Recent English Decisions.

Expropriation of land—Colorable purpose—Injunction.

In *Lynch* v. *Commissioners of Sewers*, 32 Chy. D. 72, the Court of Appeal held that the plaintiff was entitled to an interlocutory injunction restraining the defendants from proceeding with the expropriation of the plaintiff's property, it being shown that there was a question to be tried at the hearing, whether the defendants were not seeking to expropriate the land in question colorably for a purpose authorized by statute, but really to effect an object for which they were not authorized to expropriate it.

Disentailing deed — Ineffectual bar of entail (R. S. O. c. 100, s. 30)—Volunteers.

The case of *Green* v. *Paterson*, 32 Chy. D. 95, although one relating to a copyhold estate, nevertheless is of use as throwing light on a branch of real property law. A married woman, being entitled to an equitable estate tail in copyholds, executed a post-nuptial deed in February, 1870, declaring that such estate should be held in trust for such persons as she and her husband should jointly appoint, and in default for herself in fee. The deed was duly acknowledged but not entered on the court rolls within six months after execution, as required by the *Fines and Recoveries Act*. By a deed made in March, 1870, she and her husband purporting to exercise this joint power appointed the copyholds in question, and covenanted to surrender them to trustees upon trust to sell, invest the proceeds and hold the und (in the events which happened) for her, for her separate use for life, then for her husband for life, and then for her children other than her eldest son. No sale or surrender of the copyholds was ever made. The husband and wife both died, leaving several children. The trustee of the settlement then petitioned for an order vesting in him all the estate of the eldest son and customary heir, who was an infant, and Hall, V.C., granted the order in April, 1881, and it was from this order that the eldest son appealed by leave of the court; and on the appeal the order of Hall, V.C., was reversed, the Court holding that the deed of February, 1870, was not a "disposition" within the *Fines and Recoveries Act*, but a mere declaration of trust, and therefore, and also on the ground of not being entered on the court rolls within six months after execution, (see R. S. O. c. 100, s. 30), was void, and inoperative to bar the entail. It was also held by the Court of Appeal that the settlement of March, 1870, being post-nuptial, the children of the settlor were merely volunteers, and therefore, were not entitled to enforce its provisions as they would have been in the case of an ante-nuptial settlement. Speaking of the settlement, Lindley, L.J., says:

> Those children were not parties to that contract, and *primâ facie*, no person who is a stranger to a contract can sue to enforce it. But upon that general rule there is, as is well known, this exception grafted, that children, born of the marriage in contemplation of which a settlement has been executed, are treated to a certain extent as if they were parties, and they are allowed to sue for the execution of that settlement. It appears to me, that in the case of a post-nuptial settlement that rule cannot apply. The consideration of marriage is not infused into that settlement. It is made for considerations which arise after the marriage, and, therefore, in point of principle, I am unable to see how the exception which applies to an ante-nuptial settlement, giving children of the marriage a right to sue for the performance of those covenants, can apply to post-nuptial settlements.

The application for the vesting order was held to be virtually a motion to enforce the settlement on behalf of the beneficiaries, and the order of Hall, V.C., was therefore vacated.

Practice—Service out of jurisdiction—(R. S. O. c. 40, ss. 93, 94.)

In re Busfield, *Whaley* v. *Busfield*, 32 Chy. D. 123, the Court held, (affirming the decision of Chitty, J.,) that the court cannot order service of an originating summons out of the jurisdiction. It was contended by the appellant that the former jurisdiction of the Court of Chancery, under 2 W. IV. c. 33; 4 & 5 W. IV. c. 82, was continued under the Judicature Act. These Acts had been repealed, but one of the repealing Acts provided that the repeal effected by the Act should not affect any jurisdiction established or confirmed by the repealed Act. But the Court of Appeal held that the Judicature Rules established a complete code of cases in which the jurisdiction of the court might be exercised against persons out of the jurisdiction, and extended only to cases in which a writ was issued, except where it was merely necessary to notify a party of proceed-