

## EDITORIAL NOTES—EQUITABLE EXECUTION.

AN interesting paper might, with a little research, be prepared referring to some of the many anomalies still remaining in English jurisprudence. One very striking one in connection with criminal procedure occurs to us at present. There is a record kept of the smallest judgments recorded in a Division Court, but this is not so as to sentences pronounced against prisoners. The observation "*sus. per col.*" may or may not be inserted in the calendar opposite the name of a man condemned to death for murder; and by some investigation it might be possible to arrive at what became of some unfortunate who had been sentenced to imprisonment for life, but as to any record, or entry of judgment or other judicial registration of the sentence, it is not to be found. We are not aware that any great injustice has arisen from this peculiarity of the law, but it strikes one that the omission is somewhat singular and that a little more formality in the premises would be desirable.

### EQUITABLE EXECUTION.

It is much to be desired that some author "learned in the law" should write a treatise upon the subject of Equitable Execution. We are not aware of any text-book which deals with this topic, except in the most cursory manner. In a country like this, where it is very often difficult to realize the fruits of judgment, and creditors are "beaten on the execution," it is desirable that the law for the benefit of creditors should be in a well-defined and satisfactory state, which is certainly not the case at present. While so many changes are foreshadowed in the names of things and the times of doing them, as appear in the contemplated Judicature Act, the weightier matters of substantial justice should not be overlooked. Is it right that a debtor should beneficially enjoy property which his creditor cannot touch? Should he be able to live at ease, and put

at defiance every one to whom he is justly indebted? Yet substantially that is the law in this highly civilized province of Ontario.

The origin of this equitable jurisdiction in aid of the law is given by Vice-Chancellor Leach in *Kirkby v. Dillon*: C. P. Coop. 504. He points out that it was very common for debtors to convert their legal estates into equitable ones in order to defeat their creditors who obtained judgment. That gave rise to numerous bills for equitable execution. In many cases of the kind, he says, the legislature has given relief to creditors in courts of law by the Statute of Frauds, which enables the sheriff to levy upon lands held in trust for the debtor. But, notwithstanding this, it is obvious that there are many cases in which a debtor has a beneficial interest in land and yet no one can be said in a legal sense (*i. e.*, as understood in a court of common law) to be seized or possessed in trust for him; and also there are many cases in which no process at law can get at that estate of which some one is possessed in trust for the debtor. In such cases as these, the Vice-Chancellor says, presenting impediments which the common law courts cannot remove, bills for equitable execution must continue to be filed.

But the courts of equity have not yet given effect to these words in their obvious scope, and have introduced many limitations on their own power. Thus, so far as it regards personal estate, it has been held by the highest court in this Province that if the execution debtor is entitled to a definite share of the annual proceeds of the estate of a deceased person, yet that this valuable interest cannot be reached at law or in equity for the benefit of his execution creditors: *Gilbert v. Jarvis*, 16 Gr. 265. And in *Robertson v. Beamish*, 15 Gr. 676, the right is limited to those cases in which the bill seeks to impose on the equitable interest the liability which would attach at law on a corresponding legal interest. And this was held by our highest court to be a proper limitation in *Fisken v. Brooke*, 4 App. R. 8. It is noteworthy, also