STATUTE OF LIMITATIONS.

The decision of Lord Chelmsford in *Seagram* v. *Knight*,* has occassioned much surprise in the profession. It had always been supposed to have been settled beyond doubt that, after the Statute of Limitations has once begun to run, its operation cannot be suspended. So Mr. Broom, in his commentaries, estimates the result of such decisions as there are bearing on the subject; and so Lord Abinger, in an *obiter dictum* in *Rhodes* v. *Smethurst*, supposed the law to be; indeed, so little doubt has been felt on the point that it seems to have been scarcely ever fairly raised before the courts. Now, however, Lord Chelmsford has definitely decided that the operation of the statute, after it has begun to run, can be suspended, in the case where the person who has a claim on another for a tortious act committed by the latter dies, and administration to his estate is taken out by the other.

This decision appears to have been somewhat by misadventure, if we may venture to use the expression. The case was one in which an appeal was made from a decree of the Master of the Rolls, upon a bill praying an account of timber felled by a tenant for life impeachable for waste. Lord Chelmsford stopped the counsel for the respondents, who were also the defendants, and delivered judgment, deciding that, as regarded a portion of the claim, the statute had barred the remedy, but that, as regarded the remainder, its operation had been suspended in the manner above mentioned: and his Lordship grounded this view upon two very old cases—one in Coke and the other in Salkeld—in which it was laid down that where administration of the goods of a creditor is committed to a debtor, this works, not an extinction of the debt, but a suspension of the remedy. No doubt it is very hard that the remedy should be suspended and yet the statute run on, but these cases afford, we think, no *authority* for holding a suspension of the operation of the statute. The respondents' counsel, finding at the conclusion of the judgment that it did not give them all they had contended for, were placed in a rather singular position, The appellants' counsel had been heard, and, without being heard themslves, they had had judgment given against them upon a part of their contention. By way of a sort of reply after judgment, they proceeded to "mention" *Rhodes* v. *Smethurst*, but Lord Chelmsford, after reading the remarks of Lord Abinger, to which his attention was directed, said that his opinion was the same, though not, perhaps, as strong as before. Possibly, had the respondents' counsel been heard, the decision upon the point of law would have been the other way. The case is certainly a very singular one.—*Solicitors' Journal.*

* See this case *ante* p. 266.

UPPER CANADA REPORTS.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law, Reporter in Practice Court and Chambers.)*

DEVLIN v. MOYLAN.

Pleading several matters—Libel—Fair comment on public acts.

The alleged libel purported to be founded on information given to the defendant by "a resident of this city, yesterday" (meaning the day before the publication). One of the pleas sought to be pleaded alleged that the gravamen of the charge was matter of "public notoriety and discussion" and that the words used were a fair comment, &c., and making other statements which, it was alleged, would enable defendant to introduce evidence of irrelevant matters.

Held that a general plea that the publication was a fair *bona fide* comment, &c., might be pleaded, but the plea as now framed, and set out below, was inconsistent with the words used in the alleged libel, and could not be allowed.

[Chambers, September 30, 1867.]

This was an action for an alleged libel in *The Canadian Freeman*. The words complained of were as follows:—

"1844—What became of the repeal rent? An old repealer, a resident of this city, informed us yesterday, that in 1844, Mr. Barney Devlin was the recipient of a considerable sum subscribes towards the cause of repeal, that did not reach the Conciliation Hall. Could not Mr. Hagey or Mr. Brennan or some of the old residents of Montreal West, ask Barney for some information on this important point; by all means let there be light thrown on the repeal rent"

The defendant proposed to plead, with others, the following plea:—

"That before and at the time of the publication of the alleged words, the defendant was a candidate for the representation of the Western Electoral Division of the City of Montreal, in the House of Commons in Canada; that during his candidature, questions arose and were publicly discussed as to certain contributions of money, which the defendant had received in the year 1844, in the public capacity of Treasurer, to promote the repeal of the union between Great Britain and Ireland, and which it was publicly alleged had not been paid over for that purpose; that said questions as to the receipt and disposition of such money were matters of public notoriety and discussion, and were and are matters which it was lawful, fit and proper to discuss in reference to the defendant's said candidature, and the alleged libel was, and is a fair comment in a public newspaper on the public acts and conduct of the defendant; and the said words were published by the defendant, believing the same to be true, and without any malice."

McKenzie, Q. C., opposed the allowance of the plea, because it would enable the defendant improperly to introduce evidence of many irrelevant matters, and that the plea, if allowed at all, should be simply, that the publication was a fair comment upon the plaintiffs conduct and proceedings.—He referred to *Lucan* v *Smith*, 1 H & N. 481, as expressly in point; Bullen & Leake, 611, and notes; *Paris* v. *Levy*, 9 C. B. N. S. 342; *Lewis* v. *Levy*, E. B. & E. 537, 27 L. J. Q. B. 282; *Campbell* v *Spottiswoode* 3 B. & S. 769;