

RECENT ENGLISH PRACTICE CASES.

things) he ordered the payment of a sum of money to Burrowes by Forrest.

The award had not been made a rule of Court.

H. G. Deane now moved on behalf of Burrowes for an order enforcing the award.

THE MASTER OF THE ROLLS, expressing an opinion that it was desirable to assimilate the practice of the Chancery and Common Law Divisions, made the order as asked without requiring the award to be made a rule of Court.

SCHGOTT V. SCHGOTT.

Married woman suing by her next friend—Authority—Security for costs.

[July 29.—W. N. 125.]

Motion on behalf of defendants, a husband and the wife's trustee under a separation deed (the trustee having refused to give his consent to the wife's proceeding) that the action, which had been commenced by the wife, suing by her next friend for the payment of unpaid instalments of maintenance money under the deed, might be dismissed, on the ground that the plaintiff had never given the alleged next friend any authority to act; or that the next friend might be ordered to give security for costs, on the ground that he was not a householder, and that a witness had ascertained upon inquiry that he had no visible means of paying costs. In defence the next friend deposed that he was in a position to pay any costs that he might be ordered to pay, but as to his authority he said nothing.

THE VICE-CHANCELLOR said it was new to him that a next friend should be interrogated as to his authority. If a wife were to come forward and say she had not given any authority, that would be another thing. But until the wife said this, or until some one said this and proved it, the case must go on. Neither could he put the alleged next friend on the terms of giving security for costs. The defendant, the husband, was the last man who should make this application, having deprived his wife of the means of subsistence. If he could answer the case he had the remedy in his own hands, for if he should succeed, he might pay himself the costs out of the annuity.

Motion refused; costs to be costs in the cause.

JENNINGS, APP.; JORDAN AND PRICE, RESPST. *Imp. O. 16, r. 7—Ont. O. 12, r. 7 (No. 95.) Mortgage—Consolidation—Parties—Trustees.*

[H. of L., August.—W. V. 127.]

Appeal from a decision of the Court of Appeal, reported *sub. nom. Mills v. Jennings*, 13 Ch. D. 639.

THE LORDS affirmed the decision with costs, with the variation of reserving liberty for the respondents or either of them, or for any of the *cestuis que trust* under the deeds of the 3rd of December, 1838, and the 6th May, 1868 respectively (in case of redemption of the mortgaged premises included in the decree by the respondent Jordan) to apply to the Chancery Division for the addition to the decree of any further accounts and directions consequential thereon, which by reason of such redemption, the Court may think just.

[NOTE.—*Imp. O. 16, r. 7, and Ont. O. 12, r. 7 are identical. Mills v. Jennings is cited at some length by Taylor & Ewart, (Jud. Act) p. 187.*]

AUSTEN V. BIRD.

Imp. O. 16, r. 15.—Ont. O. 12, r. 17 (No. 105.) Death of sole plaintiff—Order to revive—New defendant—Service of writ.

[M. R., Aug. 5.—W. N. 129.]

This action was commenced on the 27th of July, 1880, by a sole plaintiff against a sole defendant. The plaintiff died on the 26th of December, 1880; after delivery of statement of claim, and on the 11th of February, 1881, his executors obtained a common order to revive. The plaintiffs had obtained leave to add a new defendant, but the order was not drawn up.

Coxens-Hardy applied under Order xvi. r. 15, for directions as to service, the only plaintiff named in the writ being dead. He referred to *Re Wortly, Culley v. Wortley*, 4 Ch. D. 180.

The Master of the Rolls directed copies of the original writ and the order to revive and the order adding the new defendant to be served upon him.

[NOTE.—*Imp. O. 16, r. 15, and Ont. O. 12 r.*