130th section of the C. L. P. Act, 1856, and if defendant do so plead, plaintiff may sign judgment under 135th section. And where, after execution issued, a judgment regularly signed is set aside upon the merits, defendant will be ordered to pay into court the amount for which judgment was signed. Per Hagarty J., Nov. 8.

Brett v. Smith et al.

The affidavit on which an application is made for a writ of trial should show where the venue in the action is laid.—*Ib.*

Nimmo v. Flannigan et al.

The statement in a declaration that a promissory note was duly presented and *dishonoured*, is a sufficient averment of non-payment as against the maker, and probably as against the endorser also; but query.—*Ib.*, Nov. 3.

Starrett v. Manning.

Defendant's attorney accepting service of summons has the same time within which to appear as if the service of the writ of summons had been served on defendant himself.—Per Burns J., Oct. 8.

Taylor v. McKinlay.

Upon an application under 130th section of the C.L.P. Act, 1856, for leave to plead in denial of a deed or agreement, and at the same time in confession and avoidance of it, it should be shown that something material may turn upon the construction of such deed or agreement.—Per Burns J., Oct. 18.

Taylor v. Carroll.

In an action against Sheriff on his bond, and also for neglecting to arrest a party against whom plaintiff had issued a Capias, and for a false return of such Capias defendant will be allowed to traverse such party's indebtedness to plaintiff, and at the same time to plead "not guilty," and also to traverse the separate allegations of the declaration upon an affidavit of the matters required by 130th section of the C. L. P. Act, 1856, and further stating good reason for denying the indebtedness of such party to plaintiff.—*Ib.*, Oct. 23.

Lock v. Harris.

On an application for a writ of trial, the affidavit on which the summons is obtained should show where the venue in the action is laid.—Per Hagarty J., Nov. 8.

MONTHLY REPERTORY.

COMMON LAW.

EX. Pardington v. South Wales Railway Co. *May* 28.

Two directors of a completely registered joint stock company signed and sealed with the seal of the company a document, of which the following is a copy: "Three months after date we, two of the directors of the Ark Life Assurance Society, by and on behalf of the said society, do hereby promise to pay M. or order, the sum of £67 15s. 6d., for value received." There was no counter signature by the secretary of the company.

Held, a promissory note binding on the company, and not the parties who signed it.

EX. Gulliver v. Gulliver et al. *June* 6.

Replication on equitable grounds—Statute of Limitations—Set-off—Will—Assent of executor.

To an action against an executor on a debt due by his testator, the defendant pleaded, first, the statute of Limitations, and secondly, that at the time of the death of the testator the plaintiff was indebted to him in an equal amount, which being still due the defendant was willing to set-off against the plaintiff's claim. To the first of these pleas the plaintiff for replication on equitable grounds, replied that the causes of action therein mentioned accrued within six years before the death of the testator; that he by his will appointed the defendant his executors, and devised certain freehold estate to them upon trust to sell, and also the residue of his personal estate upon trust to call it in, and should out of the monies to arise from the sale of the real estate, and the calling in of the personal estate, pay debts and legacies, and hold the residue in trust for the plaintiff and his other children in equal shares, averring the sufficiency of the money thus realized to pay all debts and legacies. To the second plea the plaintiff replied for the replication on equitable grounds, that the testator devised and bequeathed to him certain freehold estate and a certain sum of money, and devised and bequeathed certain other property, real and personal, to his other children, and declared that the money and other effects then already advanced and delivered by him to his children, should be deemed advancements, and that they should not be required to account for the same; averring that the matters of set-off were money and effects so advanced, &c.

Held, that both these replications were bad.

Q.B. Thomas v. The Baron Von Stuttarheim. *Nov.* 3.

Practice—Examination of witness in extremis—Application for rule absolute in the first instance—Common Law Procedure Act, 1851, *sec.* 46.

The court will not grant a rule absolute in the first instance for the examination of a witness, although he be at the point of death.

Semble, that sec. 46 of the Common Law Procedure Act, 1851, does not give the court the power of doing so.

C.P. Ward v. Stewart et al. *Nov.* 4.

Contract—Construction of.

By the terms of a written contract the plaintiff was to receive from the defendants a per centage commission on the proceeds of some cargoes of palm oil coming to them from Africa, but was to be entitled to no commission on any wet, dirty, or unmerchantable palm oil. Some of the oil brought over had small quantities of water in it, but was merchantable. The oil was of a description which is hardly ever entirely free from water, and the weight only, and not the quality, was affected in the present instance by the presence of the water. It was in evidence that any amount of wet made the oil wet. The judge ruled that if the oil were either wet or dirty the plaintiff was not entitled to commission on it, and the defendants had a verdict.

Held, that the direction was right.

C.B. Atwood et al v. Emery. *Nov.* 7.

"As soon as possible,"—Meaning of a contract.

The defendant on the 30th Nov. 1855, wrote to the plaintiffs to send him some iron hoops as soon as possible. They were not sent till the 30th January following, when the defendant refused to accept them. An action was brought upon the special contract, to which the defendant pleaded that the hoops were not sent "as soon as possible."