.*] Where two defendants resided in different civil bill jurisdictions, the Court refused to strike out the name of one, and to remit the action. GRIFFIN *v.* GRIFFITH - - - **E. D. XVI.** *M.* **98**

98.——**S. 6**—*Detinue.*] An action, which was brought in detinue, claiming a return of the goods, was remitted to the Civil Bill Court, where it appeared that there was no substantial and *bonâ fide* desire on the part of the plaintiff to recover the goods in specie. WHITE *v.* JOSEPHS **[Q. B. VII. 61 note**

99.——**S. 6**—*Detinue and trover—Striking out count in detinue—Practice.*] Where it appeared, in an action of trover and detinue, that the count in detinue was of the gist of the action, the Court refused a motion that the count in detinue should be struck out, and that, thereupon, the action should be remitted to Quarter Sessions, under the C. L. P. A. Act, 1870. This Court will not remit to the Inferior Court an action of detinue, brought *bonâ fide*, in respect of a substantial cause of action, for the recovery in specie of a chattel capable of being recovered on a judgment against the defendant. *Byrne* v. *Ffrench* (VI. 10), discussed. M'DONALD *v.* LEIGH **[C. P. X. 31**

100.——**S. 6**—*Detinue—Want of visible means.*] Where, on a motion to remit to the Civil Bill Court an action in detinue, in which the plaintiff prayed for a return of the goods and for damages, the defendant offered to return the goods, and the plaintiff was willing to take them back, the Court ordered that, upon the terms of the defendant giving up the possession of the goods to the plaintiff, the action be remitted, unless the plaintiff should give security for costs. Where, in answer to affidavits that the plaintiff was looking for a situation as milliner's assistant, and had no visible means of paying costs, the plaintiff deposed that she was entitled to a share in a valuable leasehold interest in a house and twenty acres of land, the Court was not satisfied that the plaintiff was possessed of "visible means," as the value or extent of the share was not stated. STAMP *v.* HICKEY - - **C. C. VIII. 167**

101.——**S. 6**—*Detinue—Common Law Procedure Amendment Act*, 1870, *s.* 6.] On a motion to remit an action of detinue to the Chairman of the Quarter Sessions, under the Common Law Procedure Amendment Act, 1870, sec. 6:—*Held*, that the existence of a doubt whether the Chairman would have jurisdiction to give relief, was sufficient to justify the Court in refusing the motion. *Quære*, whether an action of detinue can be remitted under the C. L. P. A. Act, 1870, sec. 6? *Byrne* v. *Ffrench* (VI. 10) not followed. WALSH *v.* SUGRUE **[E. VI. 11**

102.——**S. 6**—*Detinue—Jurisdiction of Inferior Court.*] An action of detinue will not be remitted to the Civil Bill Court under the C. L. P. A. Act, 1870, sec. 6, where the plaintiff *bonâ fide* prays for a return in specie of the chattels detained, even though, in the opinion of the Court, they may be of but small intrinsic value, or of such a nature as that damages would seem to be sufficient to compensate the plaintiff without awarding a return of the chattels themselves. LUDLOW *v.* HEADLEY - - - - **E. VII. 136**

103.——**S. 6**—*Detinue—Jurisdiction.*] The Court refused to remit an action of trover and detinue where a return of the chattels was prayed for, under the C. L. P. A. Act, 1870, sec. 6. PARSONS *v.* FEGAN - - - - **C. C. VII. 61**

104.——**S. 6**—*Dismiss without prejudice—Second action for same cause brought in Superior Court—Staying proceedings.*] Where an action of tort had been remitted to an Inferior Court, under the Common Law Procedure Amendment Act, 1870, s. 6, and there heard, and dismissed without prejudice, the plaintiff is not barred from instituting another action in the Superior Court in respect of the same cause of action. But the Court, on being satisfied that the bringing of the second action was an abuse of its process, might order that the proceedings be stayed, and the writ taken off the file. BARNES *v.* SEXTON **[C. P. IX. 129**

105.——**S. 6**—*Ejectment.*] The Court refused to remit an action of ejectment to the Civil Bill Court. KENNEDY *v.* SAURIN; KENNEDY *v.* SIBTHORPE **C. C. VII.** *M.* **343**

106.——**S. 6**—*Injuries by negligence of doctor—Case fit to be tried in Superior Court.*] An action against a doctor for

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alleged negligent treatment of the plaintiff's arm was not remitted, it being a case for the Superior Courts. SHEEDY *v.* ALTON - - - - - - **C. C. VII.** *M.* **343**

107.——**S. 6**—*Judicature Act, ss.* 60, 71—*County Court Act, s.* 51.] Though no rules have been made adapting the procedure under the C. L. P. A. Act, 1870, to the procedure under the Judicature Act, the jurisdiction to remit actions to the County Courts under the former Act is not taken away by the substitution of the writ of summons for the summons and plaint; and the writ of summons is now the proper document to be sent to the Clerk of the Peace under the provisions of the former Act. IRELAND *v.* FLINT **[E. D. XII. 31**

108.——**S. 6**—*Jurisdiction of Chairman to try questions of title—Valuation of holding*—37 & 38 *Vic., c.* 66, *s.* 1.] A Chairman of Quarter Sessions has no judrisdiction to adjudicate on a case involving a question of title, under 37 & 38 Vic., c. 66, until it has been proved that the value of the land in dispute, or in respect of which an easement or license is claimed does not exceed £20 per annum "as valued under the Acts relating to the valuation of rateable property in Ireland," and in order to sustain the burthen of such proof the defendant must show that the land is rated separately and at less than £20 per annum; and it will not be sufficient to prove that the land is not worth and could not be let for £20 per annum, nor that it forms so small a portion of a holding valued at more than £20 per annum as to afford a strong presumption that the land in dispute would, if separated from the rest, be valued at less than £20 per annum. Therefore an action involving a question of title which the Chairman would only have jurisdiction to try if within 37 & 38 Vic., c. 66, will not be remitted to the Civil Bill Court, unless it is proved that the land in dispute is rated separately, and at less than £20 per annum. REILLY *v.* NUGENT **[E. IX. 72**

109.——**S. 6**—*Jurisdiction—Consent of Plaintiff.*] Under sec. 6 of the C. L. P. A. Act, 1870, the Court cannot remit the action to an Inferior Court, where notice is not served within the eight days, even though the plaintiff consents to such a course. O'CONNOR *v.* O'CONNOR - **E. D. XVII. 62**

110.——**S. 6**—*Malicious prosecution—Justification*—40 & 41 *Vic., c.* 77, *ss.* 50, 52.] In an action for malicious prosecution in which the defendant justified the arrest, and also pleaded reasonable and probable cause, the Court granted an application for remittal to the County Court, under the C. L. P. A. Act, 1870, s. 6, on the defendant consenting to abandon his plea of justification. M'CANN *v.* CRAWFORD **[Q. B. D. XVII. 25**

