

RECENT ENGLISH DECISIONS.

questions of law involved in the above contentions, as the elections are now over; and before the next general election the question may be set at rest, either by judicial decision or legislative enactment.

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The *Law Reports* for February comprise 18 Q. B. D. pp. 161-314; 12 P. D. pp. 29-45 and 34 Chy. D. pp. 85-216.

PRACTICE—DISCOVERY—INSPECTION OF PROPERTY—CO-DEFENDANTS—ORD. 50 R. 3; ORD. 31 R. 12. (ONT. RULES 398, 322.)

In *Shaw v. Smith*, 18 Q. B. D. 193, the Court of Appeal was called on to construe Ord. 50 r. 3 (Ont. R. 398) which provides that it shall be lawful for the court or a Judge upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for (among other things) the inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein. Ord. 31 r. 12 (Ont. Rule 222) provides that "any party" may apply for an order directing "any other party" to any cause or matter to make discovery. Under this last rule it was held in *Brown v. Watkins*, 16 Q. B. D. 125, that discovery could not be ordered except as between opposite parties. This action was brought against the defendant, Smith, for breach of a covenant for quiet enjoyment, and against the other defendants for letting down the surface of plaintiff's land by working their mines. Smith obtained an order to inspect the mines of his co-defendants under the plaintiff's lands and the land adjoining thereto. It was contended on the appeal from this order that the court had no jurisdiction to make such an order as between co-defendants, between whom no issue was pending, and the Court of Appeal (overruling the Divisional Court) held that this contention must prevail; *Brown v. Watkins* was explained, and the words "opposite party" used in that case were stated to include co-plaintiffs, or co-defendants, as between whom any question was in conflict in the action.

STATUTE OF LIMITATIONS (21 JAC. 1 c. 16)—DEATH OF DEFENDANT PENDING ACTION—FRESH ACTION AGAINST EXECUTORS.

In *Swindell v. Bulkeley*, 18 Q. B. D. 250, the Court of Appeal declined to depart from the long established, but what they admitted was a forced construction of the Statute of Limitations, 21 Jac. 1 c. 16, whereby, in the event of a defendant dying, pending an action, the plaintiff has been held entitled to bring a fresh action within a reasonable time, against the deceased defendant's personal representative, notwithstanding that in the meantime the period of limitation under sec. 3 had expired. In this case an action was commenced on a bill of exchange against the acceptor within the six years by the issue of a writ. The writ, however, was not served, and the defendant died before the six years had expired. Before the six years had expired his will was proved. About six months after this, and about a month after the expiration of the six years, the plaintiff brought the present action against the executors, and it was held that it was in time.

Lord Esher, M.R. at p. 253, says:

The rule was, that where an action was commenced within the period of limitation, and the defendant died, then the plaintiff had a right to bring a new action against the executor or administrator, if he did so in a reasonable time. That is what has happened here.

The court was unanimous that the provisions of the Judicature Act for the continuing of proceedings in the event of the death of a defendant did not warrant any alteration in the interpretation to be placed upon the statute.

PRACTICE—PARTICULARS—ALLEGED FALSE ENTRIES.

None of the cases in the Probate Division seem to require notice here: we therefore proceed to the cases in the Chancery Division. The first to which we think it necessary to call attention is *Newport Slipway D. y Dock Co. v. Paynter*, 34 Chy. D. 88. In this case a question of practice is discussed. The plaintiffs had bought a business from the defendants and employed them to manage it, the defendants guaranteeing that the profits would amount to a certain yearly sum. The statement of claim alleged that the defendants had made false entries in the books for the purpose of making the working expenses appear less