Per Willes, J.—Where both plea and replication are on equitable grounds, the replication only can be considered on equitable grounds. Where the plea is on legal grounds and the replication on equitable grounds, the latter may be good either on equitable or on legal grounds.

EX. Clarke v. Laurie P.O. *Nov.* 19.

Pleading—Equitable plea—Trust—Pledge of dividends by married woman being cestui que trust—Power of attorney.

The trustee for the payment of dividends on stock to a married woman, gave a power of attorney to bankers in London, empowering them to receive the dividends and pay them to her. She went with her husband to Brussels, and the dividends were paid to her, according to her directions, through a bank there. She and her husband received the amount of a dividend before it was due, from the Brussels bankers upon an agreement that the Brussels bankers should receive and retain the dividend when it became payable. Subsequently to receiving the money, and before the dividend was due, she revoked the authority to the London bankers to receive the money; they, notwithstanding, received the dividend and paid it over to the Brussels bank, by whom it was retained.

Held, that these facts offered no answer to an action by the trustee against the London bank for the recovery of the dividend.

Held, also, that although the defendants might not be answerable in equity, the Court would not give leave to plead the facts on equitable grounds, inasmuch as a Court of law could not afford complete relief.

EX. Dingly v. Robinson. *Nov.* 25.

Garnishee—Attachment of debt—Property of wife of judgment creditor—Savings Bank annuities—Common Law Procedure Act, 1854, sec. 61.

Money due in respect of Savings Bank annuities to the wife of a judgment creditor, cannot be attached under the garnishee clauses of the 17 & 18 Vic., cap. 125.

C.P. Mather v. Lord Maidstone. *Nov.* 22, 24.

Bill of exchange—Renewal of forged acceptance—Onus of proving consideration.

M. having accepted bills of exchange for the accommodation of V., upon a bill presented by the plaintiff, as indorsee to him (M.) for payment, believing it to be one of the bills accepted by him for the accommodation of V., paid the interest, and gave a fresh acceptance in lieu of the one presented. The latter turned out to be a forgery. An action being brought by the plaintiff against M. on the fresh genuine acceptance in which action M. proved the forgery:

Held, that it was incumbent on the plaintiff to show affirmatively that he was a *bonâ fide* holder for value of the forged bill.

C.P. Swynfen v. Swynfen. *Nov.* 24, 25, *Dec.* 1, 2, [*Jan.* 12.

Practice—Counsel and client—Attachment to enforce arrangement at Nisi Prius—Filing affidavits in answer.

Where one judge differs from the rest of the court, a writ of attachment will not be granted.

Where an arrangement was entered into by the counsel on both sides at *Nisi Prius*, the attorneys also being present:

Held, (per Crowder, J.) that without deciding whether the agreement ought or ought not to be held binding on the client, by reason of the attorney's tacit acquiescence, an attachment ought not to be granted for contempt against a party who, having given no special authority for the purpose, refuses to perform it.

The proper time to file affidavits in answer to the affidavits used by the other side in showing cause against a rule is after the court has heard the latter affidavits read, and is of opinion that they ought to be answered.

EX. Smith v O'Brien, Julland v. Riches. *Nov.* 18.

Practice—Change of venue—Affidavit—Use and occupation.

The venue will be changed in actions for use and occupation on an affidavit that the cause of action arose in the county to which it is desired to be changed, and not where it is laid, and that the witnesses of the party making the application reside there, unless it be shown in answer that the cause may be more conveniently tried in the county where the venue is laid.

EX. Hart v. Denney. *Jan.* 20.

Practice—Payment of money into Court—Amendment—Wrongful dismissal.

The plaintiff complained of a wrongful dismissal, alleging the hiring to be for a whole year. The Court refused the defendant liberty to plead, with a denial of the dismissal, a plea that the contract was subject to the condition that the hiring should be determined by giving three months' notice, and payment into Court of £29; but the Court intimated that the plaintiff should not be allowed to amend at the trial, except on the terms that the defendant should be in the same situation as if the money had been paid in with the pleas.

B.C. In re —— (An Attorney.) *Jan.* 20.

Practice—Attorney—Amendment.

Where a rule *Nisi* for an attachment against an attorney is obtained on the last day but one of term, plaintiff cannot be required to show cause at Chambers without his consent.

B.C. Lee v. Sandell. *Jan.* 31.

Affidavit in support of suggestion to deprive plaintiff of Costs—Hearing—Inference from facts.

In support of a rule to enter a suggestion in order to deprive plaintiff of costs in an action on a bill for £20, the affidavit of A. stated that the cause of action arose in a material point within the jurisdiction of the City Small Debts Extension Act; that at the trial B. was called as a witness, and stated that he endorsed the bill to the plaintiff within that jurisdiction, and that C. being also called stated facts confirming B.'s statement. The affidavit of B. and C., in opposition to the rule, positively stated that the bill was endorsed to the plaintiff out of the jurisdiction of the city court.

Held, that the affidavit of A., in support of the rule, stated hearsay evidence in opposition to the positive oath of B. and C. and was insufficient, and that the rule must be discharged.

EX. Brown v. Foster. *Jan.* 28.

Privileged communication—Knowledge of document acquired by counsel at trial—New trial—Strong observations of Judge.

A barrister attended as counsel for B. on the occasion of two examinations before a Magistrate on a charge of embezzlement against B., upon both of which, a book into which it was B.'s duty to enter sums received by him for his master the prosecutor, was produced and put in evidence on behalf of the prosecution. On the second examination B.'s counsel pointed out to the magistrate an entry under the proper date of the sum to which the charge referred, and he was thereupon discharged. B. brought an action for malicious prosecution against the prosecutor, at the trial of which it was suggested that the