111.——**S. 6**—*Malicious prosecution and trespass—Certificate of value of lands, the title of which is involved*—37 & 38 *Vic., c.* 66.] The defendant, a magistrate, had summoned the plaintiff before the Petty Sessions Court, in which the defendant was in the habit of sitting, for having taken forcible possession of a certain house and lands which were claimed by the defendant under a title, which was impeached by the plaintiff, who had never been out of possession, and the case was returned for trial at the Quarter Sessions, where the indictment was ignored by the Sessional Grand Jury. An action for trespass and malicious prosecution having been brought against the defendant for damages arising out of those proceedings, and a motion having been made to remit it to the County Court, it appeared that the plaintiff might reasonably be considered entitled to more than £50 damages:—*Held*, that the motion should be refused. *Semble*, in an action for trespass to lands before the case can be remitted for trial to a County Court, a certificate of the value of the lands under Sir Colman O'Loghlen's Act (37 & 38 Vic., c. 66) must be produced by the defendant. KERR *v.* BENISON - - **E. D. XII. 36**

112.——**S. 6**—*Minority of Plaintiff—Common Law Procedure Act*, 1870.] The minority of the plaintiff does not prevent the Court from remitting the case to an Inferior Court, under the C. L. P. Act, 1870. GREEN *v.* DEMPSEY **E. V. 121**

REMITTING ACTION TO CIVIL BILL COURT—*con.*

113.——**S. 6**—*Non-recovery of more than £40 not proved.*] Having regard to the decision in *Doyle* v. *Hanks*, if the evidence on affidavit does not satisfy the Court that the plaintiff cannot recover more than £40, the case should not be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, s. 6. LAWLER *v.* REDDING - - - - **Q. B. VI. 69**

114.——**S. 6**—*Notice of application—Computation of time—Sundays.*] Under the 6th sec. of the C. L. Procedure Act, 1870, "sufficient notice" of an application for security for costs means such notice as to the Court shall seem sufficient, and need not be two clear days, as in the motions on notice. In the computation of the eight days after service of the summons within which the application must be made, Sunday is not to be reckoned. M'DONOGH *v.* BROPHY **[C. P. IV.** *M.* **630**

115.——**S. 6**—*Notice of motion framed under sec.* 5.] The Court refused to remit an action under the 6th section where the notice of motion was framed under the 5th. AINSCOW *v.* CANTRELL & COCHRANE - - **E. D. XVII.** *M.* **44**

116.——**S. 6**—*Personal injuries—Life in peril.*] The Court refused to remit an action for damages for personal injuries caused by defective machinery, whereby the bones of the skull of the plaintiff's son were broken, causing paralysis, and for two months his life was in danger. TONER *v.* O'NEILL **[Q. B. D. XVII. 78 note**

117.——**S. 6**—*Personal injuries—Contributory negligence.*] An action for damages for personal injuries where contributory negligence was charged, was remitted, the motion being unopposed. DUFFY *v.* BELFAST FLAX CO. **[Q. B. D. XVII. 78 note**

118.——**S. 6**—*Personal injuries—Contributory negligence.*] Where damages were claimed for an injury, by which a workwoman in the defendants' employment lost one of her fingers, in consequence of machinery being left unguarded, the Court remitted the action (which had not been instituted till three years after the accident) for trial before the Local Recorder, notwithstanding that a question of contributory negligence was involved. M'BEY *v.* THE EDENDERRY SPINNING CO. **[Q. B. D. XVII. 78**

119.——**S. 6** — *Probable damages.*] Probable damages should not afford a flat answer to an application to remit made after the passing of the County Courts Act, 1877. FEE *v.* HALL **[C. P. XI.** *M.* **577**

120.——**S. 6**—*Question of law.*] The action was brought by the plaintiff against the defendants, as carriers, for a breach of contract in not transmitting his cattle from Kilkenny to Waterford, so as to be conveyed to Bristol in time for the market. The damages were laid at £27. The Court refused to remit the case, though the damages were within the jurisdiction of the Civil Bill Court, there being a question of law on the conditions of the contract. SMITHWICK *v.* WATERFORD RAILWAY CO. - - - - - **Q. B. VI. 6**

121.——**S. 6**—*Question of title—Easement—Valuation*—37 & 38 *Vic., c.* 66, *s.* 1—40 & 41 *Vic., c.* 56, *s.* 53.] On a motion to remit an action for trespass *quare clausum fregit*, the defendant, by his affidavit, set up a public right of way, but no certificate of valuation of the land was verified by the affidavit, and it was sworn that the plaintiff had no visible means, except a small farm of seven acres of land held by him as tenant from year to year:—*Held*, that no question of title was involved which would prevent the Court from remitting the action, and that the defendant was not possessed of visible means. CARRAHER *v.* BLACK - - **C. P. XI. 177**

122.——**S. 6**—*Question of title.*] The Court refused to remit an action for assault and forcible possession, there being a question of title involved. O'DONNELL *v.* MAUNSELL **[E. VII.** *M.* **585**

123.——**S. 6**—*Scandalous matter in affidavits.*] Where affidavits on motions to remit contain scandalous matter, the costs of the motion of both parties will be disallowed. O'DRISCOLL *v.* BLACKWELL - - **C. C. VIII.** *M.* **54**

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REMITTING ACTION TO CIVIL BILL COURT—*con.*

124.——S. 6—*Second action—Costs of first not paid.*] The plaintiff had formerly brought an action in the Exchequer Division claiming £100 damages for slander, which was dismissed with costs as frivolous and vexatious. He now brought an identical action against the same defendant in the Queen's Bench Division. The costs of the former action had not been paid. The Court refused an application to dismiss the present action as frivolous and vexatious, on the terms that the plaintiff should pay to the defendant £5 5s. costs of the former action, as a condition precedent, and remitted the present action to the Recorder. (By Madden, J.) DANSIE *v.* COLQUHOUN - - - - **Q. B. D. XXVII. *M.* 486**

125.——S. 6—*Slander—Justification.*] In an action of slander, where it was alleged that the defendant had charged the plaintiff with an indictable offence, the Court refused to remit the case unless the defendant undertook not to raise a defence of justification in the County Court. M'GINGAN *v.* O'BRIEN - - - - - **E. D. XIX. 30**

126.——S. 6—*Slander—Want of visible means.*] The Court remitted an action of slander, where it was stated that the plaintiff (who had been in partnership with the defendant) was not worth more than £11, which, however, was denied. The order not to issue if the plaintiff gave security for costs. RAFFERTY *v.* GROOGAN - - - **C. C. VII. *M.* 419**

127.——S. 6—*Slander.*] Under the 6th sec. of the C.L.P. Act, 1870, actions excluded from the Chairman's jurisdiction by 14 & 15 Vic., c. 57, viz., slander, libel, &c., may be referred to him. *Quære*, whether the Chairman is limited to £40 in awarding damages? CRANSON *v.* SCOTT **[C. P. IV. *M.* 690**

