

## RECENT ENGLISH PRACTICE CASES.

## DAUVILLIER V. MYERS.

*Imp. O. 31 r. r. 11, 18, 20; O. 36 r. 32.—Ont. O. 27, r. 3, 16, 18; O. 31, r. 25.*

The official referees have no jurisdiction to make an order for the production of documents, the proper course being to take out a summons for the purpose in the chambers of the Judge, to whom the action is attached.

[April 13. L. R. 17 Ch. D. 346.]

This action had been referred to one of the official referees who during the trial had ordered the plaintiff to produce certain documents at the office of his solicitor for the defendant's inspection.

With this order the plaintiff had not complied, and the defendant now moved, under *Imp. O. 31, r. 20* of Rules of Court 1875, (*Ont. O. 27, r. 18*), to dismiss the action.

Counsel in support of the motion asked that if the order of the official referee was wrong, the order for production might be made then, and that if necessary they should have leave to amend their notice of motion.

JESSEL, M. R.—I shall make the order for production as asked for, and shall for that purpose give the plaintiff leave to amend his notice of motion, though it is not absolutely necessary, as the notice of motion contains the usual clause as to further or other order. The official referee has made a slip; he made a perfectly proper order if he had jurisdiction to make it, but under *Order 36, r. 32*, (*Ont. 31, r. 25*), the only jurisdiction he has is to make such an order as a Judge of the High Court can make at a trial before him, and the order the official referee has made could not be made at the trial. Orders for the production of documents should always be made in the chambers of the Judge to whom the action belongs. My chief clerk would have made the order as a matter of course.

I shall now make the order that the plaintiff do produce the documents in question at the office of his solicitor, for the defendant's inspection. The costs of this motion will be costs in the action.

[*Note.—The Imperial and Ontario Orders referred to are virtually identical, but under our O. 27 r. 3, an order for discovery and production can be obtained on præcipe.*]

## EX PARTE HOSPITAL OF ST. KATHARINE.

*Imp. O. 55.—Ont. O. 50. r. 1.*

The Court has now, under the Judicature Act, 1875, and *Order 55* of Rules of Court, 1875 (*Ont. O. 50, r. 1*), a discretion as to directing payment of costs where a provision as to costs is omitted in any public or private act.

[Feb. 11, L. R. 17 Ch. D. 378.]

This was a petition by the Master of the Hospital of St. Katharine, that part of a sum of money which had been paid into court by the St. Katharine Docks Company upon the purchase of land from the charity might be ordered to be laid out in the redemption of land tax chargeable in respect of land belonging to the charity; and the petition asked that the Docks Company might be ordered to pay the costs of the petition and of the re-investment of the money. The payment of costs was resisted by the company on the ground that by their private Act of Parliament, 6 Geo. IV., the Court could only direct costs to be paid in case the money was re-invested in the purchase of "other houses, buildings, lands, tenements, or hereditaments," and not where money was re-invested in the redemption of land tax.

After this point had been decided adversely to the contention of the company, who were ordered to pay the costs,

GLASSE, Q. C., referred his Lordship to a recent case of *Ex parte Mercers' Company*, L. R. 10 Ch. D. 481, where it was held by the M. R. to be now immaterial to consider whether any public or private statute passed prior to the Jud. Act. 1875, had made, or omitted to make, any express provision as to the costs of particular proceedings under such statute, inasmuch as the combined effect of the Jud. Act and *Order 55* of Rules of Court, 1875, giving the Judges a discretion as to costs in all cases, with certain specified exceptions, was to repeal all previous enactments directing costs to follow certain rules; and where a previous statute is silent as to the costs of particular proceedings under it, to supply the omission.

MALINS, V.C.—"I am glad to have been referred to that case, because it settled the question, and shews that, independently of the term of this Act, the Court has authority to do what I have now done."

[*Note.—Imp. O. 55 and Ont. O. 50; r. 1 are identical.*]