

PRACTICE.—*Continued.*

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by leave of judge, notified plaintiffs that unless by this date decree agreed to, judge would make decree. 25th April, 1887.—Petition served for leave to set down anew for hearing. 26th April, 1887.—Another sittings held, case, of course, not set down. Defendants did not show existence of any injury to them by reason of delay. *Held*, 1. Under all the circumstances set out in the judgment that leave should be given to set down again upon payment of costs of the day and the petition. 2. The engagements of a witness coupled with shortness of notice may form an excuse for non-attendance upon subpoena. 3. The negligence of plaintiff's solicitor in not procuring evidence may form a ground for an extension of time for hearing. *Balfour v. Drummond*. 389

—*Varying minutes*.—Upon a motion to vary minutes the later rule is, that the only question to be argued is, What was the actual order made? except in cases where both parties consent, or where it cannot be ascertained what order was pronounced. By a judgment an indulgence was granted upon payment of costs, but no order for payment in any event was pronounced. Upon speaking to the minutes this latter order was directed to be inserted. *Balfour v. Drummond*. 467

PRINCIPAL AND AGENT.—*Admissions*.—A principal is not bound by the statements of his agent, after the happening of the act sued upon, unless the agent has authority to make such statements. *Down v. Lee*. 177

—*Power of agent appointed to receive money*.—B., one of three executors (the defendants), agreed to permit the plaintiff to become assignee of a lease granted by their testator; that the plaintiff should be allowed to deduct from the rent the value of improvements to be placed by him upon the premises to the amount of \$1,000; and that the rent should be increased by 13 per cent. of the amount of such allowances. The improvements were made, but the value was not deducted out of the rent. In an action against the defendants personally, and not as executors, a verdict was given for plaintiff. *Held*, 1. That there being no proof of a joint promise, the verdict was wrong except as to B. 2. That the receipt of rent by B. only showed that he had power to receive the rent in money. 3. That an agent authorized to collect a debt, can receive it in money only. *Paisley v. Bannatyne*. 255

PROMISSORY NOTE. *See* Bill of Exchange.

PUBLIC WORKS ACT.—*See* Injunction.

QUIA TIMET.—*Specific performance of covenant to pay off mortgage.*

In a conveyance of land the grantee covenanted "to save harmless and indemnified" the grantor from a mortgage previously executed by him and from all claims and demands in respect thereof. *Held*, 1. That after demand made by the mortgagee for payment upon the grantor, and before the grantor had paid any money, he could obtain specific performance of the contract. 2. The mortgagee would not be a proper party to such a bill. 3. The grantee must rely upon the covenant and not upon any express or implied agreement to pay off the mortgage. *Horsman v. Burke*. . . . . 245