128.——S. 6—*Striking out count in detinue.*] A motion was granted, that a count in detinue be struck out of the summons and plaint, and that the remaining causes of action be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, sec. 6. CASEY *v.* GALWAY - **C. C. VIII. 90**

129.——S. 6—*Striking out count in detinue.*] Motion was granted that a count in detinue should be struck out, and the remaining causes of action in trespass and trover remitted to the Quarter Sessions, under the Common Law Procedure Amendment Act, 1870, s. 6. NOON *v.* WALSH **[C. C. IX. 229**

130.——S. 6—*Striking out count in detinue—Want of visible means.*] In an action for trespass on the plaintiff's land, and seizing two calves, and a count in detinue for the calves being joined, it appeared that the calves had been seized and sold for £4 9s., under a civil bill decree against the plaintiff's son, which was the detention complained of; that the count for trespass to the land and taking the calves referred to the same proceeding upon which the cause of action in detinue was founded; and that the plaintiff was not possessed of visible means, except her property, if any, in the said lands, but that the question to be determined in the action was whether the plaintiff or her son was the real owner of the lands and cattle. On motion that the action be remitted to the Chairman under C. L. P. A. Act, 1870, s. 6:—*Held*, that the count in detinue should be struck out, and the action remitted, unless security for costs given. *Per* Morris, J.: The Court of Common Pleas adheres to the decision of *Byrne* v. *French* (VI. 10), that detinue may be remitted under C. L. P. A. Act, 1870, s. 6. BARRY *v.* CASS **[C. C. VIII. 124**

131.——S. 6—*Striking out count in detinue.*] A motion was refused (reversing an order made by *Morris, J.*) that a count in detinue be struck out of the summons and plaint, and that the remaining cause of action, in trover in respect of the same goods be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, sec. 6, where the goods claimed were not in the defendant's possession. WHITE *v.* AUNGIER **[E. IX. 195**

132.——S. 6—*Time for moving—Sunday—O. LVII., r. 2—Moving after appearance entered.*] Sunday does not count in the computation of time for moving to remit an action, and the defendant's right to move is not barred by his entering an appearance. NEVIN *v.* SINGLETON. **[E. D. XII. *M.* 186**

133.——S. 6—*Tort—Affidavit of Defendant.*] The affidavit on which is grounded a motion to remit an action of tort need not be made by the defendant himself. *Cloran* v. *Reilly* (V. 43) and *Hunter* v. *Darcy* (VIII. 95) followed. LORD *v.* SMALLHORNE - - - - - **E. D. XVII. 6**

134.——S. 6—*Tort—Minor plaintiff—Amount of damages recoverable—County Courts Act*, 1877, *s.* 52— *C. L. P. A. Act*, 1870, *sec.* 6.] The Exchequer Division refused to remit an action of tort, brought by a minor plaintiff, where it was manifestly apparent, or reasonably to be expected, that the plaintiff, if he succeeded, would recover more than £50. TOOLE *v.* SHAW - - - **E. D. XII. *M.* 47**

135.——S. 6—*Tort—Amount of damages recoverable—County Courts Act*, 1877, *s.* 52—*C. L. P. A. Act*, 1870, *s.* 6.] Since the County Courts Act, 1877, sec. 52, has passed, the Court has to consider whether, on grounds other than that of the amount of damages recoverable, the action is one fit for the Superior Courts. An action for damages by a servant for contracting fever at her master's house, her relations being in humble circumstances, was remitted. NOLAN *v.* ROOKE **[Q. B. D. XII. *M.* 35**

136.——S. 6—*Tort—Visible means — Arranging debtor.*] The Court will not remit to the County Court an action of tort on the ground that the plaintiff has no visible means merely because the plaintiff is an arranging debtor. DUFFY *v.* RICE - - - - - **C. P. D. XVIII. 13**

137.——S. 6—*Tort.*] A motion to remit an action in tort, which comes under section 6, was moved on a notice framed under section 5; leave was given to amend the notice. GEOGHEGAN *v.* M'KEEVER - **Q. B. D. XIII. *M.* 121**

138.——S. 6—*Tort—Notice of motion—Omission of alternative as to security for costs.*] An application to remit an action of tort to the Civil Bill Court was refused where the notice of motion omitted to offer the plaintiff the alternative of giving security for costs. FOSTER *v.* BOYLE **[E. D. XIII. *M.* 375**

139.——S. 6—*Tort—Amount of damages.*] An action of tort will not be remitted to the Civil Bill Court, unless the defendant satisfy the Judge that the plaintiff reasonably ought not to recover damages to an amount greater than forty pounds. FINEGAN *v.* KENNEDY - **C. C. VII. 169**

140.——S. 6—*Trespass—Annual value of land exceeding* £30.] The Court has jurisdiction, by virtue of the County Officers and Courts Act, 1877, sec. 52, to remit to the Civil Bill Court an action of trespass, involving questions of title to land, under sec. 6 of the C. L. P. A. Act, 1870, although the annual value of such land exceeds £30, and although the action could not have been commenced in the Civil Bill Court. *Per* Fitzgibbon, L.J.:—Where such an action is solely founded on a question of law arising from a mere accidental or technical defect in reference to the place where an eviction notice was posted, the cause of action is not necessarily more fit to be tried in the Superior than in the Inferior Court. BERMINGHAM *v.* TURNER - - **C. A. XXIII. 37**

141.——S. 6—*Trespass and wrongful eviction.*] The Court considered an action of damages for trespass and wrongful eviction a case fit to be tried in the Superior Courts, and refused to admit it. M'CARTEN *v.* M'CARTEN **[C. C. VII. *M.* 378**

142.——S. 6—*Trover and detinue — Adjournment from Consolidated Chamber to full Court.*] A judge sitting in the Consolidated Chamber refused to hear a motion where the evidence was conflicting, but adjourned it for the full Court. FELLOWES *v.* JONES - - - **C. C. X. *M.* 507**

143.——S. 6—*Trover and detinue.*] In an action of trover and detinue for a servant's certificate of character and discharge,

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REMITTING ACTION TO CIVIL BILL COURT—*continued.*

the summons and plaint in each count added, "and which discharge the plaintiff had given to the defendant on entering the service of the said defendant as butler and servant." On a motion to amend same as being embarrassing, and that said action be remitted for trial to Quarter Sessions:—*Held*, that said counts should be amended by expunging said words, and that the action should be remitted to the Chairman. BYRNE *v.* FFRENCH - - - - - - - C. P. VI. 10

144.——S. 6—*Two Defendants — Notice served by one Defendant with acquiescence of the other—Discontinuance of action against Defendant moving to remit—Right of the other defendant.*] Two railway companies were defendants in an action for damages. One, with the acquiescence of the other, moved to have the action remitted, and the motion was adjourned. After the adjournment the action was discontinued against that company; the other company moved to remit:—*Held*, that although they had not moved to remit within the time, they were entitled to take advantage of the former motion, and that the action should be remitted. BAXTER *v.* GREAT NORTHERN RAILWAY COMPANY - Q. B. D. XXVI. 137

