

THE JUDICATURE ACT—NOTES OF CASES.

be considered as sufficiently represented by any person who volunteers to appear for him?

Order IX. Rule 6, (close of rule) add "and subsequent interest."

Order XVI. Rule 2, p. 60, end of line 3—for "defendant," read "plaintiff."

Order XVII., Rule 2, p. 62.—Eight days is very short time to prepare and deliver defence, seeing plaintiff has no less than three weeks to reply, and a defendant in Chancery has now four weeks to put in answer.

Order XXVII., Rule 4, p. 70. The change from the Chancery practice by which an order for production is obtained on *præcipe* appears to me very objectionable. The order will be applied for and probably granted as of course, and in every contested case, but the cost of affidavit and application will be so much loss to the litigants. The affidavit will probably be a stereotyped form by the solicitor as to his belief that the other side has papers, &c. The multiplication of formal and unnecessary affidavits is very objectionable and runs counter to the current of modern legislation. All the variations from the present Chancery practice as to production are changes for the worse.

Order XXXV., Rule 2, p. 80. How are the shorthand writer's notes to be procured in four days after trial?

Order XXXIX., p. 86. Why not embrace this opportunity to remodel the law of executions, abolish the distinction between *fi. fa.* goods and *fi. fa.* lands and do away with the necessity of the *ven. ex*? Let there be one writ, a *fi. fa.* goods and lands, affecting and binding both moveables and immoveables—but not enforced against the lands until after the year. When the year is up, let the duty be cast upon the sheriff, if plaintiff desires lands to be sold, of procuring a proper description of the lands, of advertising them sensibly, and of conducting the sale with some regard to the interest of the defendant as well as of the plaintiff, and, generally speaking, in a mode somewhat similar to Chancery sales. The result would be a vast saving in expense, half the number of writs doing the work; and great reform would be effected by making the sheriff's sale a judicial proceeding, instead of a hole-and-corner piece of jugglery for giving the plaintiff the defendant's land for five dollars. There would be no necessity for postponing the sale, as no *ven. ex.* would be required. Of

course, the sheriff's fees would have to be remodelled, to cover the additional expense of the proper advertising, &c., &c.

Order XLIX., Rule 7 (p. 95). The right of removal appears unnecessary and uncalled for, and may tend to embarrass a plaintiff.

Do., Rule 12. What is to prevent a clashing of the jurisdictions of the local master and the County Court Judge?

Do., Rule 13 (p. 96). Why not by notice instead of summons? See Order XLVIII.

Order L., Rule 5 (p. 97). I must protest against the introduction of this principle into our practice. Why should not the solicitor be permitted (as at present) to make his copies from his adversaries' papers? It is, in the first place, a large addition to the head of disbursements if one must pay for these copies, and may prevent many lawyers from being able to do so much for a poor client as they might otherwise do. My experience of the system, and of the complicated cross accounts between solicitors for copies, as it worked in England, leads me emphatically to condemn it. On the question of extracts alone, a lawyer may be driven to order a copy of a long account or document, the greater part of which is utterly worthless to him, simply because to order a certain limited extract would be to disclose his entire case (or some vital point of it), to his adversary.

NOTES OF CASES.

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QUEEN'S BENCH.

IN BANCO.—MICHAELMAS TERM, 1880.

BERNARD V. COUTELLIER.

Malicious prosecution—Rejection of evidence—New trial—C. L. P. Act, s. 289.

In an action for malicious prosecution, on the opening of the defence, the defendant was called, and stated that he had learned some facts from certain persons upon which he had caused the plaintiff to be arrested; but on proceeding to state what he had heard, the learned Judge ruled that this was inadmissible, and that the persons who had told him these facts