

## RECENT ENGLISH PRACTICE CASES.

DEAN, Co. J., *held*, relying on *Rush v. Bobcay-geon* 44 U. C. Q. B. 199, that the objection was well taken, and that he could not hear the appeals or make any order as to costs or otherwise.

Martin, & Hopkins (Lindsay), for respondents.  
A. F. Sinclair (Cannington), for appellants.

## ENGLAND.

## RECENT PRACTICE CASES.

## RE GYHON, ALLEN V. TAYLOR.

*Preliminary accounts and inquiries—Rules 1883, Ord. 15 r. 1 (Ont. Rule O. 86, 87).*

Under Ord. 15 r. 1. (*Ont. Rules 86, 87*) only common accounts and inquiries can be directed, and not accounts and inquiries the right to which depends on the plaintiff establishing a case for them at the hearing.

A mortgagee of shares of the proceeds of the residuary real and personal estate of a testator who died in 1872 brought an action for administration of the estate, alleging mis-application by one of the trustees of moneys raised by mortgage of parts of the testator's estate on equitable mortgage. The plaintiff applied under Ord. 15 r. 1 for common accounts in an administration suit, and also for inquiries as to mortgages of the real estate and as to advances to the trustees.

*Held*, plaintiff not entitled to the inquiries as to mortgages and advances to trustees.

[C. A.—29 Chy. D. 834.]

COTTON, L. J. . . . "The two special inquiries for which the plaintiff asks do not come within that description (*i.e.*, accounts and inquiries necessary in an administration suit), but point to alleged breaches of trust which ought to be determined at the hearing. These are not within the rule, and nothing could now be directed but ordinary administration accounts."

NOTE.—*Query*, how far this case is an authority for the construction of Ont. Rules 86, 87, see Chy. Ord. 220, Holmsted's R. & O., p. 103.

## DE LA POLE V. DICK.

*Solicitor—Service of notice of appeal.*

An order on further consideration was made for the payment of money by a defendant into Court: the plaintiff appealed from the order. The defendant went abroad, and notice of the appeal was served on his solicitors.

*Held*, that as the order appealed from had not been worked out, the defendant's solicitors still represented him, and that service of the notice of appeal on them was sufficient.

[C. A.—29 Chy. D. 351.]

COTTON, L. J.—" . . . ROLLE, C. J., lays down in *Lawrence v. Harrison*, Sty, 426, a principle on which we may act. He says: 'The only question is whether the warrant of attorney be determined by the judgment given in the suit wherein he was

retained; and I conceive it is not, for the suit is not determined, for the attorney after the judgment is to be called to say why there should not execution be made out against his client, and he is trusted to defend his client, as far as he can, from the execution.' According to that principle, until the judgment is worked out, there is a duty imposed on the solicitor on the record, to defend his client against any improper steps taken for the purpose of enforcing the judgment. Until that time, therefore, the solicitor on the record must be taken, as between him and the opposite party, to represent the client, unless the client not only discharges him, but substitutes another solicitor on the record."

BOWEN and FRY, LL.J., concurred.

## GARNHAM V. KIPPER.

*Preliminary accounts—Rules S. C. 1883, Ord. 33 r. 2 (Ont. R. 244).*

In an action for foreclosure against several other mortgagees the plaintiff insisted she was entitled to priority to the defendants on the ground of notice and fraud. On the application of the plaintiff, under Ord. 33, r. 2 (*Ont. R. 244*), KAV, J., made an order directing an inquiry as to the priorities, and an account of the amount due to the incumbrancers.

*Held*, order must be discharged as Ord. 33, r. 2 does not authorize the whole questions in a cause to be tried in Chambers; but only authorizes the Court to direct before trial accounts and inquiries which would otherwise have been directed at the trial.

[C. A.—29 Chy. D. 566.]

FRY, L. J.—" . . . When questions are raised which ought to be decided at the trial they are not proper to be sent to Chambers. What the order intended was to authorize inquiries which would otherwise have been directed at the trial, to be directed before the trial."

COTTON and BOWEN, LL.J., concurred.

## CARSHORE V. NORTH-EASTERN RY. CO.

*Third party—Claim of indemnity—Rules S. C. 1883, Ord. 16, r. 48 (Ont. Rules 107, 108).*

In giving leave to serve notice of claim for contribution or indemnity on a third party, the Court will only consider whether the claim is *bona fide*, and whether, if established, it will result in contribution or indemnity. It will not on the preliminary application determine whether the claim is valid.

[C. A.—29 Chy. D. 344.]

NOTE.—See Ont. Rules 107, 108. Under the latter Rule a defendant may serve notice of claim for contribution, etc., without leave, but the above case is an authority as to the propriety of giving such a notice, and as to the principle on which the Court would act on motion to set aside the notice.