

RECENT ENGLISH PRACTICE CASES.

a trustee of his costs, but it only does so if something has occurred to deprive the trustee of his right to take them out of the fund, which is part of the contract under which he undertakes the trust. It has been attempted to confine that right to costs which are not costs of litigation; but *Cotterell v. Stratton* directly applies on this point.

LINDLEY, L. J.—I am of the same opinion. . . I should certainly have held so on principle, but I confess I am puzzled by *In re Hoskins*. I cannot understand that case; but I think we are bound by the earlier authorities, and ought to follow them in the present case.

COTTON, L. J.—I am inclined to think that if a trustee is deprived of his costs upon proceedings taken under the Trustee Relief Act, an appeal might be brought.

JESSEL, M. R.—I think so too.

[NOTE.—*The Imp. and Ont. sections and rules are identical respectively.*]

CURTIS V. SHEFFIELD.

Imp. O. 50—Ont. O. 44.

Revivor—Discretion of Court.

Where a great lapse of time has occurred, the right to revive is not absolute, but is subject to the discretion of the Court.

[Feb. 28, FRV, J.—L. R. 20 Ch. Div. 398.]

FRY, J., (after referring to the circumstances of the case).—The question which I have to determine regards the discretion of this Court as to allowing a revivor under the circumstances, because undoubtedly the law is this, that, after the long lapse of time which has occurred here, the right to revive is not absolute, but is subject to the discretion of the Court, and in cases of long delay, gross negligence, laches, or change of the situation of the parties in consequences of a decree, the Court has declined to allow a revivor.

[NOTE.—*The Imp. and Ont. Orders are identical so far as affects this case.*]

BIDDER V. MCLEAN.

Imp. O. 28, r. 42—Ont. Rule 190.

Pleading—General demurrer.

When the facts set out in a statement of claim are long and complicated, so that the equity is not apparent, a general demurrer may be sufficient.

[Feb. 25, C. A.—L. R. 20 Ch. D. 512.]

Action seeking a declaration of trust in respect

of some railway stock. The statement of defence was long, the equity, if any, having to be collected from a complicated state of facts. The defendant had put in the following demurrer: "The defendant, F. McLean, demurs to the plaintiff's statement of claim, and says that the same is bad in law, on the ground that the facts alleged therein do not show any cause of action to which effect can be given by the Court as against the defendant, F. McLean, and on other grounds sufficient in law to sustain this demurrer."

The plaintiff moved on summons that the demurrer be set aside, "on the ground that it does not state specifically whether it is to the whole or to a part, and to what part, of the statement of claim, and that it does not state any ground in law for the demurrer, or only a frivolous ground of demurrer is stated."

Kay, J., refused the application. The plaintiff now appealed, and the question was whether the above general demurrer for want of equity, without stating any particular ground of demurrer, was sufficient in the face of *Imp. O. 28, r. 2* (*Ont. Rule 190*).

JESSEL, M. R.—This is a case in which I must say that the plaintiff had some reason to expect a general demurrer for want of equity. . . I have not heard a suggestion in what better form the demurrer could have been put in such a case at the present. It is urged that if we hold this demurrer good in form, the direction of *Imp. O. 28, r. 2* (*Ont. Rule 190*) will be nugatory; but that is not so. I do not think that it was intended to make it impossible to demur in a case where the statement of claim is so framed that the only way of meeting it is by the simple allegation that it shows no cause of action. In many cases a general demurrer like this would be improper, but I think it is not so in the present case.

BAGGALLAY, L. J.—In my opinion a general demurrer may be sufficient under the order, and I think that it is so in the present case. I do not mean to say that it generally is so.

LINDLEY, L. J.—Each case must be determined with reference to the form of the statement of claim. I think that in this cause a general demurrer is sufficient, though I do not say that it would be so generally.

[NOTE.—*The Imp. and Ont. Rules are virtually identical.*]