145.——S. 6—*Unliquidated damages.*] An action for £30 for damages for breach of warranty was remitted. WALSH *v.* M'MANUS - - - - - C. C. VIII. *M.* 109

146.——S. 6—*Usual residence—Visible means.*] Under the 6th section of the 33 & 34 Vic., c. 109, the term "usual residence" means residence as defined by the 14 & 15 Vic., c. 57, sec. 69 (the Civil Bill Act), and though the defendant usually resides in England, if he has in Ireland an office for carrying on business the Court may, under the 6th section, remit the case to the Civil Bill Court of the division in which the said office is situate. "Visible means" signifies means available for the costs. If the case be more fitted to be entertained by a superior tribunal, the Court will not remit it to an inferior, and will regard the possibility of the plaintiff recovering more than £40 as an element in inducing them to determine whether the case is fitter for the Superior Court. KENNEDY *v.* BAXENDALE; COUNSEL *v.* GARVIE [Q. B. V. 96

147.——S. 6—*Waiver of right—Requisition of statement of claim on entering appearance—Defective copy of affidavit served*—143, 148, *G. O.*, 1854.] A defendant, having entered an appearance requiring a statement of claim, moved to remit the action. The jurat of the affidavit to ground the motion was correct, but the copy of the affidavit served omitted a portion of the jurat, containing the statements necessary in the case of a marksman, under 143 G. O., 1854:—*Held*, by the Exchequer Division, (1) that the motion was too late, as the appearance had not been accompanied by a notice that it was entered without prejudice to the motion, on which ground *Nevin* v. *Singleton* (XII. M. 186) was distinguished; (2) that the defect in the copy of the affidavit served would not warrant an objection to the jurisdiction under 148 G. O., 1854, but would at most entitle the objector to require an amended copy to be served, on terms as to postponement of the motion and payment of costs. On appeal to the Court of Appeal from this decision as to the first point:—*Held*, that the motion was rightly refused on that ground. NAGLE *v.* SULLIVAN [E. D. and C. A. XIV. 43

148.——S. 6 — *Want of visible means — Salary.*] A salary of £100, to which the plaintiff, a master mariner, is entitled, does not constitute visible means. KLEFFEL *v.* BARRY [E. D. XVII. *M.* 44

149.——S. 6 — *Want of visible means — Slander.*] A quartermaster having £17 per month has not visible means within sec. 6 of the C. L. P. A. Act, 1870. (Morris, C.J., *diss.*). *Counsel* v. *Garvie* (V. 96) commented on. CAMPBELL *v.* DONNELLY - - - - - C. P. XI. 176

150.——S. 6—*Want of visible means.*] A plaintiff who states he is worth several hundred pounds has visible means. LOVE *v.* M'CONNELL - - - - E. VII. *M.* 231

REMITTING ACTION TO CIVIL BILL COURT—*continued.*

151.——S. 6—*Want of visible means—Affidavit not filed when notice of motion served—Valuation—O. LX.*] A plaintiff who swears that he has house property valued at £200, subject to a rent of £14, of which nine quarters' rent was due, for which his surety was sued, and an interest, not specified, in other lands, was held to have no visible means. A notice of motion was served on 27th December, to be grounded on an affidavit to be filed when the offices opened, which was filed on 2nd January; the affidavit was allowed to be read on the motion heard 13th January. GRAYSON *v.* QUINN - - - Q. B. D. XIII. *M.* 89

152.——S. 6—*Want of visible means—Discretion of Court below—Competence of appeal to the House of Lords—Costs payable by party appealing* in formâ pauperis—33 & 34 *Vic., c.* 109, *s.* 6.] The determination of the questions whether a plaintiff has visible means, and whether a cause of action is fit to be tried in a Superior Court, is eminently a matter for the discretion of the Court of first instance, and the House of Lords will never interfere with the exercise of such discretion except under extraordinary and exceptional circumstances, involving a question of law or principle, or a point of practice of general application. *Quære*, whether an appeal to the House of Lords from a mere interlocutory order is competent? The fact that an appellant *in formâ pauperis* appears at the bar of the House of Lords by counsel who have not been assigned to him, is not a reason for ordering him to pay the costs of a successful respondent. NEIROTH *v.* BOILEAU - - - - - - H. L. XX. 57

153.——S. 6—*Want of visible means.*] A man who has a share of a coal vessel and money in the funds has visible means to enable him to prosecute an action in the Superior Courts. RICE *v.* M'GANN - - Q. B. VII. *M.* 218

154.——S. 6—*Want of visible means—Detinue—Trover—Trespass.*] On a motion to remit under the 6th section of the C. L. P. Act, 1870, an action in trespass, trover, and detinue, the plaintiff's affidavit stated he was possessed of a public house, for which he paid £22 a year rent, and that he had £200 in stock, and that he made £200 a year by his business:—*Held*, that the possession of such means by the plaintiff was sufficient to prevent the action being remitted. MAUNSELL *v.* CRONIN - - - C. P. X. 157

155.——S. 6—*Want of visible means.*] On a motion that an action be remitted to the Civil Bill Court, under the C. L. P. A. Act, 1870, s. 6, it appeared that the plaintiff was in the employment of his father, at a salary of £120 per annum, as manager of a business of cabinet-making and upholstery:—*Held*, that the plaintiff's means were not "visible means" of paying costs within the 6th sec. TORKINGTON *v.* CONNOR - - - C. P. VIII. 80

156.——S. 6—*Want of visible means.*] A plaintiff who was alleged to be carrying on his business in two rooms at 4s. 6d. a week rent, and to have four decrees against him which the sheriff was unable to execute, was held not to have visible means, though he stated that he had two or three young men constantly employed, and that he was earning £125 a year, independent of income from literary pursuits. HASTINGS *v.* BRISCOE - - C. P. D. XVII. *M.* 44

157.——S. 6—*Want of visible means—Barrister's professional income.*] On motion to remit an action brought by a barrister, resident in the country, for libel:—*Held*, that the mere fact of plaintiff being a member of the bar, accompanied by a general statement that he was in receipt of a considerable income by the practice of his profession, did not constitute evidence of visible means under the C. L. P. A. Act, 1870 (33 & 34 Vic., c. 109). LOWRY *v.* BATES E. D. XVII. 110

158.——S. 6—*Want of visible means—False arrest and malicious prosecution.*] The Court remitted an action for false arrest and malicious prosecution, where the plaintiff stated that he made on an average 12s. a day. ENNIS *v.* MURPHY - - - - - C. C. VIII. *M.* 89

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REMITTING ACTION TO CIVIL BILL COURT— *continued.*

