Held, the petitioner might be reimbursed the $100 from the testator's general estate, as the claim she paid appeared to be a debt due by the testator; but neither this nor the other expenditure could be charged on the land. It is against all the authorities to burden the estate with such charges. The petitioner could not be reimbursed the repairs, for the repairs of a tenant for life, however substantial and lasting are his own voluntary act, and do not arise from any obligation, and he cannot claim any charge for them upon the inheritance.

Held, however, it was a proper case for the sale or leasing, with a right to build, of the settled estate, for there was no means from the income of the property of putting it into a sufficiently remunerative condition to support M. H. and her child. M. H. was not obliged to support the infant, and it was imperative to deal with the property in such a way as to supply proper maintenance for the boy.

Arnoldi, for the petitioner.

PRACTICE CASES.

Osler, J.] [Nov. 10, 1882.

BOTHWELL ELECTION PETITION.

Election—Issue—Preliminary objections—Examination—37 Vict. (Can.) ch. 10.

Preliminary objections (sect. 10) presented after the expiration of five days from the service of the petition, are not void, as the time for their presentation may be extended (sect. 43), and by analogy to ordinary practice such extension may be obtained even after the expiration of the time originally fixed by statute, (*Wheeler* v. *Gibbs*,, 3 S. C. R. 347), they are at most irregular, and therefore the petition is not at issue under sect. 11, and an examination of the parties under sect 14 cannot be had while they remain undisposed of.

Holman, for the petitioner.
Beck, contra.

Osler, J.] [May 29, 1883

COULSON V. SPIERS.

Interpleader—Jurisdiction.

Upon the return of an interpleader summons taken out by a sheriff, the judge of the County Court of the County of Grey made an order protecting the sheriff, barring the claimant, and containing other provisions.

Held, on appeal, that an interpleader not being an action under sect. 91, O. J. A., but a proceeding in an action (*Hamelyn* v. *Bettleley*, L. R. 6 Q. B. D. 63), the Master in Chambers had jurisdiction to make such an order, (Rules 2 and 422, O. J. A.,) and so had the County judge.

Marsh and *Aylesworth*, for execution creditors.
Holman, for sheriff.

Proudfoot, J.] [June 2.

BUCKE V. MURRAY.

Dismissal for want of prosecution—Sects. 12 and 52, and Rule 255 O. J. A. and Chy. G. O. 276.

An appeal from the order of the Local Master in Hamilton dismissing the bill for want of prosecution.

Held, that there is no inconsistency between Chy. G. O. 276, and the O. J. A. sects. 12 and 52 and Rule 255.

The general rule still remains that an undertaking to speed the cause is not a sufficient answer to a motion to dismiss for want of prosecution, but it is still discretionary with the judge to say whether, under all the circumstances, the bill should be dismissed.

The Court, in the exercise of its discretion, allowed the plaintiff to go down to immediate trial, where a delay of a year and a half appeared to have arisen from the residence out of the jurisdiction of the defendant, and some hesitation as to proceeding with the case from the negligent manner in which the defendant was cross-examined under a commission executed out of the jurisdiction.

Muir, for the plaintiff.
Lash, Q.C., for the defendant.

Proudfoot, J.] [June 2.

MILLER V. BROWN.

Mortgagee in possession.

An application by the defendant O'Brien for leave to appeal from a judgment given on the 16th December, 1882, notwithstanding that the time for giving notice of appeal has elapsed.

Held, that the fact of the defendant being resident in England, and that by the judgment in question further directions are reserved, and