

RECENT ENGLISH PRACTICE CASES.

tract they served P. as third party under Imp. O. 16. r. 18. The defendants then applied to the Court to give directions as to mode of trial; but the Court held that the matters could not all be decided at one trial, and declined to give any directions. Pleadings having been, by direction of the Q. B. Div., delivered between the defendants and the third party, the defendants then gave the third party notice of trial, the action between the plaintiff and the defendants having been already tried.

Held (affirming the judgment of the Q. B. D.) that as the Court had decided that all the questions could not be determined in one trial, the third party ought to be dismissed from the action, and that the notice of trial should therefore be set aside.

[Q. B. D., C. of A., May 19, 20.—50 L. J. R. 525.]

The facts of this case sufficiently appear from the above head note.

BRAMWELL, L. J., who delivered the judgment of the Court, after observing, that speaking for himself, he thought that when a case is not within Imp. O. 16, r. 18, but is within rule 17 of the same order, the third party served with a notice which in terms brought the case within rule 18 (as was the case here)—should be dismissed, and not brought in on one ground and then retained and dealt with on another ground, continued:—

"However, assume that the case is properly brought under rule 17, then we think the object of the rule is that, where the same question may arise between two parties, where a plaintiff may say to a defendant, 'you complain that the goods sold to you are not according to contract,' and the defendant replies, 'If that is true, and if they are not, then there is a third party who has broken a contract with me with respect to the same goods,' that same question should be tried once for all. But when, as in this case, a Court has decided that the same question shall not be tried once for all between all the parties, then the reason for retaining the third party is at an end. There is no reason why the provisions of rule 17 should be applied to the third party, and we think that the third party should be dismissed for the action. The Solicitor-General has said that the rules could not limit the operation of Jud. Act, 1873, sec. 24, subs. 3; but the rules have received a sanction which renders them equivalent to an Act of Parliament, and speaking for myself, I think that, although the rules ought to be in-

terpreted according to the Act, still this view in effect does so. It may be observed that the section of the statute is permissive not obligatory or compulsory."

[NOTE: *Imp. J. Act 1873, s. 25, subs. 3. and Imp. O. 16, r. 17, are identical with Ont., J. Act, s. 16, subs. 4, and Ont. O. 12, r. 19 respectively. Imp. O. 16, r. 18 and Ont. O. 12, r. 20, are virtually identical, except that the former requires the leave of the court or judge before service of the notice on the third party, and also that the notice shall be stamped with same seal as writs of summons.*]

MUDGE V. ADAMS.

Imp. Jud. Act, 1873, s. 24, subs. 3.—Ont. Jud. Act, s. 16, subs. 4.—Protection order—Probate action—Statement of defence and counter claim praying for discharge of protection order.

[P. D. & A. D., Feb 1.—50 L. J. R. 49.]

In this case the plaintiff as executor, propounded the will of defendant's wife. The statement of claim alleged that the deceased had duly executed the will while living apart from her husband after obtaining a protection order, and being possessed of separate estate. The statement of defence alleged that the protection order had been obtained fraudulently, and ought to be set aside. The defendant by his counter-claim, claimed (i.) that it might be declared that the protection order was fraudulent and void, and that 'the same be set aside and discharged; (ii.) that the Court should pronounce against the will propounded by the plaintiff; (iii.) that the Court should decree to the defendant a grant of letters of administration of the personal estate of the deceased as her lawful husband; (iv.) that in the alternative the Court should decree to the defendant a grant of letters of administration of so much of the personal estate and effects of the deceased as she had no power to dispose of by her will.

The plaintiff demurred on the ground that it was not alleged that the protection order had been revoked, and that it was not competent to the defendant in this proceeding to assail its validity.

The President (Sir James Hannen), held that the counter-claim was good, and that an ap-