159.——S. 6—*Want of visible means—Slander.*] A motion to remit an action of slander to the Civil Bill Court on the ground of want of visible means was refused. RIORDAN *v.* CONNELL - - - - - **C. C. VII.** *M.* **366**

160.——S. 6 — *Want of visible means — Damages for injury.*] The Court remitted an action for damages for injury on the ground of want of visible means. DUFF *v.* APOTHECARIES' HALL - - - - - **Q. B. VII.** *M.* **556**

161.——S. 6 — *Want of visible means—Solicitor—Costs.*] A motion that an action be remitted to the Civil Bill Court, under 33 & 34 Vic., c. 109, s. 6, was refused, as the plaintiff was possessed of "visible means," it appearing that he was a practising attorney, and that he held a mortgage on the lands for £61 5s. 6d., and interest. Scandalous matter, irrelevant to the motion, having been introduced with the affidavits filed in opposition to the motion and a material fact as regards the plaintiff's means having been suppressed, the Court, while refusing the motion gave no costs as against the applicant. HUNTER *v.* D'ARCY **Q. B. VII.** *M.* **556; VIII. 95**

162.——S. 6—*Want of visible means—Contributory negligence—Consent to waive questions of law.*] Where there is a *bonâ fide* cause of action, the Court will not, under the 6th section, remit the case to the Civil Bill Court, though the plaintiff has no visible means to pay the costs, and though the defendant consents to waive points of law, to give judgment, and to pay whatever damages beyond £40 the Court below may decree. DOYLE *v.* RICHARDSON - **Q. B. VI. 56**

163.——S. 6—*Wrongful diversion of drain.*] The Court refused to remit an action for the wrongful diversion of a drain whereby the plaintiff's house was inundated, where the plaintiff was a labourer with a few acres of land, and the Quarter Sessions would not be held for over three months. HUGHES *v.* WALPOLE - - **C. C. VII.** *M.* **161**

——Amendment of order - - **XXVII. 59**
See PRACTICE—AMENDMENT. 8

——Judgment for part of claim admitted **XXVI. 10**
See PRACTICE—JUDGMENT. 32.

——"Next Court" - - - - - **XXV. 48**
See PRACTICE—CIVIL BILL COURT—REMITTED ACTION. 2.

——Right of way - - - - - **XI. 75**
See WAY. 5.

REMOVAL OF CORONER.

See CORONER—REMOVAL.

REMUNERATION OF CORONER.

See Cases under CORONER—REMUNERATION.

RENEWABLE LEASEHOLD CONVERSION ACT.

1.——*Fee-farm grant—Covenant against alienation.*] A fee-farm grant, not under the Renewable Leasehold Conversion Act, contained a clause providing that it might be lawful for the grantee, his heirs, &c., to assign, sublet, &c., the demised premises, provided that they should not be divided into more than four lots without the consent, in writing, of the grantor:—*Held*, that this restriction was void and inoperative. *Re* LUNHAM'S ESTATE - - **L. E. C. V. 46**

2.——*Fee-farm grant—Covenant against alienation.*] A covenant by a grantee in a fee-farm grant, under the Renewable Leasehold Conversion Act, not to alienate, sell, or assign over his interest in the granted premises to any person whatever other than to his child or children, is void; and an action will not lie for an additional rent reserved on the breach of such a covenant. BILLING *v.* WELCH - **Q. B. VI. 64**

3.——*Fee-farm grant—Encroachments—Costs.*] A petition for a fee-farm grant was opposed, on the ground of encroachments, and the hearing of it was adjourned till an ejectment

RENEWABLE LEASEHOLD CONVERSION ACT— *continued.*

was brought by the respondent, in which he recovered the lands encroached upon:—*Held*, that the petitioner was entitled to the fee-farm grant, but he should pay the costs of the encroachments. USHER *v.* BALFOUR - **V. C. X.** *M.* **296**

4.——*Fee-farm grant—Execution by Master.*] The owner of the reversion being abroad and neglecting to comply with an order directing him to execute a fee-farm grant, under the Renewable Leasehold Conversion Act, the Court ordered that the grant should be executed by one of the Masters. *Ex parte Gucrin* (IV. M. 592), followed. *Ex parte* WALSH **[V. C. VIII. 37**

5.——*Fee-farm grant—Refusal of owner of reversion to execute—Execution by the Master.*] The owner of the reversion having refused to execute a fee-farm grant under the Renewable Leasehold Conversion Act, which she had been directed by the Court to execute, the Court ordered the Master to execute same. *Ex parte* GUERIN - - - - **R. IV.** *M.* **562**

6.——*Injunction — Waste — Bog — Cutting turf for sale.*] Where bog, *co nomine*, is demised, along with other lands, for lives renewable for ever, and the lease is converted into a fee-farm grant under the provisions of the Renewable Leasehold Conversion Act, a grantee cutting turf for sale is impeachable for waste. GORE *v.* O'GRADY **[C. I.** *M.* **5; Ch. A. I.** *M.* **422**

7.——*Laches—Forfeiture.*] T. purchased in the L. E. Court, but subject to C.'s tenancy, lands held by C. under a lease for lives renewable for ever, and by letters required C. to pay the renewable fines and to take out a fee-farm grant. C. did not comply. In March, 1866, T. offered by letter to sell his interest to C. No steps having been taken, T., on the 21st of July, 1866, by letter withdrew the offer and peremptorily demanded the fines. They were tendered on the 5th of Oct., but refused. T. relied on the forfeiture, and C., in May, 1867, filed a petition for a fee-farm grant:—*Held*, affirming the decision of the M.R., that the offer to sell was a waiver of previous demands; that the fines were tendered within a reasonable time; and that the petitioner was not disentitled by laches to relief. *Ex parte* COLCLOUGH - - - - - **Ch. A. II.** *M.* **225.**

8.——*Lessee out of jurisdiction—Petition by receiver to have deed of fee-farm grant executed by one of the Masters—Title of petition.*] A receiver over lands having obtained a fee-farm grant, which he and the lessor had executed, applied by petition under the Renewable Leasehold Conversion Act, for an order, directing that one of the Masters should execute it for the lessee, who was out of the jurisdiction of the Court:—*Held*, that the Court had no power under the Act to grant the order. Petitions by receivers under the Act should be entitled in the cause or matter to which the receivers have been appointed, as well as in the matter of the Act. *Ex parte* HARRISON - - - - - **V. C. VIII. 82**

