

in. Now, the putting in and perfecting of this "special bail," is a somewhat complicated proceeding. According to the Rules, it is to be put in and perfected according to the established practice (Rule 1067).

It is a very easy matter to provide that special bail is to be put in according to the "established practice"; but, judging from past experience, we should say it is a very difficult thing, indeed, to say what is the established practice. The student cannot be referred to any statute or code of rules which will enlighten him; he cannot be even referred to any Canadian cases, which will enable him to learn intelligently what the established practice on this subject is.

In order to make this out, he must go to some of the older works on the English practice at law, and he must, in reading them, carefully note wherein express statutes and rules of court, either in England or Ontario, create a difference in the practice there laid down; and having carefully weighed and considered all these questions, he may, perhaps, have arrived at a faint glimmering of what is the established practice; but he will be a bold man, indeed, if he have any very great confidence in the knowledge thus acquired. His greatest security lies in the fact that his opponent, probably, knows as little about the "established practice" on this point, as he does himself. That there should be this difficulty is not, after all, very surprising, when we consider that the arrest of a defendant on *mesne* process has become a comparatively rare proceeding; not much opportunity, therefore, arises in the ordinary course of practice for getting any very accurate knowledge on the subject; and what is learned, is learnt for the occasion as it arises, and only so far as the exigencies of the occasion make it necessary. We do not pretend to greater wisdom than our fellows, and in venturing to state what we think is this established practice to which Rule 1067 refers, we feel that we are on treacherous ground.

Special bail may be given either by bond or recognizance, conditioned that if the defendant be condemned in the action at the suit of the plaintiff, he will satisfy the costs and condemnation money, or render himself to the custody of the sheriff of the county in which the action is brought, or that the sureties will do so for him (Rule 1062). The sureties are not to exceed two in number, except by leave of the court or a judge (Rule 1070), and they cannot justify if they have been indemnified for so doing by the solicitor or solicitors of the defendant (Rule 1072). The recognizance of bail cannot be taken by any one employed as solicitor or agent for either party (Rule 1073). And if any person put in as bail, except for "the purpose of rendering only," be a practising solicitor, or a clerk to a practising solicitor, or sheriff's officer, bailiff, or person concerned in the execution of the process, the plaintiff may treat the bail as a nullity, and sue upon the bail bond given to the sheriff as abovementioned as soon as the time for putting in special bail has expired, unless good bail be duly put in in the meantime (Rule 1074). The recognizance of bail may be acknowledged before a judge, or the Master in Chambers, or the Judge of the County Court, or Local Master having jurisdiction in the action, or before a commissioner for taking affidavits, and recognizances of bail.

The recognizance of bail being duly acknowledged, or the bond duly