

Act, Consol. Stat. U. C., ch. 16, requires a bond from administrators, "conditioned for the due collecting, getting in, and administering the personal estate of the deceased," and enacts that such bond shall be in the form prescribed by the rules and orders referred to in the 18th section of the act. These rules were those made under the Surrogate Courts Act, 1858, which, by the section referred to, "are hereby continued." *Held*, that such rules being thus sanctioned by the legislature, a bond in accordance with the form prescribed by them must be held sufficient, though it was alleged not to comply with the statute.

Part of the condition of such bond was, that the administrator should, when lawfully called on, make and exhibit an inventory of all the estate and effects which had or should come into his hands. The first breach alleged was that the judge made an order upon him to bring in forthwith an inventory of the goods, chattels and credits, of the deceased, and that he did not make or exhibit an inventory of the goods which had come into his hands, or any inventory. *Held*, that admitting the order to be too large, it was nevertheless good to the extent of the condition, and that the breach not going beyond such condition, was also good.

Held, also, that it was unnecessary to shew the amount recoverable in respect of such breach.

Held, also, that the nonpayment of the plaintiff's judgment against the intestate could not be assigned as a breach of the bond, for the Surrogate Courts Act gives no new remedy for the recovery of debts.

Quære, however, as to the mode of carrying out the provisions of section 65.

Per DRAPER, C. J., after joinder in demurrer, the party demurring cannot without consent or leave alter or vary the grounds of demurrer.—*Bell v. Anne Mills, Robert Mills, and James Elliott*, 25 U. C. Q. B. 508.

MASTER AND SERVANT—NEGLIGENCE OF FELLOW SERVANT—LIABILITY OF MASTER—EVIDENCE.—

Action against a railway company for the death of one D., an engine driver in their employment, alleging that they negligently employed one R., an incompetent person, as switchman, and that by his incompetency the collision occurred. It appeared that R. neglected to raise the semaphore at the east end of Stratford station, so as to prevent D.'s train going west from entering the yard while a freight train was coming from the west, and this caused the accident. According to the testimony on both sides, R. was an intelligent man, employed at work which one witness said could be learned in a day, another

in two or three weeks, and after being a week about the yard he had performed this work regularly for two weeks without complaint until this occasion. A verdict having been found for the plaintiff—

Held, that there was no evidence to go to the jury that defendants negligently employed an incompetent person; that for R.'s neglect, he being D.'s fellow servant, the plaintiff clearly could not recover; and a nonsuit was ordered.—*Deverill, Administratrix of Deverill v. The Grand Trunk Railway Company*, 25 U. C. Q. B. 517.

CONVEYANCE OF PEWS — CHURCH TEMPORALITIES ACT — EJECTMENT. — Defendant, being the holder of certain pews situated in the gallery and aisles of the Church of St. James, in the city of Toronto, belonging to the Church of England, conveyed the same by deed to plaintiff, a member of that Church. It appeared that the deed, though made nominally to plaintiff, was in reality so made to him in trust for a corporation, to secure an advance of money by them to defendant, and, moreover, that several members of the corporation belonged to other religious denominations.

Plaintiff was not described in the deed as a member of the Church of England, but the evidence at the trial showed that he had been in the habit of attending the services of that Church.

Held, that there was sufficient evidence that plaintiff belonged to the Church of England, and that it was not necessary that he should have been so described in the deed.

Held, also, that the deed, even if clothed with an unexpressed trust in favor of a corporation, incapacitated under the Church Temporalities Act from being pewholders, by reason of their not belonging to the Church of England, was nevertheless not void in the eye of a court of law, because it was apparently good on its face, and it was therefore binding between the parties to it.

Semble, that a court of equity would not set aside the deed on account of the existence of such secret trust, but that a court of law could not recognize it, even if it were set out.

Held, also, that plaintiff could not maintain ejectment for the pews, because he was not entitled to the exclusive possession of them, his possession being limited to the special purpose of attending divine service, at which time alone he had the right to enter; and because such right was of an incorporeal nature, and possession of it could not be given by the sheriff.

Case, is the proper remedy for the disturbance of the right to occupy a pew.