

## PRACTICE—RECEIVER—RIGHT OF WAY, OBSTRUCTION—LEAVE TO ABATE NUISANCE, NOTWITHSTANDING RECEIVER.

*Lane v. Capsey* (1891), 3 Ch. 411, was an action for foreclosure in which a receiver had been appointed, and an application was now made to the court by third parties for leave to proceed to abate an obstruction to a right of way over the mortgaged premises notwithstanding the appointment of the receiver. The applicants, in a former action against the defendants in the present action, had established their right of way, but had failed to obtain a mandatory injunction to remove the obstruction. They now claimed the right to proceed under their common law rights to abate the obstruction. Chitty, J., without deciding whether or not the applicants had not lost their right to abatement, or whether or not they might, after notice and request to remove the obstructing house, pull it down although it was inhabited, nevertheless held that the applicants ought to have leave to pursue any remedies, or do any act they might lawfully take or do to abate the obstruction notwithstanding the receiver, leaving it to be hereafter decided, if necessary, how far such measures as they might see fit to pursue were legally open to them under the circumstances.

## PRACTICE—COPYRIGHT IN DESIGN—DEFENDANTS' PARTICULARS OF OBJECTIONS, AMENDMENT OF—COSTS.

In *Morris v. Coventry Machinists Co.* (1891), 3 Ch. 418, North, J., decided that the rule of practice in patent actions established by *Edison Telephone Co. v. India Rubber Co.*, 17 Ch. D. 137, to the effect that where a defendant asks to amend his particulars of objections, he can only be allowed to do so on the terms of the plaintiff having the right to elect to discontinue his action, the defendant paying the costs subsequent to the delivery of his first particulars, applies also to actions to restrain the infringement of copyright designs.

## WILL—LEGACY TO DEBTOR OF TESTATOR—APPOINTMENT OF DEBTOR AS EXECUTOR—RELEASE OF DEBT—ESTOPPEL.

In *re Applebee, Lervson v. Beales* (1891), 3 Ch. 422, a testatrix by her will, made in 1886, had bequeathed to the plaintiff two legacies of £100 each, and she gave her residuary estate to the defendant, and appointed the plaintiff and defendant executors. By a codicil dated in 1887, to the making of which the defendant was a party, she gave additional legacies, including one of £700 to the plaintiff, and in other respects confirmed her will. She afterwards in her lifetime made payments to the plaintiff on account of the legacies to him, though at the time he was indebted to her in a greater amount. She died in 1888, and the defendant alone proved the will. The defendant refused to pay the plaintiff's legacies on the ground that he was indebted to the testatrix's estate to an amount exceeding the legacies, and the present action was brought to recover payment thereof. Stirling, J., held that the appointment of the plaintiff as executor was in law a release of his debt, notwithstanding he had not proved the will, and on the evidence any claim in equity was rebutted by the presumption of an intention on the part of the testatrix to forgive the debt, and that evidence of such intention was admissible; and, even if it were not, the defendant, by being party