Ord xi., r. 1, yet the court had a discretion, and, under the circumstances, leave to serve the writ out of the jurisdiction should not be granted, and the order of Pearson, J., was therefore rescinded.

PRACTICE—MODE OF TRIAL—JURY—COUNTER-CLAIM.

In *Lynch* v. *Macdonald*, 37 Chy. D. 227 the action was for redemption of mortgaged shares. The defendant filed a counter-claim seeking relief incident to his position as mortgagee, and also damages for alleged fraudulent misrepresentations made by plaintiff to defendant. The plaintiff applied to have the action tried by a jury, which North, J., refused. The Court of Appeal (Cotton and Fry, L.JJ.) held that the case did not come within Ord. xxxvi. r. 6, so as to give the plaintiff the right to have the action tried by a jury, but that his proper course was to have applied to have the counter-claim for damages disallowed, or tried separately, as a claim which could not be conveniently tried in the action.

FOREIGN JUDGMENT, ACTION ON.

In re Henderson, Nouvion v. *Freeman*, 37 Chy. D. 244, the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.) decided that a judgment of a foreign tribunal upon which an execution may issue but which is not a final and conclusive judgment between the parties, according to the law of the foreign country in which it has been recovered, cannot be sued on in England, or enable the plaintiff to obtain administration of the defendant's estate, he having died.

DEBENTURE AND DEFINITION OF.

Perhaps the only point worth noticing in *Levy* v. *Abercorris Slate Co.*, 37 Chy. D. 260, is Chitty's, J., definition of the word debenture. He says at p. 264: "In my opinion a debenture means a document which either creates a debt, or acknowledges it, and any document which fulfils either of these conditions is a 'debenture. See, however, remarks of North, J., *Topham* v. *Greenside Fire-Brick Co.*, 37 Chy. D. 290.

PRACTICE—PARTICULARS—FRAUD.

Sachs v. *Speilman*, 37 Chy. D. 295, was an action by a principal against his stock broker to open settled accounts on the ground of fraud. The statement of claim alleged that the plaintiff was unable to give particulars before discovery. The defendant, before delivering a defence, applied for particulars. North, J., ordered the application to stand till a statement of defence had been put in.

WILL—GIFT OF INCOME TO A CLASS—ASCERTAINMENT OF CLASS.

In re Wenmoth, Wenmoth v. *Wenmoth*, 37 Chy. D. 266, Chitty J., decided that there is a distinction between the rule by which a class is to be ascertained, when the gift is of a *corpus*, and when the gift is of income merely; and while for convenience sake the class is to be ascertained in the case of a gift of a *corpus* when the first member of the class becomes entitled to his share, because the trustees could not otherwise ascertain what is the aliquot share of a member