

out making any provision for the payment of the plaintiffs' mortgage. In 1882, the plaintiffs' mortgage proved to be worthless, owing to the existence of a prior mortgage on the property. The plaintiffs then brought an action against the executors for a *devastavit* in paying over the residuary estate, but failed. The present action was brought to make the residuary legatees refund; but it was held that though the claim against the mortgagors' estate was not barred yet that the plaintiffs' claim against the residuary legatees, being in the nature of an equitable demand, was barred by lapse of time and acquiescence.

**SPECIFIC PERFORMANCE—DEFAULTING PURCHASER—
FORM OF JUDGMENT.**

Morgan v. Brisco, 31 Chy. D. 216, is an action for specific performance by a vendor. The defendant having refused to tender the conveyance or complete the purchase according to the judgment of the Court, the question Bacon, V. C., was called upon to decide was as to the proper form of the judgment on further consideration in such a case. The judgment, as settled, authorized the plaintiff to prepare and execute a conveyance (as an escrow to be delivered to the defendant on payment of the purchase money), and directed the defendant to pay the purchase money at a time and place to be named, when the conveyance was to be delivered to him.

NEXT FRIEND OF INFANT—TESTAMENTARY GUARDIAN.

In *Hutchinson v. Norwood*, 31 Chy. D. 237, an application was made to Pearson, J., to change a next friend under the following circumstances: The action had been commenced by infant plaintiffs in the lifetime of their father, who authorized a stranger to act as their next friend. Subsequently the father died, and by will appointed the mother of the infants their guardian. She now applied to be substituted as their next friend in this action, and the application was granted.

NON-PAYMENT OF COSTS—STAY OF PROCEEDINGS.

In *re Youngs, Doggett v. Revett*, 31 Chy. D. 239, Pearson, J., held that the old rule of Chancery practice, that where a party is in default for non-payment of costs, further proceedings by him in the action will be stayed, until payment is still in force.

PATENT—PRIOR PUBLICATION.

Otto v. Steel, 31 Chy. D. 241, is a patent case, in which it was sought to avoid a patent on the ground of alleged prior publication. The facts in support of the alleged prior publication were, that in 1863, a French treatise was placed in the British Museum Library, the Museum catalogue being kept with reference to authors' names, and the books being arranged according to subject-matter, and readers under guidance being able to search for books on particular subjects. But it was held by Pearson, J., that this was no prior publication in England of the matter contained in the treatise so as to avoid a patent taken out in 1876.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

QUEEN'S BENCH DIVISION.

IN BANCO.

LEWEY V. CHAMBERLAIN.

Libel—Privileged communication—Nominal damages—New trial refused.

Defendant published of and concerning plaintiff, a business man, in a written circular called "Legal Record, Co. Renfrew," a statement meaning that plaintiff had given a chattel mortgage on his property, whereas he had only assigned a chattel mortgage held by him against another person.

Held, statement libellous, and not privileged. Jury having found no damages, rule *nisi* for new trial refused without costs.

Delamere, for motion.

Arnoldi, contra.