

RECENT ENGLISH PRACTICE CASES.

evidence tending to show that engine No. 5 habitually threw more fire than the other locomotives used on the appellants' railway might be legitimately taken into account by the jury in considering whether it was defective in construction.

Their Lordships will, therefore, humbly advise Her Majesty that this appeal ought to be dismissed. The appellants must bear the costs of the appeal.

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DAVID V. HOWE.

Transfer of action to County Court—Plaintiff failing to proceed—Jurisdiction of Superior Court.

[L. R. 27 Ch. Div. 533.]

When an order has been made for the transfer of a Chancery action to a County Court under sect. 8 of the County Courts Act, 1867 (cf. R. S. O. c. 50, s. 31) the Superior Court retains its jurisdiction in the action until the transfer has been completed by all necessary steps being taken for that purpose.

Hence, if after such transfer the plaintiff fails to enter action for trial at the County Court, the plaintiff may move before the Superior Court to dismiss it for want of prosecution.

EMENY V. SANDES.

Action remitted for trial to the County Court—Costs.

[L. R. 14 Q. B. D. 6.]

Where an action in the Supreme Court has been ordered to be tried in a County Court, and has been so tried, the High Court retains its power under Order 75, r. 1, 1883 (O. J. A. rule 428) of dealing with the costs of the action.

BRADFORD V. YOUNG.

IN RE FALCONAR'S TRUSTS.

Stay of proceedings pending appeal—Payment out of Fund in Court.

[28 Ch. Div. 18.]

In the absence of special circumstances it is not the practice of the Court to retain in Court pending an appeal, a fund which has been ordered to be paid out, because there is an appeal from the order.

An order directing the payment of a fund out of Court, consisting of money on deposit and East India stock, to the plaintiff having been made just before the commencement of the long vacation,

and an appeal having been presented, a suspension of the payment out was granted over the Long Vacation in order to enable the appellant to apply to the Court of Appeal.

Wilson v. Church, 12 C. D. 454, and *Walburn v. Ingilby*, 1 My. & K. 70 considered.

The application being renewed before the Court of Appeal, at the close of the Long Vacation, and it being shown that the plaintiff had been abroad for two years, and that the applicant could not discover his address, it was held that payment out ought to be stayed if the applicant would give security to pay to the plaintiff interest at £4 per cent. on the present value of the funds in Court, and to make good to the plaintiff, if the appeal was unsuccessful, the difference between the highest market price of the investments at any time before the hearing of the appeal and their market price on the day of the hearing of the appeal.

ADAM, SON & CO. V. W. TOWNEND & CO.

Imp. O. 12, r. 15—O. J. A. r. 57.

Service of a writ on one member of a trading partnership—Appearance by him only "as a partner of the firm."

A writ was issued against a trading partnership (unincorporated), and served upon a member of the firm, who entered an appearance, "W. N. a partner of the firm of W. T. & Co." There was no service upon or appearance by the other members of the firm.

Held, that leave to sign judgment against the firm for default of appearance could not be granted.

Jackson v. Litchfield & Son, 8 Q. B. D. 474 followed.

[L. R. 14 Q. B. D. 103.]

MATHEW, J. You cannot have judgment against the partner who has appeared, which is in effect what you are asking for; nor can you have judgment against the firm including N. Your proper course would seem to have been to apply to strike out the appearance by him; this you have not done.

THE BEESWING.

Appeal—Cross appeal—Withdrawal of appeal.

[L. R. 10 P. D. 18.]

When a respondent has given notice that he will, on the hearing of an appeal, contend that the decision of the Court below should be varied, and the appellant subsequently withdraws his appeal, such notice entitles the respondent to elect whether to continue or withdraw his cross-appeal. If he continues his cross-appeal the appellant has the right to give a cross-notice that he will bring forward his original contention on the hearing of the respondent's appeal.