C. P. EDWARDS v. EDWARDS. *November* 17.

Common Law Procedure Act 1854—*Compulsory reference to County Court Judge—Costs—On what scale to be taxed.*

In case of a compulsory reference to a County Court Judge under the Common Law Procedure Act 1854, the cause is still a cause in the superior court and the costs are to be taxed according to the scale of the superior court.

This was a rule calling on the defendant to show cause why the Master should not review his taxation having taxed according to the County Court scale.

The Court were of opinion, costs ought to be taxed according to the scale of the Superior Court.

EX. HILL v. FROST. *November* 10.

Interpleader Act—Application by Sheriff—Under Sheriff—Attorney for claimant—Statute 1 & 2 *Wm. IV., ch.* 58, *sec.* 6.

The circumstance that the under sheriff acted as attorney for the claimant will not unless he so acted as to prejudice the execution creditor, induce the court to refuse the sheriff relief under the Interpleader Act.

The following cases were cited on behalf of the execution creditor. *Dudden* v. *Long*, 1 *Bing., N C* 299. *Jale* v. *Balue*, 2 *D & L* 718. *Crump* v. *Day*, 4 *C B*, 760. *Ridgeway* v. *Fisher* 3 *Dowl*, 567.

WATSON, B.—In *Dudden* v. *Long*, the under sherif was not only connected as an attorney with the execution creditor, but he so acted as to prejudice the claimant. Nothing of the sort is shown here.

EX. FISHER v. HINDER. *November* 20.

Withdrawal of writ—Notice to bailiff.

A letter was addressed to the defendant who held a warrant to arrest the plaintiff, by the attorneys who had issued the writ, informing him that the action was arranged, and that notice had been given to the plaintiff's attorney of the withdrawal of the writ.

Held, that this was under the circumstances, a sufficient notice to the bailiff not to execute the writ of *Ca. Sa.*, and that in this particular case it was not neccessary to shew that the notice had actually reached the Sheriff, it being the defendants duty as his agent to communicate it to him. Two questions discussed in this case were—Did the defendant stand in the position of agent to the sheriff so as to make the notice to him? And was the notice itself sufficiently explicit to make it the duty of defendant to inform the sheriff?

Both were decided in the affirmative.

EX. WILLIAMS v. GREAT WESTERN RAILWAY CO. *Nov.* 12.

Jury—Interested juryman—Cause of challenge—New trial.

The court will not set aside a verdict in favor of a joint stock company merely on the ground that a shareholder was upon the jury, and was not challenged in consequence of the circumstance not being known when he was called.

The Court in delivering judment said:

Had there been any arrangement to procure such a person to be on the jury to influence the other jurymen, the court might interfere, or without any arrangement or manœuvering of any sort, if the court perceived that injustice had been done, they might interfere, but *per se* it is no cause for disturbing the verdict.

C. C. R. REGINA v. AARON LYONS. Nov. 20.

Arson—setting fire to goods in a house in the prisoners occupation with intent to defraud—Pleading—Fire Insurance—14 & 15 *Vic. c.* 19, *s.* 8—7 *Wm.* 4, *and* 1 *Vic. c.* 89, *s.* 3.

It is a felony, under 14 & 15 Vic. c. 19, s. 8, coupled with 7 Wm. 4, & 1 Vic. c. 89, s. 3, for a man to set fire to goods in a house in his own occupation, with intent to defraud an Insurance Company by burning the goods.

One of those Acts makes it felony to set fire to a house with intent to defraud. The other, felony to set fire to good in a house, the setting fire to which house would be felony.

If the intention to defraud is meant to extend to the defrauding of any person who may be defrauded by the effects in the house being destroyed, then, in this case it would be felony to set fire to the house; but setting fire to goods in a house, the setting fire to which house would be felony—is felony.

C. C. R. REGINA v. HILTON AND MCEVIN. *Nov.* 22

Pleading—Indictment charging previous conviction—6 & 7 *Wm.* 4 *c.* 3—*Evidence of receiving—Principal in second degree.*

Where an indictment for felony lays a previous conviction, notwithstanding that when the prisoner is given in charge to the jury, the subsequent felony must be read alone to them, in the first instance it is no objection to the indictment, that the previous conviction is laid at the commencement.

Upon an indictment against E. H., and another for stealing and receiving, it was proved that H. was walking by the side of the prosecutrix, and E. was seen just previously following her. The prosecutrix felt a try at her pocket and found her purse gone, and on looking round saw H. walking with E. in the opposite direction, and saw H. handing something to him.

The jury were directed, that if they did not think from the evidence that E. was participating in the actual theft, it was open to them on these facts to find a verdict of receiving. The jury found H. guilty of stealing, and E. of receiving. *Held*, that upon the finding of the jury, E. was not a principal in the second degree as the jury had not found that he was acting in concert with the other prisoner in the theft, and that the conviction was right.

Held also, that the direction to the jury was right.

It was objected, that upon the facts proved, the jury should have been told to find McEvin guilty of stealing or of no offence. Upon the facts he was a principal in the second degree, aiding and abetting, present, and near enough to afford assistance; Archibold's Criminal Pleading. Williams, J, that is not enough to constitute a principal in the second degree, there must be common purpose and intention. Wightman, J., thought that they, the jury, might very well have inferred concert but they had not done so.

L. J. WALL v. COLSHED. *July* 6, 7.

Will—Construction—Conversion.

A testator gave the rents of his real and personal estate to his wife for the support of her and her children, till the youngest attained 21, and then devised certain part of his real estate to his daughter E., for life, and after her death to his trustees, upon trust to sell and divide the proceeds among E.'s children equally. The testator gave other real estates in the same terms, to his son W., for life, and after his death to his trustees upon similar trusts for sale, for the benefit of his children; and he gave the residue of real and personal estate to his daughters E., and A., equally. And he declared that in case either of his children should die under 21, his or her share should go to the survivors or survivor of them for life, and after the death of the survivor, he gave such shares to the trustees upon trust to sell for the benefit of the issue of the deceased children. E., and W., attained 21, and died without issue, and the question arose whether their shares belonged to the real or personal estate of the testator.

Held, on the whole construction of the will, that the trusts for sale did not depend on E. and W. having issue: but that their shares were absolutely converted into personalty.

L. J. DAVIS v. NICHOLSON. *July*, 9, 10.

Specific legacy—Liability to debts—Assent of Executor.

A testator made a specific bequest of a leasehold estate. The executor administered the testator's estate without the assistance of the Court, and assented to the bequest and assigned the leasehold to the legatee. Afterwards a creditor filed a bill for the administration of the estate.

Held, that the leasehold was liable to the debt, notwithstanding the assignment by the executor, and that it was not incumbent on the creditor first to shew that the residuary personal estate was insufficient.

Gillespie v. *Alexander*, 3 Russ. 180, distinguished.