

RECENT ENGLISH PRACTICE CASES.

form, and if in that form, large as it is, it is short of fulfilling that which is the fundamental condition, I must have omitted to state something which ought to have been stated. But it will be observed that I use the words, 'of every right of the assured.' I think the rule does require that limit *** The contract in the present case (the contract of purchase) as it seems to me, does enable the assured to be put by the third party into as good a position as if the fire had not happened, and that result arises from this contract alone. Therefore, according to the true principles of insurance law, and in order to carry out the fundamental doctrine, namely, that the assured can recover a full indemnity, but shall never recover more, except, perhaps, in the case of the suing and labouring clause under certain circumstances, it is necessary that the plaintiff in this case should succeed"—p. 386-392. And Bowen, L. J., at p. 404, says of the above language of Mr. Justice Brett: "It does seem to me, that taking his language in the widest sense, it substantially expresses what I should wish to express with only one small appendage that I desire to make. I wish to prevent the danger of his definition being supposed to be exhaustive, by saying that if anything else occurs outside it, the general law of indemnity must be looked at." And he says in another place, that in all the difficult problems that arise in connection with the subject, he goes back "with confidence to the broad principle of indemnity."

A. H. F. L.

REPORTS

RECENT ENGLISH PRACTICE CASES.

IN RE PAYNE, RANDLE V. PAYNE.

Imp. O. 16, r. 8—Ont. r. 97—Action by next friend of married woman—Security for costs.

[L. R. 23 Ch. D. 228.]

An action was brought by a married woman by her next friend, and an order was made that the next friend should give security for costs on the ground of poverty. That order not having been complied with the action was dismissed with costs. Afterwards the plaintiff, by a different next friend, brought another action for the same purpose.

Held, the second action ought to be stayed till the costs of the first action were paid.

PENRICE V. WILLIAMS.

*Imp. O. 31. r. 12—Ont. r. 222.**Order of reference—Production of documents—"Matters in question in the action."*

[L. R. 23 Ch. D. 353.]

This was an application by the plaintiff, under the above English rule, that the defendants might be ordered to make an affidavit of the documents in their possession. The defendants objected on the ground (as was the case) that an order had been made by consent of the parties, referring the action and all matters in difference to the award of an arbitrator; and it was said that the effect of this order was that there was no longer any action or question in an action pending before the court, and therefore that the jurisdiction of the court was exhausted. The order relied on was an arbitration order, and provided that the parties should produce before the arbitrator all documents in their or either of their custody or power relating to the matter in difference; also that the party in whose favour the award should be made should be at liberty, after the service of a copy of the award on the other party, to apply for final judgment in accordance with the award.

Held, the effect of the order was that, for all practical purposes, the action, so far as the court was concerned, had disappeared in every respect, with the exception that the court had to allow judgment to be entered up according to