

RECENT ENGLISH DECISIONS.

in the bill constituted "special circumstances," had ordered a taxation, his order was affirmed by the Divisional Court of the Queen's Bench Division (Mathew and A. L. Smith, JJ.), and the latter decision was now affirmed by the Court of Appeal. The court was pressed with the rule laid down by Cotton, L.J., *In re Boycott*, 29 Chy. D. 571, but the Court of Appeal refused to adopt it, and preferred that stated by Bowen, L.J., in the same case, as follows:

Special circumstances, I think, are those which appear to the judge so special and exceptional as to justify taxation. I think no court has a right to limit the discretion of another court, though it may lay down principles which are useful as a guide in the exercise of its own discretion.

ADDING PARTY PLAINTIFF—CONSENT—ORD. XVI. RR. 2, 13
—(ONT. RULE 103 b).

The short point decided in *Tyron v. The National Provident Institution*, 16 Q. B. D. 678, by Mathew and A. L. Smith, JJ., was that under Ord. 16, r. 11, a party cannot be added as a co-plaintiff without his written consent, even though he be indemnified against costs. In the case of *Cox v. James*, 19 Chy. D. 55; 45 L. T. N. S. 471, decided under the English Rules of 1875, and which more nearly correspond with the Ont. Rule 103b, then the English Rules of 1883, it was held that it was not necessary that the consent of the party to be added should be in writing; and that it was sufficient that the solicitor for the existing plaintiff states that he has authority to consent on behalf of the party proposed to be added. Although a consent in writing is not necessary under our Rule, the consent must be given either in person or by counsel or solicitor.

TRIAL—HOSTILE WITNESS—DISCRETION OF JUDGE—
C. L. P. ACT, 1854, s. 22—(R. S. O. c. 62, s. 27).

The case of *Rice v. Howard*, 16 Q. B. D. 681, is one in which the defendant, on a motion for a new trial, sought to review the discretion exercised by the judge at the trial as to permitting the defendant's counsel to treat one of his own witnesses as a hostile witness. At the trial, in order to show that the witness in question was adverse, the judge was asked to look at an affidavit made by the witness in a former action. The judge being of opinion that there had been nothing in the witness's demeanour, or in the way he had given his evidence, to

show that he was hostile, refused to look at the affidavit; and Grove and Stephen, JJ., were of opinion that the decision of the judge at the trial on this point was final and could not be reviewed.

INTERPLEADER AS TO PART OF A CLAIM—(ONT. JUD.
ACT, s. 17, ss. 3).

In *Reading v. School Board for London*, 16 Q. B. D. 687, a Divisional Court of the Queen's Bench Division (Day and Wills, JJ.) affirmed the order of A. L. Smith, J., holding that a debtor against whom an action is brought, and who has had notice of an assignment of the debt, may interplead as to part only of the claim, and may dispute the residue.

MUNICIPAL BY-LAW—UNREASONABLENESS—MUSIC IN
STREET ON SUNDAY.

In *Johnson v. Croydon*, 16 Q. B. D. 708, a Divisional Court, composed of Hawkins and Mathew, JJ., were called on to consider the validity of a municipal by-law, which provided that "no person, not being a member of Her Majesty's army or auxiliary forces, acting under the orders of his commanding officer, shall sound or play upon any musical instrument in any of the streets of the borough on Sunday."

The court held that the by-law in question was unreasonable, and *ultra vires*, inasmuch as it prohibited all music, however harmless or free from offence it might be, and they therefore quashed a conviction made under it.

BALLOT PAPER—ABSENCE OF OFFICIAL MARK.

In *Re Thornbury, Ackers v. Howard*, 16 Q. B. D. 739, was a case stated by Field and Day, JJ., for the opinion of the court, as to the validity of ballot papers, which conformed in other respects to the requirements of the Ballot Act, 1872 (35 and 36 Vict. c. 33), but had not on their face the official mark directed by s. 2 of that Act to be marked on both sides of the ballot paper. This section provides that "each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot shall be marked on both sides with an official mark, and delivered to the voter within the polling station. . . . Any ballot paper which has not on its back the official mark . . . or on which anything, except the