on the breach of which the £2000 became payable was capable of accurate valuation, (the stipulation for the half fees forming no part of the covenant.)

EX. AIKINS, P. O. v. SHORT. *June 7.*

Money had and received—Mistake—Payment—Recovery back of money paid.

A. having purchased from B. a share in the lands taken under the will of his father, subject to an incumbrance by way of an equitable charge, paid £200, the amount of the charge to the creditor of B., upon his demanding the same. It afterwards turned out by the discovery of a will subsequently made, that B. had no power to make the assignment.

Held, that A. could not recover back from B.'s creditor the £200 as having been paid under a mistake.

EX. BARSTOW v. REYNOLDS. *June 11.*

Practise—Appeal—Rule to enter nonsuit—Rule for new trial—Common Law Procedure Act, 1854, secs. 34, 35.

A rule *nisi* was granted to enter a nonsuit upon a point reserved at the trial, at the argument there was a difficulty as to the facts, and a new trial was ordered.

Held, that there was no appeal under either the 34th or 35th section of the Common Law Procedure Act, 1854.

GULLIVER v. GULLIVER AND OTHERS, EXECUTORS, &c.

EX. *June 6.*

Pleading—Equitable replication—Statute of Limitations—Set-off.

In an action against an executor for a debt due his testator the defendant pleaded the Statute of Limitations. The plaintiff replied on equitable grounds that by the will the defendant was made a trustee for payment of debts, and that the assets were sufficient to pay debts and legacies, relying on the practice in Courts of Equity, not to admit the Statute of Limitations as an answer to a claim in respect of trust-monies.

Held, that the replication was bad, as Courts of Law have no power to modify the application of the Statute.

To a declaration for a debt due from the defendant's testator the defendant pleaded a set-off of monies due from the plaintiff to his testator. To this the plaintiff replied on equitable grounds, that the testator by his will declared that monies already advanced to the plaintiff and the testator's other children, should be deemed to be advancements, and that they should not be required to account for the same, and alleged that the matters of set-off were monies so advanced.

Held, that the replication was no answer to the plea, the effect of the will being to make the monies advanced a legacy, and there being no allegation of assets to pay debts, and a Court of Law being unable to deal finally with the matter.

EX. C. HASLETT v. BURT. *June 13, 24.*

Landlord and tenant—Fixtures—Plate glass, shop front—Right of tenant to remove—Covenant—Construction.

By deed the plaintiff demised to B. a messuage and premises for 21 years; the lease contained a covenant to repair, and a covenant that B., his executors, administrators and assigns, should at the end of the term, yield up the premises to the plaintiff, his executors, &c., together with all wainscots, *windows*, shutters, &c., and other things which then were, or at any time thereafter should be thereunto *affixed or belonging*, (looking-glasses and furniture excepted); and together, also, with all sheds and other *erections*, buildings and *improvements* which should be erected, built, or made upon the demised premises, in good repair and condition.

An assignee of the lease during the term removed an old shop window, and put up in its place a plate-glass front, but without in any manner, except by wedges, fastening it to the premises.

Held, (affirming the judgment of the Common Pleas) that the plate-glass front was a window set up or affixed to the demised premises within the meaning of the covenant, and that the assignee was not entitled to remove it.

EX. JONES v. JENNER. *June 12.*

Practice—Attachment of debt—Judgment in County Court—Common Law Procedure Act, 1854, *sec.* 61.

A creditor who has obtained judgment in the Superior Court by having judgment in the County Court upon the judgment so obtained, loses his right to proceed by attachment, if a debt in the hands of a garnisher, under the 17 & 18 Vic., cap. 125.

EX. INSOLE v. JAMES AND ANOTHER. *June 11.*

Easement—Flowing water—Diversion—Grant of water for mining purposes—Pleading—Variance.

A declaration alleging the plaintiff's possession of *mines, lands and premises*, and claiming a right to the use of the water of a stream flowing alongside the said *lands and premises*, is not supported by proof that the plaintiff was a lessee of mines under land adjoining the stream, with a grant from the surface-owner of the use of the water for colliery purposes.

EX. JONES v. BROWN. *June 10.*

Trover—Conversion—Joint owners—Partnership property.

Trover will not lie by the partner against the purchaser under a sale on an execution against his copartner of partnership property, of which such partner has obtained and refused to give up possession.

EX. TAYLOR v. LAIRD. *April 22, May 6, & June 10.*

Contract—Quantum meruit.

A cause of action once vested, is not subject to be divested by the plaintiff's desertion or abandonment of the contract, but he is entitled to recover a quantum meruit for services performed. The entire performance of a contract is not a condition precedent to the right of payment.

CHANCERY.

RE CHESLYN HALL, (a solicitor) AND RE DOLLOND v. JOHNSON.

V.C.S. *June 27.*

Practice—Solicitor—Striking off rolls.

A solicitor who, being one of the trustees of a settlement, had been guilty of fraudulent misapplication of, and misrepresentation as to, a part of the trust-fund, was ordered to be struck off the rolls upon the petition of his co-trustees. In such a case, the fact that the delinquent was not at the time of committing the fraud in question acting as the solicitor of the defrauded *cestuis que trust*, is immaterial.

V.C.W. BENECKE v. CHADWICKE. *June 25.*

Specific performance—Parol acceptance.

A. B. offered in writing to grant a lease of a coal mine upon certain terms: C. D. verbally accepted the offer. A draft lease was sent to him, and returned with approval of C. D.'s solicitor. C. D. laid out money in driving shafts towards the coal mine through the adjoining property. Before any lease was executed, and something more than a month after the return of the draft lease, A. B. died.

Held, that the parol acceptance of the written offer of the lessor coupled with the subsequent acts in the lifetime of