After all, is the taking of an election recognizance a judicial act? Admitting to bail is. But here there is no judgment to be exercised, everything is prescribed by the rules of the election court. At any rate, the last mentioned cases show that it is an act of that nature which cannot be within the prohibitions of section 308.

There is another point—that the place where the recognizance was taken is not shown on the face of it. This seems to be unnecessary, if in fact the taking of it was authorized. See the form in Petersdorf, and in Burns' Justice, and *Queen* v. *Sydserff* 2 D. & L. 564. The fact that it was taken in Hamilton is supplied by the respondent himself. See *French* v. *Bellew* 1 M. & S. 302.

I refer further on the question of jurisdiction, to *Kerr* v. *Marquis of Ailsa*, 1 McQ. H. L.C. 736.

I discharge the summons, but, from the nature of the principal question, without costs.

Order accordingly.

CHANCERY CHAMBERS.

NOTES OF CASES.

PETERSON v. PETERSON.

Interim alimony—Con. order 488.

[April 20, 1874—Strong, V. C., affirming the order of the Referee, April 4, 1874.]

An omission to make the endorsement directed by Con. Order 488, to be made upon the office copy of the Bill served, does not disentitle a plaintiff to apply on motion for interim alimony, but is a question merely affecting the costs of the motion.

Where a plaintiff had neglected to proceed to a hearing at the first hearing term after issue joined, it was held that this was no bar to her obtaining interim alimony, it appearing that the neglect was owing to a mere slip on the part of her solicitor, that she had a *bona fide* intention to go to a hearing, and had made offers to change the venue with a view to enable the cause to be speedily heard.

WEISS v. CRAFTS.

Vendor and purchaser—Execution of conveyance.

[April 20, 1874.—The Referee.]

Under the fifth clause of the standing conditions of sale the purchaser makes a sufficient tender of the conveyance for execution by delivering it to the vendor's solicitor; and it is the duty of the vendor's solicitor to procure its execution by all necessary parties.

The purchaser is not bound to pay the expenses of procuring the execution of the conveyance, unless there be an express condition to that effect.

Until the conveyance is completed and delivered to the purchaser, he may properly resist payment out of Court of any part of his purchase money.

WILSON v. WILSON.

Security for costs—Order on præcipe.

[April 27—Strong, V. C., on appeal from the Referee.]

An order for security for costs can only be obtained on *præcipe* when the plaintiff admits on the face of the bill that he is resident abroad, and there is nothing in the bill qualifying such admission. Where a bill describes the plaintiff as of the City of Toronto, but stated that, "by "the advice of a physician the plaintiff had "sought change of air, and is now temporarily "resident at Rochester," it was held that an order for security for costs could not properly be granted on *præcipe*.

DUNN v. McLEAN.

Restoring dismissed bill.

[May 18—Strong, V. C., on appeal from the Referee.]

A bill dismissed for default of prosecution will not be restored unless it can be shewn that the plaintiff's cause of suit will be lost by the dismissal.

ENGLISH REPORTS.

COURT OF PROBATE.

BOUGHTON AND MARSTON v. KNIGHT AND OTHERS.

Will—Testamentary capacity.

Mental capacity is a question of degree, but the highes degree of capacity is required to make a testamentary disposition, inasmuch as it involves a larger and wider survey of facts than is needed to enter into the ordinary contracts of life. A sound mind in contemplation of law does not necessarily mean a perfectly balanced mind: *Banks* v. *Goodfellow*, [illegible] T. Rep. N. S. 813; 5. L. Rep. Q. B. 549, considered.

[28 L. T. N. S. 502, June 21, 1873.]

John Knight, deceased, late of Henley Hall, in the county of Salop, died 7th Sept., 1872 aged sixty-nine, leaving a will, bearing date Jan 27th, 1869. This was propounded by the plaintiffs, Sir Charles Henry Rouse Boughton and Mr. Edward Marston, the executors, and it was opposed by the defendants, the three sons of the deceased, and the children of a deceased daughter, on the ground that the deceased, at the time of the execution of the will, was not of sound mind.

The testator was married in 1827, and shortly after his marriage removed to Brussels, where he resided until 1848. His wife died in 1842, and in 1853, on the death of his father, he