EX. MORGAN v. FENNYHAUGH. *June* 12.

Practice—Costs of the day where the plaintiff does not proceed to trial—Default of defendant.

In order to entitle defendant to the costs of the day where the plaintiff makes default in proceeding to trial pursuant to notice, he must appear where the cause is called on.

In giving judgment, POLLOCK, C.B. said: Our judgment is upon this short ground, that it is, in reality, the consequence of the defendant's own fault, that he incurred costs which were fruitless and of no use; for if the defendant had been there he must have non-suited the plaintiff. He was not there, and the parties are in *pari delicto;* and the person who is equally in fault with the other cannot come to court and claim costs which are the consequence of the neglect in which he himself concurred; and which neglect and his concurring in it, was the cause of the mischief of which he complains.

Q.B. IN RE LORD v. LORD. *June* 12, 19.

Arbitration—Attachment—Validity of award—Appointment of umpire.

An affidavit shewing that the appointment of an umpire had been signed by arbitrators, separately, and not jointly, as it ought to have been, is admissible, and conclusive against the right to an attachment for disobeying the award made by the umpire.

CORRESPONDENCE.

To the Editor of the "Law Journal."

SIR,

The letter of your correspondent R. N., in your July issue, respecting attachments under the Division Courts Acts, reminds me of a point which has occasioned some doubt in my mind, and which, perhaps you or some of your correspondents may be able to throw some light on.

What is the meaning to be attached to the word "indebted," in the D. C. Act of 1850, sec. 64, and in form 22 in the General Rules and Forms." In the Absconding Debtor's Act, 2 Wm. 4, c. 5, s. 1, the word has reference only to *debts* properly so called. At least that construction is given by the Judges, who will not grant a fiat in case of unliquidated damages, but only for a *debt*. But the D. C. Act speaks of being *indebted* "for any debt *or damages* arising upon any contract *express or implied*." The form of affidavit (No. 22) rather seems to ignore any qualification of meaning in the word "indebted," by giving only the word "debt" at the end of the affidavit. How is a suitor to know in what case he is entitled to an attachment?

By the way, it strikes me on looking at the forms you give (p. 121) for the use of officers of Div. Courts, that you are unusually severe on the luckless jurors whom you condemn to deliberate in the dark.

I am, sir,
Your obedient servant
C. S. P.

August, 1855.

[We think attachments are issuable only in actions on contracts for sums popularly called Debts. This is the obvious meaning of the clause and the construction put on it by the Commissioners.

An error (at page 121) which escaped our proof-reader, C. S. P. has discovered. The form should read "or fire, candle *excepted;*" the omission of the last word has given an opening to C. S. P. to say a smart thing, and he has said it accordingly. We thank C. S. P. for pointing out the error. *Ed. L. J.*]

To the Editor of the "Upper Canada Law Journal."

SIR,

I think the following remarks, from a late number of the *Law Times*, may be re-published by you with benefit.

Your ob't serv't,
A. J.

"There is nothing that more forcibly impresses itself upon the mind of the practitioners, whether Barrister or Attorney, who has had any varied experience of juries, than their unsatisfactory character in local jurisdictions. It is extremely difficult to obtain justice from them. Local prejudices and interests influence them so strongly—perhaps, also, so unconsciously—that it is necessary to know the jury in order to shape the case. A remarkable instance of this has just occurred at the late Assizes at Cambridge. An action was brought by a tradesman of that town against one of the many victims to whose extravagant follies the tradesmen minister, not merely by selling, but by giving credit. The articles supplied were two gold breast-pins, a hunting-whip, and a gold signet ring, engraved; the defendant pleaded infancy, and the plaintiff replied that they were necessaries. The plaintiff admitted that he had made no inquiry of the tutor as to the youth's position in life. The father of the defendant proved that he was a clergyman, with an income of only £390 a-year—that he had allowed his son all reasonable expenses, but that at the end of the second term the foolish boy had run into debt to the amount of £500, whereupon he had removed him from College, and sent him into the army, and he was now on his way to Sebastopol.

Baron PARKE summed up strongly in favour of the defendant, and a portion of his argument is worth recording, as it may be useful in other cases. He said, that,

In order to enable the plaintiff to recover, he was bound to make out to the satisfaction of the law and of the jury, that the items of his bill, or some of them, were articles necessary to the real estate, condition and degree of the defendant in life, and not merely for that which he assumed when at the University. That was a question which did not depend on the amount of his allowance; but, taking the law from him as its exponent, the jury must say whether these articles were necessaries as above explained and understood, or were merely ornaments. In the one case the plaintiff would be entitled to their verdict, and in the other they ought to find for the defendant, who had a perfect right to defend this action, and whose father rather deserved approval than reprobation for coming forward to defend his son from the baneful system of credit into which some tradesmen in this town were but too ready to entrap the younger members of the University. The rule of law was, that an infant could not contract except for necessaries. These things which were purely ornamental an infant was not liable for; but then another question arose where the goods were not strictly of the ornamental class, for then they might become necessaries if they were such as that the infant would lose caste in society if he did not possess and use them. Now, as to the subjects of this bill, he had no hesitation in directing the jury that the hunting-whip was not a necessary, and as to the ring and the charge for engraving, it seemed to him perfectly idle to suppose that, considering the defendant's condition in life, they were necessaries. He might therefore withdraw those items from the hands of the jury, and the remaining questions were whether the two