

## COMMENTS ON CURRENT ENGLISH DECISIONS.

THE *Law Reports* for July comprise 21 Q. B. D. pp. 1-177. 13 P. D. pp. 89-119; and 38 Chy. D. pp. 237-287.

## PRACTICE—EVIDENCE—FOREIGN COMMISSION—ORD. 37, R. 5.

*Cock v. Allcock*, 21 Q. B. D. 1, was an appeal from chambers, in which it was held by a Divisional Court (Field and Wills, JJ.) overruling Denman, J., that where material witnesses are resident abroad, the fact that such witnesses are in the employment or under the control of the party who desires to obtain their evidence, is no sufficient ground for refusing an order for a commission, *Lawson v. Vacuum Brake Co.*, 27 Chy. D. 137, was stated by Wills, J., to be inaccurately reported so far as the head note is concerned.

## PRACTICE—PROHIBITION—PROCEEDINGS ON CROWN SIDE—PROCEEDINGS AS PAUPER—ORD. 16, R. 22—ORD. 68, RR. 1, 2.

In *Mullensisen v. Coulson*, 21 Q. B. D. 3, it was held by Cave and A. L. Smith, JJ., that there was no power to admit an appellant to appeal *in forma pauperis* from the order of a Divisional Court granting a prohibition. Ord. 16, r. 22, was held not to apply to a proceeding on the crown side, as Ord. 68, r. 1, 2, expressly provides that Ord. 16, r. 22, shall not affect the procedure or practice in proceedings on the crown side. (See Ont. C. R. 1). We may observe *en passant* that the new Consolidated Rules of Ontario fail to prescribe any practice in civil proceedings for suing or defending *in forma pauperis*.

## PRACTICE—SERVICE OUT OF JURISDICTION—DEFENDANT FOREIGNER RESIDING ABROAD—SERVICE OF WRIT—NULLITY—ORD. 11, R. 6; ORD. 70, RR. 1, 2—(ONT. C. R. 232).

*Hewitson v. Fabre*, 21 Q. B. D. 6, is another decision of Field and Wills, JJ., on a point of practice. By Ord. 11, r. 6, (Ont. C. R. 232), it is provided that where the defendant is neither a British subject nor in British dominions, notice of the writ of summons, and not the writ itself, is to be served upon him. In this case the defendant was a foreigner residing in France, who was sued for goods sold and delivered to him in England. The plaintiff obtained a judge's order for the service upon him of the writ out of the jurisdiction, upon an affidavit which, in good faith, but erroneously, stated that the defendant was a British subject; and under this order the defendant was served with the writ in France, and judgment was signed against him for default of appearance. Upon motion to set aside the judgment, it was held that the service of the writ instead of a notice was a nullity, and not a mere irregularity, and the order for the service of the writ and all subsequent proceedings were set aside. The reason of the decision may be gathered from the following remarks of Field, J., after observing that the service of English writs on defendants in Ireland and Scotland had been the subject of complaint, he goes on to say:

"But the evil is greater in the case of foreign countries, the governments of