9.——*Operation of Incumbered Estates Court conveyance—Schedule—Lease of lives renewable for ever.*] The schedule of tenancies to an Incumbered Estates Court conveyance contained the following statement: "I. Denom. (Raheen, part of); tenure which tenants hold, lease dated 13th September, 1764, from John Lord Baltinglass to Mr. Samuel King, for three lives, renewable for ever; last renewal dated 22nd February, 1834, for three lives, all of whom are in being. Renewal fine of half-a-year's rent on the fall of each life." The counterpart of the lease of 1764, stated to be a lease for 3 lives or 21 years, and contained no covenant for renewal. The renewal of 1834 contained a recital: "Whereas, by indenture bearing date the 13th day of September, 1764, between, &c., for the considerations therein mentioned and in pursuance of a covenant for perpetual renewal in the said lease under which the said premises were then held, all that part and parcel of the lands of Raheen were released and demised," &c. It further contained a recital that the fee and inheritance of the said lands were vested in the lessor:—*Held*, that the tenant was entitled to a fee-farm grant of the lands from the representative of the purchaser. *Ex parte* MURRAY - **R. VI. 158**

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RENEWABLE LEASEHOLD CONVERSION ACT— *continued.*

10. —— *Renewal fines—Sums by way of penalties for not nominating new lives in lease—Statute of Limitations—Time from which statute begins to run.*] On the 13th April, 1812, A. demised to B. certain lands for three lives with a covenant for perpetual renewal, a fine of sixpence being assessed on each added life. Covenant by B., if he should neglect or refuse to pay said fine within six months after the failure of each and every life, and should not within six months nominate a life or lives in lieu of those dropped, to pay A. a sum of £50 for every such life so to be added: proviso, that if B. should for 12 months after the failure of any life refuse or neglect to nominate a new life, A. should be at liberty to refuse any after nomination. Last life in lease dropped in 1853, and there had been no renewal. Plaintiff purchased reversion in Landed Estates Court in 1868. Defendant became owner of lessee's interest in 1881. Equity civil bill to compel defendant to execute a fee-farm grant, and for an inquiry as to fines and costs, and for an order for the payment of the same. Plaintiff was ignorant until 1889 that the original lives were not in being:—*Held*, that defendant was not bound to pay the three several sums of £50 each claimed under the covenant; that the Statute of Limitations applied; that the statute had commenced to run before plaintiff became owner of reversion, even though, in the circumstances, plaintiff and those under whom he claimed were ignorant of the dropping of the lives; and that the cause of the action never vested in the plaintiff. *Ward* v. *M'Roberts* (25 L. R. Ir. 224), referred to, and distinguished. WARD *v.* M'ROBERTS **Q. S. XXVII.** *M.* **522**

11. —— *Rent reserved—British or Irish currency.*] In 1716, a lease containing a covenant for perpetual renewal, reserved a rent of £100, current and lawful money of Great Britain. In 1836, a renewal reserved the rent of £100 in current and lawful money of Great Britain. The then lessor covenanted for perpetual renewal. In 1852, the lessee's interest was sold to the petitioner, who paid the rent in British currency until 1866, when he, being advised that the rent was payable in Irish currency, required the respondent in whom the reversion had become vested, to allow the difference in future payments. He refused, and then was presented this petition praying a fee-farm grant at the rent of £100 Irish currency:—*Held*, that the rent reserved in 1716 was payable in Irish currency, and was the amount which should be reserved in the fee-farm grant; but that the rent reserved by the renewal in 1836 was payable in British currency, and must be paid during the existence of the lives in the renewal. *Re* RENEWABLE LEASEHOLD CONVERSION ACT; *ex parte* KEATINGE - **B. II.** *M.* **58**

RENEWAL OF DECREE.

See Cases under PRACTICE — CIVIL BILL COURT — RENEWAL OF DECREE.

RENEWAL OF HABERE.

See HABERE. 2-8.

RENEWAL OF LEASE—Church lease—Fine **I.** *M.* **422**

See ECCLESIASTICAL LEASE. 4.

RENEWAL OF WRIT.

See PRACTICE—COMMON LAW—RENEWAL OF WRIT.

RENT.

See Cases under LANDLORD AND TENANT—RENT.

RENTAL—Landed Estates Court.

See Cases under PRACTICE—LANDED ESTATES COURT—RENTAL.

RENT-CHARGE—Mode of recovering arrears **II.** *M.* **369**

See PRACTICE — LANDED ESTATES COURT — RENT-CHARGE.

RENUNCIATION—Executor.

See Cases under PROBATE—RENUNCIATION.

REPLY.

See PRACTICE—REPLY.

REPUGNANCY—Lease - - - **III.** *M.* **388**

See LANDLORD AND TENANT—LEASE. 28.

REPUTATION — Evidence of marriage — Legitimacy — Letters—Acts—Costs - - - **I.** *M.* **27**

See LEGITIMACY.

REPUTED OWNERSHIP.

See Cases under BANKRUPTCY — ORDER AND DISPOSITION.

RESCUE.

See CRIMINAL LAW—RESCUE.

RESIDENCE.

See Cases under PRACTICE—CIVIL BILL COURT—RESIDENCE.

—— Forfeiture—Will - - - **IV.** *M.* **137**

See WILL—CONDITION. 5.

RESIDENTIAL HOLDINGS.

See LAND LAW (IRELAND) ACT, 1881. 202-205.
LAND LAW (IRELAND) ACTS, 1881, 1887. 45-47.
REDEMPTION OF RENT (IRELAND) ACT, 1891. 18.

RESIDUARY DEVISE.

See WILL—RESIDUARY DEVISE.

RESIDUARY GIFT.

See Cases under WILL—RESIDUARY GIFT.

—— Erroneous rental in will - - **III.** *M.* **406**

See RECITAL.

RESTRAINT OF MARRIAGE—Condition - - - [**XII. 22**; **XII.** *M.* **293**

See WILL—CONDITION. 1.

RESTRAINT OF TRADE—*Contract—Factories—Reasonableness.*] A contract between factory workmen and their employer—by which (1) no workman is to leave the employment unless he gives or receives a fortnight's notice; (2) not more than six persons' notices shall be received in any one day, and if a larger number shall be desirous to leave, the notices of only the first six shall be received, and the others shall be placed at the head of the list for the next succeeding pay day; and (3) non-compliance with this rule to subject the party to forfeiture of a week's wages—is not a contract in restraint of trade, and the Court will give effect to it irrespective of considerations of reasonableness or unreasonableness. M'ARDLE *v.* WILSON - - - - - - **E. X. 87**

RESUMPTION OF HOLDING BY LANDLORD.

See LAND LAW (IRELAND) ACT, 1881. 43-45.
LAND LAW (IRELAND) ACTS, 1881, 1887. 4, 14, 27.

REVENUE.

