

RECENT ENGLISH PRACTICE CASES.

BRETT, L. J.—For the solution of this question one must look at the Judicature Orders and Rules, since a proceeding against a firm by the firm's name was not known at common law; and it is a new proceeding. . . . In all cases at common law, which are not provided for by the Judicature Acts, the proceedings are to be as they were before the Acts, and in all cases within the Judicature Acts, where no special steps in proceedings are provided, the proceedings are to be as nearly like as they can be to analogous proceedings before these Acts. . . . There is no rule or order as to how judgment is to be entered where the writ is against the firm, therefore the way in which it is to be entered must be determined according to the canon rules of construction which I have enunciated. The rule at common law is that the judgment must follow or accord with the writ. Under the Judicature Act and its orders, the writ may be against the firm. Therefore, by analogy, the judgment must be against the firm. . . . The only mode of putting such judgment into execution is by proceeding under Imp. O. 42, rule 8 (Ont. Rule 346). That rule provides that execution may issue "against any person who has been served as a partner with a writ of summons and has failed to appear." It is not necessary to determine now whether such service must be personal, though I still incline to think it must be. . . . In my opinion the judgment in this action must follow the writ and be against the firm, and then execution may issue against the firm, and against every individual member of it, either without or after leave given to do so.

[NOTE.—*Imp. O. 9, r. 6, and Ont. Rule 40 are virtually identical; and Imp. O. 42, r. 8, and Ont. Rule 346 are identical.*]

SCOTT v. SAMPSON.

Imp. O. 19, r. 4—Ont. Rule 128—Pleadings—Facts not stated.

If in an action of libel a defendant desires to give evidence of general reputation, or any other material facts, he must shew upon his statement of defence that it is his intention to offer such evidence and to rely on such material facts.

[March 20.—L. R. 8 Q. B. D. 491.

The action was for a libel published by the defendant of the plaintiff, alleging that the latter had extorted a sum of £500 from Admiral Carr

Glyn, by threatening to publish defamatory matter of Miss Neilson, an actress, then lately dead.

The case was tried before the L. C. J. and a special jury, and the defence set up was that the alleged libel was true. The jury returned a verdict for the plaintiff.

The defendant now claimed a new trial on the ground that the L. C. J. misdirected the jury in rejecting (i) evidence of the plaintiff's general bad character; (ii) evidence that rumours to the same effect as the libel complained of were in general circulation before the publication of the of the libel.

MATHEW, J.—Under our new procedure, a statement of the material facts upon which the defendant intended to reply ought to have appeared in his pleadings. But there had been no notice upon the statement of defence in this case that evidence would be offered at the trial of the matters with respect to which the ruling of the L. C. J. is complained of, and on this ground I am of opinion that the evidence was properly rejected.

CAVE, J.—The defendant proposed to prove certain facts which he alleged were material, but these facts were not stated or referred to in the pleadings, as required by Imp. O. 19, rule 4 (Ont. Rule 128), and it appears to me that on that ground their rejection might have been supported, had they been material, which, however, I have said I think they were not.

[NOTE.—*The Imp. and Ont. Rules are virtually identical. The legal point which arose in this case regarding the admissibility of certain evidence, apart from the question of pleadings, is noted among the Recent English Decisions.*

SANDERS v. SANDERS.

Imp. O. 58, r. 5—R.S.O., c. 38, sect. 22. Further evidence in Court of Appeal.

That, upon a case heard on admissions, those who advised one of the parties put a construction upon the admissions, which they have since found is not a right construction, is not a sufficient ground on which to apply for leave to adduce further evidence, on appeal, under the above section.

[Nov. 29, C. of A.—51 L. J. N.S. (Ch. D.) 276.

This was an appeal from a decision of Malins, V.C. The case was tried upon admissions. The question at issue was whether the plaintiff's