on the ground of suppression of facts, is not an appeal from that order.

Armour, for judgment creditor.

Miller, for attaching creditor.

Wilson, C. J.] [Nov. 24.

FRANCIS v. GRACEY.

In an application to dismiss the plaintiff's action under Rule 255, the six weeks mentioned in the rule may be made up of time that elapsed before, as well as since, the coming into force of the Judicature Act.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared from the various Reports by A. H. F. LEFROY, ESQ.)*

FARROW v. AUSTIN.

Imp. J. A. 1873, *s.* 49, *O.* 55, *r.* 1—*Ont. J. A. s.* 32, *O.* 50, *r.* 1 (*No.* 428—*Appeal for Costs.*

[June 21, C. of A.—L. R. 18 Ch. D. 58, 45 L. T. N. S. 227.

This was a suit for administration of the trusts of a will. On further consideration MALINS, V. C. made an order refusing the plaintiff, a married woman, who was a residuary legatee, and one of the executors under the will, any costs of the suit, and ordering the next friend to pay the costs of taking an account of what, if anything, was due from another of the executors on an account current between him and the testator.

The plaintiff appealed.

The preliminary objection was taken that this was an appeal for costs only.

JESSEL, M. R.—According to the rules acted upon by Courts of Equity prior to the Judicature Act, a residuary legatee filing a bill for administration was entitled to costs out of the estate unless some special grounds were shown for depriving him of them; and if he was also a personal representative, his *prima facie* claim to costs out of the estate was all the stronger. This right is expressly saved by rule 55 (Ont. O. 50). The appellant has a *prima facie* right to costs out of the estate which can only be defeated by shewing some special grounds, and I consider that her costs do not come within the description of costs which are in the discretion of the Court.

BAGGALLAY and LUSH, L. JJ., concurred.

NOTE.—*Imp. J. A.* 1873, *s.* 49, *O.* 55, *r.* 1, *and Ont. J. A. s.* 32, *O. No.* 428, *are identical, respectively.*

BEDDALL v. MAITLAND.

Imp. O. 19, *r.* 3. *Ont. O.* 15, *r.* 3 (*No.* 127).

Pleading—Counter-claim.

A counter-claim may be brought in respect of a cause of action arising after the issue of the suit in the original action.

[Feb. 24, Ch. D.—50 L. J. N. S. 401, L. R. 17 Ch. D. 174.

In this action, part of the wrongful act alleged by the defendant's counter-claim, for which he claimed damages, consisted of forcible ejectment at a date subsequent to the issue of the writ.

Counsel for plaintiff took an exception to jurisdiction as regarded the counter-claim, on grounds indicated in above head-note, and cited *The Original Hartlepool Collieries Co.* v. *Gibb*, L. R. 5 Ch. D. 713; *Vavasseur* v. *Krupp*, L. R, 15 Ch. D. 474; *Stooke* v. *Taylor*, L. R. 5 Q. B. D. 569; *Winterfield* v. *Bradnum*, 47 L. J. Q. B. 270. Counsel for defendant, *contra*, contended that a counter-claim was in the nature of a fresh action, and relief could be given upon it in respect of any cause of action accrued before the counter-claim was put in, and cited *Child* v. *Stenning*, L. R. 7 Ch. D. 413; 11 Ch. D. 82; *Fritz* v. *Hobson*, L. R. 14 Ch. D. 542; *Chatfield* v. *Sedgwick*, L. R. 4, C. P. D. 459; *Neale* v. *Clarke*, L. R. 4 Ed. D. 286.

FRY, J., after remarking that he had a strong opinion on the subject, and regretting that it differed from that of the M. R. in *The Original Hartlepool Co.* v. *Gibb*, *supra*, and after citing Imp. J. A. 1873, sec. 25, sub-sec. 3 (Ont. J. A., sec. 16, sub-sec. 4), and observing on the generality of its terms, turned to the rules and forms

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It is the desire of the compiler to make the above collection of cases a complete series of all current English decisions, illustrative of our new pleading and practice, under the Supreme Court Judicature Act.