	Col.
INCOME TAX - - - - - -	688
LEGACY DUTY - - - - - -	689
PROBATE DUTY - - - - - -	689
STAMP - - - - - - -	690
SUCCESSION DUTY - - - - -	690

REVENUE—INCOME TAX—*Profit upon adventure or trade—Municipal body supplying water to extra-municipal district—Excess of receipts over expenditure—Apportionment—*

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REVENUE—INCOME TAX—*continued.*

Arbitrary assessment, in absence of written statement of facts by persons assessed—24 & 25 *Vic., c. clxxii.*—33 & 34 *Vic., c. xcvi.*—5 & 6 *Vic., c.* 35—29 *Vic., c.* 36.] Upon the true construction of the Dublin Corporation Water Works Acts (24 & 25 Vic., c. clxxii., 33 & 34 Vic., c. xcvi.), such sum, if any, as shall remain out of the total amount of all the sums received by the payments in respect of (1) the supply of water in the extra-municipal districts, and (2) the supply within the Borough of Dublin of water other than that for which the Domestic Water Supply rate and Public Water rate are payable, after deducting the expenses properly paid in providing and giving such supplies, constitutes profits within the meaning of 5 & 6 Vic., c. 35, and the Acts amending the same, and the Corporation is subject to be assessed with income tax accordingly. The Surveyor of Taxes having made an assessment, assessing the Corporation on what he considered was the profit upon the inter-municipal as well as the extra-municipal supply treating it as one undivided sum, the Corporation appealed to the Commissioners for the special purposes of the Income Tax Acts, and the Commissioners, rightly holding that the assessment so made was erroneous, permitted the Surveyor to amend the assessment. The Surveyor having thereupon made an arbitrary assessment, as upon there being no written statement supplied by the Corporation to enable an exact assessment to be made, although there could be no occasion for such a statement as required until the appeal came before the Commissioners:—*Held*, that such assessment was not justified under the circumstances. DUBLIN (LORD MAYOR, &C.) *v.* M'ADAM [E. D. XXII. 10

REVENUE—LEGACY DUTY.

1. —— *Bequest for masses—Charitable purposes in Ireland.*] A testatrix bequeathed "to the Right Rev. Dr. Delany, Roman Catholic Bishop of Cork, £100 to have 400 masses offered up for the repose of my brother Timothy and myself," "to the Prior of Saint Mary's Roman Catholic Community £20 to have 80 masses offered up for the repose of my brother Timothy's soul and myself," and to other priests like sums for the same purpose; and bequeathed the residue of her property to the Right Rev. Dr. Delany and the President of All Hallow's College "for the education of clergymen for the foreign mission." She appointed the Right Rev. Dr. Delany and the President of All Hallow's College, Dublin, executors. The legacies were given to strangers in blood to the testatrix, and were payable out of personal estate in Ireland, and the testatrix died while domiciled in Ireland:—*Held*, that the pecuniary legacies and residuary bequest were liable to 10 per cent. legacy duty, and were not exempted therefrom as being merely charitable within 54 Geo. III., c. 92, s. 12; 55 Geo. III., c. 184, schedule 3; and 5 & 6 Vic., c. 82, s. 38. THE ATTORNEY-GENERAL *v.* DELANY - - - - - - - - - E. X. 34

2. —— *Charitable purposes in Ireland*—5 & 6 *Vic., c.* 82, *sec.* 38.] H., domiciled in Ireland, bequeathed moneys to charities in England and Scotland. An information was filed for legacy duty thereon:—*Held*, that they were not exempt by the 5 & 6 Vic., c. 82, sec. 38. ATTORNEY-GENERAL *v.* HOPE [E. II. *M.* 353

REVENUE—PROBATE DUTY—*Value of property—Executor's admission—Reception of probate as evidence.*] In an action of trover by an executor the defendant pleaded a traverse of the plaintiff's property in the goods, but did not traverse the plaintiff's executorship. The goods consisted of hay, which had grown on the testator's farm during his lifetime and was afterwards sold to the defendant by his widow. At the trial, the plaintiff gave in evidence the probate granted in August, 1875, stamped with only an £11 stamp, the assets having been sworn under £600, but the plaintiff admitted that since he had been executor he was offered £1,500 for the testator's farm. There was no other evidence as to the assets or as to the nature of the tenure of the farm:—*Held*, that it was essential to the plaintiff's case to tender the probate in evidence,

REVENUE—PROBATE DUTY—*continued.*

but that the offer for the farm was sufficient evidence, in the absence of explanation to the contrary, that at the date of the probate the farm was worth more than the amount covered by the stamp; and so that the probate, being insufficiently stamped, was not admissible in evidence. CORMACK *v.* BARRAGRY - - - - - - - - - C. P. X. 142

REVENUE—STAMP—*Assignment of debt—Portion of debt—Bill of Exchange—Judicature Act, s.* 24—*Stamp Act*, 1870.] The plaintiff claimed as assignee of £395, portion of a debt due by the Governors of Cork Asylum to C. and Co.; the order for payment was as follows:—"We, C. and Co., do hereby authorise and request the Board of Governors of the Cork District Lunatic Asylum to pay to A. the sum of £395 10s., due from the Asylum to us for goods sold and delivered by us to the Asylum, and the receipt of A. for the same shall be a good discharge." To a defence by the defendant that the writing constituted a bill of exchange and should have been stamped as such, the plaintiff demurred; the Exchequer Division and the Court of Appeal allowed the demurrer. ADAMS *v.* MORGAN - - - - C. A. XVII. *M.* 126

—— Cancellation of stamps on affidavits claiming compensation for malicious injury - - XXVII. 116
See MALICIOUS INJURY. 2.

—— Notice of appeal under Petty Sessions (Ir.) Act, s. 24 (5) [XXVII. 8
See JUSTICES—APPEAL FROM. 10.

—— Objection as to not raised till new trial motion [XXIV. 98
See SALE OF GOODS. 1.

—— Receipt for rent paid in advance stating terms of tenancy —Stamp - - - - - - X. 8
See LANDLORD AND TENANT—AGREEMENT. 3.

—— Receipt for rent containing declaration of tenancy determinable at end of each year - - X. *M.* 325
See LANDLORD AND TENANT—AGREEMENT. 4.

REVENUE—SUCCESSION DUTY—*Claim for, subsequent to partition of the lands in respect of which it was payable.*] Two denominations of land, A. and B., having been in 1856 devised to R. C., W. C., and H. C., as joint tenants, by an arrangement in the nature of a partition made in 1859, A. was conveyed moietively to W. C. and H. C. No duty had been paid on R. C.'s succession, and upon the sale in 1871, in the L. E. Court, of W. C.'s moiety, the Inland Revenue Commissioners claimed it as payable out of so much of the proceeds of sale as represented that portion of R. C.'s share of A. which had become vested in W. C. by the partition. The Court allowed the claim. *Re* CRUISE'S ESTATE - L. E. C. V. 195

REVERSION.

See Cases under HUSBAND AND WIFE. 29-31.

REVERSIONARY LEASE—Made *bonâ fide* [XIX. 29, 45
See LAND LAW (IRELAND) ACT, 1881. 150.

REVESTING ORDER—Insolvency.

See Cases under INSOLVENCY—REVESTING ORDER.

REVIVOR AND SUPPLEMENT.

See Cases under PRACTICE—CHANCERY—REVIVOR AND SUPPLEMENT.

