

RECENT ENGLISH PRACTICE CASES.

IN RE BROOK: SYKES V. BROOK.

Imp. J. A., 1873, s. 56, 58—*Ont. J. A. s.* 47, 49.
Official referee—Objection to report—Notice—Administration action—Costs.

When questions have been referred to an official referee for inquiry and report, and he has reported, objections may be made to the report on further consideration, but notice of the objections should be given; and it seems two clear days' notice would be sufficient.

[Ch. D. May 13—19 W. R. 820.

In this case after the official referee had made his report, the plaintiff raised the objection to the report, that certain sums claimed by the defendant against the estate and allowed by the referee, ought not to be allowed. This point was raised on the pleadings, the accounts, and the reports.

No notice of this objection had been given.

Counsel for defendant raised the preliminary objection that it was too late to vary the report, and that for the purpose of variation, the report is equivalent to the verdict of a jury, and cited *Sullivan v. Rivington*, 28 W. R. 372.

FRY, J., however, after calling attention to the fact that *Imp. J. Act*, 1873, sec. 58 (*Ont. J. Act*, s. 49), draws a distinction between two classes of cases, and the latter part only speaks of a trial, gave judgment as follows:—

"It is clear that I cannot object to hear the plaintiff when he says that the report of the official referee is wrong, because sec. 56 of *J. A.* 1873 says the report of the referee may be adopted wholly or partially by the Court. Now, that report does not come before the Court except on further consideration, because on that occasion the question arises whether the report shall or shall not be adopted by the Court; yet, undoubtedly great inconvenience will arise if points on the report are to be argued without any intimation on the part of the person who makes that objection. Therefore, I shall order the case to stand over if the defendant desires it. I cannot lay down any general rule as to what length of time should be allowed for notice of objection. I think two clear days would be desirable."

A further question arose in this case on the subject of costs. The facts were these: Beneficiaries under a will brought an action against B., who was trustee and executor, asking for execution of the trusts, administration, relief in respect of alleged breaches of trust, appoint-

ment of a new trustee and a receiver. A receiver was appointed. When the action came on for trial, an order was made referring certain questions for inquiry and report to an official referee. Some of these questions were common administration inquiries, and the rest were directed to the alleged misconduct of the defendant. The referee reported in favour of the defendant on all points. On further consideration,—

FRY, J., held that the plaintiffs must pay the costs of the action up to and including the further consideration, except such costs as would necessarily have been incurred in obtaining a common administration judgment.

[NOTE.—*Imp. J. A.* 1873, s. 58, is identical with *Ont. J. A.*, s. 49. *Imp. J. A.*, 1873, s. 56, and *Ont. J. A.*, s. 47, are to the same effect, but not identical since the latter gives powers to a Co. Ct. Judge, and to a single Judge of a Divisional Court, which do not appear to be given by the *Imp. Act.*]

WHEELER V. LE MARCHANT.

Imp. O. 31, r. 11, 12—*Ont. O.* 27, r. 4, (No. 222)
Discovery—Privilege—Surveyor—Information by a Solicitor ante litem motam.

Where a solicitor is consulted by a client in a matter as to which no dispute has arisen, and applies to a surveyor or other third party for information necessary that the solicitor may give legal advice to the client, the communications between the solicitor and third party are not privileged from discovery in legal proceedings subsequently commenced by or against the client.

[C. of A., April 6—44 L. T. 632, L. R. 17 Ch. D. 675.

In an affidavit as to documents, delivered pursuant to an order to produce, the defendants objected to the production of certain documents on the ground that they consisted of "confidential correspondence between ourselves and our former solicitors, B. R. & B., and our present solicitors, G. R. & Co., and our former estate agent and surveyor Mr. W., and his agent Mr. N. K., and our present estate agent and surveyor, Mr. E., and between such solicitors and agents."

The plaintiff thereupon took out a summons for production for inspection of these documents. This summons was adjourned into Court