

THE FOLLIES OF LITIGATION.

In the recent case of *Comey v. Fenton*, 40 Ch. D. 518, Kekewich, J., observed, "I know of nothing which requires more careful exercise of judicial power than the deciding on, or granting applications when there is no real argument; the consent business of the Court being, according to my experience, as a rule even more difficult than the contentious business." This opinion perhaps is not shared in by all the members of the Bench, but we think, notwithstanding, that it is none the less true. In contentious cases the Court has generally the assistance of the Bar, all the facts are presented, and the authorities bearing on the case are usually brought to the notice of the Court. On the other hand in consent motions, or *ex parte* applications, the Court usually gets very little assistance from the Bar, as the only parties represented are those who are interested in getting the Court to make the order asked.

Point is given to Mr. Justice Kekewich's remarks by a matter which was lately before the English Court of Appeal. The matter in question was an application to strike a solicitor off the rolls for improper conduct, and though the Court of Appeal reversed the order striking the solicitor off the rolls, they, nevertheless, felt constrained to make some strong observations on the scandalous state of affairs which the facts of the case disclosed.

It appeared that a man named William Coppin, who had acquired a possessory title to a house, died, leaving a will whereby he devised the house to his widow for her life, with remainder to his six children. The widow died, leaving a will whereby she (although having only a life estate) purported to devise the house in fee to a daughter who lived with her, and under this will the daughter claimed to be solely entitled; her eldest brother also claimed the property as heir-at-law. The brothers and sisters quarrelled bitterly amongst themselves. The mother's devisee then went to the solicitor in question, and the opinion of counsel was taken, who advised that the property was divisible between all the brothers and sisters under their father's will, and he advised that they should all consent to a sale and a division of the proceeds amongst them; and if this could not be done, then that it would be necessary to apply in the County Court for a partition. The daughter, who claimed as devisee of her mother, refused to get the consent of the other parties to a sale, and instructed the solicitor to go on with a partition suit. This suit was accordingly brought, and resulted in a sale of the property for £360; and the solicitor concluded the proceedings by sending a bill for his costs of the suit, amounting to £400! and it was in consequence of this outrageous disproportion between the costs and the fruits of the litigation, that the application was made against the solicitor.

The Queen's Bench Divisional Court considered the solicitor had been guilty of misconduct, and struck him off the rolls; but on appeal the Court of Appeal reversed the order. On referring to the proceedings in the County Court suit, it appeared that although the property was producing only 10 shillings a week, yet the County Court judge had, on an *ex parte* application, granted an order for a receiver; and that in pronouncing the judgment for partition he had included in