RIGHT OF WAY.

See Cases under WAY.

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ROAD CONTRACTOR.

See Cases under GRAND JURY—ROAD CONTRACTOR.

—— Bond—Action on - - - - - **XI. 21**

See PRACTICE—CIVIL BILL COURT—JURISDICTION. 1.

—— Signature of tender by - - - **XXIII. 16**

See GRAND JURY—PRESENTMENT SESSIONS. 1.

ROADS—Presentment for.

See Cases under GRAND JURY—PRESENTMENT—ROADS.

ROMAN CATHOLIC CLERGYMAN—*Papal rescript—Suspension of parish priest—Libel—Privilege—Law of R. C. Church—Pleading.*] An action was brought for alleged libel, contained in two sentences of ecclesiastical censure, published by the defendant, one a sentence suspending the plaintiff from his office of parish priest, and the other, an interdict against the parish chapel, the plaintiff having disregarded the sentence of suspension. The summons and plaint contained four counts; and in addition to the usual traverses several special defences were filed by the defendant, some framed as pleas of privilege and others as pleas of justification. The following allegations were common to both classes of defence, viz., that the plaintiff, as a Roman Catholic clergyman, had contracted to be and was bound by, the rules, discipline, and ordinances of his Church, and that the defendant was empowered by right of a rescript received from the Pope, to enquire into the proceedings and conduct of the plaintiff, and pronounce upon him the sentence of suspension; that he had so enquired, and had, in exercise of his authority, suspended the plaintiff, and that such suspension was in accordance with the rules, ordinances, and discipline of the said Church. The plaintiff replied that he could only be legally suspended in case he had infringed some of the laws and ordinances of the Church; that the only ordinance infringed by him was one which prohibits ecclesiastics from impleading one another in the Queen's Courts; and that, as such rule was contrary to public policy and therefore illegal, no legal suspension could be issued:—*Held* (Whiteside, C.J., *dissenting*), that the rule prohibiting ecclesiastics from impleading one another was not contrary to public policy, and that although such a rule could not be pleaded in bar to an action brought for an alleged violation of it, the violation of it by an ecclesiastic would justify his suspension by his superior. *Held* (by Fitzgerald & Barry, JJ.), that the rescript was illegal under 2 Eliz., c. 1 (Ir.), therefore the defences, which alleged by way of justification that the plaintiff had been legally suspended, were bad; but that the plea of justification to the count of the plaint, which simply complained of the plaintiff being "suspended," was good, inasmuch as the sentence of suspension had been issued in accordance with the rules and ordinances of the Roman Catholic Church, which the plaintiff was bound to obey, and that its being illegal according to the law of the land was immaterial, so far as the pleas of privilege were involved. *Held* (by O'Brien, J.), that the Pope's rescript was legal, inasmuch as the Roman Catholic religion had been tolerated, though not established; that the penalties under the Statute of Elizabeth had not been enforced in recent times; that the denial of the Pope as the Spiritual Head of the Roman Catholic Church not being included in the Religious Opinions Relief Act (9 & 10 Vic., c. 102), nor in the Act of Emancipation in 1829, could not now be maintained; and therefore the rescript was legal, being the exercise of a competent spiritual authority in a spiritual matter. *Held* (by Whiteside, C.J.), that the rescript being illegal, all the pleas, whether of privilege or justification, founded on it were bad in law. O'KEEFFE *v.* CULLEN **Q. B. VII. 100**

—— Register of baptisms—Evidence - - - **XII. 32**

See EVIDENCE. 10.

—— Sermon—Slander—Privilege - - - - **XI. 103**

See DEFAMATION—PRIVILEGE. 8.

S.

SALE—Application for.

See PRACTICE—SALE.

—— By Court.

See PRACTICE—CHANCERY—SALE BY COURT.

—— By Sheriff—Setting aside.

See SHERIFF. 17, 19, 45, 46.

—— Landed Estates and Land Judges' Court.

See Cases under PRACTICE—LANDED ESTATES COURT—COMPENSATION.
PRACTICE—LANDED ESTATES COURT—DISCHARGE OF PURCHASER.
PRACTICE—LANDED ESTATES COURT—SALE.

—— Landed Estates Court—Prescription—Way—Schedule **[II. *M.* 283**

See PRACTICE— LANDED ESTATES COURT—EASEMENT. 3.

—— Share in ship—Liability for necessaries - **I. *M.* 317**

See SHIP—OWNER.

SALE OF GOODS.

1. —— *Contract—Shipping goods by rail—Delivery order—Indorsement—When possession of property passes—Stamp Act* (33 & 34 *Vic., c.* 97).] A vendor, in pursuance of a verbal agreement entered into in Cork, shipped goods to the value of £131 by rail from Thurles to Cork, and sent to the purchaser by the same day's post, a delivery order in the vendor's own name, but indorsed to the purchaser, who, on receipt thereof, sent the vendor £100 in part payment. The purchaser did not call for the goods for some days, and, meantime, the railway company, in error, delivered them to a third person:—*Held*, that the possession of the property passed from the vendor to the purchaser on its being put on the rails at Thurles, and that the contract was completed on the arrival of the goods in Cork, and that, therefore, the vendor was entitled to payment of the balance, £31 due to him by the purchaser. A point on the Stamp Act should not be raised for the first time on a new trial motion. SUGRUE *v.* DWYER **[E. D. XXIV. 98**

2. —— *Market overt—Public salesmaster—Conversion—Stolen property—Thief unconvicted—Liability of salesmaster to true owner.*] A cattle salesmaster, in the ordinary course of his business, sold a stolen cow openly in the New Cattle Market—established under the Dublin Improvement Act (12 & 13 Vic., c. 97)—innocently acting as the agent of the apparent owner, the alleged thief, who was present in attendance at the sale. The cow was delivered by the salesmaster to the purchaser. The thief was not convicted. In an action by the true owner against the salesmaster for wrongful conversion:—*Held*, that although the New Cattle Market was established under a modern statute, and not created by prescription or grant from the Crown, it is a market overt, and that the property passed to the purchaser. *Held*, further (Whiteside, C.J., *diss.*), that, although the property passed, the sale was a wrongful conversion, for which the salesmaster, notwithstanding that he had acted merely as agent in the ordinary discharge of his business, was responsible in trover to the true owner. *Greenway* v. *Fisher* (1 C. & P., 190), discussed. GANLY *v.* LEDWIDGE **[Q. B. X. 52**

3. —— *Market overt—Sale by public salesmaster—Trover—Conversion—Stolen goods.*] A salesmaster who innocently receives into his cattle-pen, in a market overt, and sells stolen cattle is liable in trover to the true owner for the value of the cattle. *Ganly* v. *Ledwidge* (X. 52) followed. DELANEY *v.* WALLIS AND SONS - - - **E. D. XVII. 111**

[This was affirmed on appeal, 14 L. R. (Ir.) 39.]

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